

Recommendation and decision on notification of resource consent application(s) under sections 95-95G of the Resource Management Act 1991 (RMA)

Summary

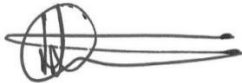
I recommend the application is processed on a publicly notified basis. This is because:

- There is uncertainty of the effect of the landfill leachate on ground water, surface water and the Coastal Marine Area due to a lack of monitoring data available.
- The cumulative effects of this activity have the potential to be significantly adverse for the environment.

Recommendation and decision

10. Officer's recommendation

10.1	The application be processed non-notified	<input type="checkbox"/>
10.2	Public notification is required	<input checked="" type="checkbox"/>
10.3	The application be placed on hold while the applicant tries to obtain written approvals from the affected persons	<input type="checkbox"/>
10.4	Limited notification is required. Persons to be served notice are those listed in 8.2	<input type="checkbox"/>



Tayla Carson
Consents Officer

Date: 20/03/2019

Decision under Delegated Authority

11.1	I agree with the recommendation	<input checked="" type="checkbox"/>
11.2	The application will be processed non-notified	<input type="checkbox"/>
11.3	The application will be publicly notified	<input checked="" type="checkbox"/>
11.4	The application shall be placed on hold while the applicant tries to obtain written approvals from the affected persons	<input type="checkbox"/>
11.5	The application will be limited notified. The parties to be served notice are those listed in section 8.2	<input type="checkbox"/>

This decision is made under delegated authority by:



Michael Durand
Consents Manager

Date: 26 March 2019

The application

Particulars

Applicant:	Southland District Council
Application reference:	APP-20191112
Site address or location:	47 Braggs Bay Road, Stewart Island
New consent(s) for new activity(ies) (s88)	<input type="checkbox"/>
New consent(s) for existing activity(ies) (s88)	<input checked="" type="checkbox"/>
Change to conditions of existing consent(s) (s127)	<input type="checkbox"/>

The proposal

The application is for a discharge permit at 47 Braggs Bay Road - Stewart Island, to discharge clean fill and green waste to land that has the potential to enter groundwater, surface water and the ocean.

- The subject site is located in Braggs Bay, Stewart Island, adjacent to the Coastal Marine Area.
- The site is identified on the Selected Land Use Site (SLUS) register and on the Hazardous Activity and Industries List (HAIL).
- The current discharge permit expires on 6 April 2019 and section 124 continuance rights do not apply.
- The consent is for the discharge of greenwaste and cleanfill to land.

Land use consent	
Map Reference (NZTM2000)	1229609E 4796022N
Relevant rule(s)	Rule 56 (RWP) and Rule 45 (pSWLP)
Activity Status	Discretionary activity
Catchment Boundary	Port William
Management Unit	Fiordland and Islands
Physiographic Zone	Bedrock/Hill Country



Figure 1: Site plan of 47 Braggs Bay Road, Stewart Island.

The Southland District Council operate a landfill at 47 Braggs Bay, Stewart Island. The applicant is authorised for the deposition of cleanfill and greenwaste under an existing discharge permit (AUTH-205877) which expires in April 2019.

The applicant seeks to replace the existing permit, so they can maintain the ability to use the site as a landfill.

Overall, the application is a discretionary activity.

Public notification consideration

1. Is notification mandatory?

1.1 Has the applicant requested that the application be publicly notified? (s95(3)(a))	<input type="checkbox"/> Yes	Application must be publicly notified. Go to 10.2
	<input checked="" type="checkbox"/> No	Go to 1.2
1.2 Was further information, or commissioning of a report, requested under s92?	<input checked="" type="checkbox"/> Yes	Go to 1.3
	<input type="checkbox"/> No	Go to step 2.1
1.3 If yes, was the request refused, or did the applicant fail to respond or fail to provide the information by the deadline?	<input type="checkbox"/> Yes	Public notification is required by s95C. Go to 10.2
	<input checked="" type="checkbox"/> No	Go to step 2.1

2. Is notification precluded?

2.1 Is each activity subject to a rule or NES that precludes public notification?	<input type="checkbox"/> Yes	Rule(s): enter rule Go to 4.1
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	<input checked="" type="checkbox"/> No	Go to step 2.2
2.2 Is each activity a controlled activity?	<input type="checkbox"/> Yes	Application must not be publically notified unless there are special circumstances. Go to 4.1
	<input checked="" type="checkbox"/> No	Go to 2.3
2.3 Is each activity a residential activity and a discretionary activity or a restricted discretionary activity?	<input type="checkbox"/> Yes	Application must not be publically notified unless there are special circumstances. Go to 4.1
	<input checked="" type="checkbox"/> No	Got to 3.1

3. Is notification required?

3.1 Are any of the activities subject to a rule or NES that requires notification?	<input type="checkbox"/> Yes	Application must be publicly notified. Go to 10.2
	<input checked="" type="checkbox"/> No	Go to 3.2
3.2 Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (see Note)	<input checked="" type="checkbox"/> Yes	Application must be publicly notified. Complete 3.3 and go to 10.2
	<input type="checkbox"/> No	Complete 3.3 and go to 4.1.

