



PATTLE DELAMORE PARTNERS LTD

Section 42A Officer's Report:  
Hearing of resource consent application  
by AB Lime Limited  
Report of Michael Durand

Environment Southland

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# Section 42A Officer's Report: Hearing of resource consent application by AB Lime Limited Report of Michael Durand

✦ Prepared for

Environment Southland

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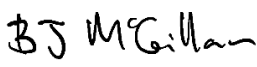
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ENVIRONMENT SOUTHLAND - SECTION 42A OFFICER'S REPORT:  
HEARING OF RESOURCE CONSENT APPLICATION BY AB LIME LIMITED  
REPORT OF MICHAEL DURAND

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## Hearing of application

Application:	AB Lime Limited (APP-20202200, APP-205862-01-V1)
Notification:	The application was limited notified on 8 January 2021, submissions closed on Tuesday 9 <sup>th</sup> February 2021 and 7 Submissions were received.
Hearing:	The hearing is scheduled to commence at 9.00 am on Monday 17 May 2021 and run to Friday 21 May 2021 unless concluded earlier.

## Executive Summary

### Introduction

AB Lime Limited has applied to Environment Southland for resource consents relating to the operation of their landfill at Kings Bend near Winton, Southland. The applicant seeks to “*future proof the landfill so that it is well positioned to accept waste from a wider range of locations and in a majority of circumstances.*” (AEE, pg. vii).

A summary of my expert planning assessment of the application is set out below.

### Applicant's proposal and application

The existing operation holds a suite of seven (7) resource consents allowing the operation to occur until 2038 (17 years from now) with an annual cap of 100,000 tonnes on waste that may be received. The proposal is to replace two of those resource consents (for discharges to land and for discharges to air) with new resource consents of 25 years duration. Two further applications are to change the conditions of an existing air discharge permit for landfill gas combustion emissions, and to construct bores.

The key elements of the proposal are to:

- ∴ Allow an unlimited weight and volume of material to be deposited at the site annually
- ∴ Allow the site to be operated in accordance with a framework of management plans
- ∴ Formally allow receipt of emergency waste and other forms of waste to be received, with the protocols to manage their environmental effects to be developed later through management plans

The applicant has prepared an AEE, a suite of Technical Memos and a suite of corresponding draft Environmental Management Plans.

The technical memos are central to the application and each cover matters relating to the operation of the site and particular effects such as air pollution and odour effects. Each Technical Memo has informed the Assessment of Environmental Effects and informed the management approaches proposed in each Environmental Management Plan.

Since the new consents have been sought for a longer term than the existing consents, until 2046, the applications are for *replacement* consents for the period between now and 2038, and for *new* consents for the period 2038-2046.

## Issues with application

The application as a whole has been developed and prepared in accordance with three concepts:

- ∴ That the current consents form a 'consented baseline' which accounts for current environmental effects of the operation but also presumes to account for future effects of the operation, beyond the expiry of those consents.
- ∴ That the *difference* in environmental effects between the current and future weight of waste received (rather than the type of waste) is the appropriate assessment to make when applying for replacement and new consents; and
- ∴ That the environmental effects of waste streams, some of which are new and not assessed in the application, can be managed by a process of preparing and approving management plans in the future.

These concepts are central to each element of the application. In my assessment they pose significant issues for decision making on the application as it stands. Respectfully, these difficulties exist because:

- ∴ In conflating a 'consented environment' with the 'existing environment' as established in case law, the application does not address or assess relevant effects of allowing the activities as proposed. For the purpose of assessing those applications, the activities authorised by the current resource consents only form part of the existing environment until 2038. Beyond that, the effects of the proposal have not been assessed.
- ∴ In assessing the difference in effect between current and future weight of refuse to be received, and by deferring the assessment of particular waste streams and their effects until later, not all of the relevant effects have been presented in the application. Consequently not all of the relevant effects can be assessed here.
- ∴ The management plans submitted with the applications do not address all of the environmental effects of the proposal.

These issues each make the decision maker's consideration of the application problematic.

In my opinion, notable types of waste whose effects have not been assessed or where management plans will not address their effects, include:

- ∴ Discharges of odour from new waste streams or emergency waste streams.
- ∴ Discharges of remedial waste from other landfill sites.

- ∴ Discharges of aluminium dross waste originating at NZAS's smelter at Tiwai Point.

In my opinion an adequate assessment of these waste streams is critical for this application to be properly considered, especially since the application is to operate the landfill with no weight limit on the waste to be received and so it could potentially receive much greater amounts of waste than has been the case recently.

#### **Ability to assess environmental effects**

As a result of the approach taken in the application, the assessment of environmental effects presented is narrower in scope than the proposal itself. The proposal is to extend the time period of the operation and allow an unlimited volume of waste from potentially new waste streams. However, the effects of that time extension and the effects of any new waste streams themselves have not been assessed. In my assessment, the application's proposed system of management plans will not adequately manage the potential or actual environmental effects of the activity, nor will they ensure that consent conditions are met.

Beyond my consideration of these issues with the application, I have not found it possible to assess the environmental effects of the proposal. An assessment of the environmental effects would be speculative and, in my opinion, would not assist with decision making on the application.

In my opinion consideration of the application as required by s 104 is not possible and, consequently, a decision to grant the consent cannot be made.

#### **Recommendation**

For the reasons outlined throughout this report my recommendation is that the application for resource consent is **refused**.



## Table of Contents

SECTION	PAGE
<b>Hearing of application</b>	<b>iii</b>
<b>Executive Summary</b>	<b>iv</b>
<b>1.0 Introduction</b>	<b>1</b>
1.1 About the author	1
1.2 About this report	2
<b>2.0 Application, submissions and procedural matters</b>	<b>6</b>
2.1 Summary of proposal and application	6
2.2 Proposal	7
2.3 Reasons for the proposal	8
2.4 Reasons for the consent application	9
2.5 Resource consents applied for	9
2.6 Class of activities	12
2.7 Further information requests and notification	12
<b>3.0 Section 104(1) – Actual and potential environmental effects</b>	<b>19</b>
3.1 The application and section 104(1) matters	19
3.2 Issue 1: Not all of the actual and potential effects on the environment have been assessed	20
3.3 Issue 2: The types of waste to be received have not been assessed	26
3.4 Issue 3: Management plan approvals will not provide sufficient environmental protection	29
3.5 Summary of issues	33
3.6 Ability to assess environmental effects	33
3.7 Adequacy of information – s 104(6)	34
3.8 Whether adequate information was made available – s 104(7)	35
<b>4.0 Recommendations</b>	<b>36</b>
4.1 To grant or refuse consent (s 104B)	36
4.2 Consent conditions (s 108)	36
4.3 Bond (s 108A)	36

## Table of Tables

Table 1: Summary of first s 92(1) request, response, review of response and applicant's comment	13
Table 2: Summary of submission received	14

## Appendices

Appendix A: Summary of current and future consented activities	
Appendix B: Applicant's suggested consent conditions (rearranged 9 April 2021)	
Appendix C: Council s 92(1) request for further information (2 July 2020) (the first request)	
Appendix D: Applicant's response to Council's first further information request	
Appendix E: Technical reviewer's comments on applicant's response to first s 92(1) request	
Appendix F: Applicant's response to technical reviewer's comments on first s 92(1) response	
Appendix G: Submissions	
Appendix H: Council s 92(1) request for further information (19 March 2021) (the second request)	
Appendix I: Applicant's response to second s 92(1) request	

## 1.0 Introduction

### 1.1 About the author

My full name is Michael Durand. I am a Service Leader (Environmental Planning) at Pattle Delamore Partners Ltd (PDP) where I have worked since June 2020.

I hold an honours degree in Physical Geography from University of Plymouth (UK) and a PhD in Earth Sciences from the University of Wales, Aberystwyth (UK). In New Zealand I held post-doctoral research positions for four years at the University of Canterbury researching environmental and human health effects of air pollutants including hydrogen sulphide (H<sub>2</sub>S) and particulate matter (PM<sub>10</sub>). I have presented evidence as an expert witness at a Coroner inquest into H<sub>2</sub>S poisoning.

I have fifteen years professional experience working in resource management in New Zealand, primarily in consenting of developments under the management of regional councils, the development of regional policy for the use of water and land, and nationally in environmental policy and regulatory design. This experience includes:

- ∴ Between 2006 and 2012 I was a Consents Planner, Senior Consents Planner and Team Leader at Tasman District Council and Nelson City Council (both unitary Councils), processing and managing teams processing applications for regional land use consents, water permits, discharge permits and coastal permits.
- ∴ Between 2012 and 2015 I was Senior Analyst at the Ministry for the Environment where I lead policy development and implementation of the Resource Management Amendment Act 2013 and worked on RMA policy development.
- ∴ Between 2015 and 2020 I was the Consents Manager at Southland Regional Council leading the Council's consent processing and making approximately 900 delegated decisions on resource consent applications annually.

