

# Decision following the hearing of a request for Proposed Private Plan Change 42 under the Resource Management Act 1991



## Proposal

To introduce Proposed Private Plan Change 42 – Auckland Regional Landfill: Wayby Valley into the Auckland Unitary Plan (Operative in Part). The Plan Change seeks to include a new precinct within the Auckland Unitary Plan that would provide for the Auckland Regional Landfill (subject to a consent process) by way of specific identification and plan provisions.

The request for Private Plan Change 42 is **DECLINED** and the submissions in support and opposition are accepted or rejected accordingly. The reasons are set out in the below decision report.

<b>Number and name of proposed change:</b>	Proposed Plan Change 42 (Private); Auckland Regional Landfill – Wayby Valley, to the Auckland Unitary Plan
<b>Site address:</b>	1232 State Highway 1, Wayby Valley and part of Mahurangi Forest, Mahurangi, Auckland
<b>Requestor:</b>	Waste Management New Zealand Limited
<b>Hearing commenced:</b>	Monday 9 November 2020, 9.30 a.m.
<b>Hearing days:</b>	9-12, 17, 18, 20, 24-27 November 2020; 1-3, 10, 11, 16, 17 December 2020; 27-28 January 2021
<b>Hearing Commissioners / Panel:</b>	Sheena Tepania (Chairperson) Alan Watson Wayne Donovan David Mead Michael Parsonson
<b>Appearances:</b>	<b><u>For the Requestor:</u></b> Waste Management NZ Limited represented by: <ul style="list-style-type: none"> <li>• Bal Matheson, Legal</li> <li>• Simon Pilkington, Legal</li> <li>• Tom Nickels, Corporate</li> <li>• William Kapea, Cultural</li> <li>• Mike McSaveney, Corporate</li> <li>• Gareth James, Kate Valley Landfill</li> <li>• Masha Cadman, Communications</li> <li>• Ian Kennedy, Corporate</li> <li>• Simonne Eldridge, Site Selection</li> <li>• Eleanor Grant, Alternative Technology</li> </ul>

- Bruce Horide, Corporate
- Penny Kneebone, Waste Acceptance Criteria
- John Goodwin, Landscape and Visual
- Ian Campbell, Lighting
- Tony Bryce, Engineering
- Tim Coote, Geotechnical
- Simonne Eldridge, Liner Systems
- Edward Kavazanjian, Liner Review
- Leon Pemberton, Hydrogeology
- Chris Bailey, Contaminant Fate and Transport Modelling
- Jenny Simpson, Health Risk Assessment
- Rob Van De Munckhof, Erosion and Sediment Controls / Stormwater Management
- David Bouma, Stormwater Dams
- Justine Quinn, Aquatic Ecology
- Marcus Cameron, Marine Ecology
- Matt Baber, Terrestrial Ecology
- Roger MacGibbon, Offsetting and Compensation
- Don McKenzie, Transportation
- Stephen Peakall, Noise and Vibration
- Jenny Simpson, Air Quality
- Matthew Felgate, Archaeology
- Michael Copeland, Economics
- Ian Jenkins, Risk Assessment and Bond
- Tony Kortegast, Bond Methodology
- Andrea Brabant, Planning – Resource Consent Application
- Rachel Signal-Ross, Planning – Plan Change 42

**Submitters:**

Ngāti Manuhiri

- Mook Hohneck
- Jason Pou, Legal

Te Aroha Pā Araparera Marae

- Te Atarangi Edmonds
- Margaret Tukerangi

Tinopai Resource Management

- Mina Henare

Ngāti Whātua Ōrākei

- Joe Pihema
- Andrew Brown

Ōtakanini Haranui Marae Trust Board

- Lynn Marie Te Aniwa Tutara

	<p>Te Rūnanga o Ngāti Whātua</p> <ul style="list-style-type: none"> <li>• Dame Naida Glavish</li> <li>• Mikaera Miru</li> <li>• Alan Riwaka</li> <li>• Richard Nahi</li> <li>• Glenn Wilcox</li> <li>• Catherine MacArthur</li> <li>• Fleur Maysek</li> <li>• Greg Carlyon, planning</li> <li>• Rob Enright, Legal</li> <li>• Ruby Haazan, Legal</li> </ul> <p>Te Ohu Kaimoana</p> <ul style="list-style-type: none"> <li>• Kirsty Woods</li> </ul> <p>Te Uri o Hau</p> <ul style="list-style-type: none"> <li>• Edward Ashby</li> </ul> <p>Nga Maunga Whakahii</p> <ul style="list-style-type: none"> <li>• Jane Sherard</li> <li>• Cherie Povey</li> <li>• Tumanako Povey</li> <li>• Hemi Tapurau</li> <li>• Temupara Povey</li> <li>• Shona Oliver</li> </ul> <p>Tracy Wiremu Davis, Rewiti Marae</p> <p>Shona Oliver (personal submission)</p> <p>Ngāti Rango</p> <ul style="list-style-type: none"> <li>• Te Arahi Kapea</li> <li>• William Kapea</li> </ul> <p>Jon Boyd and Katherine Taylor</p> <p>Rodney Local Board</p> <ul style="list-style-type: none"> <li>• Danielle Hancock</li> </ul> <p>Matthew Lomas</p> <p>Susan Speedy</p> <p>Julia Nevill</p> <p>Elizabeth Dowling</p> <p>Sustainable Energy Forum</p> <ul style="list-style-type: none"> <li>• Steve Goldthorpe</li> </ul> <p>Department of Conservation represented by:</p> <ul style="list-style-type: none"> <li>• Troy Ulrich, Legal</li> <li>• Sue Clearwater, Freshwater</li> <li>• Tertia Thurley, Long-tailed bats</li> <li>• Jennifer Germano, Frogs and Herpetofauna</li> <li>• Thomas Emmitt, Pest Management</li> <li>• Ilse Corkery, Avifauna and Biodiversity Off-setting</li> </ul>
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	<ul style="list-style-type: none"> <li>• Amy Young, Planning</li> <li>• Angus Gray, Planning</li> </ul> <p>Auckland Transport</p> <ul style="list-style-type: none"> <li>• Katherine Dorofaeff</li> <li>• Craig Purvis</li> </ul> <p>Waterfall Farms</p> <p>Meryl Elizabeth Bacon</p>
	<p>Sophie Bretherton-Jones</p> <ul style="list-style-type: none"> <li>• Sue Bretherton</li> </ul> <p>Nicholas Merwood and Oxana Haque</p> <p>Alan von Tunselman</p> <p>Auckland Conservation Board</p> <ul style="list-style-type: none"> <li>• Lynn Mayes</li> <li>• Nicola MacDonald</li> <li>• Kate Waterhouse</li> </ul> <p>Federated Farmers</p> <ul style="list-style-type: none"> <li>• Richard Gardiner, Planning</li> <li>• Alan Coles</li> <li>• Stephen DillBarry Rose</li> </ul> <p>Jaquie Stokes</p> <p>Alex Schenz</p> <p>Joshua Don and Lionel Foster</p> <p>Watercare Services Limited</p> <ul style="list-style-type: none"> <li>• Lindsay Wilson</li> <li>• Leane Barry</li> </ul> <p>Kaipara District Council</p> <ul style="list-style-type: none"> <li>• Jason Smith</li> </ul> <p>Mahurangi Residents and Ratepayers Association</p> <ul style="list-style-type: none"> <li>• Peter Seers</li> <li>• Stuart Windross Matakana Coast Trail Trust</li> <li>• Graeme Stretch</li> </ul> <p>Royal Forest and Bird Protection Society</p> <ul style="list-style-type: none"> <li>• Nicholas Beveridge</li> </ul> <p>Forest and Bird Warkworth Area</p> <ul style="list-style-type: none"> <li>• Roger Williams</li> <li>• Elizabeth Foster</li> <li>• Tracey Wood</li> </ul> <p>William Foster The Board Limited</p> <ul style="list-style-type: none"> <li>• Tony Edmunds</li> <li>• Kevin Smith</li> </ul>

	<p>Skyworks Helicopters and Goatley Holdings Limited</p> <ul style="list-style-type: none"> <li>• Burnette O'Connor</li> <li>• Richard Griffiths</li> </ul> <p>Rhys Davies</p> <p>Hitachi Zosen Inova Australia</p> <ul style="list-style-type: none"> <li>• Marc Stammbach</li> <li>• Malcolm Lea</li> </ul> <p>Jill Jackson</p> <p>Maurice Purdy</p> <p>Florian Primbs</p> <p>Anna Pendred</p> <p>Kotare Research and Education for Social Change in Aotearoa Charitable Trust</p> <ul style="list-style-type: none"> <li>• David Parker</li> <li>• Tim Howard, Social Credit Party</li> <li>• Chris Leitch</li> <li>• David Mason</li> </ul> <p>Ruth Minton</p> <p>Jenner Zimmerman</p> <p>Dave Fletcher</p> <p>Judy Wood</p> <p>Colin Smith</p> <p>Love Kaipara Limited</p> <ul style="list-style-type: none"> <li>• Victoria del la Varis-Woodcock</li> <li>• Steve Pigot</li> </ul> <p>Rohan Arlidge</p> <p>Melanie Scott</p> <p>Aotearoa Sustainability Foundation</p> <ul style="list-style-type: none"> <li>• Dudley Ward</li> </ul> <p>First Nations Association New Zealand</p> <ul style="list-style-type: none"> <li>• Chris Newman</li> </ul> <p>Fight the Tip Tiaki Whenua</p> <ul style="list-style-type: none"> <li>• Michelle Carmichael</li> <li>• Susan Crockett</li> <li>• Rochelle Rodgers</li> <li>• Matt Lomas</li> <li>• Mikaera Miru</li> <li>• Susan Crockett</li> <li>• Michelle Carmichael</li> </ul>
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	<p><b><u>Auckland Council represented by:</u></b></p> <ul style="list-style-type: none"> <li>• Warwick Pascoe, Project Lead Resource Consent</li> <li>• Ryan Bradley, Reporting Planner (PC 42)</li> <li>• Mark Lowe, Aquatic Ecologist</li> <li>• Simon Chapman, Terrestrial Ecologist</li> <li>• Peter Kensington, Landscape and Visual</li> <li>• Arsini Hanna, Stormwater</li> <li>• Fiona Harte, Erosion and Sediment Control</li> <li>• Paul Crimmins, Odour and Air Quality</li> <li>• Sharon Tang, Human Health Risk</li> <li>• Natalie Webster, Waste Acceptance Criteria and Environmental Risk</li> <li>• Alan Pattle, Landfill Engineering</li> <li>• Ross Roberts, Geotechnical and Seismicity</li> <li>• Aslan Perwick, Hydrogeology</li> <li>• Gary Black, Traffic Engineer</li> <li>• Jon Styles, Noise Consultant</li> <li>• Sam Otter assisting as Senior Hearings Advisor</li> </ul>
<b>Hearing adjourned:</b>	28 January 2021
<b>Commissioners' site visits:</b>	November 2020, February 2021, March 2021, April 2021
<b>Hearing closed:</b>	26 March 2021

