

## Before Hawkes Bay Regional Council and Hastings District Council

In the matter of            the Resource Management Act 1991

And

In the matter of            Application by Hastings District Council and Napier City Council to  
Hawke's Bay Regional Council for resource consents authorising  
the operation of Area B at Ōmarunui Landfill (**consent application**)

And

In the matter of            A notice of requirement by Hastings District Council to Hastings  
District Council for alteration of designation for the Ōmarunui  
Regional Landfill (**NoR**)

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### Outline of Submissions for Hastings District Council and Napier City Council

Dated 28 October 2021

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#### INTRODUCTION

1. Hastings District Council and Napier City Council (**Applicants**) propose to extend the life of the Ōmarunui Landfill (**Landfill**) by expanding into Area B. To do so, it requires new and varied regional consents from Hawke's Bay Regional Council (**HBRC**) and an alteration to the designation for the Landfill which is included in the Hastings District Council's (**HDC**) District Plan.
2. Consents for landfills are frequently highly contested – the recently heard Auckland Regional Landfill consent applications attracted close to 1000 submissions on the resource consents alone, with only 10 in support. By contrast, the applications for the Ōmarunui Landfill have attracted a total of 24 submissions, 9 of which are in full support, and one which is neutral. Post lodgement consultation undertaken by the Applicants have resulted in the neutral submission being resolved, and one submitter – Ngāti Pārau Hapū Trust – confirming it does not object to the proposal.<sup>1</sup> The Applicants understand only 3 submitters wish to be heard, 2 of whom gave submissions in support.

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<sup>1</sup> Ngāti Pārau Ōmarunui Landfill Cultural Values Assessment, August 2021, provided as Attachment B to the evidence of Martin Jarvis, page 6.

3. The main difference between the new Auckland Landfill and the one at Ōmarunui is that we are here dealing with a known quantity – an existing landfill that has successfully managed waste for the Napier and Hastings communities for over 30 years, with a high level of community acceptance.
4. With the current area used for waste disposal, Area D, predicted to be full by as early as mid-October 2025, and with a 3 year construction period for proposed Area B, it is now important that the Landfill's future be determined.
5. On the advice of its highly experienced expert team, the Applicants consider that Ōmarunui Landfill can be expanded into Area B with minimal adverse effects on its neighbours or the wider environment. The proposal is supported by a comprehensive assessment of environmental effects (AEE) and detailed technical reports, summarised and expanded on in expert evidence. None of that evidence has been seriously challenged by the submitters, nor by the experts engaged by the consent authorities.
6. The issues raised in submissions, and the relatively few remaining differences in terms of wording of conditions of the regional consents, are largely technical, rather than legal, issues. These submissions are therefore reasonably confined and will address the following matters:
  - (a) A brief overview of the existing Landfill and the extension proposal.
  - (b) Briefly, the statutory framework against which the applications are to be assessed.
  - (c) Comment on the submissions received, including the evidence filed by Mr Bearsley.
  - (d) Comment on the s 42A reports and proposed conditions, with a particular focus on areas of difference between the Applicants and the Regional Council on conditions (there being full agreement on the appropriate content of the designation conditions).

## **OVERVIEW AND CONTEXT OF THE PROPOSAL**

7. The application documents and the evidence of Mr Jarvis set out the background to the Landfill and its context. Importantly, the Landfill is part of a much wider waste

minimisation strategy that sees a large proportion of waste from within the Hastings and Napier areas diverted from landfill, including by recycling and diversion of organic waste. While zero waste remains the aspirational goal, at this stage, there is a need to dispose of residual waste and the Councils are required to fulfil that service.

