

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

applications by the Hamilton City Council in
respect of the closed Willoughby Street landfill

REPORT OF THE WAIKATO REGIONAL COUNCIL HEARING COMMITTEE

1 THE HEARING

In terms of the Waikato Regional Council's resolution of 14 August 2007 a Hearing Committee comprising Councillors JD Howland, LB Burdett and RA Neeley participated in a hearing in Hamilton on Wednesday, 22 August and Thursday, 23 August 2007, for the purpose of enquiring into the application and the submissions thereto.

22.08.07 10.00am to 5.04pm

23.08.07 9.45am to 12.10pm

The hearing was adjourned awaiting correspondence from the Applicant in response to questions raised by the Hearing Committee. This was provided under correspondence dated 7 September 2007. The Committee closed the hearing on 27 September 2007.

A site visit was undertaken on Thursday, 23 August 2007 as part of the hearing.

2 THE APPLICATION

Hamilton City Council (referred to as "the Applicant") lodged resource consent applications with Environment Waikato (Waikato Regional Council) to:

- (i) (100953) discharge leachate into the ground from the closed Willoughby Street landfill from where it may enter groundwater and the Waitawhiriwhiri Stream;
- (ii) (100954) discharge contaminants (i.e. landfill gas) into the air from the closed Willoughby Street landfill;
- (iii) (114504) discharge contaminants (i.e. landfill gas) into the air from the closed Willoughby Street landfill;

all in the vicinity of Willoughby Street, Hamilton.

Applications 100953 and 100954 were publicly notified in the Waikato Times on 9 November 1999. The closing date for receipt of submissions was 7 December 1999.

Limited notification of application 114504 was given in accordance with section 94(1) of the Resource Management Act 1991 with the closing date for receipt of submissions being 6 June 2006.

The Hearing was convened only in relation to applications 100953 and 114504.

3 SUBMISSIONS

To Application 100953 within the prescribed period:

Three (3) submissions were received from Community Health, Ecologic Foundation, and Te Kotuku Whenua.

One (1) submission from Fountain City Motor Inn was received out of time. With the agreement of the Applicant, the submission timeframe was extended pursuant to section 37 of the Resource Management Act and the submission was formally received.

To Application 114504 within the prescribed period:

Two (2) submissions were received from Beetham Park Motel and Waikato District Health Board.

Two (2) submissions were received out of time from Brian Boys Prodrive and Fountain City Motor Inn. At the request of Fountain City Motor Inn, and with the agreement of the Applicant, the submission timeframe was extended pursuant to section 37 of the Resource Management Act and the submission from Fountain City Motor Inn was formally received.

4 APPEARANCES

Applicant

DA Thresher, legal Counsel for the Applicant and two witnesses, being PR Cochrane and JM Chizmar.

Submitters

R Brabant, legal Counsel for Fountain City Motor Inn Partnership and Beetham Park Motel.
M Pene representing Te Kotuku Whenua Consultants

Environment Waikato

B Sinclair and one witness being AV Reeve

5 APPLICANT'S PROPOSAL

The Applicant seeks resource consent for the ongoing discharge of leachate and landfill gas from the closed Willoughby Street landfill. The consents sought are;

- To discharge leachate into the ground from the closed Willoughby Street landfill from where it may enter groundwater and the Waitawhiriwhiri Stream (Application 100953).
- To discharge contaminants (i.e. landfill gas) into the air from the closed Willoughby Street landfill (Application 114504).

5.1 Leachate Discharge

The Applicant proposes to identify visible seeps of leachate that occur within the gully that lies between the landfill and the Waitawhiriwhiri Stream, and to construct shallow subsurface drains into which these leachate seeps would be discharged to prevent direct discharge to the Waitawhiriwhiri Stream. The Applicant proposes to undertake the works as part of a gully restoration project that the Hamilton City Council (HCC) plans to undertake in the 2013/2014 financial year. The Applicant also proposes to infill low areas on the landfill surface to minimise surface ponding of water where practicable.

5.1 Landfill Gas Discharge

Details of the land titles to which the landfill gas discharge consent application relates are provided in the Table below.

Legal description	Address	Owner
Allotment 201 Town of Hamilton West	Hamilton Childcare Services Trust, Royal NZ Plunket Society	Hamilton City Council
Allotment 202 Town of Hamilton West	Beetham Park Brian Boys Pro Shop Telecom Facility	Hamilton City Council
Allotment 203 Town of Hamilton West	Hamilton Bridge Club	Hamilton City Council
Allotment 212 Town of Hamilton West	Phoenix Charitable Trust	Hamilton City Council
Allotment 458 Town of Hamilton West	Beetham Park	Hamilton City Council
Lot DPS 307645, Flats A, B & C	8A, B & C Richmond Street	Meka Holdings Ltd – F Avery
Lot 4 DPD 343	285 Ulster Street	CB & JE Jesty
Lot 3 DPS 343	287 Ulster Street	LRA & VJ Riches
Lot 2 DPS 343	289 Ulster Street	Flats – Multiple owners *
Lot 1 DPS 12212	Beetham Park Motel 297 Ulster Street	Hamilton City Council lease to Southwing Investments Ltd (PM Brown and SP Franklin)
Pt Allot 169 Town of Hamilton West	Beerescourt Motel (now known as the Hygate Motor Lodge)	J Roberts
Lot 1 DPS 20687	Fountain City Motor Inn 305 Ulster Street	S & MY Kim
Lots 1 & 2 DPS 26/8	Beetham Park	Hamilton City Council

* Owners of 289 Ulster Street: Koukouvayies Ltd (SA49A/804), Wen Zhou & Yajuan Wang (SA49A/805), Tukker Holdings Limited (SA49A/806), Rory Leslie Steet & Hannah Bramwell (SA49A/807), Ulster Investments Ltd (SA49A/808), RNK Properties Ltd (SA49A/809), Norman Walter Lamont (SA49A/810), Avinesh Chandra (SA49A/811 and SA49A/812).