I have appeared as a planning witness before consent hearings and in Environment Court mediation (where I carried Council delegation to settle appeals). I am also a certified Hearings Commissioner under the Ministry for the Environment's Making Good Decisions programme and am on decision-making panels at Marlborough District Council, Nelson City Council and Tasman District Council. I have written about the RMA's practice and implementation in the form of technical guides for the Ministry for the Environment and discussion pieces for planners, particularly on cognitive bias in planning and the implementation of the National Policy Statement for Freshwater Management 2020.

Of particular relevance to this application are my past roles in regional and unitary Councils where I was responsible for assessment (as processing officer) or decision making on activities such as landfills, fumigation and combustion air discharges where potential or actual environmental effects arose from discharges into the environment.

I have read and agree to abide by the Environment Court's code of conduct for expert witnesses.<sup>1</sup>

## 1.2 About this report

### 1.2.1 Consultant's report prepared under section 42A of the RMA

The contents and recommendations of this report are not to be construed as Council policy.

The recommendations of this report are not binding on the commissioner hearing the application and making any decision under delegated authority.

### 1.2.2 Purpose and commissioning

Section 42A provides for a consent authority to commission a consultant to prepare a report on information provided by resource consent applicants and submitters.

The purpose of this report is to assist the Commissioner with:

- ∴ Considering any directions or requests that might be made before at the hearing (s 41C)
- ∴ Considering and determining the application (ss 104 through to 107)
- ∴ If the requested consents are to be granted, setting any conditions on the consents (s 108)

### 1.2.3 Structure of the report

In this report I have followed as closely as possible the RMA's sequence of provisions for considering applications for resource consent. Section 104 is central to this. This part of the RMA requires that those considering consent applications and any submissions on them have regard to (in particular) the environmental effects of allowing the activity and the provisions of relevant planning documents.

In section 3.0 of this report I had envisaged addressing that requirement directly by having regard to the environmental effects described in the application and raised by submitters in light of planning provisions.

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<sup>1</sup> *Environment Court of New Zealand Practice Note 2014*, section 7.1.  
<https://environmentcourt.govt.nz/about/practice-note/>

However, in a complex application such as this, broader and potentially more significant issues may also be present that fall outside of an orderly list of discrete environmental effects. That is the case with this application.

The principal component of this report is a series of analyses that identify issues with the application that are central to decision making. These are considered in sections 3.2 to 3.4. In these sections I have presented a broad assessment of the applicant's proposal and the approach taken to assessing its merits: the application's series of Technical Memos that support both the Assessment of Environmental Effects and the series of draft Management Plans, and problems arising from that approach.

In my assessment, this approach is not necessarily flawed in principle but in the current case has been executed in a way that results in a series of considerable issues for the application. These issues are important to consider in their own right.

Thus, this report presents an assessment of issues present in the application and the consequential environmental effects that may occur if consent is granted. The report does not focus on an assessment of the effects in the traditional manner for a number of reasons outlined in section 3.0.

#### 1.2.4 Status as evidence

Once circulated to the parties, this report is to be treated as evidence before the hearing. Whilst it is a report of a planning expert acting as an expert witness, the report has no higher status than any other evidence provided to the hearing. As described in section 1.2.1 the report's recommendations are not binding.

#### 1.2.5 Pre-circulation of evidence

Section 103B requires any evidence to be heard at a hearing, including any report prepared under s 42A, to be provided at least 15 working days before the hearing to the applicant and every submitter who wishes to be heard. This report will be provided to the parties in accordance with that timetable.

#### 1.2.6 Procedural principles and adoption of the application – sections 18A and 42A

Section 18A requires Councils and consent applicants to:

*“take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised.”*

I have prepared and structured this report to highlight and provide relevant analysis and commentary on the application in a manner that is proportionate to the issues, risks and effects raised by the applicant's proposal.

Section 42A states that reports prepared under this section do not need to repeat information included in the applicant's application and instead may adopt all or parts of the information presented in the application. In this report I have adopted parts of the application, including as modified by responses to s 92 requests and supplementary information provided during processing (notably, modified draft conditions provided on 22 March). In the parts of this report where I have not adopted information provided by the applicant, or where I disagree with information in the application, this is made clear in those sections.

I have not focussed on disagreements between technical experts on technical matters, except where disagreement on facts have presented difficulties for evaluating the potential or actual environmental effects of the proposal, their significance and their relation to the relevant planning documents.

#### 1.2.7 Summary of consent process leading to this report

I was commissioned to prepare this report on 24 February 2021. By that date the application had followed a process of assessment and review whereby:

- ∴ the application had been lodged and formally received;
- ∴ the application had been passed to technical reviewers for their comments;
- ∴ a s 92 request had been made based on the reviewer's comments;
- ∴ a response to the s 92 request had been received from the applicant;
- ∴ the response had been reviewed;
- ∴ the reviewer's comments had been passed back to the applicant,
- ∴ the applicant's response to the reviews had been received by the Council;
- ∴ a decision had been made to process the application with limited notification; and
- ∴ submissions had been received.

After I was commissioned to prepare this report, ES facilitated a pre-hearing meeting (4 March) which I attended and participated in. I also met with the applicant's planners Ryan McCone and Andrew Henderson (10 March) to discuss aspects of the application.

Having considered the application in detail I then requested further information from the applicant under s 92 (19 March), as outlined and discussed in detail in sections 2.7.5, 2.7.6 and 3.2.

#### 1.2.8 Information relied on in preparation of this report

In preparation of this report, I have had regard to the following documents:

- ✦ Resource Management Act 1991
- ✦ Relevant planning documents, including National Policy Statements, National Environmental Standards, the Southland Regional Policy Statement, Regional Water Plan, proposed Southland Water and Land Plan and the Regional Air Plan
- ✦ Module 2: Hazardous Waste Guidelines, Landfill Waste Acceptance Criteria and Landfill Classification, MfE 2004
- ✦ Technical Guidelines for Disposal to Land Waste Management Institute New Zealand (WasteMINZ), 2018
- ✦ Cited case law (see footnotes).
- ✦ AB Lime Limited Landfill Resource Consent Application dated 29 May 2020 ("the AEE")
- ✦ Landfill Operational Management Technical Memo
- ✦ Landfill Leachate Technical Memo
- ✦ Landfill Geotechnical Engineering Technical Memo
- ✦ Landfill Gas Technical Memo
- ✦ Landfill Air Quality Technical Memo
- ✦ Groundwater Quality Technical Memo
- ✦ Site Traffic Technical Memo
- ✦ Preliminary Site Investigation (PSI)
- ✦ Landfill Capacity and Lifespan Technical Memo
- ✦ Draft Environmental Management Plan
- ✦ Draft Landfill Operations Management Plan
- ✦ Draft Landfill Gas Management Plan
- ✦ Draft Landfill Leachate Management Plan
- ✦ Draft Landfill Concept, Landscape, Rehabilitation and Aftercare Plan
- ✦ Draft Landfill Air Quality Management Plan
- ✦ Draft Site Traffic Management Plan
- ✦ Site Stormwater Management Technical Memo
- ✦ Draft Site Stormwater Management Plan
- ✦ Draft Site Archaeological/Koiwi or Taonga Accidental Discovery Plan
- ✦ Council s 92(1) request for further information (2 July 2020) (the first request) (Appendix B)

- ∴ Applicant's response to Council's first further information request (Appendix C)
- ∴ Technical reviewer's comments on applicant's response to first s 92(1) request (Appendix D)
- ∴ Applicant's response to technical reviewer's comments on first s 92(1) response (Appendix E)
- ∴ Submissions (Appendix F)
- ∴ Council s 92(1) request for further information (19 March 2021) (the second request) (Appendix G)
- ∴ Applicant's response to second s 92(12) request (Appendix H)

## 2.0 Application, submissions and procedural matters

### 2.1 Summary of proposal and application

#### 2.1.1 Applicant, site and current activities

The applicant, AB Lime Limited, operates a landfill facility at King's Bend near Winton, Southland. Details of the site including the address and legal descriptions were provided in the application and are adopted here.

The site is a Class A landfill under the Ministry for the Environment's current landfill classification system,<sup>2</sup> and a Class 1 facility under the WasteMINZ Technical Guidelines for Disposal to Land.<sup>3</sup> The landfill holds these classifications because it is sited to reduce the potential for adverse environmental effects and it has an engineered system for leachate containment and collection, and the collection of landfill gas.

The applicant operates the site under a suite of existing resource consents from Southland Regional Council, which give permission for various operations to occur at the landfill – the discharge of refuse to land, the discharge and recycling of leachate with the landfill, the discharge of odour, discharge and flaring of landfill gas, the taking of surface and groundwater, diversion of surface water, and discharge of stormwater. These existing consents expire in 2038.

Technically and in accordance with case law, the existing consents and the environmental effects arising from their exercise form part of the existing environment until their expiry. This matter is discussed at more length in section 3.2. Otherwise the site location and environment, including the physical, cultural and social environment are described in sections 2 and 3 of the AEE

<sup>2</sup> Module 2: Hazardous Waste Guidelines, Landfill Waste Acceptance Criteria and Landfill Classification, MfE 2004

<sup>3</sup> Technical Guidelines for Disposal to Land Waste Management Institute New Zealand (WasteMINZ), 2018



(pgs. 14-32). I largely agree with and adopt those descriptions for the purposes for this report and do not repeat them here.<sup>4</sup>

The applicant also holds various district land use resource consents from the Southland District Council.