8. Ōmarunui Landfill commenced operations in 1988, effectively replacing several smaller landfilling operations which had reached capacity at around the same time. The Landfill has been strategically planned from the outset to provide for the long-term waste needs of residents of Napier and Hastings. Four separate areas were identified on the 150-hectare site, on the basis these would be opened, filled and rehabilitated on a staged basis, as required. Area A was developed first and reached capacity in 2007. Area D was consented in 2004 and, as noted earlier, is expected to reach capacity in October 2025, based on a 'high' waste scenario.<sup>2</sup>
9. In 2014, a gas to electricity plant was established, with capacity to generate up to one Megawatt of electricity. Incidentally, this is enough to power around 600-700 homes annually. The Landfill sells gas to a private company who is responsible for running this plant.
10. In addition to Areas A and D, in 2014, Area E was authorised for cleanfill disposal.
11. In terms of how the Landfill site is laid out and how it operates on a day to day basis, Mr Doolan, the Landfill's Solid Waste Engineer, has described this in some detail in his evidence. Hopefully by the time of the hearing, at least 2 of the Commissioners will have had the opportunity to conduct a site visit and see it in action.
12. The Landfill has had no serious compliance issues, with the only incident of note being a recent infringement notice issued for odour, arising from the disposal of skins at the Landfill which were delivered in an already decomposing state. Mr Doolan describes the area-wide issues leading to that odour event, and the steps that have been taken to ensure it does not arise again. The compliance history listed at page 7 of the HBRC s 42A report identifies a handful of minor or moderate non-compliances since 2006, none of which, other than the recent odour incident, have warranted any enforcement action. For a site managing the waste disposal requirements of two urban areas, at volumes of over 100,000 tonnes per year, this

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<sup>2</sup> Mr Bryce can address the Commissioners on the detail of the remaining capacity scenarios if required.

is an admirable record, but one which the operators are consistently seeking to improve.

13. Importantly, there has been no real suggestion that there is an alternative site or method to dispose of the waste being generated by these two growing areas. Despite the Councils' ongoing efforts, there will still be waste requiring disposal for the foreseeable future. Mr Jarvis discusses the only real option, which is to transport all of the area's waste to another region, the most likely destination being Hampton Downs in the Waikato, requiring a 5-hour drive in each direction. That is not an economically viable, nor environmentally responsible, option.

## STATUTORY FRAMEWORK

### *Regional consents*

14. A range of regional consents are sought to authorise the expansion of the Landfill to Area B, namely:
  - (a) A 'Solid Waste Consent' for Area B, encompassing consents for discharge of contaminants to land and water, diversion and discharge of stormwater, and diversion and discharge of drainage water.
  - (b) A new Air Discharge Consent for LFG Combustion from Areas A, B and D (and a consequential variation to the existing Air Discharge Consent for Areas A and D, to remove the LFG Combustion components).
  - (c) A new Air Discharge Consent for the discharge of odour and landfill gas from the decomposition of refuse and dust from Area B.
  - (d) A variation to the Leachate Discharge Consent to cover Area B.
15. On a bundled basis, the consents have been assessed as a Discretionary activity, requiring assessment under s 104 and s 104B Resource Management Act 1991 (RMA). Sections 105 and 107 are also relevant in respect of the discharge permits.
16. The AEE, and Ms Brabant's planning evidence, set out a full assessment of all aspects relevant under those sections. Ms Brabant draws on the evidence of the Applicants' 10 other witnesses to summarise the potential effects and the methods proposed to mitigate them to an appropriate level; as well as considering the positive effects which in this case are significant. She also includes an assessment against the

relevant statutory planning documents, including the National Policy Statement for Freshwater Management, which was only introduced after the application was first lodged in 2019.

17. I do not repeat her analysis here, and there are no particular legal issues arising from it. Having undertaken a full analysis, Ms Brabant concludes that effects arising from the proposal can be appropriately addressed through the proposed management plans and conditions of consent; and that it is not contrary to relevant objectives and policies but is directly supported by many of them.

### *Alteration of Designation*

18. The Landfill is currently designated in the Hastings District Plan as Designation D123, with the conditions being included as Appendix 24 to the Plan. The Notice of Requirement seeks an alteration to that designation to allow waste disposal in Area B.
19. Alterations to designation are managed under s 181 RMA, with s 181(4) clarifying that the section applies equally to a territorial authority's own designation. As a HDC designation, the alteration is to be assessed under s 168A RMA. Similar to the assessment required under s 104 RMA, s 168A(3) requires the assessment of the effects on the environment – both positive and adverse – of allowing the requirement, having particular regard to the statutory planning documents.
20. The proposal has been assessed on a holistic basis, and the AEE and Ms Brabant's evidence address the effects of the proposal and the assessment against the statutory documents of the proposed works as a whole. As noted above, based on the evidence called for the Applicants, and Ms Brabant's assessment of the proposal against the statutory documents, she considers the alteration is appropriate.
21. Under s 168A(3)(b) and (c), the Commissioners are also required to have particular regard to:
  - (c) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
    - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
    - (ii) it is likely that the work will have a significant adverse effect on the environment; and

- (d) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought;  
...