## SUMMARY OF THE DECISION

1. Waste Management NZ Ltd (**Waste Management** or **the requestor** or **the applicant**) has made a request for Proposed Private Plan Change 42 – Auckland Regional Landfill: Wayby Valley (**PC 42** or **the Plan Change** or **the Proposed Plan Change**) to the Auckland Unitary Plan (Operative in Part) (**AUP**) to include a new precinct in the AUP that would provide for the Auckland Regional Landfill (subject to a resource consent process) by way of specific identification and plan provisions.
2. The request is made in accordance with the Resource Management Act 1991 (**RMA** or **the Act**) to the Auckland Council (**the Council**). It relates to a site at 1232 State Highway 1, Wayby Valley and part of Mahurangi Forest, Mahurangi, Auckland. We have considered the request, the submissions, the evidence, the representations and the expert advice provided to us as part of the hearing process within the framework of the RMA. The Panel has decided that the Plan Change request is declined.
3. The reasons are included in the below decision report and include that the proposed objectives are not the most appropriate way to achieve the purpose of the Act, while the policies and methods proposed have the potential to be less effective and efficient in implementing the objectives of the AUP than the existing AUP provisions. The effects on the environment that the proposed plan change seeks to manage are appropriately dealt with by the current provisions (objectives, policies and methods) in the AUP. The proposed plan change may create scope for resource consents to be granted which have materially different effects, compared to the consents that have been granted (and which are subject to appeal proceedings) for a refuse landfill on part of the land.

## INTRODUCTION

4. This decision is made on behalf of the Council by Independent Hearing Commissioners (**Commissioners or the Panel**).<sup>1</sup> It contains the findings of our deliberations following the hearing of a request by Waste Management NZ Ltd (**Waste Management**) for a private plan change to introduce a new precinct into the Auckland Unitary Plan – the Auckland Regional Landfill, Wayby Valley precinct (PC 42). The hearing was held contemporaneously with hearing the application for resource consents to construct and operate a new regional refuse landfill facility at 1232 State Highway 1, Wayby Valley.
5. This decision in respect of PC 42 relates only to the Plan Change request. While Waste Management has taken the approach of combining the assessment of the Plan Change and the application for resource consents and presenting them together, no doubt in the interests of efficiency and to avoid confusion, we decided to issue two separate decisions.
6. The decision on the application for resource consents has been made and is dated 11 June 2021.
7. For the Plan Change, the Commissioners have been given delegated authority<sup>2</sup> by the Council to make the decisions on it and on the submissions, after considering all the submissions, the s.32 RMA evaluation, the report prepared by the Council's officers for the hearing and evidence presented during and after the hearing of submissions.
8. This decision in respect of PC 42 and the submissions has been prepared in accordance with clause 29(4) of Schedule 1 of the RMA.<sup>3</sup>
9. We note that we have undertaken two separate statutory assessments: that of the plan change and that of the application for resource consents. Of necessity, the assessment of the plan change has been influenced by the application for resource consents, in that the application for resource consents and associated assessments contain substantial detail over the establishment and operation of a landfill. However, the granting of resource consents for the refuse landfill has not meant only a superficial examination of the proposed plan change, nor an automatic decision to recommend approval of the plan change.

## THE PROPOSED PLAN CHANGE

10. In section 3.1 of her Evidence in Chief, Ms Signal-Ross stated that the purpose of the plan change is to establish a precinct on the site for the following reasons:

*“(a) To appropriately recognise landfills as infrastructure within the AUP, by identifying a site within Auckland that has been assessed as being suitable for a new landfill, and describing this site through the use of a precinct which manages future effects of activities through bespoke objectives, policies and rules.*

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<sup>1</sup> Sheena Tepania, Alan Watson, Wayne Donovan, David Mead and Michael Parsonson, appointed and acting under delegated authority under ss 34 and 34A of the Resource Management Act 1991.

<sup>2</sup> Regulatory Committee Minutes, 8 August 2019.

<sup>3</sup> Unless otherwise specified, references to sections and sub-sections are references to sections and sub-sections in the Resource Management Act 1991.

*(b) In anticipation of a landfill being established at the site, providing recognition of the site in the planning framework for the Auckland region, consistent with the treatment of other large scale infrastructure in the region, and to manage potential future reverse sensitivity effects.*

*(c) To enable efficient operation of a future landfill at the site throughout its operating life, by targeting future re-consenting requirements to the nature of the discharge and measures to avoid, remedy or mitigate effects.”*

11. This is encapsulated in the Precinct Description as presented with the Applicant’s Reply, which states:

*“Its purpose is to recognise the existence of, and enable the efficient construction and operation of the landfill and the associated land use and activities in recognition of its role in providing the long term, safe disposal of solid waste from Auckland and surrounding regions, and for enabling renewable energy generation from the biomass within the landfill.”*

12. The private plan change request describes the proposed Auckland Regional Landfill precinct as follows<sup>4</sup>:

*“Two sub-precincts are proposed: Sub-precinct A, which identifies the area where waste will be placed within the landfill; and Sub-precinct B, which identifies an area where works in the [Natural Stream Management Area overlay] NSMA are classified as discretionary rather than non-complying...*

*The proposed precinct includes 6 objectives and 6 policies. The objectives and policies are intended to enable establishment and operation of a landfill within the precinct, whilst requiring effects to be appropriately managed to the extent practicable...*

*The activity table makes landfill activities discretionary, rather than non-complying within the precinct. The proposed precinct has intentionally retained a discretionary status for new landfills to allow for Works within the NSMA in Sub-precinct B would (sic) be discretionary, whereas works in an NSMA outside of Sub-precinct B would remain non-complying...*

*Discharges from an existing, legally authorised landfill (i.e. re-consenting the ongoing operation of activities within the precinct) are proposed to be a restricted discretionary activity. Many activities, such as stormwater, industrial and trade activities, discharges from closed landfills, and earthworks, will continue to be regulated by the Auckland-wide provisions in the AUP, rather than by the precinct provisions...*

*The precinct includes standards for restricted discretionary and discretionary activities. These standards limit the placement of waste to Sub-precinct A, require installation of an appropriate lining system, require no offensive or objectionable odour at the Precinct boundary, and restrict works within identified SEAs, WMAs and NSMAs, and limits the maximum airspace volume of the landfill...*

*Assessment criteria and matters of discretion have been included for the proposed restricted discretionary activities. These are broadly consistent with the assessment criteria and matters of discretion for other discharges in the AUP...”*

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<sup>4</sup> Section 42A report, section 6.2.



13. The proposed precinct states that the objectives and policies in the precinct are in addition to the overlay, Auckland-wide and zone objectives and policies, except where there is conflict, in which case the precinct objectives and policies are to take precedence.
14. In terms of activities, as notified, the proposed precinct includes text above Activity table I617.4.1 (Sub-precinct A) stating that the provisions in any relevant overlays, Auckland-wide provisions and the zones apply unless otherwise specified. A footnote states that *“Specifically, the rules in this table are intended to replace E3.4.1 (A49), E13.4.1 (A9), E14.4.1 (A160), and H19.8.1 (A67), and are intended to apply instead of any plan rules which classify landfills or associated activities as non-complying.”*
15. By way of context, E3.4.1 covers streams. Activity (A49) concerns stream reclamations. Activity (A9) in E13 provides for discharges from landfills. E14 addresses air quality, with activity (A160) relating to landfills that do not meet standards. H19 relates to the Rural zone where landfills as an activity are covered by activity (A67).
16. The private plan change request notes that the precinct provisions do not replace the rules or assessment criteria for water and stormwater activities covered in E7, E8, E9, E10 and E33, or for erosion and sediment control in Chapters E11 and E12.
17. The proposed precinct includes text above Activity table I617.4.2 (Sub-precinct B) stating that the activity table applies instead of any other rule in the Unitary Plan for the purposes of the activities listed. A footnote states *“Specifically, the rules in this table are intended to replace E3.4.1 (A33) and E3.4.1 (A49) within the Sub-precinct.”*
18. Activity (A33) covers culverts or fords more than 30m in length when measured parallel to the direction of water flow; while (A49) makes new reclamation or drainage, including filling over a piped stream a non-complying activity.
19. In response to submitter presentations and evidence and matters raised by the Panel, the precinct provisions were modified by the applicant throughout the course of the hearing and in its final form, included:
  - Additional and revised objectives and policies (now 12 objectives and 11 policies in total)
  - Clarification that AUP rules would continue to apply to landfills outside Sub-precinct A
  - Clarification of standards applying to landfills in Sub-precinct A, including maximum height of landfill (elevation) and lining systems to be used
  - Expanded list of matters to be addressed by Landfill Management Plan.
20. The manner in which the Auckland Regional Landfill precinct would appear in the Unitary Plan maps (if approved) is shown in the plan change request documents.

## NOTIFICATION

21. The request for PC 42 was publicly notified on 26 March 2020 and 412 submissions were received and there were 11 further submissions. The section 42A RMA report (**s.42A report**) from the Council’s reporting planner records the sequence of events from then.<sup>5</sup> We note that sequence of events includes delays as a result of COVID-19, that being the Alert Level 4 lockdown period in March/April 2020; the period for submissions being

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<sup>5</sup> Section 42A report, section 8.

doubled, given that the proposal was large and complex and of high public interest; some submissions being to both the application for resource consents and to the Plan Change; and late submissions.