The Applicant proposes mitigation measures to control the fate of the landfill gas that are specific to the various land titles from which it is seeking consent to discharge.

In summary, in addition to a programme of monitoring landfill gas in wells that have been constructed around the site, the measures proposed at each property involve one or a number of the following measures:

- Monitoring for landfill gas inside buildings;
- An inspection programme of buildings to check appropriate sub-floor ventilation remains in place and to check for cracks in basement walls and floors that might provide a pathway for gas migration;
- Ventilation of confined spaces in buildings including the installation of ventilation grilles;
- Sealing of gas entry points in buildings;
- Controlling open fires.

In addition to the above, the Applicant proposes to inform the Fire Service that Beetham Park is located on an old landfill and to brief contractors and utilities companies where activities are undertaken on land over which HCC has control. The Applicant has also identified that it would consider the installation of gas detectors and alarms in some buildings.

6 EVIDENCE PRESENTED

6.1 Applicant

Ms D Thresher, legal Counsel for the Applicant, presented opening submissions and introduced the witnesses for the Applicant.

Ms Thresher set out the statutory powers she considered were available to the HCC to enable it to enter land and buildings and the mechanisms that the Applicant proposes to utilise to ensure it has continued access to adjacent sites for the duration of any consent granted to undertake the proposed mitigation measures.

Ms Thresher later returned to advise the Committee that the Applicant would not be relying upon two of the three mechanisms she referred to in her written submission. She noted that the HCC would not be able to rely upon the leases it holds to enable entry for the purposes of monitoring (with the exception of Beetham Park Motel for which there is a specific leases that enables access for this purpose). She also confirmed that the Applicant would not be relying upon the Local Government Act to provide access. However, she re-affirmed her view that the Applicant could rely on the powers provided to the HCC under the Health Act.

Mr P Cochrane, Senior Environmental Scientist from Tonkin and Taylor Ltd, presented evidence in relation to the application to discharge landfill gas (LFG). Mr Cochrane confirmed that the original application for air discharge consent (application no. 100954) would be withdrawn once the new application has been granted.

Mr Cochrane provided a history of the site and described the extent of the area that has been subject to the placement of refuse in the past. He described the use of the properties that now lie over areas where refuse has been placed. He detailed the LFG monitoring that has been carried out and referred to national and international guidelines for the contaminants present within the LFG.

Mr Cochrane identified that it was likely that most of the LFG is being generated within the main body of the landfill and that it is unlikely that substantial quantities of landfill gas are being generated around the perimeter of the site, where the amount of organic material is relatively small.

Mr Cochrane discussed the Quantitative Risk Assessment (QRA) that Tonkin and Taylor had undertaken. He presented evidence of a re-assessment of the risks that had been recently been undertaken based on changes that had occurred since the release of the QRA in 2005.

These changes included new building works at Beetham Park Motel, the completion of inspections of confined spaces in buildings around the site and the construction of the new Hygate Motor Inn.

Mr Cochrane referred to extracts from a document prepared by the United Kingdom Environment Agency entitled "*Guidance on the management of landfill gas*" that was published in 2004. He commented that;

"Using these criteria, the risk to people and property from the migration of landfill gas at the Willoughby Street closed landfill can not be regarded as unacceptable"

Mr Cochrane described the consultation that the Applicant undertook as part of the consent process and the mitigation measures that are proposed for each property and building. He also identified those parties that had provided their written approval for the proposals.

Mr Cochrane noted that he would support continuous monitoring of buildings with monitoring linked to an alarm system, should the building owners be amenable to such an initiative.

He commented that he did not consider additional measures such as venting ground beneath the affected buildings, the installation of a gas barrier, or the reconstruction of affected buildings were necessary. He noted that if the Committee were of the view to impose such conditions, the Committee would need to recognise that the works are not budgeted by the HCC and so additional time would be necessary to allow the HCC to come up with the necessary funds.

Ms J Chizmar, Environmental Scientist from Tonkin and Taylor Ltd, presented evidence in relation to the application to discharge leachate. Ms Chizmar described the processes that form leachate and the monitoring that had been undertaken within the Waitiwhiriwhiri Stream to identify the effects of the leachate on the stream.

Ms Chizmar referred to relevant national water quality guidelines and concluded that the leachate is unlikely to be adversely affecting surface water quality in the stream. She noted that there are potential aesthetic effects due to the seeps near the banks of the stream and outlined the Applicant's proposals for the management of these seeps. These works are proposed as part of the development of a walkway through the gully that the HCC plans to complete in the 2013/14 financial year.

Ms Chizmar also noted that measures are proposed to minimise the generation of leachate, in particular maintaining the surface of the landfill in a manner that minimising ponding and subsequent infiltration of water.

6.2 Submitters

Mr R Brabant, legal Counsel for the Fountain City Motor Inn Partnership (Beetham Park Motel), presented submissions on behalf of the Partnership.

He described the lease the Partnership has with the HCC under which it occupies the land. He confirmed that the HCC has the legal right to monitor and investigate gas or other sub-surface emissions but that the HCC does not own the buildings and has no right to carry out any works on the land.

Mr Brabant provided a history of the events that led to two units at Beetham Park being vacated due to the presence of landfill gas. He described the remedial works that were undertaken and the Certificate of Acceptance that was issued by the HCC, which includes ongoing inspection and monitoring requirements as part of the HCC's overall monitoring of the area. He identified to the Committee that no monitoring or inspections have occurred since June 2006.