22. In this case, the Landfill site is wholly owned by the Applicants and HDC, as requiring authority, has an interest in the land sufficient to undertake the work. Any adverse effects on the environment are not considered, either by the Applicants' experts nor either of the consent authorities, to be significant. There is therefore no statutory requirement to consider whether the requiring authority has given adequate consideration to alternative sites, routes or methods for undertaking the work. Nevertheless an assessment of alternatives is recorded in the AEE, at section 11, and is discussed in Mr Jarvis's evidence.

23. HDC's objectives in proposing an alteration to the designation are to:<sup>3</sup>

- (a) Provide sufficient space to enable the ongoing efficient operation of the Ōmarunui Landfill and extend its ability to receive waste; and
- (b) Maximise cost-effectiveness and environmental compliance by making use of the existing infrastructure established at the Ōmarunui Landfill site to enable the filling of Area B.

24. Both the work (i.e. the landfilling activity within Area B) and the alteration to the designation will achieve that objective, and are reasonably necessary to do so.

25. The Applicants have also requested the waiver of the requirement for an outline plan. Section 176A(2) provides that an outline plan need not be submitted if the work has been otherwise approved under the RMA; or the details in subsection (3) are incorporated into the designation; or the territorial authority waives the requirement for the outline plan. In this case, the application and the supporting AEE address all of the matters in subsection (3), namely:

- (a) the height, shape, and bulk of the public work, project, or work; and
- (b) the location on the site of the public work, project, or work; and
- (c) the likely finished contour of the site; and
- (d) the vehicular access, circulation, and the provision for parking; and

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<sup>3</sup> AEE, p12.

- (e) the landscaping proposed; and
  - (f) any other matters to avoid, remedy, or mitigate any adverse effects on the environment.
26. The detailed information available about what is to be constructed in accordance with the designation makes this an appropriate case in which a waiver can be granted.

## ***Part 2***

27. The AEE, Ms Brabant and both reporting planners have undertaken an assessment of the proposal against the purpose and principles of the Act.
28. It is submitted that allowing for the continuation of the existing landfill is a clear example of providing for the sustainable management of an important physical resource, which will meet the waste disposal needs of present and future generations. The experts for the Applicants, and as discussed below, the reporting officers, consider that adverse effects on the environment are appropriately avoided, remedied or mitigated. There is nothing in Part 2 that tells against the grant of consent.

## **SUBMISSIONS**

### ***Ngāti Parau Hapu Trust***

29. While Ngāti Parau originally filed a submission opposing the Landfill's extension, it has since confirmed, in a Cultural Values Assessment:

It is unlikely the extension of the Ōmarunui Regional Landfill will have a direct effect on areas of significance to Ngāti Parau.

Regular and active engagement has been established and will continue between the applicant and mana whenua.

Ngāti Pārau considers that the impacts identified in our submission will be avoided, minimised and/or mitigated through the systems and processes at an operational level.

Ngāti Pārau proposes that we build a closer partnership with HDC at a governance level. The purpose of these partnerships will be to build a closer connection between our entities, provide advice and guidance as mana whenua, and support a positive community Kaupapa.

30. Ms Hughes has not indicated she will attend the hearing to speak to the Cultural Values Assessment, but the document speaks very eloquently for itself.

31. Mr Jarvis's evidence confirms the Applicants' commitment to ongoing engagement with Ngāti Parau and that the partnership opportunities described in the Report are being actively pursued.
32. The Applicants are pleased to have been able to allay this submitter's concerns and also to have strengthen their relationship with Ngāti Pārau, to the parties' mutual benefit.

*Submissions in support*

33. Nine submissions were received in full support of the proposal – 2 on the designation and 7 on the regional consents. There is often a tendency to overlook submissions which support a proposal and concentrate on the issues raised by those who oppose it. However submissions in support are equally as important, and raise important issues that should be given full consideration.
  - (a) Mr Reay's submissions, on behalf of himself and Progressive Leathers Ltd, describe the landfill as being an ideally sited and well managed essential service, which is necessary to protect against health and contamination issues associated with improper waste disposal. He highlights the value delivered by the landfill in events such as the Napier floods, where contaminated waste was able to be disposed of quickly and safely. I understand Mr Reay intends to speak to his submissions.
  - (b) Mr and Mrs Burnside, of Clean Earth Ltd, also intend to attend the hearing. Their submission describes the Landfill as necessary infrastructure, which is well operated and provides a vital service to the Hawkes Bay.
  - (c) That sentiment is supported by the Hawke's Bay Chamber of Commerce who highlight the economic effects on businesses if waste had to be transported outside the area.
  - (d) Mr Frogley describes the Landfill as an asset to the Hawkes Bay community, providing a safe and economic means of disposal of waste, as well as a good employer of staff.
34. Other submissions in support include those from Hasting District Council itself, and Progressive Meats Ltd, who echo and reiterate points made above.