## 2.2 Proposal

The applicant's proposal is to replace two of the existing resource consents with new consents, which would allow the operation to occur in a different manner to that currently authorised. The key elements of the application are that, if granted, the new consents would:

- ∴ allow an **unlimited weight and volume** of material to be deposited at the site annually.<sup>5</sup>
- ∴ incorporate within the consent framework a regime of **management plans**, allowing elements of the landfill operation (including new waste streams) to be managed in a way that can adapt and change, subject to a set of controls on the review and approval of the management plans.
- ∴ formalise the management of waste received at the landfill from **emergency response scenarios**.
- ∴ **replace** two of the current consents: AUTH-201346-V3 (which authorises the discharges to land) and AUTH-201351 (which authorises discharges to air).
- ∴ **advance the expiry of consents** by seeking **new consents** from 2038 to 2046 (by seeking a term of 25 years).
- ∴ **change** under section 127 an existing air discharge permit (for discharges from **combustion of landfill gas**) to align the existing consent with the requirements of the NESAQ.

The resource consents currently held and applicant's proposition for each consent is summarised in the table in Appendix A.

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<sup>4</sup> I adopt the application's description of the environment as it exists now, but do not agree with the AEE's assertion that the existing consents form a 'consented baseline' in the manner described in the AEE. This matter is discussed further in section 3.2.2 of this report.

<sup>5</sup> The current resource consent has a limit of 100,000 tonnes annually. Notwithstanding the absence of a weight limit in the proposed new consent, the footprint, final area and capacity of the landfill are not proposed to change.

## 2.3 Reasons for the proposal

The applicant's reasons for the proposal and consent application are stated in the AEE, can be inferred from its content, or were discussed at the pre-hearing meeting.<sup>6</sup> My understanding of the applicant's reasons is that:

- ∴ AB Lime wishes to become "the premier landfill for the southern regions of the South Island." (AEE pg. vii).
- ∴ To enable this outcome, a key objective is to "future proof the landfill so that it is well positioned to accept waste from a wider range of locations and in a majority of circumstances." (AEE pg. vii).
- ∴ In practical terms, the current 100,000 tonne per year solid waste limit is proposed to be removed for reasons that support this objective.
- ∴ Acceptance of waste from emergency response scenarios further supports the objective to be the preferred choice for waste managers in the southern regions of the South Island and for emergency responders.
- ∴ Adoption of a management plan regime provides for flexibility in waste management, I have inferred, in the company's desire to accept waste from "a majority of circumstances".
- ∴ To change the compliance measurement points for odour to account for land acquisition around the site.

I have noted that the current resource consents will not expire for 17 years (in 2038). Nevertheless, the application states that "*the opportunity to revisit the term of existing consents [...] has also been taken.*" The application seeks to advance the expiry of two resource consents from 2038 to 2046 by replacing the exiting consents with new consents (discharge permits for discharges to land (waste, leachate and contaminated stormwater) and discharges to air (odour, dust and landfill gas)).

It is not clear why the application seeks a more distant expiry date for these two discharge permits in 2046 (originally requested to be to be 2056) whilst the other consents applying to the site will remain due for expiry in 2038 (stormwater discharges, ground water take, surface water take, damming and diversion of water and discharges to air from a limeworks).

It is also unclear why the application is for landfilling with no annual cap on the weight of material received, where under the current consents a 100,000 tonnes annual limit exists. I note that that between 2014 and 2018 the waste accepted by AB Lime was considerably less than the current limit, at approximately 53,000 to 63,000 tonnes annually (Landfill Operational Technical Memo,

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<sup>6</sup> The Chair's report from the pre-hearing meeting was circulated to all the parties on 24 March 2021.

Table 2, pgs. 4-5). No data have been presented on the 2019 or 2020 waste acceptance, nor to show that the current limit has been approached.

There is an increase in the population of the southern South Island occurring over time (AEE section 3.2.2, pgs. 24-25), and I recognise that population in the districts or regions the landfill serves *may* be a proxy for waste volumes. However, if such a link exists and relates to the landfill's current 100,000 tonnes annual limit, that link has not been shown in the application. Reasons for an unlimited rate of waste disposal at the site therefore remain unclear.

## 2.4 Reasons for the consent application

The proposal requires resource consents under rules in Southland's regional plans. Detailed assessments of the relevant regional plans' rules have been provided in the application and I adopt those here.

In relation to the requested change of conditions to AUTH-205862-01-V1, s 127 provides:

*(1) The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent*

[and that]

*(3) Sections 88 to 121 apply, with all necessary modifications*

Therefore, a resource consent is required to change the conditions of any existing consent.

## 2.5 Resource consents applied for

### 2.5.1 Applications to Environment Southland

The application expresses the existing consents and the new consents being applied for in various ways, which may lead to some confusion over the various permits sought and their conditions. My understanding of the application as lodged is that:

- ∴ Existing consent AUTH-201346-V3 which authorises the discharge of 100,000 tonnes of solid waste per year, leachate, and contaminated stormwater and expires on 24 June 2038, is sought to be **replaced** with a consent with a 25 year duration (until approx. 2045 if granted). Form 9 of the AEE (pg. 2) expresses this to be three new resource consents, but Table 2 of the AEE (pg. 8) expresses the application to be for "a new discharge permit".
- ∴ Existing consent AUTH-201351 which authorises discharges to air from a landfill (odour, dust and landfill gas) which expires on 24 June 2038, is sought to be **replaced** with a new consent with a 25 year duration (until approx. 2045 if granted). Form 9 of the AEE (pg. 2) expresses this to be

three new resource consents, but Table 2 of the AEE (pg. 8) expresses the application to be for “a new discharge permit”.

- ∴ Existing consents AUTH-201347 (for discharge of stormwater), AUTH-201348 (to take groundwater), AUTH-201349 (to dam and divert surface water) and AUTH-201350 (to take surface water) are to “**remain operational**” and “**no change is sought**” (Table 2 of AEE, pg. 8).
- ∴ Existing consent AUTH-201346-V3 includes an appended set of conditions in ‘Schedule 1 – General Conditions’ with the header “The granting of consents 201346, 201347, 201348, 201349, 201350 and 201351 is subject to the following general conditions which shall apply to each individual consent”. This schedule of conditions therefore applies to all the existing consented activities. An amended set of Schedule 1 conditions has been supplied with the application. If consent is granted these new conditions will apply to, and effectively change the terms of, the existing consents AUTH-201347, AUTH-201348, AUTH-201349 and AUTH-201350 even though application asserts “no change is sought” to those permits and no s 127 application has been made to change their conditions.
- ∴ Existing consents AUTH-201347, AUTH-201348, AUTH-201349 and AUTH-201350 contain references to a map of the landfill site showing various features. The current application’s set of draft conditions includes a new map reference to a new map (which may show different design features of the landfill compared to the original map). This is a change of conditions to the existing consents even though the application states also that these consents are not to change. No s 127 application has been made to change their conditions.

On 7 April I asked the applicant to clarify (a) the resource consent being applied for and (b) how the proposed conditions are intended to apply to each permit. This was particularly in reference to whether single discharge permits for discharges to land and air were being applied for, or whether the permits were expected to be split according to the source of the discharge (e.g., individual permits for discharges of reuse, discharges to air, discharges of leachate and so on).

Later on 7 April the applicant clarified the intended structure as follows:

- ∴ A new discharge permit is needed to deposit solid waste onto or into land. This consent is tied to the new activity to remove the 100,000 tonnes threshold of solid waste per annum – Proposed conditions of consent 1-2, 6-9, 10-15, 17-27, 32, 37, 41-42 of disposal to land conditions. Proposed conditions 7 – 8 of discharge to air conditions.

- ∴ A new discharge permit is needed for the discharge of leachate onto or into land within the landfill footprint for the purposes of leachate recirculation, an accepted practice for managing leachate – Proposed conditions 1, 4, 5 16, 28, 29 and 38 - 40 of disposal to land conditions. Proposed condition 10 and 28 of discharge to air conditions.
- ∴ A new land use permit is needed for the drilling of any bore or well, which is required for proposed additional monitoring bores – Proposed conditions of consent 1, 30 -31, 33, 34, 35, 36 of disposal to land conditions.
- ∴ A new discharge permit is required for the discharge of contaminants into air from combustion processes where combustible refuse matter is flared – Proposed condition of consent 2-4, 17-26, 31 of discharge to air conditions.
- ∴ A new discharge permit is required for the discharge of contaminants into air from refuse disposal facilities receiving greater than 100,000 m<sup>3</sup>/year of uncompacted solid waste – Proposed condition of consent 1-6, 11-16, 27, 29-30, 31 of discharge to air conditions.
- ∴ A new discharge permit is required for the use of masking agents to disguise odour – Proposed conditions of consent 2, 9 of discharge to air conditions.
- ∴ The variation to limeworks consent remains self-explanatory.

On 9 April a revised set of conditions, organised in accordance with this structure, was supplied and is attached here as Appendix B:

#### 2.5.2 Applications to Southland District Council

A concurrent application was lodged with the Southland District Council for land use consent. I understand from Southland District Council staff that decisions on that application have not been made except that the New Zealand Transport Agency and Te Ao Marama are considered to be affected parties.