Mr Brabant discussed the risk assessment completed by Tonkin and Taylor and national and international guidelines for the management of landfill gas. Mr Brabant invited the Committee to accept the evidence of Mr Reeve (technical advisor to the Waikato Regional Council) as that evidence relates to the issue of the acceptability of the residual risk, in preference to the evidence presented by Mr Cochrane.

He also commented that the consent duration should be no longer than 10 years, as opposed to the 35 years sought, given there is the potential for the adverse impact of the discharge to increase or vary during the term of the consent.

Ms M Pene presented evidence on behalf of Te Kotuku Whenua. Ms Pene identified that Te Kotuku Whenua is the environmental agency of Ngati Wairere.

Ms Pene noted concerns about the migration of gas into buildings and that the use of alarms should be considered for any areas that are occupied.

Ms Pene also noted concerns regarding the volume of leachate that would discharge into the Waitiwhiriwhiri Stream and the data from 1995, 1996 and 1999 that showed adverse impacts on the stream.

Ms Pene stated that the effect of the leachate was more than minor and had the potential to continue to affect tangata whenua values and diminish the indigenous taonga fish species. She considered it unacceptable to allow the discharge to continue in its current form until 2015 and that the proposed mitigation works should be completed by January 2009, noting that the discharge has already occurred for many years and this represents 10 years since the consent application was lodged.

6.3 Environment Waikato (Waikato Regional Council) Technical Report

Mr Sinclair presented the Waikato Regional Council (WRC) Officers Report that had been prepared pursuant to section 42A of the Resource Management Act. Mr Sinclair noted that the report had been pre-circulated to all parties and the Committee accepted the evidence as read. Mr Sinclair summarised the key aspects of the report and answered questions raised by the Committee.

Mr Sinclair called Mr A Reeve (Principal of Sinclair Knight Merz Ltd) to present evidence in relation to the application to discharge landfill gas.

Mr Reeve presented an additional written statement to supplement reports prepared by Sinclair Knight Merz that were included as part of the WRC Officer's Report. In this statement he discussed the risk assessment process and risk acceptance criteria. He explained the concepts of "unacceptable and intolerable risk", "unacceptable but tolerable risk" and "acceptable risk". He noted that there are no regulatory or New Zealand specific guidelines that provide numerical acceptance standards that are directly relevant to this case.

Mr Reeve commented that in most engineering situations an acceptable level of risk is achieved by complying with Codes of Practice or adopting best practice. He then referred to guidance from the United Kingdom and noted what he considered to be best practice for any new development around Willoughby Street landfill.

With regard to the risk assessment completed by Tonkin and Taylor on behalf of the Applicant, he commented that;

"The risks estimated for a number of buildings, prior to implementing risk treatment measures are not, by generally used criteria, considered acceptable."

Mr Reeve noted that the range of risk treatment measures assessed by Tonkin and Taylor do not bring the risks down to meet commonly used acceptance criteria. He noted that

additional risk treatment options could have been considered to meet best practice including:

- Installing an in-ground barrier
- Removing refuse that is under or close to buildings
- Re-constructing the affected buildings.

Mr Reeve concluded by stating that

"By most published criteria, the risks calculated are not acceptable and risk reduction measures should be applied"

6.4 Applicant's Right of Reply

Ms Thresher presented the right of reply for the Applicant. She referred to the different capacities of the HCC, noting that in terms of this application, the HCC is acting in its commercial landowning capacity, as a landlord under leases over the land that it owns.

Ms Thresher described the circumstances under which the HCC, exercising its statutory powers under the Health Act, required units at the Beetham Park Motel to be left vacant, and that the units were re-opened with the HCC exercising its statutory functions under the Building Act.

Ms Thresher submitted that it was the position of the HCC that a gas barrier is not an appropriate risk management solution in this particular instance and noted that gas would continue to discharge into the air from sites outside the barrier where that site is on landfill. Ms Thresher also referred to those parties that had provided their written approval for the proposals.

Ms Thresher submitted that the Committee should consider the costs and benefits of requiring the installation of a gas barrier, noting that the HCC had not allocated funding to such a barrier through the LTCCP process. She commented that Hamilton City's ratepayers have not identified the installation of a gas barrier around the landfill as a priority.

Ms Thresher reminded the Committee of Mr Cochrane's evidence that the risk is not unacceptable according to the UK Environment Agency's risk assessment matrix. She initially submitted that this is a matter upon which the experts, i.e., Mr Cochrane and Mr Reeve, agree although after further enquiry acknowledged that Mr Reeve had not resiled from the statements made in his written evidence that the risks calculated are not acceptable.

With respect to the leachate discharge application, Ms Thresher commented that the leachate works are focussed purely on the aesthetic effects of the discharge and as such did not support bringing the works forward from the proposed date of 2015.

7.0 EVALUATION OF THE PROPOSAL

The Hearing was adjourned to consider all of the evidence and submissions and also to await the provision of the further information requested from the Applicant. That information has been circulated to all parties. We did not see the need to re-open the Hearing after receipt of the further information and consequently the Hearing was formally closed on 27 September 2007.

The Committee acknowledge that it has taken many years for these applications to reach the point where a decision can be made. In that regard, we would like to thank all of the parties for their commitment to the process over these years.

7.1 Statutory Provisions Considered

The legislative context in which the Committee is required to make its decision is provided by the Resource Management Act (RMA).

Application 100953 (the leachate discharge) was lodged in 1999. This is before the 2003 and 2005 amendments to the RMA and so the application must be considered without reference to those amendments. Application 114504 (the landfill gas discharge) was lodged after these amendments and accordingly all the amended provisions must be considered.