35. In my submission, it is a testament to the efficient operation of the Landfill that it has attracted a high degree of support from the community. It is important to recognise the value the community places on having a well sited and well managed piece of critical infrastructure available for its use, and the significant adverse effects that would arise from it no longer being available.

### *Submissions in Opposition*

36. The submitters in opposition are primarily neighbours to the site who have genuine concerns about how the expansion into Area B will affect them and their enjoyment of their property. Concerns include that leachate will contaminate groundwater; that there will be adverse odour and litter effects; and that neighbours will be able to see the working face and therefore have their visual amenity affected.

37. The Applicants have called expert evidence to assess and address all concerns raised in submissions in opposition. In addition, the Applicants have sought to meet with all of the submitters to discuss their concerns. These efforts at consultation are described in Attachment A to the evidence of Mr Jarvis and included:

- (a) A meeting with local submitters on 29 March 2021 with a presentation and question and answer session with Tonkin & Taylor, including a site visit.
- (b) A meeting with a representative of Hawke's Bay Fish & Game Council, attended by Messrs Jarvis, Doolan, Bryce and Miller.
- (c) A meeting with Fire and Emergency New Zealand, which resulted in an agreed condition resolving this submitter's concern.
- (d) Numerous meetings with Ngāti Parau Hapu Trust, as described above, and Mr Bearsley, discussed below.

38. The only submitter the Applicants have been unable to make contact with, despite a number of efforts, is Mr Cottrell.

39. Other than Mr Bearsley, none of these submitters have chosen to call evidence or attend the hearing. Their concerns have been recognised by the Applicants but are considered to be fully addressed through the design of the proposal and the proposed conditions.

### *Submitter Evidence – Danny Bearsley*

40. The only submitter in opposition to have called evidence or attend the hearing is Mr Bearsley. Mr Bearsley is a neighbour to the site whose primary concern appears to relate to claimed breaches of conditions by the Landfill's present operation. He is also concerned with stormwater, landscaping, litter and odour effects.
41. In terms of Mr Bearsley's allegations that the Landfill is persistently in breach of the conditions of its consents, the Applicants deny this. It is quite difficult to respond to such allegations where little detail, such as dates, are provided. To the extent possible, Mr Doolan has provided a response to Mr Bearsley's evidence and the apparent breaches he describes. The claimed pattern of egregious breaches alleged by Mr Bearsley is simply not borne out by the situation on the ground, as described by Mr Doolan, nor the record of compliance included in the HBRC s 42A report.
42. Even if there was suspicion of past breaches, that is a matter for investigation and enforcement action by the relevant Council if appropriate. The caselaw is clear that "*... it would be wrong to confuse the decision on a resource-consent application with a prosecution or enforcement proceedings*",<sup>4</sup> and that applications for consent must be assessed on the presumption that the consent holder will act lawfully in complying with all conditions of consent.<sup>5</sup> In this case, a comprehensive suite of conditions is proposed to address all potential effects. The Applicants fully intend to comply with them, and that is the assumption on which the assessment is required to proceed.
43. In relation to stormwater, Mr Hansford has given primary and reply evidence to address Mr Bearsley's perception that the Landfill is increasing flooding of his land. This expert evidence shows that Mr Bearsley's perception is not correct. Mr Hansford describes the impacts of the Landfill on flooding of Mr Bearsley's land as negligible and having no measurable effect.<sup>6</sup> While Mr Bearsley clearly has an opinion that flooding of his land is caused by additional water flowing from the Landfill, he has no relevant qualifications to support that opinion and has not called any such independent evidence. Mr Hansford's evidence as an expert is uncontested.
44. In terms of Mr Bearsley's complaints about litter, odour, noise and birds, these are all addressed in Mr Doolan's evidence and do not require further comment here.