22. Details of the processes followed are also covered in the Directions of the Chairperson of Commissioners, dated 14 July 2020 and in the Decision of the Panel, which addresses the late submissions, dated 24 August 2020.

## **SUBMISSIONS RECEIVED**

23. Mr Bradley reported that the majority of submission points on PC 42 (393 out of 514) sought that PC 42 be declined in its entirety. The reasons given in the submissions to decline PC 42 were varied but can be grouped as follows (with the most commonly mentioned themes first):<sup>6</sup>
- Conflicts with sound resource management principles
  - Conflicts with the Auckland Unitary Plan
  - Conflicts with waste minimisation legislation and plans
  - Alternative sites and/or waste management methods should be used instead
  - Potential effects on waterways
  - Potential effects on ecology
  - Potential effects on transport
  - Risks to the environment
  - Potential effects on local amenity and human health
  - Cultural effects
  - Economic considerations
  - Landscape, natural character, and visual effects
  - Contribution to climate change
  - Landfills should not be considered as infrastructure.
24. Reasons to approve the plan change request included the need for a landfill in the region, the site having characteristics that mean it is potentially suitable for a landfill, and that the plan change would put in place an appropriate management framework.

## **MATERIALS EXCHANGED PRE-HEARING**

25. Prior to the hearing the following materials were provided to the Commissioners and reviewed<sup>7</sup>:
- a. A copy of Waste Management's request for PC 42 and the application for resource consents, including the supporting assessment of environmental effects, prepared in accordance with Schedule 4 and the s.32 evaluation report;
  - b. Further information provided by Waste Management in response to requests from Council officers and specialist reviewers under s.92 and clause 23 of the RMA;
  - c. A copy of all submissions, late submissions and further submissions made on PC 42;

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<sup>6</sup> Ibid, section 14.

<sup>7</sup> Some of the material, reports and evidence also address the application for resource consents for a refuse landfill that was considered at the same time but which is the subject of a separate decision.

- d. A report on PC 42 and the submissions received on the Plan Change by Ryan Bradley, a Principal Planner with the Council;
- e. Technical specialist reviews prepared by other Council officers and independent consultants (included with the s.42A report), from:

*(Specialist Area, Reviewing Specialist)*

- Landfill Engineering, Alan Pattle
  - Geotechnical Engineering and Seismicity, Ross Roberts
  - Hydrogeology, Aslan Perwick
  - Traffic Engineering, Gary Black
  - Regional Earthworks (erosion and sediment control), Fiona Harte
  - Stormwater and Industrial and Trade Activities, Arsini Hanna
  - Air Quality (odour and air discharge), Paul Crimmins
  - Human Health Risk, Sharon Tang
  - Waste Acceptance Criteria and Environmental Risk, Natalie Webster
  - Streamworks (Freshwater Ecology), Mark Lowe
  - Terrestrial Ecology, Simon Chapman
  - Landscape, Natural Character and Visual, Peter Kensington
  - Noise and Vibration, Jon Styles
  - Economics, Shyamal Maharaj and Shane Martin
- f. Briefs of evidence, including responses to matters raised in the s.42A reports and submissions from the following experts engaged by Waste Management:
    - Tom Nickels, Managing Director, Waste Management – Project Sponsor
    - William Kapea, Cultural Adviser
    - Mike McSaveney, Waste Management - Auckland Waste Disposal and Trends
    - Gareth James, Transwaste Canterbury - Kate Valley Landfill
    - Marsha Cadman, Waste Management - Communications
    - Ian Kennedy, Waste Management - Auckland Waste Disposal, Site Selection, Alternative Options and Transport, Consultation
    - Simonne Eldridge, Tonkin + Taylor - Site Selection and Lining System
    - Eleanor Grant, Principal, BECA - Energy from Waste Technology
    - Bruce Horide, Waste Management - Design Elements, Construction and Enabling Works, Landfill Operation, Landfill Management Plan, Consultation and Public Access, Contingency Planning
    - Penny Kneebone, Tonkin + Taylor - Waste Acceptance Criteria
    - John Goodwin, Boffa Miskell - Landscape and Visual Effects
    - Ian Campbell Stantec - Lighting

- Tony Bryce, Tonkin + Taylor - ARL Overall Project Design
  - Tim Coote, Tonkin + Taylor - Geotechnical
  - Edward Kavazanjan, Arizona State University - Liner Peer Review
  - Leon Pemberton, Tonkin + Taylor - Hydrogeology
  - Chris Bailey, Tonkin + Taylor - Contaminant Fate and Transport Modelling
  - Jenny Simpson, Tonkin + Taylor - Discharges to Air and Health Risk Assessment
  - Robert Van de Munckhoff, Tonkin + Taylor - Erosion and Sediment Control
  - David Bouma, Tonkin + Taylor - Design of Stormwater Ponds
  - Justine Quinn, Tonkin + Taylor - Aquatic Ecology
  - Marcus Cameron, Tonkin + Taylor - Marine Ecology
  - Matthew Baber, Alliance Ecology Ltd - Terrestrial Ecology
  - Roger MacGibbon, Tonkin + Taylor - Biodiversity Mitigation and Off-setting
  - Don McKenzie, Stantec New Zealand - Transportation
  - Steve Peakall, Marshall Day Acoustic - Noise and Vibration
  - Mathew Felgate, Maatai Taonga Ltd - Archaeology
  - Mike Copeland, Brown, Copeland & Company - Economic Impacts
  - Ian Jenkins, AECOM - Risk and Bond
  - Tony Kortegast, Tonkin + Taylor - Bond Methodology
  - Rachel Signal-Ross, Tonkin + Taylor - Planning.
- g. Briefs of expert evidence from the following experts engaged by submitters:
- Catherine MacArthur, Freshwater Specialist (for Te Rūnanga o Ngāti Whātua)
  - Fleur Maysek, Ecologist (for Te Rūnanga o Ngāti Whātua)
  - Greg Carlyon, Planning (for Te Rūnanga o Ngāti Whātua)
  - Sue Clearwater, Freshwater (for Department of Conservation)
  - Tertia Thurley, Long-tailed Bats (for Department of Conservation)
  - Jennifer Germano, Frogs and Herpetofauna (for Department of Conservation)
  - Thomas Emmitt, Pest Management (for Department of Conservation)
  - Ilse Corkery, Avifauna and Biodiversity Off-setting (for Department of Conservation)
  - Angus Gray, Planning (for Department of Conservation)
  - Katherine Dorofaëff (for Auckland Transport)
  - Burnette O'Connor, Planning (for Skyworks Helicopters and Goatley Holdings Limited)
  - Richard Griffiths, Ecologist.

## COUNCIL OFFICER'S RECOMMENDATION

26. The Council's s.42A report on the Plan Change was circulated prior to the hearing. The s.42A report canvassed all of the material submitted by Waste Management in support of the request; the further analysis provided in response to cl.23 further information requests from council officers; matters raised by specialist reviewers, and all submissions received on the request. Mr Bradley's s.42A report was informed by and included copies of a number of technical specialist reviews, prepared by other council officers and independent consultants as listed above.
27. In his report, Mr Bradley recommended we approve PC 42 with modifications and accept or reject the submissions in accordance with that recommendation, for the reasons in his report.
28. In his Executive Summary<sup>8</sup>, Mr Bradley stated:

*“Overall, I accept that the site could be suitable for a landfill and therefore I support the precinct in terms of its new discretionary activity status for a new landfill. The non-complying activity status for a landfill that applies to every rural zoned site in Auckland does not take into account the specifics of this particular site as explained in the private plan change request.*

*The location of the proposed Auckland Regional Landfill precinct in Wayby Valley has the advantages of being on a very large site that is relatively remote, with few close neighbours. Many of the typical adverse effects generated from a landfill (such as noise, dust, lighting, visual, air discharges, and odour) could be well contained within the site due to the large separation distances/buffer from neighbouring activities.*

*The valley terrain is generally appropriate for a landfill and the underlying geology appears to be suitable. The site connects directly onto SH1 meaning heavy vehicles (i.e. waste trucks) accessing the site do not need to take regular trips down rural or local roads. State Highway 1 through the Dome Valley is also receiving significant safety improvement works that will be completed before any landfill is intended to be established. I also note that should the Notice of Requirement for the Warkworth to Wellsford motorway be confirmed, the site will be well positioned to gain access (in the long-term future) from a new Wellsford motorway interchange at Wayby Valley Road, just over 1km from the site.*

*On the other hand I accept that there are other aspects of the Wayby Valley site that are not a comfortable fit for a landfill site, such the adverse cultural effects as explained by mana whenua, areas of high ecological values within the site, a high rainfall level, and being located over an aquifer that is the source of a municipal drinking water system.*

*I do not assert that the Wayby Valley site is the ideal site for a landfill, but I note that finding a suitable site in Auckland for a landfill will inevitably involve a balance of trade-offs between the different factors to consider. The industry guidelines around landfill siting acknowledge that most sites will not meet all the criteria and it is not necessary to do so.*

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<sup>8</sup> Section 42A report, Section 1.

*On balance, from the site selection information I have reviewed and considering the views of the council specialists, I do not consider the Wayby Valley site to be fundamentally flawed for a landfill, although I accept that there are some matters that are finely balanced including cultural effects, freshwater ecology, terrestrial ecology, and human health risk.*

*While it is my view that the Wayby Valley site could be suitable for a landfill, I would again emphasise that the precinct still requires any new landfill to apply for a publicly notified discretionary resource consent. Not every resource consent application for a new landfill will necessarily be granted, with each being assessed on its own merits.”*

29. Mr Bradley, towards the end of the hearing, confirmed his overall recommendation that PC 42 be approved but with modifications based on the legal submissions and the evidence that had been presented by the applicant and by the submitters<sup>9</sup>. He provided a discussion of these modifications in his supplementary report along with an attachment of recommended changes to the precinct provisions.