We note in the first instance that the discharges are a discretionary activity pursuant to Rule 5.2.7.3 of the Proposed Waikato Regional Plan and innominate (and therefore discretionary) pursuant to the Operative Transitional Waikato Regional Plan.

Section 104 of the RMA sets out those matters to which we are required to have regard, subject to Part II of the RMA, when considering these applications. As is identified in the WRC Officer's report, the wording of section 104 has been amended between 1999 and 2006 but essentially this section requires the consent authority to consider the following key matters:

- Any actual and potential effects on the environment of allowing the activity;
- Any relevant plan or proposed plan; and
- Any relevant national or regional policy statement.

In relation to application 100953, we note sections 104(3)(a) and (b) of the RMA, as it stood in 1999, require that we have regard to the sensitivity of the receiving environment and any possible alternative methods of discharge. We note that Section 105 of the amended Act (which applies to application 114504) requires the consent authority to have regard to similar matters.

Finally we note that section 107 specifies circumstances when a resource consent shall not be granted.

7.2 Relevant Policies and Plans

The relevant policies and objectives from the Waikato Regional Policy Statement (WRPS) and the Proposed Waikato Regional Plan (PWRP) were presented in the WRC Officer's Report. No evidence or submissions were presented to the Committee that challenged the evidence presented in the Officer's Report in this regard. Therefore, rather than repeat those matters again here, we refer the reader to the WRC Officer's report in relation to the relevant policies and objectives from the WRPS and the PWRP.

7.3 Issues in Contention

Leachate Discharge

We note there was consensus between the experts that the effects on the environment associated with this discharge would be minor. However, we note from the evidence of Ms Pene, that Maori cultural and spiritual values are degraded as a result of this discharge. In that regard, she considered that the timeframe for completing the proposed mitigation measures should be brought forward from 2015 to 2009. The HCC considers that the only issue is one of aesthetics and as such does not consider bringing the timeframe forward is necessary given the limited access to the gully until the walkway is completed.

Landfill Gas Discharge

It has been clearly identified to the Committee that the key issue in contention is what represents an "acceptable" level of risk associated with the discharge and consequently what represent appropriate mitigation measures.

We note that a determination whether or not the proposed measures will result in an acceptable level of residual risk requires consideration of a number of factors and that the

two experts in this instance do not fully agree about the level of mitigation that should be required.

We also note that no party sought that the application be declined in its entirety, although one option that has been presented to us in the WRC Officer's Report, which is supported by the submissions of Mr Brabant, is that consent be granted for only a portion of the land titles to which the application relates.

7.4 Main Findings of Fact

Leachate Discharge

We find that the effects of the discharge of leachate are likely to be minor. We are satisfied that appropriate monitoring and review conditions can be imposed that would enable additional mitigation measures be initiated should future data indicate a change in the level of effect.

However, we also find that the ongoing discharge does adversely affect the cultural and spiritual values of Maori. In that regard, we consider that the discharge should be minimised as far as practicable. To that end, we consider that the landfill surface should be contoured to promote surface runoff of rainfall to reduce infiltration of water and hence reduce leachate generation.

We are also of the view that the proposed mitigation measures should occur sooner than proposed. Removing the direct discharge of leachate from the Waitiwhiriwhiri Stream to address cultural and spiritual concerns should occur within a reasonable timeframe. This discharge has been ongoing for many years, and some eight years since the consent application was lodged. Waiting a further eight years to undertake the mitigation measures represents an acceptably long time for these direct discharge to continue to degrade the Mauri of the stream. Our view is that these works should be completed by the end of 2010. This should provide ample time for the HCC to design and re-schedule the works and have these budgeted into its work programme.

Landfill gas discharge

We have considered carefully the evidence and legal submissions presented to us on this issue. We are persuaded to the view presented by Mr Reeve that in situations such as this, the adoption of best practice is the most appropriate course of action to follow and that in doing so this would result in an "acceptable" level of risk.

We note Mr Cochrane's comment, which was confirmed by Mr Reeve, that most of the landfill gas is generated within the main body of the landfill. We also note in the guidance provided within the UK Environment Agency document entitled "*Guidance on the management of landfill gas*" that was provided to us by Mr Cochrane, that the first management option presented on each occasion is containment.

It is our view that best practice includes containment and as such a gas barrier should be installed at the perimeter of Beetham Park so that the primary source of landfill gas is isolated from the surrounding properties.

The extent of the barrier is a matter that is likely to require detailed design. It would have been ideal to have information before the Committee to determine the extent of the barrier as part of this decision. However, we are satisfied that conditions should be imposed requiring the main body of the landfill be isolated from the surrounding properties. To that end, we have included a condition that would require a barrier be installed along the boundary between Beetham Park and the properties to the south and east, i.e. from the Fountain City Motor Inn to the Indian Community Centre. We note that the ventilation points for the system will need to be located to minimise the risk of creating an odour nuisance.

As regards the timing of such works, we heard from Ms Thresher in her right of reply that a period of six months would be sufficient for the design of the barrier. We consider that a subsequent period of one year should be sufficient to construct the barrier.

The next issue relates to the area to which the consent applies. We have considered the option presented in the WRC Officer's Report which was supported by Mr Brabant, of declining consent for some of the land titles for which consent was sought. However, we agree with Ms Thresher that following such a course is not appropriate in these circumstances.

We have heard evidence that even after a gas barrier is installed, there may continue to be discharges outside the barrier due to existing refuse. That said, there may only be a small volume of gas present in the ground and/or very little refuse remaining that has the potential to generate landfill gas. In any case, if there is a discharge we have been advised that such discharges would be unauthorised if part of the application were declined, and in turn those discharges may then become the subject of further consent applications.

It is our view that the management of all of the discharges associated with the landfill should be addressed at this time, under this application that has been lodged by the organisation that placed the refuse at the site in the first instance. This consent process provides the opportunity to ensure best practice is followed to mitigate the potential effects of all the discharges.