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<sup>4</sup> *Hinsen v Queenstown Lakes District Council* [2004] NZRMA 115 (EC)

<sup>5</sup> *Barry v Auckland City Council* (1975) NZTPA 312 at 318 (CA), applied in *Kemp v Rodney District Council*, A087/09 (EC)

<sup>6</sup> Evidence of John Hansford, p3.

45. In terms of landscaping, the Applicants have gone to some lengths to address Mr Bearsley's concerns on this front. They engaged Mr Bray to prepare a detailed landscaping plan for Area B which identifies 3.5 hectares of planting along the ridgelines of concern to Mr Bearsley, even though Mr Bray does not consider this to be required to mitigate an adverse effect of the proposal. While Mr Bearsley does not acknowledge the multiple meetings or efforts to address his concerns, the impression conveyed to attendees at the meetings was that Mr Bearsley was satisfied with the landscaping proposed.
46. Mr Bearsley's evidence at para 4 asks that if the extension is granted "*it is granted with conditions to prevent the continued impact on our farming activities and ensure the increased use does not exacerbate the problems*". On 26 October 2021, I emailed Mr Bearsley's counsel, Ms McEwan, inviting any comment on the proposed conditions so that these could be included in the version provided to the Commissioners, and considered by the Applicants' experts. Unfortunately, Ms McEwan did not respond to that invitation, so what further conditions might address Mr Bearsley's concerns, beyond what the Applicants have already put forward, are unknown at this stage.

## SECTION 42A REPORTS AND CONDITIONS

### *District Council*

47. Mr McKay has prepared a careful and comprehensive assessment of the requirement to alter the designation in his report dated 16 September 2021. He concludes that "*the adverse effects on the environment can in my opinion be sufficiently mitigated by way of conditions of the designation*". Mr McKay also considers the positive effects of the proposal, which are relevant under s 168A RMA, noting that these include the provision of capacity for appropriate waste disposal for Hastings and Napier; and the efficient use of an existing landfill facility and its associated resources.
48. Mr McKay identified a number of amendments to the designation conditions, beyond the changes sought by the Applicants to allow for disposal in Area B. These related to tree planting, mesh fences for wind-blown litter, and the addition of an accidental discovery condition, requiring works to cease if a discovery is made during the works.

49. Mr Bray's evidence on landscape effects and mitigation expanded on the assessment included with the application, as discussed above, and recommended further changes to conditions to capture his proposals. Mr McKay confirmed on 26 October 2021 that he agrees with Mr Bray's suggested amendments to conditions and noted *"I consider that these will provide a better landscape outcome than the landscape plans originally provided with the NOR and further information response"*.<sup>7</sup>
50. A version of Appendix 24 with the changes agreed as between the Applicants and Mr McKay on behalf of HDC are filed with these submissions. I note this version was checked and confirmed by Mr McKay on 27 October 2021.<sup>8</sup>
51. Mr McKay's report also recommends the waiver of an outline plan for the designation, on the basis sufficient detail has been provided as part of this application process.

### *Regional Council*

52. Mr Shirras' report for HBRC includes a full assessment of the applications for resource consents against the relevant provisions of the RMA and the relevant planning documents.
53. At page 5, Mr Shirras states:
- It is the opinion and recommendation of the report writer that the application and associated activities can be **granted** subject to recommended consent conditions detailed in Appendix 1. Draft conditions have been prepared and these largely adopt the conditions proposed by the applicant with some modification as described in this report and advised by the technical reports which have helped inform this report. These draft conditions may be refined through the hearing process and by the Commissioners when formulating their decision, should the consents be granted.
54. The Applicants support that conclusion, and the reasons for it as recorded in the report.
55. There are however two matters arising from the HBRC s 42A report that require further attention.
56. Firstly, the 'technical reports' referred to in Mr Shirras' report were all prepared by various employees of Pattle Delamore Partners Ltd (PDP) in March 2020, in response to an earlier version of the Assessment of Effects on the Environment (AEE). The

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<sup>7</sup> Email Phil McKay, 26 October 2021, 2.16pm.

<sup>8</sup> Email Phil McKay, 26 October 2021, 10:18 PM

version of the AEE which was the subject of public notification and assessment by HBRC is dated October 2020. The current version of the AEE was produced after reviewing those earlier technical reports and following extensive consultation between the Applicants' experts and PDP. All issues raised in those technical reports have been addressed.

