

# PLANNING & ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Parcel One Pty Ltd & Anor v Ipswich City Council & Anor*  
[2007] QPEC 103

PARTIES: **PARCEL ONE PTY LTD, ALLAMBI NOMINEES PTY  
LTD and GEORGE EDWARD O'DONNELL**  
Appellants  
And  
**IPSWICH CITY COUNCIL**  
Respondent  
And  
**THE CHIEF EXECUTIVE, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION AGENCY**  
First Co-Respondent by Election  
And  
**BRISBANE CITY COUNCIL**  
Second Co-Respondent by Election  
And  
**THE MINISTER FOR LOCAL GOVERNMENT &  
PLANNING**  
Third Co-Respondent by Election

FILE NO/S: 234/2006

DIVISION: Planning & Environment Court

PROCEEDING: Appeal

ORIGINATING  
COURT: Brisbane

DELIVERED ON: 23 November 2007

DELIVERED AT: Brisbane

HEARING DATE: 19 and 20 March and 8, 9 and 10 May 2007 with further  
written submissions/references being provided to 15 August  
2007.

JUDGE: Rackemann DCJ

ORDER: **Appeal Dismissed.**

CATCHWORDS:

COUNSEL: Mr J. Haydon for the Appellant  
 Mr R.G. Bain QC and Mr M. Williamson for the Respondent  
 Mr E.J. Morzone for the First Co-Respondent by Election  
 Ms J. Brien for the Third Co-Respondent by Election

SOLICITORS: MacDonnells for the Appellant  
 Brian Bartley & Associates for the Respondent  
 EPA Law for the First Co-Respondent  
 Crown Law for the Third Co-Respondent by Election.

## Introduction

- [1] This appeal is against the Council's refusal of an application for a development permit for a material change of use and a number of environmentally relevant activities (ERAs 11, 22, 28, 45 and 75), to facilitate the development of a substantial landfill operation, for the disposal of up to 150,000 tonnes per annum of construction waste and other solid, inert and non-putrescible material on land situated at Francis Street, Chuwar.
- [2] The subject site comprises a single allotment of some 26.8 hectares. It is generally undulating and vegetated. It is presently vacant and there is evidence of some trespassing. Significantly, for the proposed landfill, the site contains a water filled void of approximately 2.43 hectares in area. The void is the result of previous open cut coal mining activities, which ceased in 1986. The void includes high cliff face walls on the western end, grading down to approximately ground level at the eastern end (adjacent to Francis Street). There are signs at the property's eastern end (Francis Street) warning of the dangers of unstable sides to the void and of deep water<sup>1</sup>.
- [3] The site is presently still in the hands of the collier, New Hope Coal (Australia) Pty Ltd, which is subject to an outstanding requirement to carry out rehabilitation works. Following cessation of mining activities an environmental management overview strategy (EMOS), dated July 1993 was prepared, but the works envisaged for the site have not yet been carried out. New Hope has entered into a conditional contract to dispose of its interest to Parcel One Pty Ltd and Allambi Nominees Pty Ltd<sup>2</sup>. By special condition 6, the buyer is to "cause the existing Mining Leases to be superseded by the rehabilitation requirements of the Environmental Protection Authority Licence". The licence referred to in that condition is a licence to operate

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<sup>1</sup> Ex 3 pp 2-3.

<sup>2</sup> Ex 21.

a general disposal facility<sup>3</sup>. The landfill operation would, in effect, supersede New Hope's rehabilitation obligation.

- [4] Parcel One Pty Ltd and Allambi Nominees Pty Ltd are partners in the "Parcel One Joint Venture", which is to establish and operate the proposed landfill under the business name "Kholo Road Landfill". The managing partner of the Parcel One Joint Venture is Mr O'Donnell who, for twenty years, was a director of Kartaway (Queensland) Pty Ltd, a company trading as Kartaway Miniskips in the waste industry. During his time with Kartaway, Mr O'Donnell established and operated a number of transfer stations. He is currently the managing director of a transport company, APA Transport Pty Ltd, which is the holding company of APA Tippers Pty Ltd, Rochedale Tippers Pty Ltd and Northside Tippers<sup>4</sup>.
- [5] The landfill would involve filling the void under two distinct regimes, based on fill material type and location within the pit. Clean inert fill material would be placed below the agreed top level of the water table. Thereafter, construction and demolition waste would be placed in lined landfill cells above the level of the water table, with control and treatment of leachate. No putrescible material would form part of the layer of the landfill. Waste materials transported to the site would either be used as landfill or stockpiled and processed for recycling and export from the site. Crushing, screening and shredding would be used in the recycling and reuse of materials<sup>5</sup>.
- [6] The life of the landfill is uncertain, and estimates have changed over time. That is discussed later. Mr Davis, who was retained by the appellant, ultimately settled on a "targeted aggregate closure period" of 13.5 years<sup>6</sup>. There would also be a post-closure monitoring period. Market or other changes could alter the active life of the landfill.
- [7] The development application was subject to public notification which attracted 179 submissions objecting to the proposal, including one petition containing seventeen signatures. The application was the subject of a comprehensive report and recommendation by planners within the employ of the Council<sup>7</sup>. The report, dated 23 December 2005, recommended refusal on grounds which included alleged conflict with the superseded and *IPA* planning schemes and likely environmental and amenity impacts of the proposal. The Council adopted that recommendation.
- [8] In accordance with the court's usual practice, the parties' respective expert witnesses were required to meet in advance of preparing reports or giving evidence. This ultimately led to substantial agreement on matters of technical expertise. In the process, various changes were made to the proposal and substantially more detail

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<sup>3</sup> See special condition 1 (a).