I understand further contact occurred between ES and SDC staff to explore and decide whether a joint hearing of the ES and SDC applications would occur (s 102). SDC's Resource Management Manager advised that SDC did not wish to participate in a joint hearing and was comfortable to process separately the application before them.

Processing of that application is in the hands of SDC and is not discussed further in this report.

## 2.6 Class of activities

The application for land use consent to construct bores, alone, would be a controlled activity. All other applications in the suite are discretionary activities.

Under the accepted principle of bundling applications, a suite of applications takes on the class of the highest application.

Overall, the suite of applications for new consents and to change an existing consent is a **discretionary activity**.

## 2.7 Further information requests and notification

The application has followed a standard process of lodgement, acceptance under s 88, technical review, further information request, notification, submissions, pre-hearing meeting and scheduling for a hearing. Key elements of this process are described here for completeness. Relatively late in the process the Council made a second further information request. Below, the significant parts of the process to date are highlighted.

### 2.7.1 First request for further information – s 92(1)

Given the technical nature of much of the material submitted with the application, ES sent copies of the application to a range of technical experts to review the application documents and contribute to the first request for further information on 2 July 2020 (refer to Table 1).<sup>7</sup> These related to:

- ∴ Air quality
- ∴ Odour
- ∴ Landfill engineering
- ∴ Leachate collection
- ∴ Landfill management
- ∴ Landfill gas management

The applicant's planning assessment was largely accepted and no further information was requested on that.

The applicant's response to the request (2 September 2020)<sup>8</sup> was reviewed by the technical experts who had informed the request (October / November 2020). A second round of reviewer's comments<sup>9</sup> was passed back to the applicant for their information. Comments on that were then received from the applicant

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<sup>7</sup> Attached in Appendix B:

<sup>8</sup> Attached in Appendix C:

<sup>9</sup> Attached in Appendix D:

(17 November 2020).<sup>10</sup> Table 1 outlines the timetable for this process, the matters covered and the technical experts involved at each stage.

**Table 1: Summary of first s 92(1) request, response, review of response and applicant's comment**

Date	What	Who
2 July 2020	2020 – Council request for further information on: <ul style="list-style-type: none"> <li>∴ Air quality</li> <li>∴ Odour</li> <li>∴ Landfill engineering</li> <li>∴ Leachate collection</li> <li>∴ Landfill management</li> <li>∴ Landfill gas management</li> </ul>	Bruce Halligan (Principal Consents Officer)  Informed by technical input from:  Prue Harwood (Beca),  Steven Price and Marcus Herrmann (Riley Consultants),  Debbie Fallows and Nick Eldren (GHD)
2 September 2020	Applicant's supply of further information	Ryan McCone (Jacobs)  Donovan Van Kekem (NZ Air Limited)
October / November 2020	Council's peer review of applicant's further information	Prue Harwood (Beca),  Steven Price and Marcus Herrmann (Riley Consultants),  Debbie Fallows and Nick Eldren (GHD)
18 November 2020	Applicant's response to peer review comments	Ryan McCone (Jacobs)

By that point the request, response, review of response and applicant's comments resulted in general agreement between technical report authors and technical reviewers that matters had been addressed to each other's satisfaction.

<sup>10</sup> Attached in Appendix E:

2.7.2 Limited notification – s 95B and s 95E

For completeness, the notification process and submitters are outlined here or the purpose of summarizing procedural matters because they are relevant context for this report. The Council’s decision on notification is not within the scope of this report or decision-making process, and can only be overturned by Judicial Review.

The Council officer processing the application identified a number affected parties in accordance with s 95E. Effects on those parties were assessed as being minor or more than minor. The wider environmental effects were assessed as being minor or less than minor under s 95A. These assessments were agreed with the delegated decision maker and the application was limited notified to 22 parties.

2.7.3 Submissions

Seven submissions were received as summarised in Table 2. Copies of all the submissions on the application are in Appendix F.

**Table 2: Summary of submission received**

Submitter	Oppose/ Support	Issues/comments	To be Heard?
Te Ao Marama Incorporated (on behalf of Te Rūnanga o Awarua and Waihōpai Rūnaka)	Oppose	<ul style="list-style-type: none"> <li>∴ The applicant seeks a 35-year consent term which is contrary to policy within the Iwi Management Plan, Te Tangi a Tauira, 2008.</li> <li>∴ Seeks that “a consent duration of around 17 years is more appropriate to be consistent with Te Tangi a Tauira, 2008 and coincides with the original expiry date of 2038.”</li> <li>∴ Kaitiaki Rūnanga via Te Ao Marama are not considered in Proposed Condition 19 (d) of discharge permit to be advised when the landfill is accepting waste under a crisis or emergency response conditions.</li> <li>∴ Requests that Te Ao Marama is included as a party in condition 19(d).</li> </ul>	Yes



Submitter	Oppose/ Support	Issues/comments	To be Heard?
Hokonui Rūnanga	Oppose	<ul style="list-style-type: none"> <li>∴ Requested 35 year term is concerning</li> <li>∴ Shorter term of 17 years “to align with other consents” is preferred.</li> <li>∴ Hokonui Rūnanga are not considered in Proposed Condition 19 (d) of discharge permit to be advised when the landfill is accepting waste under a crisis or emergency response conditions.</li> <li>∴ Requests that Te Ao Marama is included as a party in condition 19(d).</li> <li>∴ Hokonui Rūnanga should be advised on the discovery of archaeological items, koiwi or taonga</li> <li>∴ The Site Archaeological/Koiwi or Taonga Accidental Discovery Plan (SAKTDP) needs to be amended.</li> <li>∴ Further to this, condition 35 of Schedule 1 – General Conditions AUTH 201346, 201347, 201348, 201349, 201350, 201351 -- should specifically identify Hokonui Rūnanga as a party requiring notification in the event of discovery of artifacts.</li> </ul>	Yes
Jack Geerlings	Support	<ul style="list-style-type: none"> <li>∴ AB Lime has a “great plan” and do the best for the environment.</li> </ul>	No
Roger Hamilton	Oppose	<ul style="list-style-type: none"> <li>∴ Contaminants could enter groundwater</li> <li>∴ Leachate may contain chemicals from hazardous waste products that could</li> </ul>	Yes

Submitter	Oppose/ Support	Issues/comments	To be Heard?
		<p>enter groundwater and this is unacceptable</p> <ul style="list-style-type: none"> <li>∴ Contaminants are already affecting air quality. If there will be further affects on residences this sis opposed affecting air quality in an unacceptable way</li> <li>∴ Would like to think there would be no need for masking agents to be used</li> <li>∴ Requests that monitoring of air discharges meets industry standards</li> </ul>	
Lyndal and Murray Sinclair	Oppose	<ul style="list-style-type: none"> <li>∴ Air quality is not managed effectively now and the submitter experiences health effects from this</li> <li>∴ Leachate contaminates the groundwater</li> <li>∴ Changes to improve environmental performance should have been made already</li> <li>∴ Increase in waste volumes opposed since air quality is not being properly controlled now</li> </ul>	Yes
Ross and Janice McKerchar	Oppose	<ul style="list-style-type: none"> <li>∴ Has been seriously affected by odours in the past and the receipt of waste emitting pungent and obnoxious odours</li> <li>∴ Highlights weather conditions contributing to odour. Note that management techniques deployed before have failed</li> <li>∴ Receipt of special waste in the past affected their quality of life and AB Lie was slow to react</li> </ul>	Yes

Submitter	Oppose/ Support	Issues/comments	To be Heard?
		<ul style="list-style-type: none"> <li>∴ Confidence that “leachate spreading” is adequately managed and monitored (meaning, contaminants reaching water ways?).</li> <li>∴ Applicant is not in a position to guarantee there will be no detrimental effects at the submitter’s property.</li> <li>∴ Seeks for the application to be declined.</li> </ul>	
Stephen Bruce Johnston and Tracey Kim Cavanagh	Oppose	<ul style="list-style-type: none"> <li>∴ Submission enclosed a list of complaints made to AB Lime and ES regarding odour</li> <li>∴ Expects that the increase in tonnage will lead to increased odour effects</li> <li>∴ Discusses past odour effects and weather conditions that have been present at the time</li> <li>∴ Requests that the 100,000 tonnes limit remains.</li> </ul>	Yes

As discussed in section 1.2.3, the RMA requires that when considering submissions on consent applications, regard must be had to the environmental effects of allowing the activity and the provisions of relevant planning documents. An analysis of the submissions and their content is therefore provided with the discussion of the environmental effects of the proposal and the context of planning documents in section 3.0.

#### 2.7.4 Pre-hearing meeting – s 99

A pre-hearing meeting was held under s 99 on 4 March in Winton which I attended with submitters, Council and applicant representatives. No representative of Te Ao Marama was able to attend. The day prior to the meeting the applicant circulated a document covering a set of matters proposed for further discussion at the meeting:

- ∴ Leachate management / potential effects on groundwater/surface water
- ∴ Odour, air quality and the use of odour neutralising spray
- ∴ Landfill gas management

- ∴ Emergency/Crisis response waste acceptance
- ∴ Process for affected party input on management of effects
- ∴ Consent Duration
- ∴ Traffic volume management
- ∴ Litter

The document was notable for stating a revised term for the new consents, down from 35 years to 25 years. This change was confirmed by the applicant at the meeting.