## HEARING PROCESS

30. A joint hearing for both PC 42 and the application for resource consents to establish a landfill commenced at 9.30am on 9 November 2020 at the Warkworth Town Hall. After hearing from the requestor, we adjourned the hearing on 20 November and reconvened on 24 November at the Ngāti Manuhiri Trust Board offices to hear the evidence of Mana Whenua submitters, then returning to the Warkworth Town Hall from 27 November.
31. The PC 42 materials and the s.42A report (and its’ specialist reviews) were taken “asread” at the hearing, on the basis that they had been pre-circulated and read by the Commissioners.
32. Waste Management then presented its case for the plan change request and the various resource consents being sought. Counsel presented detailed legal submissions and then called their witnesses in support. Several of Waste Management’s witnesses also presented rebuttal statements of evidence responding to the expert and other evidence that had been provided by submitters.
33. Tabled statements were received from Waka Kotahi NZ Transport Agency and Fire and Emergency New Zealand.
34. Prior to the adjournment of the hearing on 17 December 2020, Counsel for Waste Management presented some initial oral reply submissions, the transcript of which was subsequently filed, and he advised the Panel as to the further rebuttal statements of evidence that the applicant intended to file the following week.
35. We received further rebuttal statements of evidence on 21 December 2020 from:
- Ian Kennedy, Corporate
  - William Kapea, Cultural
  - Bruce Horide, Corporate

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<sup>9</sup> Council reply following legal submissions and evidence from Waste Management New Zealand and submitters, 17 December 2020.

- Simonne Eldridge, Site Selection
  - Anthony Bryce, Landfill Design
  - Timothy Coote, Geotechnical
  - Don McKenzie, Transportation
  - Justine Quinn, Aquatic Ecology
  - Matt Baber, Terrestrial Ecology
  - Roger MacGibbon, Offsetting and Compensation
  - Robert Van De Munckhof, Stormwater and Sediment
  - Leon Pemberton, Groundwater
  - Rachel Signal-Ross, Planning.
36. The hearing reconvened on 27 January 2021 when the Panel heard the second statements of rebuttal evidence filed by Waste Management. Counsel for Waste Management then presented the main reply submissions, a written copy of which had been received by the Panel on 25 January 2021. Counsel also presented orally, supplementary reply submissions alongside the main reply submissions which added several additional comments as a result of matters arising from the presentation of Waste Management's final rebuttal evidence on 27 and 28 January 2021. A written record of these points was received by the Commissioners on 29 January 2021.
37. The hearing was adjourned on 28 January 2021 and closed on 26 March 2021.

## **SITE VISITS**

38. The Commissioners undertook a number of site visits to familiarise themselves with the site, the surrounding area and a modern landfill. The first site visit prior to the hearing included a visit to the Waste Management landholdings and proposed landfill site and to the existing Redvale landfill.
39. Site visits were also undertaken by Commissioners following the hearing, returning to the Waste Management landholdings and landfill site, to the location of submitters' properties, to Wellsford and to various locations along Te Awa Hōteu and the Kaipara Moana.
40. Two of these site visits were self-guided and focused on existing land features and locations identified primarily by submitters through the course of the hearing.

## **EVIDENCE CONSIDERED**

41. The volume of evidence presented to us was considerable. Details of the broad contents and conclusions of the evidence as presented by Waste Management and the submitters at the hearing, without going into every witnesses' detailed analysis and opinions, is covered as part of our discussion below. We record that we have reviewed and considered in detail all the evidence presented to us.

## **DECISION APPROACH**

42. We recognise that the approach to making a decision on a private plan change request made to the Council under clause 21 of Schedule 1 of the RMA is different to making a decision on a resource consent application under Part 6 of the RMA, both in terms of the matters that are mandatory to consider, and the specific requirements of the formal

decisions. Accordingly, we are issuing the decision on the plan change separately to the decision on the application for resource consents. This is to properly reflect that in considering all of the evidence that was presented to us and making findings on the same, the Panel was clear as to the relevant statutory requirements pertaining to each decision.

## RELEVANT STANDARDS, POLICY STATEMENTS AND PLANS

43. A number of environmental standards, policy statements and plans are engaged for consideration when assessing and determining the plan change. By reference to the AEE and to the s.42A reports, the RMA requires us to have regard to relevant provisions of the following documents:

- National Environmental Standards for Air Quality (**NES-AQ**), Freshwater (**NES-FW 2020**) Assessing and Managing Contaminants in Soil to Protect Human Health (**NES-CS**), Electricity Transmission Activities (**NES-ET**) and Plantation Forestry (**NES-PF**)
- Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 – s104(1)(b)(ii)
- National Policy Statements on Freshwater Management (**NPS:FM**), Urban Development (**NPS:UD**), Renewable Electricity Generation (**NPS:REG**) and Electricity Transmission (**NPS:ET**)
- The New Zealand Coastal Policy Statement 2010 (**NZCPS**)
- The Wildlife Act 1953
- The Waste Minimisation Act 2008
- The Auckland Regional Policy Statement 2016 (Chapter B of the AUP) (**RPS**), in particular:
  - B2 Urban growth and form (2.2, 2.3,)
  - B3 Infrastructure, Transport and Energy (3.2, 3.4)
  - B6 Mana Whenua (6.2, 6.3, 6.5)
  - B7 Natural resources (7.3, 7.4, 7.5)
  - B8 Coastal Environment (8.2, 8.3)
  - B9 Rural Environment (9.2)
  - B10 Environmental Risk (10.2)
- The AUP, in particular:
  - C1 General rules
  - D4 Natural Stream Management Areas Overlay
  - D8 Wetland Management Areas Overlay
  - D9 Significant Ecological Areas Overlay
  - D10 Outstanding Natural Landscapes Overlay
  - E1 Water Quality and Integrated Management
  - E2. Water Quantity, Allocation and Use
  - E3. Lakes, Rivers, Streams and Wetlands
  - E11. Land disturbance – Regional
  - E12. Land Disturbance – District



- E13. Cleanfills, Managed Fills and Landfills
- E14. Air Quality
- E15. Vegetation Management and Biodiversity
- E24. Lighting
- E25. Noise and Vibration
- E26. Infrastructure
- E27. Transport
- E33. Industrial and trade activities
- E36. Natural Hazards and Flooding
- H19. Rural Zones
- Designation – 9101, Taupaki to Topuni Gas Pipeline, First Gas Limited
- Designation – 6500, Petroleum Pipeline – Rural Sections – New Zealand Refining Company Limited
- Designation – 6763, State Highway 1: Puhoi to Topuni, New Zealand Transport Agency

44. We have reviewed all these standards, policy, and plan provisions in our consideration of the PC 42 request.

## **SUMMARY OF PLAN CHANGE 42**

45. We have outlined PC 42 above but wish to note key features, as below. The proposed plan change request is described in detail in the application and in the s.42A report. It seeks to introduce a new precinct into the AUP, that is, the Auckland Regional Landfill Precinct. The precinct will be identified in the planning maps, and will introduce new provisions, specific to the precinct. The provisions were updated post notification.

Key features are:

- Landfills are classified as a discretionary activity, rather than as a non-complying activity, when located in Sub-precinct A.
- Reconsenting of landfill related discharges is a restricted discretionary activity.
- Stream reclamation outside of AUP Overlays is classified as a discretionary activity.
- Activities sensitive to noise, air discharges and hazardous substances are classified as discretionary and non-complying activities.

46. The underlying zone, Auckland-wide and overlay policies apply in this precinct in addition to those specified except where there is a conflict, in which case the precinct policies take precedence. In particular, policy I617.3(3) is intended to take precedence over policy E13.3(4).

47. A number of standards are proposed to apply to landfills, as reflected by amendments made by the applicant during the hearing:

- Any placement of waste shall only occur within Sub-precinct A.

- A lining system must be installed prior to waste being placed within any area of Sub-precinct A. The lining system for the landfill must be to industry best practice standards prevailing at the time of construction with a minimum of one of two specified types of liner.
- There shall be no offensive or objectionable odour at the precinct boundary that is caused by the landfilling operation.
- No works, other than ecological restoration or enhancement works, shall occur within any Wetland Management Area overlay, or within any Outstanding Natural Landscape overlay, or within any Significant Ecological Area overlay, or in any Natural Stream Management Area overlay.
- The maximum airspace volume of the landfill must not exceed 28.5 Mm<sup>3</sup>.
- Ecological offset or compensation packages shall achieve at least a no net loss of ecological function outcome.
- Development and operation of landfills to recognise and provide for the relationship of Mana Whenua with their ancestral lands, water, sites, waahi tapu and other taonga, including providing opportunities for long term and meaningful collaboration with mana whenua.

## THE APPLICANT'S EVIDENCE AT THE HEARING

48. The RMA purpose of the precinct was outlined by Ms Signal-Ross as being to appropriately recognise landfills as infrastructure within the AUP, by identifying a site within Auckland that has been assessed as being suitable for a new landfill and describing this site through the use of a precinct which manages future effects of activities through bespoke objectives, policies and rules. In anticipation of a landfill being established at the site, the precinct would provide recognition of the site in the planning framework for the Auckland region, consistent with the treatment of other large scale infrastructure in the region, and manage potential future reverse sensitivity effects.
49. To enable efficient operation of a future landfill at the site throughout its operating life, the precinct would target future re-consenting requirements to the nature of the discharge and measures to avoid, remedy or mitigate effects.
50. Towards the end of the hearing, Ms Signal-Ross provided a table of proposed precinct provisions to show, in her view, the provisions that were more enabling and those that were more restrictive than the existing AUP provisions.

### ***Precinct provisions which were stated as being more enabling than existing AUP provisions***

- Objective 1 & Policy 1 – Providing for a landfill in Sub-precinct A. Whilst the wider AUP provisions are enabling of infrastructure more generally, these provisions explicitly provide for a landfill within Sub-precinct A.

- Discretionary activity status for landfills in Sub-precinct A, including discharges to air, land and water. These activities would otherwise be classed as non-complying under the AUP. Restricted discretionary activity status would apply for re-consenting discharges to air, land and water from a legally established landfill within Sub-precinct A.
- Discharges to air from an existing landfill are discretionary (Rule E14.4.1(A159)). Likewise discharges to water and land are also discretionary (Rule E13.4.1(A10)).
- Discretionary activity status would apply for reclamation, drainage, diversion or disturbance of any lakes, rivers, streams outside of overlays. These activities would otherwise be classed as non-complying under the AUP. Justification for a discretionary activity status is provided in her primary evidence at EVD1696 – EVD1698.