Having considered the evidence of Mr Reeve, we find that, in addition to the measures already proposed by the Applicant, following best practice in relation to properties outside the barrier would require venting of the ground beneath the affected buildings, ongoing monitoring of landfill gas in the ground and the installation of an automated alarm system within the affected buildings. We do not find that the evidence presented indicated that the respective buildings should be demolished and re-constructed.

We note that some property owners/occupiers may not wish to have these additional mitigation measures be implemented. In that regard, we recognise that we can only require that the HCC offer to undertake these measures. It would be the choice of the landowner/occupier whether or not to accept such an offer.

Whilst we consider it appropriate that the HCC inspect those buildings where mitigation measures are proposed, or have been implemented, on an ongoing basis to ensure the works are appropriately maintained, we recognise that the HCC may not be able to gain access without the approval of the land owner and/or occupier.

In that regard, we are not convinced that the HCC has the ability to gain access to any property for which it does not have a specific arrangement and have not been satisfied that it has the necessary powers under the Health Act to undertake all of the mitigation monitoring and investigation that it has proposed. This makes it that much more important that HCC ensures the main body of refuse (and the gas it produces) is contained.

We noted Ms Thresher's submission that Hamilton City's ratepayers have not identified the installation of a gas barrier around the landfill as a priority and as such HCC has not allocated funding to such a barrier through the LTCCP process. This was a matter upon which we sought further information from Ms Thresher. From the information provided, it appears that the LTCCP for Hamilton City is silent on the extent of the gas migration issue at the site matter and whether further mitigation is necessary to mitigate the risk of the migration. It does not appear that there was specific consultation with the community on this issue as part of the development of the Hamilton City LTCCP.

7.4 Conclusions

Firstly, we are satisfied that none of the effects identified in section 107 of the RMA are likely to occur that would prevent us from granting the consents.

Secondly, after consideration of the matters specified in section 105 (in particular with regard to the sensitivity of the receiving environment), we are persuaded by the evidence of Mr Reeve in preference to that of Mr Cochrane. In that regard, we also take note of the United Kingdom Environment Agency document that was tabled by Mr Cochrane which is entitled "*Guidance on the management of landfill gas*". This document consistently refers to "containment" as the first course of action in situations where landfill gas migration is an issue.

We are of the view that additional mitigation measures to those proposed by the Applicant in relation to landfill gas discharge application are necessary to ensure that the residual risk associated with the discharge is at a level that can be considered acceptable.

With those additional mitigation measures in place, Mr Reeve's evidence gives us the confidence to conclude that granting the consents would not be contrary to the relevant policies and objectives of the Waikato Regional Policy Statement, the Proposed Waikato Regional Plan, and the over-riding purpose and principles of the RMA.

7.4 Overall Broad Judgement

In coming to our overall broad judgement as to whether the proposal would promote the sustainable management of natural and physical resources, as defined in section 5 of the RMA, we have considered very carefully the evidence presented. For completeness, we record Part II of the RMA in its entirety below:

Part II of the RMA – The Purpose and Principles

Section 5 - Purpose

5. Purpose---(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, "sustainable management" means managing the use, development and protection of natural and physical resources in way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life – supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

Section 6 - Matters of National Importance

6. Matters of national importance---In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Section 7 - Others Matters

7. Other matters---In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to---

(a) Kaitiakitanga:

(aa) The ethic of stewardship

(b) The efficient use and development of natural and physical resources:

(c) The maintenance and enhancement of amenity values:

(d) Intrinsic values of ecosystems:

(e) Recognition and protection of the heritage values of sites, buildings, places, or areas:

(f) Maintenance and enhancement of the quality of the environment:

Section 8 - Treaty of Waitangi

8. Treaty of Waitangi---In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

It is our view that the granting of the consents is, on balance, consistent with the purpose of the RMA. The evidence shows that the proposed discharges, subject to the conditions of consent we have imposed;

- will not compromise the community's ability to provide for its social, economic and cultural wellbeing,
- will not unduly compromise the health and safety of the community,
- will sustain the potential of natural and physical resources to meet the reasonable foreseeable needs of future generations,
- will not compromise the life-supporting capacity of air, water soil and eco-systems; and
- will adequately mitigate adverse effects of the discharges on the environment.

We have recognised and provided for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, as presented in the evidence of Ms Pene.

We do not consider that the consent duration sought should be reduced, as was submitted by Mr Brabant. We are satisfied that the conditions we have imposed are sufficiently robust to achieve the purpose of the consent over the longer term of 35 years that was sought, including the provision to review the consents at regular intervals.

8.0 DECISION

After consideration of all of the evidence, we have decided to grant resource consent applications 100953 and 114054, as per the attached Schedule of Consents, for the following reasons:

- (a) The proposed discharges will have minor actual or potential adverse effects on the environment,
- (b) The proposal is not contrary to the provisions of the Waikato Regional Policy Statement or the Proposed Waikato Regional Plan,
- (c) The proposal is consistent with the purpose and principles of the Resource Management Act 1991,

subject to compliance with the conditions of consent attached to this decision.

DATED thisday of2007

(JD Howland) Chairperson

LB Burdett

RA Neeley

Resource Consent Schedule

Resource Consent: 100953
Consent Type: Discharge permit
Consent Subtype: Discharge to land

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Hamilton City Council (Water & Waste Services)
Private Bag 3010
HAMILTON 2020

(hereinafter referred to as the Consent Holder)

Activity authorised: To discharge leachate into the ground from the closed Willoughby Street landfill from where it may enter groundwater and the Waitawhiriwhiri Stream.