All of the above matters were traversed but no further amendments to the application were made, and no agreements were reached between parties.<sup>11</sup>

#### 2.7.5 Second request for further information – s 92(1)

Following the pre-hearing meeting a second request for further information was made to the applicant (19 March 2021).<sup>12</sup> This request related to the characterisation and assessment of effects on the environment arising from the proposal.

In my view, the application as lodged and amended does not address all of the actual and potential effects of the proposal. This is because the application seeks resource consents that, if granted, will replace the current consents<sup>13</sup> and advance the expiry of consents from 2038 to 2046, by seeking a term of 25 years.<sup>14</sup> In the regional consenting context, new consents are required when a prior (or current) consent has expired (or will expire), and there is no right of replacement, renewal or existing use right established by the earlier consent.

The application has not been constructed as if it were for new consents, and the environmental effects of the proposal have not been assessed as if they are not currently occurring in the environment. This is clear from the AEE which states that:

*“The above consents form the consented baseline for the current landfill activities on site. [...] The relevant matters to consider in this application relate to the difference in effect between the consented activity (primarily the discharge of up to 100,000 tonnes of waste per year onto or into land) and the proposed activity (the removal of the 100,000 tonnes discharge*

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<sup>11</sup> The Chair's report from the pre-hearing meeting was circulated to all the parties on 24 March 2021.

<sup>12</sup> Attached in Appendix H:

<sup>13</sup> Noting changes to the volume limit, the introduction of provisions for special waste and incorporation of a management plan structure.

<sup>14</sup> Initially the applications sought to advance their expiry from 2038 to 2056, by seeking consents for 35 years.

*limit, extension of permit expiry dates, and change of odour compliance locations)."*<sup>15</sup>

Consequently, the second s 92(1) request (19 March) requested this be addressed in the AEE and other supporting documents:

*"Please provide a revised or supplementary assessment of the environmental effects of the proposed activities in accordance with accepted case law and practice. In particular, this assessment must address the totality of the environmental effects and their significance for the period 2038 to 2046, without discounting any effect associated with the resource consents that will be replaced."*

#### 2.7.6 Applicant's response

The applicant's response<sup>16</sup> is discussed in detail in section 3.2 as it relates to the scope of the relevant potential or actual environmental effects that have been assessed or not assessed.

### 3.0 Section 104(1) – Actual and potential environmental effects

#### 3.1 The application and section 104(1) matters

The application comprises three distinct parts:

- ∴ The main AEE document which sets out the proposal, summarises the environmental effects, sets out a statutory assessment, and provides a set of draft conditions (amended by email to ES on 22 March 2021).
- ∴ A range of Technical Memos which each address discrete parts of the landfill operation and associated environmental effects.
- ∴ Draft Management Plans which set out methodologies on operational matters to ensure consent conditions are met.

Collectively these documents are considerable in volume (listed above in section 1.2.8) and I will not repeat their content here.

As I highlighted in section 1.2.3, some elements of the application and these documents need to be highlighted for the purpose of understanding the application as a whole and the applicant's conclusions on environmental effects. In particular, the way the AEE, technical memos and management plans relate to each other and to the scope of the proposal requires assessment and discussion. In the following sections 3.2 to 3.8 I highlight issues arising with the application

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<sup>15</sup> AB Lime Limited Landfill Resource Consent Application AEE section 1.1, pg. 10 (emphasis added)

<sup>16</sup> Attached in Appendix I:

that, in my assessment, have consequences for the effects that have been described and assessed (and critically, not described or assessed). These matters also relate to the future management of environmental risks and the potential effects of the operation under a management plan regime.

### 3.2 Issue 1: Not all of the actual and potential effects on the environment have been assessed

#### 3.2.1 Definition of 'effects on the environment' and the 'existing environment'

The first matter s 104 requires when considering applications is an assessment of the actual or potential effects allowing the activity will have *on the environment*. This is an exercise in first establishing the status of the environment as it stands – the “existing environment” – and then assessing changes that will occur to that environment if the activity is allowed.

The existing environment has been canvassed in case law and planning practices from those cases is well established.<sup>17</sup> My understanding is that two concepts apply:

- ∴ The existing environment includes the effects from (a) what exists with permission to exist, and (b) what could foreseeably exist in the future (therefore, the environment includes permitted activities being undertaken, consented activities being undertaken and unimplemented consented activities that are likely to be implemented); and
- ∴ The environment does not include the effects of expired consents (therefore, at re consenting, all effects must be reconsidered because the activities generating them are no longer part of the environment. The application must be considered as if the existing activity does not exist).

In the case of a regional activity being undertaken in accordance with an expiring consent, the activity is part of the environment for the duration of the permit and then ceases to be part of the environment on expiry.

Typically, holders of regional resource consents apply for new resource consents to replace expiring consents between around two years and 6 months from a consent's expiry. Case law has made it clear that the new application must be subject to a 'from scratch' assessment. As the judgment in *Port Gore* made clear: “the case is not, at law, about whether resource consents should be renewed but, [...] whether they should be granted” [emphasis added]. New consent applications for existing activities are therefore assessed as if the activity were new. Regarding how to do that, in *Port Gore* the judgement recorded that:

<sup>17</sup> *Port Gore Marine Farms v Marlborough DC* [2012] NZEnvC 72; *Ngati Rangī Trust vs Manawatu-Whanganui RC* [2016] NZHC 2948; *Queenstown Lakes District Council v Hawthorn Estate Limited* (2006) 12 ELRNZ 299.

*“first we need to bear in mind that we must imagine the environment, for the purposes of section 104(1)(a) of the Act, as if the three marine farms are not actually in it. We were not referred to any direct authority on that, but it is a logical consequence of the expiry of the earlier permits.”<sup>18</sup>*

Where activities occur under regional consents that expire, it is possible for evidence of the activity to endure in the environment beyond the expiry of the consent. This is particularly the case where discharges have occurred and the material remains present in the environment. A good example of this is a landfill site. In that case the effects of material legally discharged during the life of the discharge permit would remain part of the existing environment beyond the expiry of the permit. However, any further effects of discharging new material (including landfill gas and leachate) would not be considered part of the environment if they required permission by resource consent to occur legally.

Any application for a new discharge permit would need to assess directly the full effect of new future discharges, whether they are of landfill gas and leachate or new waste material being deposited into the landfill.

### 3.2.2 Existing environment concept applied to this application

In this case, the existing environment is more complex to characterise than the simple upcoming expiry of a current suite of permits. The landfill has permission to operate until 2038 within the terms of its current permits. The lawful exercise of those permits and the environmental effects arising from that are part of the environment now, but only for the time being. Permission was given by the regional Council for those activities and their effects to occur until 2038 and not longer. Beyond that date, landfilling activities cannot be considered to be part of the existing environment.

In accordance with these principles, in my assessment the applications being considered here are:

- ∴ For the period 2021-2038: to grant replacement resource consents allowing the operation of the landfill to occur differently to as presently authorised, and potentially to allow environmental effects that are different; and
- ∴ For the period 2038-2046: to grant new resource consents for the operation of a landfill.

Therefore:

- ∴ The part of the application seeking a replacement consent can be assessed against an existing environment that includes the current activities as authorised; and

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<sup>18</sup> At [140]

- ∴ The part of the application seeking new resource consents (from 2038 onwards) must be assessed by considering the environment as if the prior discharged material is present at the site, but the discharges of landfill gas and leachate, odour, and any further landfilling activities such as the discharge of refuse and discharges from traffic, are not included as part of the environment.

The application has not been structured in this manner and the environmental effects of the proposal have not been assessed according to this approach.

The key element of the application in this regard is each of the Technical Memos<sup>19</sup> which inform the conclusions of the AEE.<sup>20</sup> The scope of each Technical Memo and its assessment should cover the whole scope of the proposal, so that the environmental effects assessment addresses the relevant matters having regard to the proposal and the "environment". To reiterate, the proposal's main elements are to (1) allow an unlimited volume and weight of material to be deposited at the landfill annually and (2) formalise the receipt and management of waste from emergency responses, whilst (3) managing environmental effects with flexible management plans. However, the Technical Memos have not been prepared to support the application for new resource consents for the operation of the landfill. They do not consider the totality of the environmental effects that will potentially occur. Rather, they assess a short-term proposal which is described in section 1 of each Technical Memo as:

*"to assess whether existing [landfill operations / leachate management / landfill gas management / geotechnical engineering] will be changed due to the proposed change to incoming waste quantities."*<sup>21</sup>

This is problematic as:

- ∴ the assessment in each Technical Memo assumes that all of the environmental effects of the current activity are part of the existing environment and are to be taken as a "consented baseline".<sup>22</sup>

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<sup>19</sup> Landfill Operational Management Technical Memo,  
Landfill Leachate Technical Memo,  
Landfill Geotechnical Engineering Technical Memo,  
Landfill Gas Technical Memo,  
Landfill Air Quality Technical Memo,  
Groundwater Quality Technical Memo,  
Site Traffic Technical Memo,  
Preliminary Site Investigation (PSI),  
Landfill Capacity and Lifespan Technical Memo.