***Precinct provisions which were stated as being more restrictive than existing AUP provisions***

- Objective 4 and Policy 3 – Bottom line protection of municipal water supply sources. The provisions require that municipal water supply sources are protected. The existing AUP provisions do not have these protections for unscheduled potential water supply sources such as that beneath the precinct.
- Requirement for offset or compensation for stream loss to achieve no net loss of ecological function. The AUP does not require a 'no net loss' outcome with respect to stream function. However, given the unavoidable nature of stream loss from landfill development within the precinct (particularly within Sub-precinct A), a higher requirement is seen to be appropriate for any offset or compensation package than what is required by the underlying provisions.
- Policy 8 – Requirement for discharges to land and water to be managed using an adaptive management regime. The AUP does not currently provide for the use of an adaptive management regime for discharges, however this is now considered best practice, and as such appropriate to then require an adaptive approach to discharges from the precinct.
- Policy 9 – Requirement for a bond. The AUP does not include any reference to a bond in the existing provisions, so this is a new mandatory requirement to provide a financial bond.
- Policy 10 – Requirements for buildings, structures and earthworks to integrate within the landscape when viewed from off-site and to avoid or mitigate effects of building or structures on ridgelines. This policy goes further than the existing objectives and policies in the AUP for managing effects on landscape and amenity values in the Rural Production zone.
- Controlled activity rules for holes and bores in proximity to a landfill. Rules for bores and holes are set out in Chapter E. There are a number of permitted activity rules,

which the proposed controlled activity rules in the precinct would supersede, ensuring appropriate oversight of boreholes to prevent unintended compromising of the lining system.

- Non-complying activity status for activities sensitive to air discharges, hazardous facilities and infrastructure, and noise. Most such sensitive activities (as defined in Chapter J) are discretionary in the Rural Production zone.
- Minimum lining system standards. The proposed lining standards are consistent with best practice. The existing AUP provisions are silent on the specific requirements for a landfill lining system.
- Special Information Requirements. These are all additional to what is required by the existing AUP provisions and will ensure future applications include the appropriate suite of information required to support an activity of this nature.

## THE SUBMITTERS AT THE HEARING

51. As we have noted above, 412 submissions were received and there were 11 further submissions. Recurrent themes included in the submissions and the presentations at the hearing by submitters were:
  - a. Impacts on cultural values and cultural wellbeing.
  - b. Use of alternatives to landfills, such as waste to energy.
  - c. Transport impacts and traffic safety.
  - d. Transfer of rubbish to the site by way of rail, rather than road.
  - e. Concern over high rainfall in the Dome valley area.
  - f. Uncertainty over geological conditions and potential instability.
  - g. Sediment effects.
  - h. Escape of leachate into ground and/or surface water.
  - i. Loss of ecological values and adequacy of mitigation, offsets and compensation.
52. If there was one overarching theme it was a concern, given the multi-decade life of the landfill (including construction, operation and after care), that there would always be a risk that there would be some sort of failure of the landfill, with potentially drastic consequences for the health of Te Awa Hōteu and the Kaipara Moana. Submitters also expressed significant concern about the potential impacts of a landfill operation on downstream ecological and human health.
53. Mana Whenua submissions encompassed these matters, as well as impacts on tikanga, mauri and wairua. The impacts of the placement of paru in the whenua in the context of its significance to the land descending from Tohitohi ō Reipae (the Dome) and adjacent maunga and awa were addressed by various submitters, including Mr Hohnock, and the whakapapa provided by Mr Wilcox.

54. Many submitters on PC 42 addressed the application for resource consents in their evidence to us, but we accept that they were referring to both that application and to the plan change request when they outlined their opposition. The majority of PC 42 submitters were opposed to the landfill due to concern over the direct impacts of the landfill on streams and ecology, as well as the long term risks to Te Awa o Hōteu and Kaipara Moana. Transport issues among other matters were also raised. Because of this opposition, they saw no need for a precinct.
55. While some submitters supported the proposal, or at least considered that potential adverse effects from a future landfill were unlikely to be as adverse as claimed by many, it was unclear if these submitters saw the need for a specific precinct.
56. We received specific expert evidence from a number of planners on the plan change, on behalf of submitters. This evidence canvassed many of the matters raised by lay submitters and provided analysis of the plan change against relevant statutory tests.
57. Ms O'Connor considered that both PC 42 (and the application for resource consents) do not adequately address the potential effects on the wider roading network, particularly the State Highway 1 (SH1) / Goatley Road / Kaipara Flats Road intersection.
58. Mr Wilson's evidence for Watercare outlined the need to ensure that water supply sources are not compromised.
59. Mr Carlyon raised a number of issues, including:
- He does not consider the section 32 analysis meets the requirements of the RMA.
  - There is significant uncertainty about the potential ability to manage effects from a development within the site, and a significantly more detailed analysis of effects and management options is needed.
  - The costs of the precinct have been inappropriately assessed, and he considers that further assessment of the potential costs is required. This is with reference to the potential effects of the ARL on ecological and mana whenua values.
  - PC 42 will not give effect to the NPS-FM. For example, Objective 5 of PC 42 does not require all stream loss to be avoided, it does not prioritise the health and wellbeing of waterbodies and freshwater ecosystems as the highest priority of Te Mana o te Wai and therefore does not give effect to the NPS-FM.
  - The plan change does not adequately provide for active involvement of tangata whenua in freshwater management, as is required by the NPS-FM.
60. Mr Gray stated that he had concerns around whether PC 42 is consistent with Part 2 of the RMA. He raised a number of matters, pointing out that the site contains significant indigenous biodiversity values, including both habitat and species.
61. In his view, the proposed precinct provisions are *"heavily weighted towards enabling a landfill"*. He noted:

- Objective I617.2(2). Mr Gray preferred Mr Bradley's proposed drafting for this objective in the s.42A report, which included reference to the environment.
- Mr Gray stated that in his opinion, Policy I617.3(3) is inappropriately qualified with *"where practicable"*, and that *"In my opinion this policy is more lenient than and undermines the existing AUP framework... [and] it does not give effect to the AUP RPS provisions"*.

62. Mr Carlyon and Mr Gray both raised concerns about whether the drafting of PC 42 adequately reflects the effects management hierarchy in the NPS-FM. And further, that due to the significant cultural values associated with Te Awa o Hōteu and Kaipara Moana, the NZCPS is relevant to the assessment of PC 42 and that the precinct may be inconsistent with it.

## EFFECTS ON THE ENVIRONMENT

63. We accept that the likely or potential effects on the environment of a landfill located in the plan change area are extensive. The application for the resource consents and the plan change have identified and discussed these likely effects. Our findings on the application for the resource consents are included in our decision on that application, and should be referred to in relation to the nature and scale of these effects and, in terms of the majority decision on that application, how they can be appropriately managed to provide for a grant of the resource consents.
64. While the application for the resource consents was for a specific project, it is possible that once the proposed precinct in PC 42 is in place, different methods of landfill operation and management may be proposed to that advanced by the applicant suggesting a different set of effects. The applicant's case for the precinct was based on a large amount of evidence on the specific landfill proposal for which consent was sought (i.e. the technical reports for PC 42 were the same as those for the application for resource consents while the planning evidence suggested a more generic approach). We did not hear evidence on an alternative proposal that could be sought under the proposed precinct provisions. That said, there was nothing from the hearing that suggested that the possible effects identified by Ms Signal-Ross and Mr Bradley were an incomplete list. We list the effects considered below.
65. We note that the findings on the application for the resource consents was that some effects (after mitigation is taken into account) are more than minor.
66. We record that we addressed an extensive range of issues/effects in the decision for the resource consent application, those being:
- a. Positive effects
  - b. Landfill design and surface water management
  - c. Geotechnical design and tomo
  - d. Liner design and leachate containment

- e. Hydrogeology
- f. Stormwater
  - Rainfall, flooding and stream erosion
  - Temperature effects
  - Dams
- g. Sediment
- h. Aquatic Ecology
  - Loss of freshwater aquatic habitat and biota
  - Impacts on wetlands and wetland birds
  - Offsite offset
- i. Terrestrial ecology
  - Pine forest
  - Long-tailed bats
  - Adequacy of offset/compensation modelling approach
- j. Leachate
- k. Landscape and visual
- l. Rural character, community, wellbeing and amenity
- m. Transportation and traffic safety
- n. Odour and air quality
- o. Noise and vibration
- p. Archaeology and historic heritage (not a significant issue but included for completeness)
- q. After care: bond
- r. Risk
- s. Cultural values and Mana Whenua interests.

## **PRINCIPAL ISSUES IN CONTENTION FOR PC 42**

67. Having read the application documents and heard the relevant evidence, it is apparent that the main issues in contention relate to the need for a precinct and the general implications for future consenting processes, rather than the detail of proposed precinct provisions. We therefore address:

- Need (as expressed by the Applicant) for the precinct.
- Objectives and policies for the proposed precinct.
- Methods associated with the proposed precinct.