Location: Willoughby St Landfill

Map Reference: NZMS 260 S14:097-783

Consent Duration: Granted for a period expiring on 30 June 2042

Subject to the conditions overleaf:

General

1. This consent is subject to the conditions shown below and the conditions as listed in “Schedule One – General Conditions” attached to this consent.

Final Cover

2. The consent holder shall ensure that the landfill is contoured to minimise, as far as is practicable, surface ponding of rainfall and the production of leachate.

Monitoring

3. The consent holder shall monitor water quality in the Waitawhiriwhiri Stream at locations above, below and adjacent to the landfill to determine the ongoing effect of leachate from the landfill on the stream. To this end, the consent holder shall, unless otherwise agreed in writing by the Waikato Regional Council (WRC), monitor the stream every six months to coincide with expected groundwater level maximum (generally September) and minimum (generally April), for the following parameters:

- (i) pH (field and laboratory) ;
- (ii) electrical conductivity (field and laboratory) ;
- (iii) ammoniacal nitrogen;
- (iv) chemical oxygen demand (COD);
- (v) carbonaceous biological oxygen demand (BOD₅);
- (vi) chloride;
- (vii) potassium;
- (viii) nitrate nitrogen;
- (ix) total organic carbon;
- (x) total zinc;
- (xi) total boron.

The consent holder shall forward the results of the analyses to the WRC within two months of sampling.

4. After one year of monitoring subsequent to the completion of the mitigation works required pursuant to condition 8 of this consent, the consent holder may amend the sampling frequency to annual and the parameters to be monitored, subject to first obtaining written approval from the WRC. Any reduced suite of parameters shall comprise, as a minimum;

- (i) pH;
- (ii) conductivity;
- (iii) ammoniacal nitrogen;
- (iv) total zinc
- (v) total boron

The consent holder shall undertake any amended monitoring programme to the satisfaction of the WRC. After a further three years of monitoring, the consent holder may further amend the monitoring programme, subject to obtaining approval from the WRC.

5. The results of monitoring undertaken pursuant to this consent shall be compared with the trigger values specified in the Aftercare Management Plan approved pursuant to condition 3 of Schedule One – General Conditions. The trigger values are to be set 80% of the relevant guidelines for the protection of aquatic species. If the trigger values are exceeded, the consent holder shall report the exceedence to the WRC and shall undertake further investigations to determine if the landfill is the cause of the exceedence. The consent holder shall report the result of these investigations to the WRC.

If the landfill is identified as the cause of the exceedence, the consent holder shall provide a report to the WRC detailing works that will be undertaken to reduce the impact of leachate on the Waitawhiriwhiri Stream to ensure the trigger values are not exceeded.

Sample Analysis

6. All sample analyses shall be undertaken in accordance with the methods detailed in the "Standard Methods For The Examination Of Water And Waste Water, 1998" 20th edition by A.P.H.A. and A.W.W.A. and W.E.F. and any subsequent updates; or any other method approved in advance by the Waikato Regional Council. Sampling shall be undertaken under appropriate protocols.

Site Inspections

7. The consent holder shall inspect the surface of the main landfill area annually for depressions, cracks and refuse at the surface. The consent holder shall infill depressions and cracks to prevent ponding of surface water and concentrated infiltration, and cover over or dispose of any refuse found protruding from the landfill surface to ensure public safety. The consent holder shall also undertake annual inspections of the site for leachate seeps. If a new seep is identified, the consent holder shall undertake an assessment of the environment effects of the seep. A report on this assessment, along with proposed mitigation measures (if appropriate), shall be provided to the WRC within three months of the seep being identified. The proposed mitigation measure(s), if required, shall be undertaken within the following six month period.

Note: The consent holder must obtain any further consents that may be necessary to enable the proposed mitigation measures to be undertaken.

Further Mitigation Measures

8. The consent holder shall undertake remedial works to capture leachate seeps from the landfill and discharge these into the ground to prevent direct discharge of the leachate to the Waitawhiriwhiri Stream before the end of 2010. The consent holder shall provide to the WRC, for its written approval, proposals for the leachate capture and disposal system at least six month prior to construction.

Reviews

9. The WRC may, within three months of 30 June 2010 and every third year thereafter, or within three months of the receipt of a report submitted pursuant to condition 5 or condition 7 of this consent, commence a review of this consent under section 128 of the Resource Management Act 1991, for the following purposes:
 - (i) to review the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the Waitawhiriwhiri Stream from the closed landfill and if considered appropriate by the Waikato Regional Council to avoid, remedy or mitigate such effects by way of further or amended conditions;
 - (ii) if necessary and appropriate, to require the holder of this resource consent to adopt the best practicable option to remove or reduce adverse effects on the Waitawhiriwhiri Stream resulting from the exercise of this consent;
 - (iii) to review the adequacy and necessity of the monitoring undertaken.

Costs associated with any review shall be borne by the consent holder.

Advice notes

- i. This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.
- ii. This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).
- iii. The consent holder may apply to change the conditions of the resource consent under s.127 RMA.
- iv. The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.