<sup>20</sup> They have also been used to develop the Management Plans to manage the landfill and its effects, considered in section 3.4.

<sup>21</sup> Bracketed text to be supplemented as required.

<sup>22</sup> Terminology used in the AEE Section 1.2 pg. 10



- ∴ the assessment in each Technical Memo is focussed on *the change in environmental effects* that may arise if consent is granted, whilst not assessing the total environmental effect of the operation.

This issue was the topic of a further information request made under s 92(1) to the applicant on 19 March.<sup>23, 24</sup> The applicant responded on 22 March<sup>25</sup> that:

*“following 2038 or the surrender of the existing consents, the Applicant contends that the environment beyond 2038 will unavoidably include the legacy effects of past lawful activities,”*

and

*“it is highly impractical and unreasonable to assess the existing environment without the consideration of the landfill’s existence.”<sup>26</sup>*

The legacy effect of >2,000,000 m<sup>3</sup> of material<sup>27</sup> at the site by 2038 is not disputed. It may also be unreasonable to assess the environment in 2038 as if the landfill does not exist, but that is not what was requested.

### 3.2.3 Odour effects as an example of adverse effects *on the environment*

The applicant’s response to the second s 92(1) request contended that an assessment of odour effects from 2038 onwards would be “arbitrary”. This was because:

*“The air quality technical assessment is based on implementing an adaptive management framework and providing controlling mitigation measures and mechanisms to ensure that there is no offensive or objectionable effect of odour beyond the boundary of the site. This standard is used as the baseline for the assessment and endures beyond 2038 and is created as a framework to manage waste irrespective of the amount accepted.”<sup>28</sup>*

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<sup>23</sup> See Appendix H: for a copy of the 19 March s 92 request

<sup>24</sup> The was request for “a revised or supplementary assessment of the environmental effects of the proposed activities in accordance with accepted case law and practice. In particular, this assessment must address the totality of the environmental effects and their significance for the period 2038 to 2046, without discounting any effect associated with the resource consents that will be replaced.”

<sup>25</sup> See Appendix I: for a copy of the 22 March memo in response to the 19 March s 92 request

<sup>26</sup> Applicant’s 22 March memo, pg. 2

<sup>27</sup> Applicant’s estimate of cumulative waste volumes at the site, 22 March memo, pg. 2

<sup>28</sup> Applicant’s 22 March memo, pg. 2

And that:

*“Overall, implementing the adaptive management plan the effects of odour control are expected to be less than minor beyond 2038.”<sup>29</sup>*

The applicant's response does not address the question of odour effects directly, but rather provides an evaluation relative to a threshold. In other words, the applicant has asserted that effects will be less than offensive or objectionable beyond the boundary, without describing the what the effects of odour may be.

The missing information here is the likely frequency of odour events, intensity of odour, duration of odour events, location of odour events and the sensitivity of the environment as it might likely exist by that time. This information should be supplied in addition to an evaluation of the character and offensiveness of the odour expected, and an assessment of its significance against regional planning documents. It is not enough to assert the odour will not be offensive or objectionable without describing what the odour will be like, and stating when, how, where and for how long odours might be generated and who may be affected.

3.2.4 Have environmental effects been adequately identified, described and assessed? – the example of odour

In the discussion of the existing environment concept applied to this application above, I have focused on the matter of odour. Overall, in my assessment, the application does not adequately address the matter of odour because:

- ∴ The existing environment has not been characterized incorrectly.
- ∴ The application describes the difference in the *significance of* odour effects, without stating what the effects will be and without describing key parameters of those odour effects: how they will occur, where, their duration, who may be affected.
- ∴ Whilst the difference in the actual effects may be a valid approach to an AEE for a replacement consent application,<sup>30</sup> the present application is also for a new consent. The odour effect should have been assessed from the baseline of no odour effects occurring at all, and then the significance of that effect evaluated from that point.

For these reasons I have concluded that the applicant's assessment of odour effects does not adequately identify, describe or assess the effects of odour on the environment.

<sup>29</sup> Applicant's 22 March memo, pg. 3

<sup>30</sup> A replacement consent being a new resource consent that cancels and substitutes an existing resource consent, covering the same activity and the same timeframe.

### 3.2.5 The 'existing environment' and other environmental effects

I have stressed above that the application seeks to extend the duration of resource consent for the landfill's activities from 2038 (under the current consents) to approximately 2046. The applicant's assessment of the effects this extension has been predicated on the difference between the current and future effects rather than the effects themselves.

The whole application has been constructed using this model – where an extension of time for the landfill has been requested without assessing the effects of that. This is particularly important because, for reasons addressed further in section 3.3 below, the application is to change the type of waste to be received and to manage any effect of that through a management plan regime.

Overall, the application is for, for the period 2038-2046, a discharge of an unlimited volume of waste<sup>31</sup> with no assessment having been undertaken of the type of waste to be received, and no assessment of the potential or actual effects. The applicant has stated that (in the case of odour) such an assessment would be "arbitrary" and that – despite not stating what the effects will be – concluding the adverse will be less than minor.

In my opinion that approach is incorrect.

### 3.2.6 Conclusion

In my assessment the matters outlined in sections 3.2.1 to 3.2.5 mean, for the part of the application seeking new consents from 2038 to 2046, there is inadequate information to determine the application (s 104(6)) and that part of the application should be declined.

Further to this it seems possible that, as a result of the approach taken, the adverse environmental effects of the activity for that period could be more than minor. However, this speculative as they have not been assessed.

If the decision maker were to find that the environmental effects are, or are likely to be, more than minor then the application should have been notified. If that were the case my advice would be that s 104(3)(d) applies and the application must be declined.

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<sup>31</sup> Notwithstanding the total capacity of the landfill is 24.9 million m<sup>3</sup> (Predicted Lifespan and Capacity Technical Memo, pg. 1)

### 3.3 Issue 2: The types of waste to be received have not been assessed

#### 3.3.1 Scope of the proposal, AEE and Technical Memos

As I described in section 3.1, central to the application is the suite of Technical Memos which inform the conclusions of the AEE and have been used to develop Management Plans. The scope of each technical memo should cover the whole scope of the proposal, which is to allow an unlimited volume and weight of material to be discharged, to formalise the receipt and management of waste from emergency responses, and to manage environmental effects via management plans.

The Technical Memos have not been prepared to take account of the potentially wider range of waste that the AEE states may be received. Rather, the Technical Memos assess the narrower proposal described in section 1 of each as:

*"to assess whether existing [landfill operations / leachate management / landfill gas management / geotechnical engineering] will be changed due to the proposed change to incoming waste quantities."*<sup>32</sup> [emphasis added]

In my opinion, it is problematic that the technical assessments in the application are narrower than the scope of the proposal. This is for several reasons:

- ∴ the assessment is limited to the effects arising from the *quantity* of waste to be received, not the *type* of waste to be received – and is focussed on the changes to management that might be appropriate rather than the potential environmental effects of different types of waste;
- ∴ there is no assessment of the various types of waste which may potentially be received, especially from emergencies and remedial waste management, and any particular effects on (for example) leachate generation volumes, leachate chemistry or other characteristics (e.g., foaming or odours), geotechnical matters, air quality effects during arrival, processing, placement and following capping, or any risk to groundwater and surface water quality. This is despite the application being clear that it seeks a consent to discharge waste from "a majority of circumstances" to the landfill.
- ∴ the assessment in each technical memo is focussed on *the change in environmental effects* that may arise if consent is granted without assessing the influence that particular forms of waste may have on those effects.

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<sup>32</sup> Bracketed text to be supplemented as required.

As discussed, the current consent limits the total annual weight of material that can be received at the landfill to 100,000 tonnes. Under the proposed consents there is to be no limit. This is despite the application showing a significant annual freeboard below the current limit. Most years, roughly half of the annual limit of 100,000 tonnes has been received. There does not seem to be sufficient supply of municipal waste regionally to justify the current limit to be removed.

A change to the operation of the site with no limit could suggest, rather, that significant quantities of new types of waste may be planned to be received.

### 3.3.2 New types of waste could be received but their effects have not been assessed

Whilst the AEE notes the applicant's objective to accept waste from a wider range of locations and 'in a majority of circumstances' (pg. vii) the application does not provide much guidance on what those circumstances might be or what types of waste might be received (other than waste from 'emergencies').

One exception is the AEE's reference to the possible future transfer of waste to AB Lime's site from other locations. The Fox River landfill is mentioned as an example of this type of work (pg. 26). The AEE speculates that in the future material from historic landfills may need to be transferred to secure sites and also suggests that:

*"There are likely to be many other sites in Southland that may require remedial waste relocation."* (AEE, pg. 26)

No particular sites or types of waste are mentioned in the report, and there are no assessments included of any possible environmental effects of receiving such waste. The proposition, instead, is that assessments are made prior to the receipt of waste through the management plan process.

