

Appeals on the Dome Valley Landfill Resource Consent.

Meeting: Kaipara District Council
Date of meeting: 25 August 2021
Reporting officer: Paul Waanders District Planner

Purpose | Ngā whāinga

To inform Council of the decision to join the appeals on the Resource Consent for a Regional Landfill at Dome Valley, Auckland and to seek a decision on the delegations to resolve Environment Court appeals on the Dome Valley Landfill Resource consent in Auckland.

Executive summary | Whakarāpopototanga

At the June Council meeting, the decision to join the appeals on the Auckland Regional Landfill application was delegated to the Mayor, Deputy Mayor and Chief Executive and that progress be reported to the August 2021 Council meeting following any decision. That decision is attached for information.

Now that Kaipara District Council has joined the Ngāti Whātua Ōrākei and Environs Holding Ltd (Te Uri O Hau)'s appeal, a decision is required as to whom will represent Kaipara District Council in the Environment Court proceedings.

Recommendation | Ngā tūtohunga

That Kaipara District Council:

- a) Notes that Kaipara District Council has joined the appeal lodged by Ngāti Whātua Ōrākei and Environs Holding Ltd (Te Uri O Hau) on the Dome Valley Landfill Resource Consent, as a s274 party.
- b) Delegates the authority to resolve appeals on the Dome Valley Landfill Resource Consent [insert three elected members names].
- c) Delegates staff to attend Court-assisted mediation on behalf of Kaipara District Council and to represent Council's position during mediation with the parties.

Context | Horopaki

An application from Waste Management NZ Ltd for a Resource Consent and a Private Plan Change was received by the Auckland Council to construct and operate a regional landfill facility at 1232 State Highway 1, Wayby Valley between Wellsford and Warkworth (Dome Valley).

Kaipara District Council (KDC) made a submission on both the Auckland Regional Landfill Resource Consent application and the Private Plan Change at Dome Valley, Auckland.

The Auckland Council granted the resource consent with conditions. A decision on the Plan Change is still awaited.

Discussion | Ngā kōrerorero

At the Council meeting of 30 June 2021, Council resolved as follows:

- a) Opposes, in principle, the Auckland Regional Landfill at Dome Valley.
- b) Agrees NOT to initiate a direct appeal to the Environment Court against the Auckland Council Resource Consent decision about the Auckland Regional Landfill at Dome Valley.

- c) Agrees, in principle, to become a s. 274 (1)(e) party (as defined in the Resource Management Act 1991) to proceedings before the Environment Court in the event of there being a suitable Appellant to the Resource Consent decision about the proposed Auckland Regional Landfill at Dome Valley.
- d) Delegates to the Mayor, Deputy Mayor and Chief Executive the authority to progress this matter and in the first instance decide which (if any) Appellant Kaipara District Council will follow, and report progress on this to the August 2021 Council meeting following any decision.

Section 274 of the Resource Management Act 1991 provides for parties to join appeals as well as the limitations of such representation. If one becomes a party to the proceedings, it may present submissions and evidence at the Environment Court hearing. However, one can only address issues within the scope of the appeal which has been lodged.

A section 274 party must be involved in any mediation or agreement to settle the proceedings by consent. However, the party cannot oppose the withdrawal of the proceedings unless the person who lodged the original appeal made an original submission on the same issue as the section 274 party. Therefore, if the original submitter and appellant withdraws its appeal the section 274 party will lose the ability to progress its argument as the matter falls away.

As KDC made a submission, it could therefore join as a section 274 party to the appeals but is limited to the topics which were covered by the KDC submission, which were:

- a) Possible sedimentation and leaching to the Kaipara Harbour via the Hoteo River and
- b) Traffic issues on SH1 as gateway to the North during construction and after construction if the SH is not upgraded to accommodate the additional traffic

An assessment was made of all the appeals and the recommendation was made to join the appeal ENV 021 ALK 000085 Ngāti Whātua Ōrākei & Environs Holding Ltd (Te Uri O Hau) for the following reasons:

- a) The appeal aligns best with KDC's submission; and
- b) Te Uri O Hau is one of Kaipara's Treaty Partners and therefore this submission would be best suited to join.

The Environment Court 'strongly encourages' parties to undertake court-assisted mediation to try and settle disputes out of court. Any matter not resolved via mediation or by negotiation will proceed to a hearing. Mediation is a process whereby (hopefully) parties can develop and agree upon constructive, achievable, and mutually acceptable solutions. Even if mediation does not result in agreement, the process of isolating issues and agreeing undisputed facts can be helpful if an appeal proceeds to a hearing.

Delegations to resolve appeals

Council now needs to decide how it will represent its position and make decisions through the appeals negotiation and mediation process.

