

Submission Form 16 to the Otago Regional Council on consent applications

This is a Submission on (a) limited notified/publicly notified resource consent application/s pursuant to the Resource Management Act 1991.

Submitter Details:
(please print clearly)

Full Name/s: Fredric Michael PATRICK

Postal Address: [REDACTED]

Post Code: [REDACTED]

Phone number: Business: _____ Private: _____
Mobile: [REDACTED]

Email address: [REDACTED]

I/ we wish to submit a **NEUTRAL** submission on the application of:

Applicant's Name: Dunedin City Council

And/or Organisation: _____

Application Number: RM20.280

Location: Smooth Hills

Purpose: Refuse landfill

The specific parts of the application/s that my submission relates to are: *(Give details)*

Insufficient technological information upon which to approve consents, in the main the geotechnical information

My/Our submission is *(include: whether you support or oppose the application or specific parts of it, whether you are neutral regarding the application or specific parts of it and the reasons for your views)*.

See attached

I/We seek the following decision from the consent authority (*give precise details, including the general nature of any conditions sought*)

I submit that consideration of these applications should not proceed until the final, detailed design of the facility has been undertaken, including the gathering of the identified information gaps required to expedite that, and that therefore Council should hold over the process for the moment

I/we do **not** wish to be heard in support of our/my submission

If others make a similar submission, I/we will consider presenting a joint case with them at a hearing.

No

I **am not** a trade competitor* of the applicant (for the purposes of Section 308B of the Resource Management Act 1991).

**If trade competitor chosen, please complete the next statement, otherwise leave blank.*

I **am not** directly affected by an effect as a result of the proposed activity in the application that:

- a) adversely affects the environment; and
- b) does not relate to trade competition or the effects of trade competition.

I **do not** wish to be involved in any pre-hearing meeting that may be held for this application, unless you would like me to be involved.

I **do/do not** request* that the local authority delegates its functions, powers, and duties to hear and decide the application to 1 or more hearings commissioners who are not members of the local authority. **I have no preference**

I **have** served a copy of my submission on the applicant.



1 November 2021

Signature/s of submitter/s
(or person authorised to sign on behalf of submitter/s)

(Date)

Basis for submission

By way of background, I am an environmental scientist, commencing in 1976. I have worked in many aspects of the discipline – Government Departments, private consultancies (including my own), private industry, and what is now known as the Taranaki Regional Council. I have extensive experience in matters relating to landfills, including for the Dunedin City Council at its current Kaikourai Estuary operation.

My concerns with the current applications relate to, in the main, the “missing information” in the geotechnical investigations and report. This is clearly identified in the T & T review of this aspect of the application.

The Applicant has taken the approach, agreed to by T & T, that this information will be gathered during a final design process, following the approval of consents applied for. Indeed there are proposed consent conditions addressing this.

This approach was recently tossed out by the Supreme Court in what is known as the Trans-Tasman Resources case/appeals (NZSC 127, September 2021). In that case, TTR proposed a consent condition, approved by a hearing panel, requiring two years’ of additional environmental monitoring prior to works commencing, such information better informing the development of a number of management plans following approval of the consent applications. The Supreme Court rejected this approach, as follows (their decision, para 11, my highlighting) –

[11] Although differing on the correctness of the approach adopted to the purpose provision, all members of the Court were satisfied that the Court of Appeal was right to find there were errors of law in the DMC’s decision. A fundamental error was that the DMC’s decision did not comply with the requirement to favour caution and environmental protection in ss 61 and 87E, as was illustrated by the conditions imposed by the DMC relating to marine mammals and seabirds. **Winkelmann CJ, Glazebrook and Williams JJ also made the point that the attempt to rectify information deficits by imposing conditions requiring pre-commencement monitoring which would subsequently inform the creation of management plans inappropriately deprived the public of the right to be heard on a fundamental aspect of the application.**

Whilst the DCC’s applications are made under different legislation, I contend that its approach to the obtaining of further information for the purposes of final design of the landfill is the same situation as that referred to by the Supreme Court, and hence my submission that this information AND the final, detailed design require to be part of the applications considered by the Regional Council up-front, not after consents have been granted. It is my contention that the final, detailed design of the landfill is a “fundamental aspect” upon which the public should be able to comment and submit. There are also other proposed conditions relating to post-approval monitoring, establishing things such as groundwater baseline levels and quality, surface water quality *et al* –I contend that this information should’ve been part of the application. Final, detailed design might very well alter what are currently believed by the Applicant to be environmental effects associated with the operation.

I do have other concerns, in the main related to downstream water quality and loss of flow into wetlands once the landfill becomes operational, but these concerns would be more appropriately addressed following the gathering of the missing information and consideration of the final, detailed design of the landfill.

Finally, I would expect to also see, as part of the applications under consideration, a contingency plan outlining what measures will be undertaken by the landfill operator(s) to ensure compliance with any environmental consent conditions that might be breached in the event that something goes wrong (as things inevitably do with landfill operations).

Thank you for your consideration of my submission.