Whilst this may provide sufficient assurance in some circumstances, this may not be the case for all. In the application's own example – a remediation of an historic landfill – it is not known, described or assessed (even hypothetically) what wastes might be brought to AB Lime's site and what possible effects might occur as a result and need to be managed.

This is a shortcoming of the application that, in my view, presents a significant predicament for decision making on the application: the problem of considering an application, subject to Part 2, whilst having regard to environmental effects that are unknown and whose causes have not yet been revealed.

### 3.3.3 Receipt of "Aluminium Dross Waste"

The landfill is consented currently to receive "Aluminium Dross Waste" (ADW). The substance is not defined though, broadly speaking, I understand ADW is a processing waste originating from the New Zealand Aluminium Smelter operated

by NZAS at Tiwai Point. Receipt of the material was allowed via a s 127 amendment to conditions of AB Lime's current discharge permit (AUTH-201346-V3).

At the time that consent was granted ADW posed an environmental risk at (in particular) the former Mataura Paper Mill site at Mataura, Gore District. Material present and to be removed from that site was reported to be in the order of 10,000 tonnes,<sup>33</sup> and I understand there are (or were) other amounts of the material stored elsewhere in Southland District and Invercargill City.

Since the granting of that consent NZAS has signalled the Tiwai operation will cease in August 2021 or later.<sup>34</sup> Reports of significant quantities of contaminated material at the site, including ADW, are now public. For example, a report from environmental consultants Aurecon<sup>35</sup> is now public stating that the site has at least one large unlined landfill of >600,000 m<sup>3</sup> of waste including aluminium dross and other waste. There may also be a range of stockpiles and pits containing processing or other waste at the site.<sup>36</sup>

The discharge of ADW to the AB Lime landfill is proposed by the applicant<sup>37</sup> but, in my view, the environmental effects of this are to largely unknown. This is because:

- ∴ ADW is not defined or characterised in the application documents, so its physical and chemical characteristics are not before the Council;
- ∴ ADW could potentially be interpreted to include a wide range of waste material at the Tiwai site,<sup>38</sup> and not only the material that was (or still is) present stored elsewhere outside of the NZAS site;

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<sup>33</sup> <https://www.rnz.co.nz/news/national/409074/potentially-toxic-chemical-at-old-mill-to-be-moved-within-southland> ; retrieved 26/3/2021

<sup>34</sup> <http://nzas.co.nz>; retrieved 26/3/2021

<sup>35</sup> <https://www.documentcloud.org/documents/20515578-t-report>; retrieved 26/3/2021

<sup>36</sup> I note that the Aurecon report references a range of hazardous substances that are known to be present at the site or are likely there, but that AB Lime has explicitly stated that hazardous substances are not to be received at the landfill. Nevertheless the application seeks resource consent for ADW to be discharge to the landfill in uncapped volumes. Some types of waste may be present at the Tiwai site which do not meet the definition of hazardous waste in the application's suggested conditions but could be considered to be ADW. These wastes could be received at the AB Lime site in unlimited volumes if consent is granted. Such substances that might be received have not been assessed in the application, despite it explicitly referring to "other sites in Southland that may require remedial waste relocation." (AEE, pg. 26)

<sup>37</sup> Refer to suggested consent condition 20 (AEE pg. 122) and Landfill Air Quality Management Plan section 5, pg. 20

<sup>38</sup> Interpretation, in the absence of a definition, could be potentially wider than was anticipated at the time APP-2013346-V3 was granted.

- ∴ Since the granting of APP-2013346-V3 it has become apparent that large volumes of ADW material are at the Tiwai site, and actions to remove material from there may be possible in the future;
- ∴ The effects of discharging any volume of this material into the landfill have not been assessed by the applicant, but this what the application requests;<sup>39</sup>
- ∴ Granting consent in the form requested by the applicant could allow much larger volumes of ADW to be received than was assessed in APP-2013346-V3 and is currently authorised.

The application states in the Landfill Air Quality Management Plan (section 5, pg. 20) that ADW discharges “toxic fumes”. However, the Landfill Operations Management Plan does not set out acceptance criteria or management techniques that relate to ADW’s potential emissions to air.<sup>40</sup>

The environmental effect of gas discharges from ADW at the landfill do not appear to have been assessed in the application, even though consent to discharge ADW at the site is explicitly requested.<sup>41</sup>

In the absence of information and assessment on the matter, the decision maker is presented with a similar predicament as described in section 3.3.2: to make a decision where the environmental effects of the proposal are unknown.

### **3.4 Issue 3: Management plan approvals will not provide sufficient environmental protection**

#### **3.4.1 The premise of management plans**

Management plans provide detail around ‘how’ an activity is to be undertaken to meet the ‘what’ of resource consent conditions: for example, how odour discharges will be managed so that a consent condition is met relating to odour effects at the boundary.

Typically, management plans are provided as drafts in applications or are to be supplied and ‘approved,’ ‘certified’ or similar by the Council before the methods it describes can be exercised (or before the consent as a whole can be exercised). Approval will usually relate to whether the Council considers:

- ∴ Whether the management plan is generally in accordance with draft management plans submitted with the application;

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<sup>39</sup> The discharge of some ADW does form part of the existing environment by being covered in the existing consent. However, the volumes anticipated by APP-2013346-V3 were not those present at the Tiwai site but the much smaller volumes known to be in storage elsewhere at that time.

<sup>40</sup> It has been widely reported that when wet ADW emits ammonia to air.

<sup>41</sup> Suggested condition 20, AEE, pg. 122.

- ∴ Whether the management plan has been prepared in accordance with the consent conditions it will assist in meeting;
- ∴ Whether any necessary consultation has been carried out; and
- ∴ Whether the management plan meets the objectives or standards prescribed by the relevant consent conditions.

#### 3.4.2 Consideration of the management plan regimes

AB Lime wishes to incorporate a suite of management plans into the operation. The operational benefit to the consent holder (if consent is granted) is that management techniques can be adapted over time and with experience without the need to change consent conditions through s 127 applications or new consents.

In the case of this application, the management plan regime essentially defers scrutiny and decision making on the methods to be deployed at the site to manage environmental effects. That is, the application seeks that the methods to avoid, remedy or mitigate environmental effects are agreed by the Council later rather than now. The caveat is that the final management plan will usually be required to be in general accordance with the plan submitted with the application.

For a consent authority, granting consent will require a level of comfort that the future management plans will address the environmental effects of the activity and ensure that conditions of consent are met. Where management plans defer decision making on the management of important environmental effects, it may not be appropriate to defer this decision making.

#### 3.4.3 Summary of proposed certification / approval process

The applicant has proposed a regime for the approval or certification of management plans whereby an independent reviewer who is an expert in the relevant field assesses the management plan and recommends to the Council whether to approve it or not. Only when approved can the consent holder exercise the consent in accordance with the approved management plan.

#### 3.4.4 Analysis of management plans provided in the consent application: the example of odour management

Odour effects are a key matter for this application and the applicant has provided draft management plans that address odour matters.

Two key questions, therefore, are whether the Council should (a) grant the consent incorporating such a plan (by having regard to environmental effects and submissions, as per s 104(1)), and (b) be comfortable that the relevant



management plans will adequately manage odour to meet resource consent conditions.

In the case of this application broad agreement between the technical developers and reviewers of the draft management plans has been achieved, suggesting the answer to both questions would be yes. In their technical assessment there was an adequate demonstration that the management plans would be effective. In my assessment, however, I do not find that the management plan regime will provide adequate management of odour effects. The reasons for this are described below.

First, it is worth reiterating the outcome sought from the management of odours. The consent condition proposed to be met is:

*"The discharges shall not cause odour or particulate matter that has an objectionable or offensive effect beyond the boundary of the land owned, or covenanted, by the Consent Holder, ..."*<sup>42</sup>

The applicant's response to the second request for further information confirmed that:

*"implementing the adaptive management plan the effects of odour control are expected to be less than minor beyond 2038,"*

And that the management plan adaptive management framework will:

*"ensure that there is no offensive or objectionable effect of odour beyond the boundary of the site."*<sup>43</sup>

From these statements I would expect that the relevant management plans show clearly how these standards are to be met. However, the text of the draft Landfill Operations Management Plan states (in relation to acceptance of emergency waste):

*"Due to the organic nature of some of these wastes, their acceptance at the landfill site is likely to cause a heightened loss of amenity or increased nuisance associated with odour."*

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<sup>42</sup> The full text of the proposed condition is: "The discharges shall not cause odour or particulate matter that has an objectionable or offensive effect beyond the boundary of the land owned, or covenanted, by the Consent Holder, as determined by the Southland Regional Council (Manager of Compliance). The determination of an offensive or objectionable effect shall take into account the FIDOL factors and be made based on the guidance provided in Section 4.1.1 and Table 6 of the Ministry for the Environment Good Practice Guide for Assessing and Managing Odour (2016) or Section 4.2.1 and Table 8 of the Ministry for Environment Good Practice Guide for Assessing Dust (2016)."

