

Solid waste

Recommendations in response to submissions on the Proposed Regional Plan for Northland - Section 42A hearing report

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Purpose and format of the report

1. This report provides the hearing panel the rationale for the recommended changes to the Solid waste provisions in the Proposed Regional Plan for Northland (the Plan) in response to submissions. The recommended changes are set out in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
2. The recommendations made in this report are the opinion of the author and are not binding on the hearing panel. It should not be assumed that the hearing panel will reach the same conclusions.
3. The authors recommendations may change as a result of presentations and evidence provided to the hearing panel. It's expected the hearing panel will ask authors to report any changes to their recommendations at the end of the hearing.
4. The recommendations focus on changes to the Plan provisions. If there is no recommendation, then it's to be assumed that the recommendation is to retain the wording as notified.
5. Generally, the specific recommended changes to the provisions are *not* set out word-for-word in this report. The specific changes (including scope for changes) are shown in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
6. This report is structured with a focus on the key matters for the solid waste provisions raised in submissions. The key matters are:
 - Onsite refuse disposal
 - Discharges from closed landfills
7. Matters covered by submissions that fall outside the key matters are addressed in the "Other matters" section in less detail.
8. The approach of addressing matters raised in submissions (rather than addressing submissions and/or and submission points individually) is consistent with Clause 10 of Schedule 1 to the RMA.
9. This report should be read in conjunction with section 11.3 – *Solid waste* in the Section 32 report.

Report author

10. My name is Michael Payne and I have overall responsibility for this report. I work as a Policy Analyst for Northland Regional Council (regional council). For further details about my qualifications and experience, refer to the s42 report: General approach and procedural issues.
11. James Mitchel, Hazardous Substances Specialist has assisted me with the preparation of this report.
12. Although this is a council hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing this report and I agree to comply with it when giving oral presentations.

About the Solid waste provisions

13. The relevant provisions in the Proposed Regional Plan solid waste addressed in this report are:

Definitions

- Biosolid
- Cleanfill material
- Compost
- Composting operation
- Leachate
- Property
- Refuse
- Waste transfer station

Rules

- C.6.7.1 Cleanfill – permitted activity
- C.6.7.2 Discharges to land from closed landfills - permitted activity
- C.6.7.3 On site refuse disposal – permitted activity
- C.6.7.4 Composting operations less than 10 cubic metres – permitted activity
- C.6.7.5 Composting operations greater than 10 cubic metres – permitted activity
- C.6.7.6 Waste transfer stations - controlled activity
- C.6.7.7 Other solid waste discharges – discretionary activity

Policies

- D.4.11 Discharges from landfills
- D.4.12 Application of biosolids to land

14. The solid waste provisions seek to manage the deposition of waste into or onto land and any associated discharge of contaminants to land or water.

15. It does not seek to manage the disposal of liquid wastes to land or water. These matters are discussed in the following section 42A reports:
- Waste water discharges
 - Water quality management – general matters
 - Other matters
16. There is some overlap with section C.6.8 Contaminated Land in that landfills can be considered contaminated land. However, it is our intention that the rules that specifically seek to control landfill activities in the solid waste section of the Proposed Plan take precedence over the more generic contaminated land rules.

Overview of submissions

17. A total of 21 submitters made submissions on the solid waste provisions, and these were broken up into 34 submission points.
18. Submitters can broadly be grouped as;
- Councils (Kaipara, Whangarei and Far North District Councils)
 - Tangata whenua groups
 - District Health Board
 - Environmental protection groups
 - Primary producers
 - Infrastructure providers
 - Individuals/others

Onsite refuse disposal

Submissions and analysis

19. On average, farms produce nearly 10 tonnes of non-natural rural waste each year in addition to domestic waste and animal remains¹. Work undertaken by Environment Canterbury found that burning, burial and bulk storage of waste on farms are the prevalent

¹ True North Consulting for Environment Canterbury, February 2017, *New Zealand Rural Waste Minimisation Project: Milestone 4 Phase II: Detailed Business case*.

methods being deployed to manage waste². Rule C.6.7.3 of the Proposed Regional Plan seeks to permit the common practice of burying household and farm waste subject to conditions. The proposed conditions are intended to minimise the risk of nuisance effects of odour and windblown refuse as well as the risk to water quality.