57. The Applicants queried this with Mr Shirras shortly after receipt of the s 42A Report, and expressed a concern that readers of the report may be left with the incorrect impression that the issues addressed in the technical reports remained unaddressed. Mr Shirras responded (emphasis added):<sup>9</sup>

These have been added because they are the technical memorandums, of which, when commissioned I asked PDP to also include any aspects that needed clarification or more information to formulate a s92 request. In paragraph 1.9 of the s42A I have stated that: "... *the AEE provided by the applicant, and updated after provided a full response to the s92 further information request prior to public notification*". I would hope that this comment is clear in that the revised AEE addressed the concerns raised.

58. The decision to include outdated technical reports, and no expert evidence to address the current application, is unusual, and in my submission, rather unhelpful. Nevertheless, the Applicants proceeded on the basis of Mr Shirras' confirmation that the current AEE addressed all concerns the PDP advisors had previously raised, and that there were no outstanding technical issues remaining to be addressed.
59. On that basis, the Applicants' evidence reviewed HBRC's recommended conditions in detail, with each witness considering the conditions relevant to their area of expertise and, where the HBRC's version was not agreed, identifying the reason for disagreement and alternative wording. Ms Brabant's evidence attached a full set of the conditions as recommended by HBRC with the Applicants' changes and comments identifying where the HBRC's changes were accepted, and if not, where the evidence could be found supporting the Applicants' version.
60. That evidence, and the conditions, have been available to HBRC since 2 September 2021. On 19 October 2021, following receipt of the Commissioners' Third Minute, I emailed Mr Shirras and Mr McKay requesting their comments on whether the Applicants' changes to conditions were agreed or disagreed, so that a joint set of conditions could be provided to the Commissioners by 28 October 2021, as directed. I requested they provide me with any comments by the end of that week (22

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<sup>9</sup> Email from Greg Shirras, 30 August 2021, 3.57pm.

October 2021), which would have been 7 weeks after the evidence was provided.

My email noted, in respect of the HBRC conditions:

The differences between the Applicants' version and the s 42A version are relatively confined, and it would be good if we could narrow these down further. If you or your advisors disagree with any of the changes being sought by the Applicants' witnesses, I would encourage you/them to contact the appropriate witness directly to discuss, and discuss an agreed version if possible. If there is any disagreement remaining, can you let me know when you come back to me the broad reason for the change and whether the s 42A report version is being defended or some middle ground? I can then record that in the version to be submitted to the Commissioners next week.

61. On 26 October, after not having had any earlier response, Mr Shirras provided me with a version of the proposed air discharge consent for Area B which included extensive track changes, which were apparently 'comments' by Deborah Ryan of PDP. These took the form of a track change version of an older version of the conditions (not the version in Ms Brabant's Appendix) and were unsupported by any explanation or justification. They do not arise from any evidence or information that was provided subsequent to the s 42A report.
62. Comment boxes indicate the changes were made on 21 September 2021, however they were not provided to the Applicants until over a month later, less than a week before the rescheduled hearing, and 2 days before the conditions were due to be provided to the Commissioners. This version of the conditions is not currently before the Commissioners and the Applicants' experts have not had an appropriate opportunity to review and understand them. Mr Pene will need to review them over the weekend.
63. On 26 October and again at 11.15am on 28 October, Mr Shirras also provided a track change set of outdated conditions which had previously been provided in late August 2021. These appear to be an internal document pre-dating the s 42A report. These comments were available to the Applicants' experts during preparation of their evidence, and were taken into account where appropriate. HBRC has not identified which comments on that document it considers to be outstanding, and we have not commented on it further. The Applicants primarily and appropriately focused on the conditions included in the s 42A Report, on which Mr Shirras had based his opinion that grant of consent was appropriate.
64. Also at 11am on 28 October 2021, some 6 hours before the conditions were due to be filed, HBRC provided comment on the Applicants' conditions. It included explanation of some areas of disagreement but without reference to which expert

had commented or what the evidential basis for it was – as such, the disagreement has been noted but the explanation has been omitted. Presumably HBRC will speak to the reasons for its disagreement at the hearing.