Note: In forming this opinion (a) to (e) apply:

- (a) we must disregard any effects on persons who own or occupy the land on which the activity will occur or any land adjacent to that land (section 95D(a));
- (b) we may disregard an adverse effect of the activity if a rule or NES permits an activity with that effect (subject to Policy 36 of the pSWLP) (95D(b));
- (c) in the case of a restricted discretionary activity, we must disregard any adverse effects that do not relate to the matters over which the rule or NES restricts discretion (95D(c));
- (d) we must disregard trade competition and the effects of trade competition - 95D(d); and
- (e) we must disregard any effect on a person who has given written approval - 95D(e)

3.3 Reasons adverse effects on the environment are less than minor / minor / more than minor

The existing environment

The Braggs Bay landfill is located at 47 Braggs Bay, Stewart Island. It is identified as a SLUS (SLUS-00000165) site. A landfill activity is identified as an activity on the Hazardous Activities and Industries List (HAIL). The site was used as a landfill for household and commercial waste between 1970 and 2002. Since 2002 the landfill has only been used for the disposal of cleanfill and greenwaste. The site is adjacent to the coastal marine area, with Butterfield beach located to the south-west of the site.

The site has security fencing and a padlocked gate. Under the territorial authorities' district plan, the land is designated for waste disposal purposes.

The physiographic zone for this site is bedrock/hill country where the main contaminant loss is to streams. Water quickly flows down-slope through wet soils and as overland flow to nearby streams following high or prolonged rainfall. Nitrogen, phosphorus, sediment and microbes are all carried with water, particularly during late autumn and winter. Groundwater within the bedrock is minimal and contaminants are typically not a concern for this zone.

Part of the property (although not the deposition site) has a stream and wetland located on it. No wetland modification is proposed, beyond what has already occurred.

Adverse effects of the proposed activities on the environment

The applicant has provided an assessment of the environmental effects and I agree with their assessment on the following effects:

- Effects on amenity
- Effects on historic heritage
- Positive effects
- Assessment against the ministry for the environment's landfill guidance

This assessment can be found on pages 9-10 of the application.

I am in dispute on the effects on water quality and cultural values, and make an assessment below.

Effects on water quality

An assessment of historical monitoring data was completed by Land and Water Science. This was reviewed by an Environment Southland, environmental scientist and a contaminated land specialist consultant who both generally agree with the assessment made. The application's assessment of the environmental effects on water quality however, appears brief and does not cover the whole scope of this report.

Surface water

The review of surface water monitoring data suggests that there has been a general improvement in surface water quality since the closure of the municipal landfill, however due to a lack of data these trends are not statistically significant. Based on this historic data, the conclusion of "the impact from landfilling of cleanfill and greenwaste is having significantly less impact than historical municipal landfilling" was made. Despite this improvement, there is limited data of nearby surface waters in the vicinity for comparison, so without further monitoring a conclusion of the overall and cumulative effects cannot be made.

Groundwater

The only groundwater sample available was collected in 1998 and shows that the landfill has had a significant impact on the groundwater quality expected in the natural groundwater of peat wetlands. There is potential for this to have improved but it is unknown. Without any current monitoring data available, it is impossible to determine what effects of continually using the site for the deposition of cleanfill and greenwaste is having on groundwater.

Shellfish

Trace metal concentrations in shellfish sampled off Braggs Bay are available for 1999 and annually between 2001 and 2003. There is no data available post 2003 to make an assessment on ecological habitat. Due to the limited data available, an assessment on the effects that the landfill is having on the wider coastal environment cannot be determined.

Cultural values

The application states that the cultural use of the coastal marine area (in regard to water quality) is assessed as part of the Land and Water Science report, however there is no mention of cultural values in this referenced report. It is unknown what cultural values that the coastal marine and adjacent coastal marine area may have without public consultation and approval from Te Ao Marama (which has not been provided).

Adverse effects that have been disregarded

Consideration has been given to Section 95D. The following has been disregarded:

- Parties who own or occupy the land or adjacent land;
- Effects outside the scope of restricted discretion;
- Trade competition; or
- Effects on a party who has provided written approval.

No parties have provided written approval, there are no trade competitors and the activity is not restricted discretionary.

Planning provisions (policies and objectives) relevant to adverse effects

New Zealand Coastal Policy Statement (NZCPS):

Objectives 1, 2, & 6

Policies 3, 6, 11, 13, & 23

Regional Policy Statement (RPS):

Objectives WASTE.1, WASTE.2, CONTAM.1, CONTAM.2 & WQUAL.1

Policy WASTE.1, WASTE.2, WASTE.3, WASTE.4, WASTE.5, WASTE.7, WASTE.8, CONTAM.1, CONTAM.2, CONTAM.3, WQUAL.1, WQUAL.3, WQUAL.6, WQUAL.7 & WQUAL.8

Regional Water Plan for Southland (RWP)

Objectives 2, 9B & 9C

Policy 1A, 3, 7, 25, 31A, 31C, 38, 40, 46, 47 & 48

Proposed Southland Water and Land Plan (pSWLP)

Objectives 1, 4, 9A, 12, 13A

Policy 6, 14, 33, 36 & 40

Te Tangi a Tauria - Iwi Management Plan

Policy 3.5.3.3, 3.5.3.6, 3.5.3.10, 3.5.3.11 & 3.5.3.13

Conclusion: significance of adverse effects on the environment

Although there was an interpretation on the available data provided, I am of the opinion that without further monitoring and assessment, the cumulative, actual and potential effects of this activity on the environment cannot be determined.