Resource Consent Schedule

Resource Consent: 114504
Consent Type: Discharge permit
Consent Subtype: Discharge to air

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Hamilton City Council (Water & Waste Services)
Private Bag 3010
HAMILTON 2020

(hereinafter referred to as the Consent Holder)

Activity authorised: To discharge contaminants (i.e. landfill gas) into the air from the closed Willoughby Street landfill

Location: Willoughby St - Hamilton

Map Reference: NZMS 260 S14:097-782

Consent Duration: Granted for a period expiring on 30 June 2042

Subject to the conditions overleaf:

General

1. This consent is subject to the conditions shown below and the conditions as listed in “Schedule One – General Conditions” attached to this consent.
2. This consent authorises the discharge of contaminants into the air from the following properties:

Legal description	Address	Owner (at the date of granting
Allotment 201 Town of Hamilton West	Hamilton Childcare Services Trust, Royal NZ Plunket Society	Hamilton City Council
Allotment 202 Town of Hamilton West	Beetham Park Brian Boys Pro Shop Telecom Facility	Hamilton City Council
Allotment 203 Town of Hamilton West	Hamilton Bridge Club	Hamilton City Council
Allotment 212 Town of Hamilton West	Phoenix Charitable Trust	Hamilton City Council
Allotment 458 Town of Hamilton West	Beetham Park	Hamilton City Council
Lot DPS 307645, Flats A, B & C	8A, B & C Richmond Street	Meka Holdings Ltd – F Avery
Lot 4 DPD 343	285 Ulster Street	CB & JE Jesty
Lot 3 DPS 343	287 Ulster Street	LRA & VJ Riches
Lot 2 DPS 343	289 Ulster Street	Flats – Multiple owners *
Lot 1 DPS 12212	Beetham Park Motel 297 Ulster Street	Hamilton City Council lease to Southwing Investments Ltd (PM Brown and SP Franklin)
Pt Allot 169 Town of Hamilton West	Beerescourt Motel (now known as the Hygate Motor Lodge)	J Roberts
Lot 1 DPS 20687	Fountain City Motor Inn 305 Ulster Street	S & MY Kim
Lots 1 & 2 DPS 26/8	Beetham Park	Hamilton City Council

* Owners of 289 Ulster Street: Koukouyayies Ltd (SA49A/804), Wen Zhou & Yajuan Wang (SA49A/805), Tukker Holdings Limited (SA49A/806), Rory Leslie Steet & Hannah Bramwell (SA49A/807), Ulster Investments Ltd (SA49A/808), RNK Properties Ltd (SA49A/809), Norman Walter Lamont (SA49A/810), Avinesh Chandra (SA49A/811 and SA49A/812).

Odour

3. There shall be no odour beyond the boundary of the landfill site that causes an objectionable effect as a result of the activity authorised by this consent. Upon receipt of any report of an odour incident, either direct to the consent holder or via the Waikato Regional Council (WRC), the consent holder shall consult with the person who reported the incident and with the WRC, and if required by the WRC, shall provide the WRC with the following details in writing.
 - (i) the time and type of complaint;
 - (ii) the name and address of the complainant (if available);
 - (iii) wind direction at the time of the complaint;
 - (iv) the cause of the incident; and
 - (v) mitigation and remedial actions to be taken by the consent holder.

Mitigation Measures

4. Within three months of the commencement of this consent, the consent holder shall, subject to receiving permission from the relevant land owners and occupiers, undertake the mitigation

measures detailed in Appendix C of the Aftercare Management Plan, as approved pursuant to condition 3 of Schedule One – General Conditions.

5. Within six months of the commencement of this consent, the consent holder shall provide to the WRC, for its approval, detailed designs of a gas barrier and venting system to be constructed at the boundary between Beetham Park and surrounding properties. The system shall be designed to prevent the sub-surface egress of landfill gas from the main body of the landfill that lies beneath Beetham Park to adjacent properties, specifically the properties occupied by the Fountain City Motor Inn, Hygate Motor Lodge, Beetham Park Motel, Hamilton Childcare Services, Hamilton Bridge Club and Phoenix Charitable Trust. The system shall also be designed to minimise the potential for odour nuisance to be created by the venting system.

Within 12 months of receiving notice of approval of the detailed designs, the consent holder shall construct the gas barrier and venting system in accordance with the approved designs and shall maintain the system in accordance with good engineering practice

Note: In terms of this condition, the purpose of the WRC approval is to review the design to confirm that it has been designed to achieve the purpose identified in this condition.

6. Within one month of the commencement of this consent, the consent holder shall write to the owners of the Beetham Park Motel, the Fountain City Motor Inn, the Hygate Motor Lodge, the owner(s) of 8A/B & C Richmond Street and owners of units at 289 Ulster Street, and offer to undertake the following additional risk reduction measures at their properties;
 - (i) To design and install a venting system to vent landfill gas from beneath buildings on the property;
 - (ii) To design and install a continuous landfill gas monitoring and alarm system within buildings on their properties.

The consent holder shall provide the WRC with a copy of its correspondence with these parties.

If the above parties request either or both of the above mitigation measures be implemented and provide the necessary access for the measures to be implemented, the consent holder shall implement the measures within 12 months of the request being made, or within any other timeframe that has been agreed between the parties.

The consent holder shall advise the WRC in writing those parties that have requested the additional mitigation measures, the timeframe for the completion of the works and shall advise the WRC in writing when the works have been completed.

Site Inspections

7. The consent holder shall inspect the surface of the main landfill area situated on Beetham Park annually for depressions, cracks or other areas where landfill gas could discharge to the atmosphere. The consent holder shall infill depressions and cracks to prevent the uncontrolled discharge of landfill gas into the air.
8. The consent holder shall notify and advise contractors known to be working on and around the landfill regarding the potential landfill gas risks and shall ensure that the emergency services are aware of the presence of the landfill and landfill gas risks associated with the site.

Monitoring

9. Unless otherwise agreed in writing by the WRC and subject to obtaining the necessary access agreements with the respective land owners and occupiers, all landfill gas monitoring bores, as shown in Figure 1 of the Aftercare Management Plan, shall be monitored on a three-monthly basis in accordance with protocols agreed with the WRC in writing. Monitoring shall include methane, carbon dioxide and oxygen concentrations. Data on gas flow shall also be collected.

The consent holder shall record meteorological conditions for the week prior to the testing and shall make its best endeavours to conduct the testing during periods of falling barometric pressure.