## NEED FOR THE PRECINCT

68. We have carefully considered whether a precinct would enable a more appropriate evaluation framework (via a discretionary activity resource consent application) for a proposed landfill than reliance on the existing provisions of the AUP. While separately assessed, the fact that the majority of the Panel found that the resource consents for the landfill can be granted indicates that the AUP already provides an assessment framework that can lead to support for an appropriately designed and managed landfill at this location. Accordingly, the proposed precinct provisions (and the precinct itself) are not necessary and, as we discuss below, not the most appropriate provisions in section 32 terms. The rigour of assessment required by the existing provisions of the AUP is appropriate, given the potential effects of a municipal landfill operation.
69. Submitters were concerned that the precinct may “water down” some aspects of the AUP, and once in place, the revised framework could be used to apply for changes to conditions, or a new consent, that would lever off the amended (reduced) framework. We find agreement with that view of submitters.
70. Mr Bradley suggested that the purpose of the precinct was not to amend the core provisions of the AUP. He noted that a feature of the precinct was to be a means to alert future surrounding landowners to the presence of the landfill as a long term activity, and to secure the buffer around the landfill itself. In our assessment, there are benefits in the matters alluded to by Mr Bradley but it is apparent, as discussed further below in relation to objectives and policies, that the precinct does not stop at these two matters. The benefits normally afforded by a precinct should not come at the expense of the environmental safeguards that are already in the AUP, such as those that relate to cultural, leachate, stormwater, and stream reclamation impacts. In this regard we consider it important to our findings that the proposed precinct does not lower the bar of assessment that a resource consent application for a new landfill would need to pass.
71. As an example of this, the proposed change in activity status from non-complying to discretionary for establishing a landfill quite intentionally suggests a predetermined level of acceptability of a new landfill at the site. This is reinforced through the wording of the purpose, objectives and policies, rules, standards, and assessment criteria of the proposed precinct. This is a particular concern to us in that when read as a package of provisions, the discretionary status does not guarantee the same level of scrutiny that consideration of the existing non-complying status required under the existing AUP provisions.
72. Our findings on the application for resource consents to provide for a landfill were specific to that particular application incorporating the mitigation, offsets and compensation offered, the evidence presented on the likely adverse effects of discharges from the site, and other construction and operational effects. These measures were supplemented



during the hearing process to address particular concerns of the submitters, for example the greater offsetting of the ecological effects. Analysis of the application was made through the lens of various activity-specific objectives and policies that the majority found, to varying margins, swayed towards the granting of consents, and did not engage avoidance provisions to a determinative degree.

73. Commissioner Tepania on the other hand did consider the proposal was contrary to some key directive avoidance and protection policies that were central to determining the appropriateness of the resource consent application.
74. Through PC 42, Waste Management seeks to confirm the site “*as being suitable for a new landfill*”. This confirmation is supported by the evidence of Ms Signal-Ross and the reporting by Mr Bradley<sup>10</sup>, on the basis of the integrated information presented in support of the application for the resource consents and the plan change. The corollary is that if the resource consents can be granted then the plan change can be approved. It is on this point that we do not agree and do not support the plan change being approved at this time.
75. Ms Signal-Ross also supported the plan change due to a number of additional controls to those in the AUP, for example the requirement for ‘no net loss’ as a benefit of the precinct provisions (i.e. a strengthening of the somewhat equivocal policy approach provided in the AUP) and direct reference to a bond. We note that the most recent NPS-FM does promote no net loss, and preferably a net gain, when applying aquatic offsets. So that potential advantage has now been negated by the higher order planning instrument. Similarly, the AUP as it stands does not preclude a comprehensive bond being imposed as a condition of consent.
76. While being very aware of the degree of distress that the landfill proposal has created for the community and Mana Whenua, we accept the evidence of the applicant that the site and the proposed layout of it, mean it is well positioned with respect to transportation and buffers from adjacent properties and receivers. If the landfill was constructed and operations commenced in accordance with the consents granted, then the use of the site for that infrastructure would be locked in. In that instance, the stated benefits of the plan change could appropriately be achieved through the adoption of the precinct and associated provisions. Correspondingly, a restricted discretionary activity status for re-consenting (continuation) of that same landfill operation could be appropriate to provide greater certainty to the full utilisation of the site and the value of investment in the site.
77. However, the plan change as proposed, seeks not only the recognition of a future new landfill at the site but a changed status (discretionary) for that activity<sup>11</sup>. An application for such would only occur if the existing consented activity<sup>12</sup> was not undertaken. Given the majority’s finely balanced finding in favour of the currently consented proposal, we do not consider it appropriate to lessen the regulatory tests and rigour that a revised proposal and design might entail. While the discretionary activity status would only apply to a new landfill within the same general footprint (Sub-precinct A / Valley 1), it would be a different

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<sup>10</sup> Mr Bradley states that the site “could” be suitable for a landfill (paragraph 7 of the s.42A report).

<sup>11</sup> New landfills are non-complying under Rural Production Rule H19.8.1 and Discharges Rule E13.4.1(A9).

<sup>12</sup> Subject to appeal.

proposal, otherwise a new resource consent would not be sought<sup>13</sup>. While the proposed precinct provisions do favour a range of specific outcomes, the very existence of the precinct implies a degree of appropriateness of a landfill at the site (i.e. *being suitable for a new landfill*). Despite the rigour of outcomes sought by the precinct provisions, the purpose of the precinct and the discretionary status of the activity does swing the decision-making pendulum towards acceptability before the proposal has been considered. In light of the submissions and evidence we have received, we do not consider that to be an appropriate planning outcome.

78. The logical next step in consideration then, is whether it would be appropriate to limit the precinct provisions to the re-consenting of an existing landfill within Sub-precinct A. That would indeed address the concern we have discussed above. But in the event that the currently consented landfill is not advanced, the site would retain a landfill precinct which not only implied some degree of acceptability but would also lock in that potential future land use regardless of whether a landfill was actually established on the site. That would result in a perceived 'planning blight' in the absence of an Auckland Council led public strategy for the siting of new landfills. It would also be a somewhat perverse outcome to signal the acceptability of re-consenting landfills within a site but not the overall acceptability of new landfills at that site.
79. Should it be the case that the recently approved refuse landfill does not proceed, for whatever reasons, that would leave the large area (Sub-precinct A) within the area of the proposed plan change available for another proposal to be advanced as a discretionary activity with a greater expectation that it would be granted consent. Again, such a proposal may not undergo the same high level of scrutiny provided in the resource consents that were granted for the recently approved landfill. We do need also, to ensure that any change to the AUP does not open up the opportunities for other forms of development that may not be anticipated or desired.
80. Further, many of the PC 42 provisions that seek to manage effects on the environment are covered by existing provisions in the AUP. Accordingly, we do not see the need to be providing further provisions in the AUP as part of PC 42.
81. We note that many of the precincts in the AUP were introduced to provide for existing activities and to provide for those activities to be able to readily expand or change without needing to follow the more stringent consideration that a new proposal should be required to do. In other cases, precincts are established in conjunction with plan changes from future urban to urban zoning, to address specific outcomes for a particular area. The future urban zone in that case has flagged that potential future activity. In this respect, we find that it may be more appropriate to advance a plan change proposal, such as PC 42, at a time when a consented landfill was established and operating. At such time, the precinct provisions would provide some certainty on the ongoing presence and operation of the refuse landfill to the community, Mana Whenua and to the landfill operator, in line with the purpose and outcomes sought by PC 42.

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<sup>13</sup> Noting that any changes with the scope of the existing consents could be addressed through a s127 RMA change as a discretionary activity.

82. We find, accordingly, that there is no need for the proposed plan change at this time and further, its introduction at this time could compromise appropriate consenting processes and outcomes. This finding is supported by our following conclusions regarding the objectives and the policies included in PC 42.
83. While Commissioner Tepania generally accepts the reasoning given above, she notes that given the evidence we have relied on and her dissenting view on the resource consent application, her further reasoning follows:
84. Ms Signal-Ross noted that PC 42 was supported by much more detailed technical assessments (and evidence) compared to a standard plan change process and that the effects assessment for PC 42, “focussed on whether there are potential effects that would be so significant, regardless of any design, operation or other mitigation, offset or compensation, that would mean the Precinct was unsupportable and that the site could not appropriately accommodate the proposed landfill activities.” (SOE, para 5.2)
85. As decisionmakers, Commissioner Tepania considers the detailed evidence that was before the Panel as to the actual and potential effects of a landfill in this location cannot be ignored.
86. Given Commissioner Tepania’s findings at Section 23 of the resource consent decision report that the actual and potential adverse effects of the proposal in terms of ecology and cultural values will be more than minor (significantly adverse), and have not been avoided or mitigated so as to meet the purpose of the RMA, Commissioner Tepania does not consider the proposed precinct is in an appropriate location, that is, that the site could be suitable for a landfill. It is her finding that the location of the proposed Auckland Regional Landfill precinct in Wayby Valley will give rise to significant adverse cultural effects as explained by Mana Whenua and adverse effects on terrestrial and freshwater ecology including areas of high ecological value within the site, that would mean the precinct is unsupportable.
87. In terms of the selection of this particular site, while the plan change application and applicant’s evidence emphasised the Wayby Valley site was the result of an extensive site selection process undertaken over the course of a number of years, Commissioner Tepania does not agree that the site selection took proper account of the effects on cultural and ecological values. Again, in her findings at Section 23 of the resource consent decision report, she expressed some reservation as to Waste Management’s criteria and its application given that the evidence received during the hearing, in the opinion of Commissioner Tepania, suggested Waste Management did not entirely follow their own technical guidelines.
88. Accordingly, and with additional reasons, Commissioner Tepania agrees with the other Panel members in not supporting the precinct in terms of its proposed discretionary activity status for a new landfill and considers the non-complying activity status for a landfill in this rural zoned site remains appropriate. On that basis, in section 32 terms, it is also her view that the current provisions of the AUP are more appropriate than those of the proposed precinct.