<sup>43</sup> Applicant's 22 March memo, pg. 2

*"A relaxation of the consent conditions with regards to the nuisance to neighbours and the general public associated with the acceptance of this waste is possible." [emphasis added]<sup>44</sup>*

In my view these opposing statements are difficult to reconcile. The AEE and applicant's further information assert that the effects of odour will not be offensive or objectionable beyond the boundary. Application documents also state that the relevant management plans will ensure this is the case. Meanwhile, the odour management plan itself observes that nuisance odours are likely to occur and that a management response will be to 'relax' consent conditions.

This causes me some significant doubts over the efficacy of a management plan regime requested here. First, there is a disconnection between the proposal and management plans, with each purporting to achieve different levels of effects management. Second, the approach to odour control described in the draft management plan is ultra vires,<sup>45</sup> and yet was agreed by the applicant's technical expert and the Council's technical reviewer, with oversight of the applicant's planner, to be acceptable.

The management plan is inconsistent with the application and will not achieve the standards the applicant has promised. This is despite going through a process of technical review and scrutiny.

#### 3.4.5 Will certified management plans adequately manage environmental effects?

In my view there is a parallel between the consent application process and the approval process for management plans that the application proposes. Both are predicated on a draft being prepared by experts and peer reviewed. Both require that the Council is comfortable that the management plan will be effective in managing the effects of the activity – so comfortable that it will defer the assessment of effects to a later date outside of the consent process and away from public scrutiny (e.g., effects of discharging special waste).

A key element of the current landfilling operation is the generation of odour. Past complaints to AB Lime and to the Council must have highlighted that odour is one of the critical effects to be effectively managed under the proposed new consent. Submissions on the application confirm that odour effects are of very

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<sup>44</sup> Landfill Operations Management Plan section 6.1, pg. 31.

<sup>45</sup> A management plan can never be superior to a resource consent condition, and it cannot direct that a change be made to consent conditions outside of the legal process. Section 127 of the RMA provides the only avenue for changes to be made to consent conditions. Notwithstanding this, an application would fall outside of the scope of s 127 if it were to change conditions to allow greater environmental effects than those allowed by the original consent.

significant concern to neighbouring submitters. Submitters are unhappy that odour effects have not been adequately managed in the past. They are also skeptical that odours will be managed effectively in the future.

However, in the consent application a management plan has been prepared and reviewed, and agreed between technical experts to be appropriate, which will not be effective in managing the effect of odour.

#### 3.4.6 Conclusion

My analysis of the application and draft management plans shows that management plans have not been effectively prepared to support the current consent application, and are vulnerable to 'approval' even where their methods will not manage effects successfully nor ensure consent conditions are met. In the case of odour effects, there is significant community concern expressed in submissions but this concern does not seem to be addressed effectively by the adoption of a management plan regime.

For these reasons I have concluded that the system of management plans proposed in the application will not adequately manage environmental effects and should be rejected.

### 3.5 Summary of issues

In my analysis above in sections 3.2 to 3.4 I have concluded that:

- ∴ The application has not assessed all of the environmental effects of the proposal. This is because the starting point for the application incorrectly assumed that all of the effects of the current operation are, and will remain, part of the existing environment into the future. Consequently, there is inadequate information to determine the application and it should be declined.
- ∴ The types of waste that will be received at the landfill if consent is granted have not been assessed and their environmental effects are not understood. Consequently, the decision maker must consider the application having regard to environmental effects that are unknown. That task cannot realistically be undertaken and for that reason the consent cannot be granted.
- ∴ The application's proposed system of management plans will not adequately manage environmental effects nor ensure that consent conditions are met.

### 3.6 Ability to assess environmental effects

In my analysis of the application I have found that the environmental effects of the proposal have not been identified or assessed adequately. This is the case

because of the approach taken to the application, as discussed throughout sections 3.0 to 3.5.

Ordinarily an assessment of a consent application in a report such as this would address all the environmental effects of the proposal. The report would consider all of the effects that would be anticipated for such an operation – air quality effects, cultural effects, effects of leachate discharges and so on – with the application itself being the starting point for the assessment. The planner's report would identify each effect, describe them in detail, and determine their significance in light of planning documents.

A detailed evaluation of the environmental effects in light of planning documents is, in my view, not possible to undertake in this situation. The problem is that the effects of the proposal have not been identified or addressed adequately in the application, which makes an assessment of those effects in this report speculative. A speculative assessment would fall outside of the role of the Council's planner, and could not result in useful or robust advice on the application for the decision maker.

For these reasons I consider it is not possible to consider the environmental effects of the proposal any further than as above in sections 3.0 to 3.5.

For the same reasons, I do not consider it is possible here to address:

- ∴ s 104(1)(ab) – measures to ensure positive effects as offsets or compensation;
- ∴ s 104(b) – relevant provisions of planning documents;
- ∴ s 104(c) – other matters;
- ∴ s 104(2) – permitted baseline
- ∴ s 104(2A) – value of investment
- ∴ Part 2 of the RMA

### **3.7 Adequacy of information – s 104(6)**

Section 104(6) states that:

*“A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.”*

For the reasons outlined elsewhere in this report, my opinion is that there is not sufficient information to determine the application.

### 3.8 Whether adequate information was made available – s 104(7)

Section 104(7) states that:

*“In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.”*

I have concluded the information provided in the application is inadequate for two principal reasons.

First, the starting point for the applicant's assessment of effects was to consider the difference in effects between the current operation and the proposed operation, which takes all of the environmental effects for granted without identifying them and assessing their significance.

On this matter, a s 92(1) request was made which detailed the exact reasons for the request and asked for a full assessment of all of the environmental effects for the period 2038 – 2046, for which a new consent is sought. The applicant's response, outlined in section 3.2, was that to make such an assessment would be arbitrary. In this regard I consider that, in terms of s 104(6) information was requested but was not made available.

The second reason is the application contains deficient information is this: The application was designed so that the currently unknown effects of future discharges will be assessed later (although the types of possible future waste are identified in general terms, such as 'special waste', 'emergency waste' and remedial waste from other landfills).

The Council did not request further information on these types of waste or their effects. This is because the application is plainly designed to obtain consent without that information and without assessing the effects of these discharges. Rather, the effects are intended to be assessed and managed later through a process of developing and holding management plans. The problem in that regard is that the process for developing and approving those management plans is, in my opinion, not sufficiently robust.

Information on these future waste streams and their effects is absent from the application. The application asks that approval be given now but the particular effects of future waste streams be assessed later. In my view that decision should be to decline the application, because there is insufficient information to assess the effects and the system proposed for future assessment and approval is not robust.

## 4.0 Recommendations

### 4.1 To grant or refuse consent (s 104B)

For the reasons outlined throughout sections 3.2 to 3.8 my recommendation is that the application for resource consent is **refused**.

### 4.2 Consent conditions (s 108)

At the time of writing the applicant has circulated a set of draft conditions.

Given the above recommendation I have determined not to supply further revisions to the applicant's draft conditions.

As noted in section 2.5.2, there is a concurrent application being processed by Southland District Council (SDC) for a new district land use consent for the landfill's operation. The two councils are not engaged in a joint hearing process. In the event this consent is granted it would be prudent to ensure the conditions of the consents issued by both councils align with each other and do not create clashes.

In the event that the granting of consent is considered possible, I am available to caucus with the applicant's planner to seek to refine and agree on consent conditions, including if possible, with Southland District Council.

### 4.3 Bond (s 108A)

The RMA provides in section 108A for a bond to be required to secure performance of consent conditions. Such a bond may continue for a specified time beyond the expiry of a consent if the consent authority considers that an adverse effect may continue or arise beyond the consent's expiry.

The applicant has suggested in the consent conditions<sup>46</sup> a bond is held jointly with Environment Southland and Southland District Council to the value of \$945,000 plus GST. The condition states "*This bond shall be released upon the completion of rehabilitation and closure of the site to the satisfaction of the Southland District Council.*"

The value of the bond suggested is the same as the value of the current bond applying to the site, which was required by the consents granted in 2003 and to my knowledge has not been reviewed or changed since then.

Currently there is little information available on the bond its appropriateness. The application documents contain no assessment of the adequacy of the bond. The Council did not request further information or analysis of the bond amount proposed or its duration, and the technical reviewers of the application made no comment on the suitability of the amount or duration.

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<sup>46</sup> Appendix B:

The bond as proposed does not, to my understanding, cover the performance of the landfill beyond the expiry of consents as allowed for in s 108A. The applicant has noted the permanence of the landfill material in the environment once discharged, and I note the likely ongoing discharge of leachate and landfill gas (whether consented or not) beyond the requested expiry of the consents applied for here.

For those reasons, it is not clear to me that the value of the bond suggested is appropriate and will remain appropriate for the duration of the consents, if granted. It is also unclear to me whether the bond should be required to remain in force beyond the expiry of the consents, if granted. However, the permanence of the material in the environment and the likely ongoing need for management of site infrastructure (e.g., the landfill liner) and discharges from the site (e.g., gas and leachate), suggest that the merits of a longer-term bond should be investigated.

If the commissioner has a mind to grant consents, my advice is that further information and advice should be sought on the suitability of the proposed bond and its duration before a decision to grant the consent is made.

Michael Durand

**Consents Officer (Consultant)**