After two years of monitoring subsequent to the installation of the gas barrier and venting system to be installed pursuant to condition 5 of this consent, the consent holder may amend the above monitoring programme. No changes may be made to the programme without the written approval of the WRC.

10. Except as provided for below, landfill gas monitoring in and around the following buildings shall be carried out on a six monthly basis, during a period of low and falling barometric pressure, in accordance with protocols agreed with the WRC in writing, subject to obtaining approval from the respective landowner and occupier. The buildings to be monitored are as detailed in Appendix C of the Aftercare Management Plan, and as shown in the following Table:

Legal description	Address
Allotment 201 Town of Hamilton West	Hamilton Childcare Services Trust
Allotment 201 Town of Hamilton West	Royal NZ Plunket Society
Allotment 202 Town of Hamilton West	Brian Boys Pro Shop
Allotment 202 Town of Hamilton West	Telecom Facility
Allotment 203 Town of Hamilton West	Hamilton Bridge Club
Allotment 212 Town of Hamilton West	Phoenix Charitable Trust (Indian Community Centre)
Flat C Lot DPS 307645	8A Richmond Street
DPS 42465	289 Ulster St - 5 ground floor units
Lot 1 DPS 12212	Beetham Park Motel
Pt Allot 169 Town of Hamilton West	Hygate Motor Lodge (formerly Beerescourt Motel)
Lot 1 DPS 20687	Fountain City Motor Inn

The consent holder shall report the results of all monitoring undertaken pursuant to this condition to the respective landowners of all buildings monitored within two months of sampling. After five years of monitoring, the consent holder may amend the above monitoring programme. No changes may be made to the programme without the written approval of the WRC.

Exemption: The above monitoring is not required for those buildings where a continuous landfill gas monitoring system has been installed pursuant to condition 6 of this consent and it being maintained in an operational state.

11. Prior to the installation of the landfill gas barrier pursuant to condition 5 of this consent, the consent holder shall prepare a monitoring plan designed to demonstrate the effectiveness of the gas barrier and venting system and submit this to the WRC for its approval. The consent holder shall exercise this consent in accordance with the approved monitoring plan.

Contingency Measures

12. The consent holder shall detail contingency measures in the Aftercare Management Plan that will be followed in the event that methane or carbon dioxide concentrations in habitable buildings or confined building spaces exceed trigger levels that are specified in the Aftercare Management Plan. The consent holder shall provide a report to the WRC as soon as possible after becoming aware of an exceedence of a trigger level and shall implement the contingency measures specified in the Aftercare Management Plan.

Reporting

13. The consent holder shall report the results of all monitoring undertaken pursuant to this consent to the WRC within two months of sampling.

14. The consent holder shall provide a report to the WRC by 30 June 2010, and every third year thereafter, that provides an update on the status of all mitigation measures undertaken pursuant to this consent and includes recommendations for any further mitigation measures that the consent holder considers appropriate in light of the monitoring data collected to date. The consent holder shall also confirm, via this report, whether it has agreement with the respective property owners for ongoing access to their properties to undertake monitoring and to inspect the mitigation measures that are required by this consent

Reviews

15. The WRC may, within three months of the receipt of any report submitted pursuant to condition 12 or 14 of this consent, commence a review of this consent under section 128 of the Resource Management Act 1991, for the following purposes.

- i) to review the effectiveness of the conditions of this resource consent in avoiding or mitigating any actual or potential adverse effects on neighbouring properties due to the migration of landfill gas, and if considered appropriate by the WRC to avoid, remedy or mitigate such effects by way of further or amended conditions;
- ii) if necessary and appropriate, to require the holder of this resource consent to adopt the best practicable option to remove or reduce actual or potential adverse effects on neighbouring properties resulting from the exercise of this consent;
- iii) to review the adequacy and necessity of the monitoring undertaken.

Costs associated with any review shall be borne by the consent holder.

Advice notes

- i. This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.
- ii. This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).
- iii. The consent holder may apply to change the conditions of the resource consent under s.127 RMA.
- iv. The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.

Schedule One - General Conditions

The granting of resource consents 100953 and 114504 is subject to the following general conditions, which shall apply to each consent.

General

1. Except as specifically provided by subsequent conditions of this consent and subject to complying with the other conditions of this consent, the activity authorised shall be undertaken in general accordance with the application for this resource consent and the documentation provided in support of the application.
2. The consent holder shall ensure that landfill site is recorded on the appropriate planning maps as a closed landfill and shall record that the site is a source of landfill gas. The consent holder shall also request that the Hamilton City Council identify the landfill on Land Information Memoranda reports for neighbouring properties.

Operations and Maintenance

3. Within three months of the commencement of this consent, the consent holder shall amend the document entitled draft Willoughby Street Closed Landfill Aftercare Management Plan, dated 17 May 2006, to ensure that it is consistent with the conditions of this consent. A copy of the amended plan shall be provided to the WRC for its approval. The consent holder shall exercise this consent in accordance with the approved Aftercare Plan, or any subsequently amended Aftercare Plan that has been approved by the WRC.
4. All landfill investigations, design, supervision, monitoring and after-care shall be undertaken by suitably qualified personnel experienced in such works, and to the satisfaction of the WRC.

Administration

5. The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulations made under section 360 of the Resource Management Act 1991.

Reviews

6. The WRC may review the conditions of this consent in the event of the transfer of this consent, for the purpose of:
 - (i) ensuring the adequacy of the consent in terms of protecting the environment, and/or
 - (ii) ensuring that the new consent holder can comply with the intent and specific requirements of the conditions; and/or
 - (iii) reviewing the requirements for a bond.

Costs relating to the above reviews shall be borne by the consent holder.