There are a number of policies and objectives that relate to the adverse effects of the proposed activity. These are largely around land use, water quality, managing landfill sites and contaminated land. Policy 46 of the RWP aims to ensure the discharge of contaminants such as waste or cleanfill occurs at an appropriate site. Although this site has been a landfill historically, I am of the opinion that the location, being adjacent to a coastal marine area, with a stream and wetland ecosystem located within the property and an underlying physiographic zone of Bedrock/Hill Country may no longer be appropriate.

A precautionary approach towards proposed activities whose effects on the environment are uncertain, unknown or little understood, but potentially significantly adverse should be adopted. I consider that the adverse effects arising from the activity are likely to have a more than minor effect on the environment when seen through the lens of the policies and objectives, especially when cumulative effects are considered.

4. Special circumstances and public notification

4.1 Do special circumstances exist in relation to the application that warrant the application being publicly notified?	<input type="checkbox"/> Yes	Application must be publicly notified. Explain reasons in 4.2 and go to 10.2
	<input checked="" type="checkbox"/> No	Explain reasons in 4.2. If each activity is a controlled activity go to 10.1. Otherwise go to 5.1

4.2 Reasons why special circumstances do or do not exist

I do not consider there to be special circumstances, as the activity is not out of the ordinary for this location and the circumstances around the application are not unusual or exceptional (*Peninsula Watchdog Group (Inc) v Minister of Energy* [1996] 2 NZLR). The recent *Urban Auckland* case clearly sets out the requirements for special circumstances with regards to the decision on notification under s95A(4) of the RMA. I do not believe that the proposed activity will trigger the requirement for special circumstances, as the regional plans provide appropriate guidance which relate to this application for the use and operation of a landfill site.

Affected Parties and Limited Notification

5. Protected Customary Rights Group or Customary Marine Title group

5.1 Is the activity in the coastal environment, within an area where it may adversely affect a protected customary rights group(s) or a customary marine title group(s) (see s95G)?	<input type="checkbox"/> Yes	Go to 5.2
	<input checked="" type="checkbox"/> No	Go to 6.1
5.2 May the activity have adverse effects on a protected customary right carried out in accordance with the requirements of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011?	<input type="checkbox"/> Yes	The customary rights group(s) is an affected customary rights group(s). Application must be limited notified on them. Record in 5.3 and go to 6.1
	<input checked="" type="checkbox"/> No	Go to 6.1

5.3 Adversely affect a protected customary rights group(s) or a customary marine title group(s):

N/A

6. Statutory Acknowledgement Areas

6.1 Is the activity on or adjacent to, or may it affect, a statutory acknowledgement area?	<input type="checkbox"/> Yes	Go to 6.2
	<input checked="" type="checkbox"/> No	Go to 7.1
6.2 Are the adverse effects on Te Rūnanga o Ngāi Tahu minor or more than minor?	<input type="checkbox"/> Yes	Include TRONT in 8.2 and go to 6.3
	<input checked="" type="checkbox"/> No	Go to 6.3

6.3 Reasons why adverse effects on Te Rūnanga o Ngāi Tahu are less than minor, minor or more than minor:

N/A

7. Is limited notification precluded?

7.1 Is each activity subject to a rule, NES or regulation that precludes limited notification?	<input type="checkbox"/> Yes	Go to 9.1
	<input checked="" type="checkbox"/> No	Go to 8.1

8. Are any people adversely affected?

8.1 Are the adverse effects on a person minor or more than minor (but not less than minor)?	<input checked="" type="checkbox"/> Yes	Go to 8.2
	<input type="checkbox"/> No	Go to 8.3

8.2 Person(s) considered to be adversely affected (complete and go to 8.3)

Person	Effect on person (see Note)	Reasons why effect is minor or more than minor	Has written approval been provided?
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Public notification is recommended.

Note: In forming this opinion (a) to (c) apply:

- (a) We may disregard an adverse effect of the activity on the person if a rule or an NES permits an activity with that effect; and
- (b) We must, if the activity is a controlled activity or a restricted discretionary activity, disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and
- (c) Must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.

8.3 Reasons why no other person is considered to be adversely affected

N/A

9. Special Circumstances – Limited Notification

9.1 Are there special circumstances that warrant limited notification of any other persons?	<input type="checkbox"/> Yes	Application must be limited notified to those persons and any other affected persons. Go to 9.2
	<input checked="" type="checkbox"/> No	Go to 10

9.2 Reasons special circumstances exist and persons to be notified

N/A