## OBJECTIVES

89. As presented (notified) the precinct has 6 objectives.
1. *The development and continued operation of the Auckland Regional Landfill is enabled, recognising its regional significance as essential infrastructure, and recognising the benefits of biomass being used for renewable energy generation.*
  2. *Human health is protected from adverse effects of operational or closed landfills.*
  3. *The Auckland Regional Landfill is designed and operated so that the adverse effects of discharges to land and water from the landfill are avoided, remedied or mitigated.*
  4. *Adverse effects on rivers, lakes, streams and wetlands arising from the development and continued operation of the Auckland Regional Landfill are avoided, remedied or mitigated, and significant residual adverse effects are, to the extent reasonably practicable, and as offered by the applicant, offset, or compensated where this will promote the purpose of the Resource Management Act 1991.*
  5. *Effects on the ecological and mana whenua values from works within any Significant Ecological Area overlay or Wetland Management Area overlay areas are avoided, and effects on the ecological and mana whenua values from works within any Natural Stream Management Area overlay are avoided where practicable or are otherwise minimised.*
  6. *The mauri of freshwater and indigenous biodiversity within those areas of the precinct not required for operations associated with the development and continued operation of the Auckland Regional Landfill is maintained and enhanced over time.*
90. By the close of the hearing, the objectives in Waste Management's evidence had expanded to 12, being the following:
- (1) *The potential development and continued operation of the Auckland Regional Landfill, in particular the placement of waste within Sub-Precinct A is provided for, recognising its benefits as essential infrastructure, and recognising the benefits of biomass landfill gas being used for renewable energy generation.*
  - (2) *Human health and the environment are protected from adverse effects of operational or closed landfills.*
  - (3) *The Auckland Regional Landfill is designed, constructed, and operated in accordance with industry best practice so that:*
    - a) *The adverse effects of discharges to land, air and water, including groundwater, Te Awa o Hōteu, and the Kaipara Moana from the landfill are avoided, remedied or mitigated.*
    - b) *To support the stabilisation of the waste and the site's transition to a future use as soon as practicable following closure.*
  - (4) *Any proposal to offset or compensate for the loss of extent or values of streams and rivers shall achieve no net loss of ecological function.*
  - (5) *Effects on ecological and mana whenua values within any Significant Ecological Area overlay are avoided.*

- (6) *The mauri of freshwater and indigenous biodiversity within those areas of the precinct not required for operations associated with the development and continued operation of the Auckland Regional Landfill is maintained and enhanced over time.*
- (7) *Discharges from the landfill are managed to avoid adverse effects of contaminants on municipal water supply sources, so that those sources are not compromised as a municipal water supply.*
- (8) *Take and use of groundwater, including diversion of groundwater and changes to aquifer recharge, is managed to avoid compromising municipal water supply from the Waitematā Aquifer.*
- (9) *The Auckland Regional Landfill is designed and operated so as to avoid, remedy or mitigate adverse effects on the transport network.*
- (10) *Landscape and rural character values are maintained through the appropriate location and design of buildings and structures.*
- (11) *The significant values of Outstanding Natural Landscapes, Natural Stream Management Areas and Wetland Management Areas are protected.*
- (12) *Mana Whenua values are recognised and provided for when landfill development occurs within the precinct, including during the assessment of any proposal for landfill construction and operation within the precinct.*

*Drafting note: When interpreting and applying this objective, particular regard should be had to Chapter B6 of the AUP, including B6.3.1(1)-(3) and B6.3.2(1)-(6).*

- 91. The main statutory test for objectives is whether the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA.
- 92. As a starting point, the need for such an extensive list of objectives in PC 42 is unclear to us. Precinct objectives that largely replicate objectives that are already contained in the AUP do not assist in achieving the purpose of the Act.
- 93. In terms of this test, and taking into account the submissions we heard, our findings in relation to the above 12 objectives that were provided towards the end of the hearing, include our view that Objectives 2 to 12 essentially cover matters that the AUP already appropriately deals with. We see no need for these objectives as part of the plan change.
- 94. For example, Objective 3 refers to avoiding, remedying or mitigating adverse effects of discharges to land, air and water, including groundwater, on Te Awa o Hōteu, and the Kaipara Moana. This largely replicates the AUP Objective E13.2 Objectives (1): *“Cleanfills, managed fills and landfills are sited, designed and operated so that adverse effects on the environment, are avoided, remedied or mitigated.”*
- 95. Similarly Objective 2 largely replicates AUP Objective E13.2.(2) *“Human health is protected from the adverse effects of operational or closed cleanfills, managed fills and landfills.”*
- 96. In contrast, Objective 1 does provide a clear outcome that is not found in the AUP. The primary objective of the precinct refers to landfills being *“provided for”* in the precinct. Stating that landfills are *“provided for”* sends a strong signal that a landfill is generally

appropriate in the precinct. As we have earlier discussed, we do not consider from the evidence and our considerations, that this is an appropriate starting point to be considering the effects of a landfill. If there was a presumption that landfills should be provided for, then that starting point would have influenced decision making as to what level of environmental effect and environmental risk is appropriate.

97. As it stands, the AUP's objectives and policies already provide a degree of support for necessary infrastructure, which includes municipal landfills. We see no need to further extend this support by way of a specific precinct.

98. The majority's finding in the earlier resource consent decision was that the proposed refuse landfill is appropriate, based on a specific proposal and detailed assessment of it. There was no presumption that landfills are appropriate (beyond the general support for landfill as infrastructure). The output of that decision was that the Waste Management landfill is appropriate, as considered through the existing AUP provisions, rather than through precinct provisions that are more enabling or presumptive of its suitability.

99. As a further example of a shift in the 'starting line' for assessment, Objective 12, as quoted above, refers to "*Mana Whenua values being recognised and provided for when landfill development occurs within the precinct ...*". The associated Policy 9 is:

*"Require development and operation of landfills to recognise and provide for the relationship of Mana Whenua with their ancestral lands, water, sites, waahi tapu and other taonga, including providing opportunities for long term and meaningful collaboration with mana whenua."*

100. These provisions subtly assume development of a landfill, and in that context, the recognition and provision of Mana Whenua relationships. On the basis of the very clearly expounded submissions from Mana Whenua, we do not support any easing of the rigour of assessment of those values when considering the appropriateness of a landfill at this site. We consider that the minimum stringency of assessment is appropriately, and indeed must be, through the existing AUP provisions.

101. In addition to the above, the precinct provisions state "*The overlay, Auckland-wide and zone objectives apply in this precinct in addition to those specified above*". The "*above*" is reference to the 12 objectives in the precinct provisions. That does however become confusing when the objectives of the precinct and those of the AUP are read together.

102. For example, the AUP refers to human health being protected and significant adverse effects on the environment being avoided, but the precinct objectives state that both human health and the environment must be "*protected*" from adverse effects. These objectives, which seem similar, will nevertheless contribute to some confusion regarding what is the expected outcome.

103. In all of the above respects, we find that the plan change conflicts with various AUP provisions and more particularly, it is not needed to seek consent for a new landfill at the site. We acknowledge, if a plan change were to be approved, it could potentially be covered with one objective that recognised the existence of an approved landfill and the associated provisions in the AUP that were relevant to it, and a buffer area about it.

## POLICIES

104. Under section 32 of the RMA policies must be considered from the point of view of whether the provisions in the proposal are the most appropriate way to achieve the objectives by—

- (i) identifying other reasonably practicable options for achieving the objectives; and
- (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
- (iii) summarising the reasons for deciding on the provisions.

Such an assessment must—

- identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
  - economic growth that are anticipated to be provided or reduced; and
  - employment that are anticipated to be provided or reduced; and
- if practicable, quantify the benefits and costs referred to above; and
- assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

105. The closing position of the requestor was that the following policies are necessary and appropriate:

- (1) *Provide for the potential development and continued operation of the Auckland Regional Landfill, where placement of waste is proposed within Sub-Precinct A, and the associated renewable energy generation where it does not result in unacceptable adverse effects, including by maintaining adequate separation distances to sensitive receiver activities.*
- (2) *Require that any assessment of environmental effects for an activity that may affect mana whenua values includes an appropriate assessment of adverse effects on those values, and how those effects may be avoided, remedied or mitigated, including through making provision for mana whenua to exercise kaitiakitanga and the adoption of the Auckland Unitary Plan's Accidental Discovery Rule (E11.6.1).*
- (3) *Discharges of contaminants into water, land and air from the Auckland Regional Landfill's construction and operations shall avoid where practicable, and otherwise minimise:*
  - (a) *adverse effects on the quality of water, in particular within groundwater, Te Awa o Hōteu and the Kaipara Moana, including from contamination and sediment;*

- (b) *adverse effects from contaminants, and the potential for these to enter freshwater, including groundwater from both point and non-point sources;*
- (c) *adverse effects on mana whenua values associated with coastal water, freshwater and geothermal water, in particular Te Awa o Hōteu and the Kaipara Moana, including wāhi tapu, wāhi taonga and mahinga kai;*
- (d) *adverse effects on the water quality of catchments and aquifers that provide water for domestic and municipal supply, so that those sources are not compromised; and*
- (e) *adverse effects on the quality of air, including from the discharge of contaminants and odour;*  
*including through the adoption of:*
  - (f) *the best practicable option for the treatment and discharge of stormwater;*
  - (g) *the use of industry best practice lining and landfill gas control system;*
  - (h) *waste acceptance procedures and criteria that prevent the acceptance of waste that could result in discharges that could adversely affect human health and / or environmental receptors;*
  - (i) *operation and management practices which are consistent with the Technical Guidelines for Disposal to Land (WasteMINZ, 2018) or subsequent New Zealand guidance, including operational practices for waste placement, compaction and moisture control to assist waste stabilisation to support the site's transition to a future use as soon as practicable following closure;*
  - (j) *closure and aftercare procedures and monitoring that are industry best practice for these activities at the time of implementation; and*
  - (k) *the provision of an appropriate buffer within the precinct.*
- (4) *Human health effects, including potential cumulative effects from the establishment, operation, and aftercare of the landfill are avoided, minimised, or mitigated to protect human health.*
- (5) *Manage discharges to land and water through an adaptive management regime that includes system monitoring and changes to management in response to monitoring results.*
- (6) *Require any development to provide access and manage operations so as to support safe and efficient movement of vehicles, in particular heavy vehicles, accessing the site to or from the public road network.*
- (7) *Manage adverse effects of buildings and structures on landscape and rural character values by:*



- (a) *requiring buildings, structures and earthworks associated with access and building platforms, to be of a design, form, scale, density and location to integrate within the landscape when viewed from off-site; and*
  - (b) *avoiding or mitigating the adverse effects of buildings and structures on ridgelines (through placement, design, and/or screen planting) and ensure so that their profile does not adversely affect the natural profile of the ridge.*
- (8) *Require new landfills and landfill discharge consents to include a condition requiring the consent holder to maintain a bond in favour of the Council and drawn in terms satisfactory to provide security for early closure, environmental remediation, any ecological offset and compensation, and post closure aftercare.*
- (9) *Require development and operation of landfills to recognise and provide for the relationship of Mana Whenua with their ancestral lands, water, sites, waahi tapu and other taonga, including providing opportunities for long term and meaningful collaboration with mana whenua.*

*Drafting note: When interpreting and applying this policy, particular regard should be had to Chapter B6 of the AUP, including B6.3.1(1)-(3) and B6.3.2(1)-(6)*