Kaipara District Council joining as a section 274 party has limited opportunity to present its views as it supports the original appellant Ngāti Whātua Ōrākei & Environs Holding Ltd (Te Uri O Hau).

It is 'common practice' for a Council's position at Environment Court mediation to be led by a senior staff member with a specific resource management qualification and extensive resource management experience. Whilst there is no prohibition on Elected Members attending mediation and representing Council's position, this approach is not normally followed.

Staff will review this information and provide an initial recommendation to whomever has delegation to resolve appeals. The Court (and parties) expect quick and efficient responses from Council at the appeals stage.

It is noted that all discussions that take place in mediation are completely confidential (and are subject to mediation privilege). In Environment Court mediations, no formal records are kept. However, when parties reach an agreed position during mediation and any subsequent negotiations, a consent order will be produced (and issued by the Environment Court) and forms

part of the public record. Additionally, what goes on in the mediation process cannot influence or be referred to in other Court proceedings – if the process is not successful, anything discussed or offered during mediation can't be raised when the dispute goes to Court.

Staff have therefore identified the following options for consideration:

Option 1: Delegation to a panel of Council, consisting of three Elected Members, to resolve appeals on the Dome Valley Landfill in Auckland

Option 2: Staff delegated the ability to resolve all appeals.

Option 3: No delegations (full council consideration)

The advantages and disadvantages of each option are described below:

Option	Advantages	Disadvantages
1 – Delegation to three Elected Members to resolve appeals Dome Valley Landfill resource consent	<ul style="list-style-type: none"> ▪ Reasonably nimble decision-making process for resolving appeals, including the ability for staff to potentially email/call the three Elected Members during mediation to confer agreed points. ▪ Resolving appeals through mediation can move swiftly and having this ability delegated to three Elected Members is considered the most efficient and effective way forward. ▪ Provides the ability for decision makers to efficiently confer with one another to ensure appropriate decisions are made. ▪ Aligns with Environment Court expectations on quick/efficient decision making. ▪ Reasonably administratively efficient (would not need to set up extra-ordinary Council meetings). 	<ul style="list-style-type: none"> ▪ None apparent.
2 – Staff delegated the ability to resolve all appeals	<ul style="list-style-type: none"> ▪ The most nimble and agile option, potentially allowing for the quickest resolution of appeal points ▪ Aligns with Environment Court expectations on quick/efficient decision making ▪ Is administratively efficient as staff would not need to continually brief Elected Members. 	<ul style="list-style-type: none"> ▪ May be a perceived risk of 'blurring the line' between governance and operations ▪ No governance oversight of mediation agreements.

<p>3 – No delegations (full council consideration of appeals resolution)</p>	<ul style="list-style-type: none"> ▪ Allows full council to be involved in resolving appeals and no Elected Member feels left out of the process. ▪ Allows for a broad understanding of community interests to be considered. 	<ul style="list-style-type: none"> ▪ Administratively in-efficient for the full council to be involved and would slow down the mediation process. ▪ This option would require staff to regularly ‘update’ full council (outside of public meetings because of the requirement to maintain legal professional privilege) regarding the positions of appellants and to get ‘direction’ around possible settlement parameters. Staff would then need to update full council again at the conclusion of each round of mediation with regards to amended positions of parties. This is logistically and administratively in-efficient. ▪ Does not align with Environment Court expectations around quick/efficient decision making ▪ Additional administrative burden for staff and elected members to coordinate/attend extra-ordinary publicly excluded Council meetings.
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The recommended option is **option 1**. All three options assume that Council delegate staff the ability to attend Court-assisted mediation on behalf of Kaipara District Council and to represent Council’s position during mediation with the parties.

Financial implications

No funds have been allocated to join this appeal process and any costs will need to come from existing budgets.

Impacts on Māori

Joining the Appeal from Te Uri O Hau (one of our Mana Whenua Partner’s) will strengthen both the Council’s representation but also that of Ngāti Whātua Ōrākei & Environs Holding Ltd (Te Uri O Hau).

Significance and engagement | Hirahira me ngā whakapāpā

The decisions or matters of this report are considered to have a low degree of significance in accordance with Council’s Significance and Engagement Policy. No feedback is required, and the public will be informed of Council’s decision via the agenda and minutes publication of this meeting, on the website and through other channels if appropriate.

Next steps | E whaiake nei

KDC is now a party to the the Appeals on the Resource Consent for a Regional Landfill at Dome Valley, Auckland. The Environment Court will advise on the next step of the process, which is likely to be Court-assisted mediation.

Attachments | Ngā tapiritanga

	Title
A	Dome Valley Auckland Regional Landfill Resource Consent Appeal Delegated approval