20. Most of the thirteen submitters support the inclusion of a permitted activity rule for onsite refuse disposal. The key points raised in submissions relate to landfill volume. Submitters discuss whether the landfill volume should be an annual threshold or an absolute threshold and if an absolute threshold is adopted how the rule will deal with legacy / historic landfills.
21. Before I address submission points on the conditions of proposed permitted activity rule C.6.7.3 I will address submissions that seek changes to the activity status. While most submitters support the proposal to have a permitted activity rule for onsite refuse disposal, Whangarei District Council (WDC) opposes the permitted activity rule. The main reasons given in the submission is that the WDC would like more information on the location of refuse disposal site. Requiring resource consent for this activity would allow NRC to record information which could then be passed on to district councils to support them to perform their responsibilities under the *National Environmental Standard for Assessing and Managing Contaminants in Soil for the Protection of Human Health*. They state that this information is unlikely to be collected if the activity is permitted.
22. I agree that more information on the location of onsite refuse disposal pits would be beneficial for both councils. This information would help NRC's fulfil duty to collect information on Regional councils have a duty to identify and monitor contaminated land³.
23. The submitter proposes that this information be obtained through the resource consent process. I believe this would be possible however, I do not think gathering information should be the primary reason for requiring resource consent. This information could also be collected by inserting a permitted activity condition requiring council to be notified on the location of onsite landfills. This may encourage some people to provide this data without the need for resource consent of for council to undertake site visits to locate onsite landfills. This was considered when we were drafting rule C.6.7.3. Consents and monitoring staff did not support it. Based on their experience they believed that

²True North Consulting for Environment Canterbury, February 2017, *New Zealand Rural Waste Minimisation Project: Milestone 4 Phase II: Detailed Business case*.

³ RMA, Section 30 (1)(CB)

compliance with a condition of this nature is likely to be low and would result in widespread technical breaches of the rule.

24. I believe it is worth noting that my review of onsite disposal / farm dump rules from other regions showed that most regions treat onsite disposal as a permitted activity and do not require landowners to notify council of the landfills location.
25. Another point raised by Whangarei District Council is that district councils provide waste disposal facilities which render this rule unnecessary.
26. Federated Farmers of New Zealand have expressed the view that district council waste collection is not yet sufficient in rural areas to rely solely on municipal waste collection and recycling. Consequently, there is a need for onsite refuse disposal.
27. While I believe we should be encouraging primary producers to recycle more of their waste and that ideally primary produces would be transitioning away from onsite waste disposal to dispose of waste at well-designed landfills. I tend to agree with Federated Farmers, that this is not a realistic option for all primary producers, at this time. Therefore, there is a need to provide for onsite waste disposal.
28. The thirteen submitters on Rule C.6.7.3 - onsite refuse disposal raised two key issues with the conditions of the proposed permitted activity rule.
29. The first being that many farms in Northland have been operating for a number of years and may have already exceeded the proposed 50 cubic metre limit for onsite disposal⁴. Additionally, Federated Farmers of New Zealand state that farm owners may not be aware of the location or volume of historical landfills and may not be able to comply with the proposed conditions.
30. The second issue is that two submitters⁵ believe the proposed 50 cubic metre threshold is too large.
31. Northland District Health Board sought the threshold be amendment to 30m³ aside from stating that 50m³ is a large volume the they do not provide evidence to say why the volume should change.

⁴ Federated Farmers of New Zealand, Bainbridge A, Bainbridge j .

⁵ Love kaipara Limited, Northland District Health Board

32. Federated Farmers of New Zealand supported the inclusion of a permitted activity and appear to support the use of a volume based threshold but do not support the use of an absolute threshold. They are seeking that the 12m³ per annum threshold used in Rule 19.1.3 of the operative Regional Water and Soil Plan for Northland. Federated Farmers of New Zealand made the following statement in support of retaining the permitted activity rule;

In the Kaipara District Council (KDC) and Far North District Council (FNDC) areas there are physical and economic barriers to rural households being able to meet this rule. For example, in the FNDC, refuse/recycling centres are currently located within approximately 30 minutes of most residents (resulting in a 1hr+ round trip). FNDC's current Waste Management and Minimisation Plan aims to increase community recycling centres so that most residents are located within 15 minutes, however this will take 5 years to achieve.

33. Submissions have raised three options in respect to setting a permitted volume:

- use the annual limit in the operative Regional Water and Soil Plan - 12m³ per annum (Federated Farmers of New Zealand)
- waste deposited in the past be excluded from the rule (A Bainbridge)
- increase the volume threshold (various submitters).