65. HBRC's version also included changes recommended by PDP to the s 42A Report version of conditions which had not been amended by the Applicants, and did not arise from any other change or evidence called by the Applicants. These have not been included in the attached set, but HBRC may wish to separately address them if they are to be pursued.
66. Based on the information provided today, the matters of disagreement appear to relate to:
  - (a) Solid Waste Consent, condition 14 – Intermediate cover requirements.
  - (b) Solid Waste Consent, condition 40 – Leachate sampling frequency.
  - (c) Solid Waste Consent, conditions 55 and 57b – Whether there should be monitoring of the Farm Drain in addition to monitoring of the Stream.
  - (d) LFG Combustion Consent, condition 5 – Whether a condition regarding LFG collection is appropriately located in this consent or in the Air Discharge Consent for Area B.
  - (e) Leachate Discharge Consent, condition 7(f) – Whether leachate monitoring can be reduced, with agreement from HBRC, after 3 years, and the number of monitoring locations.
67. Given this feedback was only received a matter of hours ago, the Applicants have not had an opportunity to consider whether these matters can be resolved. In any event, the appropriate expert will be ready to discuss the issues at the hearing on Monday.

#### **EVIDENCE AND CONDITIONS FOR THE APPLICANTS**

68. The Applicants have called evidence from the following witnesses:
  - (a) Martin Jarvis, Waste and Data Services Manager for HDC, whose evidence addresses the background and context of the application. Mr Jarvis also lead most of the consultation and attended meetings with submitters. As noted,

the Cultural Values Assessment prepared by Ngāti Pārau Hapu Trust is provided as Attachment B to his evidence.

- (b) Philip Doolan, HDC's Solid Waste Engineer responsible for managing the Landfill. Mr Doolan describes the processes adopted at the site, with a particular focus on odour management. He also produced reply evidence in response to the evidence of Mr Bearsley.
- (c) Tony Bryce is a Technical Director – Environmental Engineering with Tonkin & Taylor who has been responsible for the design and consenting of 8 major landfills including Ōmarunui. Mr Bryce has been involved with the Landfill for 20 years and led the investigative and design process for Area B. His evidence describes the design process that has been adopted for all aspects of the Landfill. Mr Bryce has also produced supplementary evidence to respond to queries from Commissioner Mark-Brown and contributed to the joint technical memorandum responding to further queries.
- (d) Jamie Yule, an Engineering Geologist whose evidence describes the geotechnical investigations and inputs into the landfill design.
- (e) Tony Reynolds, an Hydrogeologist who addresses the potential for impacts on groundwater.
- (f) Rob Van de Munckhof, a Principal Environmental Engineer who describes the potential erosion and sediment controls and surface water contaminant controls. Mr Van de Munckhof has also contributed to the joint technical memorandum responding to queries by Commissioner Mark Brown.
- (g) Dean Miller, Principal Freshwater Ecologist who discusses potential ecological effects and methods to address these. Mr Miller has also contributed to the joint technical memorandum responding to queries by Commissioner Mark Brown.
- (h) Jason Pene, Principal Environmental Engineer providing air quality advice addressing odour, hazardous air pollutants and dust.
- (i) John Hansford, Civil Engineer specialising in Hydrological analyses. Mr Hansford's evidence was commissioned specifically to address claimed

flooding effects on Mr Bearsley's land, and he gives primary and reply evidence on that topic.

- (j) Shannon Bray, Director and Principal Landscape Architect at Wayfinder Landscape Planning & Strategy Ltd. Mr Bray was engaged to prepare a more detailed landscape plan and an end of use concept plan for the site as a whole, and also addresses landscape and visual effects of the Landfill expansion.
- (k) Andrea Brabant, Technical Director – Planning at Tonkin & Taylor, who has undertaken a planning assessment of the proposal and produced a set of conditions as Appendix A, which have been updated for this hearing.

69. Filed with these submissions is a brief summary each witness has prepared of their evidence, and they will be available to take questions arising. Where relevant, they will also address at the hearing the recently provided feedback from HBRC.

70. Also filed with these submissions is a set of conditions identifying areas of agreement and disagreement. As noted above, there are no areas of disagreement with the District Council. As further noted above, it is understood HBRC may wish to pursue additional changes beyond what is reflected in this document.

## CONCLUSION

71. The Applicants are well aware of the potential impact a landfill can have on its neighbours and the wider environment. Through engaging a highly experienced and professional design team to advise them, and by committing to detailed and stringent conditions, they are confident they can continue to provide a high quality, critical resource to the Hastings and Napier communities.



Asher Davidson  
28 October 2021