- (10) *Where the effects of the loss of river extent and values are managed by applying the effects management hierarchy, and offsets or compensation are proposed to address residual adverse effects on freshwater environments that cannot be avoided, remedied or mitigated, the offset or compensation package shall achieve at least a no net loss of ecological function outcome. Enhancement sites should be identified in the following order of preference – within the precinct, within Te Awa o Hōteio catchment, within the Kaipara Moana catchment, and within the Auckland Region.*
- (11) *Require applications to take and use groundwater, including diversion of groundwater and changes to aquifer recharge, to avoid compromising municipal water supply from the Waitematā Aquifer.*

106. As with the objectives, we struggle to understand the need for such an extensive list of policies, many of which overlap or double up with current AUP policies. Furthermore, some policies appear to be in direct conflict with existing AUP policies, or enabling to an extent that we do not consider appropriate. For example, proposed precinct Policy (4) is *“Human health effects, including potential cumulative effects from the establishment, operation, and aftercare of the landfill are avoided, minimised, or mitigated to protect human health.”* This is quite a different policy stance to the AUP which more strongly states, firstly in the policies, *“Avoid adverse effects from new landfills”* and in the objectives, that human health is *“protected”*, not *“minimised or mitigated”*.
107. Further, the proposed provisions look to reduce the stringent approach in the AUP of avoiding adverse effects from landfills on the natural environment. The precinct Policy 3 states *“Discharges of contaminants into water, land and air from the Auckland Regional Landfill’s construction and operations shall avoid where practicable, and otherwise minimise:*

- (a) *adverse effects on the quality of water, in particular within groundwater, Te Awa o Hōteu and the Kaipara Moana, including from contamination and sediment; ...”.*
- (b) *adverse effects from contaminants, and the potential for these to enter freshwater, including groundwater from both point and non-point sources;*
108. This can be compared to E13.3.1 that states significant adverse effects of landfills on lakes, rivers, streams, wetlands, groundwater and the coastal marine area should be avoided, with other effects remedied or mitigated. The use of the words “*where practicable*” in the proposed precinct policy provides a substantially different assessment to that of the AUP, as it allows for an assessment to bring into play operational issues more strongly when considering what effects should be avoided.
109. Again, as we have concluded when considering the objectives for PC 42, we find there are plan change provisions that conflict with various AUP provisions in a manner that are inappropriately enabling. PC 42 is not needed given the provisions already in the AUP.

## METHODS

110. Having discussed the objectives and policies above, we find the proposed methods follow logically but, given our findings, the methods do not require further commentary, apart from the issue of activity classification, where for the sake of caution, we consider whether a discretionary activity classification is an appropriate method to implement AUP objectives and policies (that is, even if no changes are made to AUP objectives and policies, is there still justification to amend the activity classification for landfills through the application of a site specific precinct?).
111. As noted, a key method advanced by the precinct is the (full) discretionary status of landfills in Sub-precinct A, rather than the AUP classification of non-complying. As is often noted, the difference between non-complying and discretionary status can be marginal. Both activity classifications allow for the consideration of the full range of effects, while all relevant planning documents can be referred to when considering these effects. The non-complying activity class is however subject to the gateway tests of section 104D.
112. In considering the merits of the options for activity classification, we are guided by the AUP’s description of the two activity classes. In Chapter A1.7.4, the AUP describes discretionary activities as follows:
- Activities are classed as discretionary where they are not generally anticipated to occur in a particular environment, location or zone or where the character, intensity and scale of their environmental effects are so variable that it is not possible to prescribe standards to control them in advance.*
113. In contrast, non-complying activities are described as involving the following characteristics:
- Activities are classed as non-complying where greater scrutiny is required for some reason. This may include:*
- *where they are not anticipated to occur; or*
  - *where they are likely to have significant adverse effects on the existing environment; or*

- where the existing environment is regarded as delicate or vulnerable; or
- otherwise where they are considered less likely to be appropriate.

114. We consider that within this context, landfills of the type proposed by Waste Management clearly fall within the non-complying category. Landfills of such a scale are not a common activity and not anticipated to occur in any particular environment, while there is the potential for significant adverse effects if not appropriately managed.
115. It is notable that in the plan change requestor's section 32 report<sup>14</sup>, their assessment is that making the activity status discretionary rather than non-complying is a more efficient approach to enabling infrastructure than the status quo. In contrast, they see the non-complying activity status as being in contradiction to the AUP's objectives and policies, which are generally enabling of infrastructure. Furthermore, the analysis refers to:
- The change to discretionary is enabling of infrastructure, which improves the likelihood that consents will be obtained over a non-complying activity, which is beneficial for providing resilient infrastructure to the Auckland Region.*
116. As described by the AUP, we see no contradiction in the AUP's support for infrastructure and the non-complying status of landfills.
117. We therefore find that a discretionary activity status is not an appropriate method to implement the objectives and policies of the AUP.
118. In all of the above commentary regarding plan provisions, we acknowledge the evidence addressing the various plans of relevance as provided by planning witnesses for the submitters. Those witnesses were particularly Angus Gray (DoC), Amy Young (DoC), Greg Carlyon (Te Rūnanga ō Ngāti Whatua) and Katherine Dorofaeff (Auckland Transport). We rely on the submissions, or parts of the submissions, they supported and the evidence they presented in making our decision on PC 42.

## STATUTORY PLANNING DOCUMENTS

119. We have had due regard to the national policy statements and to the national environmental standards that were discussed in the s.42A report for PC 42 as being relevant to our considerations and particularly to the evidence we received. These documents include the NPS-FW, the NES-CS and the NZCPS. These have been discussed in detail at Part 16 of the majority decision for the application for resource consents for the refuse landfill and Commissioners Watson, Parsonson, Mead and Donovan rely on that analysis for their conclusion in relation to these statutory planning documents.
120. We accept that PC 42 has been prepared bearing in mind those documents and we have addressed our concerns for the AUP provisions above. Commissioners Watson, Parsonson, Mead and Donovan consider the above commentary, together with their discussion in the decision for the application for resource consents, means they need not give further attention to these statements and standards. Similarly, with respect to the

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<sup>14</sup> Page 78, Appendix C, Auckland Regional Landfill Private Plan Change Request Assessment of Effects and Section 32 Analysis

regional policy statement component of the AUP.

121. Commissioner Tepania relies on her analysis at Section 23 of the resource consent decision report. She adds that given her findings regarding the effects on cultural values associated with freshwater resources and the ecological effects which are unable to be avoided, including the absolute loss of values both ecological and cultural where streams are infilled, she does not consider the proposed precinct provisions are in accordance with and do not give effect to the RPS or the provisions of the NPS-FM 2020.
122. Overall, Commissioner Tepania does not accept that the objectives of PC 42 are the most appropriate way to achieve the purpose of the Act. Relying on the evidence of Mr Gray she accepts that the tension with Part 2 of the RMA arises when the policy framework of PC 42 is heavily weighted toward enabling a landfill as a priority, and then requiring varying degrees of effects management while enabling that landfill. Commissioner Tepania finds that any future landfill in the area is highly likely to result in potentially significant cultural effects, reclamation of surface water bodies and irreversible loss of vegetation. Further, she finds that the strongly encouraging precinct provisions for a significant landfill activity in an area with significant cultural, ecological, and landscape values will not recognise and provide for the protection, preservation, and maintenance of these matters of national significance.

## APPROACH TO OUR DECISION

123. In terms the requirements of Schedule 1, Clause 10(3) of the RMA we are not required to give a decision that addresses each submission individually. To do so is not necessary or practicable, especially in the context of the many submissions to PC 42. We have either accepted or accepted in part the submissions (including the further submissions) that opposed the proposed plan change and precinct provisions to the extent that our decision is to decline the proposed plan change for the precinct for the reasons set out in our decision. Similarly, we reject the submissions that supported the plan change.
124. We note the requirement under section 32AA to undertake a further evaluation of any changes to the provisions as notified. In this case, as we are declining the plan change no such evaluation is required. Having said that, we consider that we have taken into account the matters covered in such an evaluation, namely whether there is a need for objectives and the efficiency and effectiveness of the associated provisions. On the later points, our assessment is that the precinct has the potential to create additional costs to the environment and introduce additional risks, compared to the framework currently provided by the AUP, but with little or no compensating benefits for the management of waste in the Auckland Region.

## DECISION

125. That pursuant to Schedule 1, Part 1, Clause 10 and Part 2, Clause 29(4) of the Resource Management Act 1991, Proposed Private Plan Change 42 to the Auckland Unitary Plan (Operative in Part) is **declined** and the submissions and further submissions are **accepted or rejected** in accordance with our decision.
126. The reasons for our decision are included in the above decisions report and can be

summarised as being that Private Plan Change 42:

- a. will not lead to a better resource management framework than currently in the Auckland Unitary Plan (Operative in Part);
- b. includes objectives and policies that conflict, or are inconsistent with those in the Auckland Unitary Plan (Operative in Part);
- c. will not assist in giving effect to the Auckland Unitary Plan (Operative in Part) given it includes inconsistencies with the relevant provisions of that Plan and, in these respects will not assist with the effective implementation of the Auckland Unitary Plan (Operative in Part);
- d. to the extent that it is not consistent with the provisions in the Auckland Unitary Plan (Operative in Part) it will not then give effect to the relevant national policy statements, in particular the National Policy Statement for Freshwater Management 2020, the draft National Policy Statement for Indigenous Biodiversity 2019 and the New Zealand Coastal Policy Statement nor the relevant national environmental standards, in particular the national environmental standards for Freshwater 2020, Air Quality 2004, Sources of Drinking Water 2008, and Plantation Forestry 2018; and
- e. will not promote the sustainable management of natural and physical resources as contemplated by Part 2 of the RMA.



**S Tepania**  
Chairperson



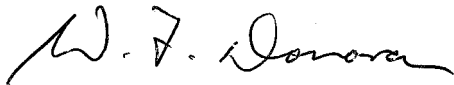
**A Watson**  
Commissioner



**M Parsonson**  
Commissioner



**D Mead**  
Commissioner



**Wayne Donovan**  
Commissioner

**30 August 2021**