34. The submitters have raised some valid concerns about the proposed 50m³. The proposed threshold is intended to be a total limit rather than an annual limit. Mr Aaron Bainbridge stated that previous landfills on his farm are likely to exceed the 50m³ threshold. He also stated that he did not know where all the old landfills are on his property. These points were repeated in the submission by Federated Farmers of New Zealand. I suspect that Mr Aarons situation is fairly common which raises some issues in respect to monitoring and enforcing the rule and could unintentionally require many farmers to obtain resource consent to operate a small scale onsite landfill.

35. Federated Farmers of New Zealand are seeking changes to re-introduce the 12m³ per annum threshold from the Regional Water and Soil Plan, 2004. They state that it is a pragmatic approach to a difficult problem. I tend to agree with Federated Farmers and recommend that the 50m³ total threshold be 12m³ per annum threshold.

36. Mrs T Upperton is seeking amendments to exclude the disposal of in-organic material, including bale wrap from the permitted activity rule. In my view, this amendment would result in a huge number of resource consent applications or non-compliance for very little environmental benefit. Where possible, bale wrap, metals and plastic containers should be recycled -but this is not always possible. For instance, bale wrap must be relatively

clean to be accepted for recycling. Dirty bale wrap cannot be recycled. Common practices for disposing of bale wrap include burial and burning. Burial is preferable to burning because burning bale wrap has the potential to release contaminants including dioxins which can contaminate air and soil. Mrs T Upperton has not provided any evidence to suggest that the burial of inorganic material is having environmental effects that would warrant excluding inorganic materials from the permitted activity onsite refuse disposal rule.

37. Royal Forest and Bird Society of New Zealand (Forest and Bird) are seeking new condition be added to Rule C.6.7.3 stating;

... waste may not be discharged to land where contaminants may enter water.

38. In my view, the outcome sought by the new condition proposed by Forest and Bird is fulfilled by conditions 5-7 of the Rule C.6.7.3 I do not believe the relief sought is necessary.

Recommendation

39. That C.6.7.3 be retained as a permitted activity and that the volume threshold in C.6.7.3(4) be amended to 12 cubic metres per year as set out in the document *Proposed Regional Plan for Northland – S42A recommended changes*.

Evaluation of recommended changes

40. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 11.3 *Solid Waste* of the Section 32 report and therefore do not require further evaluation.

Discharges to land from closed landfills

Submissions and analysis

41. Whangarei District Council, Far North District Council and Kaipara District Council submitted on proposed rule C.6.7.2 which permits the discharge of contaminants from closed landfills, provided certain conditions are met.

42. All three district councils have stated, in their submissions that that most closed landfills in Northland are not able to comply the conditions of rule C.6.7.2.
43. Far North District Council has requested that the conditions of C.6.7.2 be amended to recognise alternative landfill designs provided they have been defined in a landfill management plan approved by Northland Regional Council.
44. This would give Northland Regional Council discretion over whether an activity meets the permitted activity condition. I don't believe this is a valid option as the courts have determined that councils cannot retain later discretion through permitted activity rules⁶.
45. Kaipara District Council and Whangarei District Council is seeking that C.6.7.2 be amended to a controlled activity. This would allow conditions to be put in place that address the specific conditions and environmental risks of each site.
46. Given that all three district councils have stated that the existing closed landfills in their district are unlikely to comply with the permitted activity there is little benefit in retaining Rule C.6.7.2 in its current form. I accept the position of Kaipara District Council and Whangarei District Council that closed landfills be managed as a controlled activity.
47. This will allow for an assessment of environmental effects, specific to each closed landfill and provides the opportunity to put conditions in place to manage any adverse effects.

Recommendation

48. That permitted activity rule C.6.7.2 be deleted and replaced with a controlled activity rule as shown in the document Proposed Regional Plan for Northland – S42A recommended changes.

Evaluation of recommended changes

44. Section 32AA, RMA requires an evaluation of any changes that have been made to, or are proposed for, the plan since the RMA s32 Evaluation Report was completed. I believe that the proposed changes are that most appropriate way to achieve the high-level objectives in Section 11.3 of the Section 32 report, as well as the recommended new 'water quality management' objective to be included in section F of the plan. I do not

⁶ See for example Carter Holt Harvey vs Waikato Regional Council [A123/08]

consider that the proposed amendments will result in any additional environmental, economic, social or cultural costs.

Cleanfill

49. The following section primarily relates to the format of the plan. In particular, whether rules for cleanfill activities should be treated as a Solid Waste activity or an Earthworks activity. The Proposed Plan follows the format of the Regional Water and Soil Plan, 2004, in that cleanfill is treated as a Solid Waste activity.
50. The Key rules for cleanfill are C.6.7.1 Cleanfill – permitted activity and C.6.7.7 Other Waste Discharges – discretionary activity. Under Rule C.6.7.1 the placement of cleanfill and any associated discharges⁷ are a permitted activity. Any cleanfill activity that cannot comply with the conditions of Rule C.6.7.1 is a discretionary activity under Rule C.6.7.7.
51. There are many similarities between cleanfill activities and earthworks, particularly sediment management. To avoid repeating the extensive list of conditions for managing effects of earthworks the clean fill rule requires compliance with the permitted activity conditions for earthworks via a reference to Rule C.8.3.1 Earthworks – permitted activity.
52. In hindsight, I believe it would have been more appropriate to treat cleanfill as an earthworks activity. Cleanfill is often placed as one component of a wider set of earthworks during construction or recontouring of land. I believe relocating the provisions for cleanfill from the section on Solid Waste to the Section on Land Disturbance will make the plan more intuitive. It will also have the added benefit of removing a cross-reference. It is my view that the clean fill provisions are best repositioned as a new clause in Rule C.8.3.1 Earthworks - permitted activity.

Recommendation

53. That permitted activity rule C.6.7.7 be deleted and a new clause be inserted into clause C.8.3.1 to address these matters in the document Proposed Regional Plan for Northland – S42A recommended changes.

⁷ Proposed Regional Plan for Northland Rule C.6.7.1 Cleanfill – permitted activity

Evaluation of recommended changes

54. The changes have minor effect and are within the scope of a change under clause 16, Schedule 1, RMA.

Other matters

55. Refer to Appendix A for the summary of submission points, analysis and recommendations made on the solid waste provisions not addressed in the key matters sections of this report.

Appendix A - Response to other matters raised in submissions

Note – this table does not include the summary of submission points, analysis and recommendations made on the Solid waste provisions addressed in the key matters sections of the report.

Provision	Summary of main submission points	Discussion	Recommendation
New Definition – primary production	Forest and Bird are seeking a new definition for primary production	I believe that defining the term ‘primary production’ would be beneficial.	Insert a new definition of <i>primary production</i> the document titled <i>Proposed Regional Plan for Northland – S42A recommended changes</i>
New Rule	Whangarei District Council are seeking a new rule permitting the stock piling of green waste	<p>The operative Water and Soil Plan for Northland contains a permitted activity rule for waste transfer stations and green dumps⁸. The submitter is seeking a new rule in the Proposed Plan permitting stockpiling green waste / green dumps.</p> <p>In my opinion stock piling of green waste is unlikely to discharge contaminant to the extent that they require a rule in the Proposed Plan.</p> <p>It is my view that stockpiling of green waste is a landuse activity and is therefore subject to the permissive presumption of section 9 RMA. Stockpiling of green waste is permitted unless stated otherwise.</p> <p>If this does not provide the certainty that the submitter is seeking an alternative is to include stockpiling green waste in the definition of <i>Waste transfer station</i>. It would then be</p>	No change

⁸ Regional Water and Soil Plan for Northland Rule 19.1.5

Provision	Summary of main submission points	Discussion	Recommendation
		considered as part of the controlled activity resource consent for waste transfer stations.	
C.6.7.1 Cleanfill	GDC Winston are seeking amendments to ensure that overburden is classed as earthworks	It is Councils intention that the placement and replacement of overburden within a site is treated as an earthworks activity. Amendments have been made to the definition of earthworks to include quarrying. With this amendment as well as the existing use of the words <i>placement and replacement of earth</i> in the definition of earthworks, I believe it is clear that the placement and replacement of overburden is an earthworks activity.	No change
C.6.7.4 and C.6.7.5 Composting	Provide for composting and disposal of dead pigs within a site.	<p>NZ Pork has requested that amendments are made to the permitted activity rules for composting to provide for the composting of dead pigs.</p> <p>The proposed rules are targeted at providing for composting vegetative material which in my view poses a relatively low environmental risk. With this in mind both the activity status and the level of control exercised through the permitted activity standards is permissive.</p> <p>Composting animals appears to present a greater risk of producing offensive or objectionable odour.</p> <p>Rules C.6.7.4 and C.6.7.5 are not intended for composting animals and my concern is that the proposed conditions are not sufficient to manage the actual or likely effects on the environment arising from discharges to air, land or water.</p>	No change to C.6.7.4 and C.6.7.5

Provision	Summary of main submission points	Discussion	Recommendation
		<p>The Proposed Regional Plan Provides for the composting of dead pigs as a Discretionary activity⁹.</p> <p>To date the submitter has not provided evidence to suggest that composting of dead pigs can be adequately managed as a permitted activity and hasn't provided any proposed wording.</p>	
C.6.7.6 Waste transfer stations	The condition seeking to manage effects on water quality be deleted and that effects on water quality are managed as a matter of control with conditions on resource consents.	<p>In my opinion, the changes sought by the Kaipara District Council and Whangarei District Council are reasonable. Effects on water quality can be adequately managed through conditions of consent.</p> <p>Condition 1 relates to surface water quality and coastal water quality. Condition 2 relates to groundwater quality. The submitters seek that condition 1 is deleted. Their argument that can be adequately managed through conditions of consent applies equally to ground water. I propose that condition 2 is also deleted.</p>	That C.6.7.6 (1) be deleted.
C.6.7.6 Waste transfer stations	Add requirement that all applications are non-notified	Whangarei District Council and Kaipara District Council support rule C.6.7.6 in part and seek additional text that precludes the discharge of contaminants from waste transfer stations from public notification. The key reasons cited for this amendment is that the effects on water quality can be adequality managed through conditions and that non-notification is consistent with a controlled activity status. I agree that conditions will be able to adequately manage discharges from waste transfer and also agree that non-notification is appropriate.	Amend Rule C.6.7.6 to preclude resource consents for discharges from waste transfer stations from public notification.

⁹ Rule C.6.7.7 Other Solid Waste Discharges – discretionary activity

Provision	Summary of main submission points	Discussion	Recommendation
C.6.7.6 Waste transfer stations	A new condition restricting waste transfer stations from areas of significant indigenous vegetation and habitat, from areas of outstanding natural character and from wetlands.	<p>Royal Forest and Bird Protection Society are seeking an additional condition to Rule C.6.7.6. If a condition of this nature is adopted waste transfer stations in these areas would be discretionary activities.</p> <p>The greater level of discretion appears to be appropriate if development is proposed in these locations.</p> <p>However, the risk posed to these areas by the development of waste transfer stations, and other development appears to be adequately managed by other rules in the Proposed Plan.</p> <p>Rule C.7.6 only relates to the discharge of contaminants from Waste Transfer Stations. It does not regulate the land use component of the activity. In most instances land use for waste transfer stations is a Territorial Authority responsibility¹⁰.</p> <p>In respect to development in the areas managed by regional councils the following provisions appear to adequately manage the risk;</p> <ul style="list-style-type: none"> • Reclamations C.1.6.1 – C.1.6.5 • General Structures (CMA) – C.1.1 • Activities affecting wetlands – C.2.2.4 – C.2.2.5 	Retain C.6.7.6 as notified.

¹⁰ s31, Resource Management Act 1991

Provision	Summary of main submission points	Discussion	Recommendation
New Rule	Far North District Council have requested a new discretionary activity for discharges from municipal landfills.	<p>Most municipal landfills in Northland have resource consents with terms that extend beyond the life of this plan. At this time, it is unclear what the benefit of inserting an additional restricted discretionary rule would be.</p> <p>It is not good practice in my view to include a rule in a plan for a specific activity where it is likely to be used only a handful of times within the life of the plan.</p> <p>In these cases, I believe the activity should be managed under a more generic rule. In this case the more generic rule is C.6.7.7.</p>	Retain C.6.7.7 as notified and do not insert a new restricted discretionary rule.
Policy D.4.11	Royal Forest and Bird Protection Society NZ seek amendments to the policy to give effect to Policy A3 of the NPS-FM 2014.	<p>The policy contains several elements of best practice for managing landfills, including methods to control discharges. Two examples include;</p> <ul style="list-style-type: none"> • Leachate management • Stormwater management • Close landfills are managed in accordance with national best practice guidelines. <p>For detailed discussion on how the Proposed Plan gives effect to policy A3 NPS-FM 2014 refer to s42a report – Water quality general matters.</p>	No change
Policy D.4.11	Horticulture New Zealand requested amendments to protect groundwater	<p>I agree with Horticulture New Zealand's suggestion of including "location" as a relevant factor for managing adverse effects from landfills.</p> <p>I also agree with the addition of a clause that landfills are sited away from sensitive aquifers and recharge zones. However, I think it should only apply to new landfills.</p>	Amend Policy D.4.11 as shown in the document titled <i>Proposed Regional Plan for Northland – S42A recommended changes</i>