<sup>4</sup> Ex 4A.

<sup>5</sup> Ex 7B pp 3-4.

<sup>6</sup> Ex 9 pg 5.

<sup>7</sup> Ex 2 pg 13-63.

was provided in respect of it. The court has previously ruled that the changes were minor, for the purposes of s 4.1.52 of the *IPA*<sup>8</sup>.

[9] The joint report of the experts with respect to visual amenity records their agreement that:

- the viewshed of the Parcel One landfill is generally within a 1 km radius of the site. Presently there is only 1 residence which may be within direct view of the operations. Houses along Blackwell Rd will be screened by topography and existing trees.
- the landfill operations should be completed within as short a time period as possible, and in advance of any urban residential development which may be contemplated by the planning scheme.
- long term visual impacts on residential amenity will be negated “if the landfill is finished, rehabilitated and landscaped by the time that urban development occurs in the viewshed.”<sup>9</sup>

[10] Given the agreements which were ultimately reached by the experts in the disciplines of air quality, noise, traffic, visual amenity and water quality and operational issues, none were called to give oral evidence at the hearing. Their reports were before the court. Further, none of the co-respondents now oppose approval of the application, subject to appropriate conditions. The Council remains opposed to the landfill on grounds which may be summarised as:

- The likelihood of some amenity impacts (notwithstanding the level of agreement among the experts);
- Conflict with the transitional and *IPA* planning schemes and;
- The absence of sufficient grounds to warrant approval.

[11] The subject site lies to the north west of the site of a landfill proposed by Chuwar Recycling and Landfilling Pty Ltd (a subsidiary of Wheelan Kartaway Pty Ltd). The site the subject of the Chuwar Recycling proposal is also held by New Hope and is also the subject of the same EMOS. An appeal in respect of Council’s refusal of that proposed landfill is also before the court. Reasons for judgment in each case are being delivered contemporaneously. To minimise repetition, I will incorporate, by reference, some of my reasons for judgment in the Chuwar Recycling case.

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<sup>8</sup> See *Parcel One Pty Ltd v Ipswich City Council* [2007] QPEC 33

<sup>9</sup> Ex 1 pp41-42.

## Amenity

- [12] As in the Chuwar Recycling case, the Council contended that the subject landfill was likely to have adverse impact on amenity because:
- In order to operate acceptably, the proposal relies upon compliance with extensive controls. Impacts can be expected if they are not complied with at all times.
  - Heavy vehicles are likely to depart from the nominated haul route.
  - The very existence of the use will have an adverse impact, particularly on perceptions of the character and amenity of the locality.
- [13] For the reasons which I gave in the Chuwar Recycling case, the potential for the landfill to cause a range of specific amenity impacts in the event of non-compliance is relevant but does not, of itself, lead it to a finding that the proposal would have an unacceptable impact upon amenity.
- [14] The issue with respect to heavy vehicles departing from the nominated haul route is substantially the same as that raised in the Chuwar Recycling case. It is proposed that trucks would access the site from Thornton Road, via Kholo Road and the Warrego Highway. The traffic engineers agreed that it would not be acceptable for trucks to use that part of Holdsworth Road which lies to the south of the Warrego Highway or that part of Thornton Road east of the proposed new site access. The traffic engineers recommended conditions prohibiting travel via Holdsworth Road, requiring the owner and operator not to knowingly allow those who breach the conditions to use the landfill and requiring signage to be erected. They also recommended a condition that development approval be revoked if more than one incident of non-compliance is reported or observed per day over a one month period<sup>10</sup>. Similarly, the noise experts agreed that truck access on the east should not “under any circumstances” be via Holdsworth Road<sup>11</sup>, as this could result in noise impacting upon an established residential area. They recommended a driver control plan<sup>12</sup>.
- [15] The practicality of these and other measures were explored in the evidence of Mr O’Donnell. Senior Counsel for the respondent emphasised the greater number of entities involved, compared with the Chuwar proposal. Apart from the parties to the joint venture, another entity associated with Mr O’Donnell, would be the contractor for many of the loads. Customers could, however, use other contractors. Mr O’Donnell’s evidence was that the customers would be held responsible for the conduct of the haulage contractors, although he would also tell drivers of his about the nominated route.

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<sup>10</sup> Ex 1 pg 35.

<sup>11</sup> Ex 1 pg 11.

<sup>12</sup> Ex 1 pg 13.

- [16] The proposed operation differs from the Chuwar Recycling proposal, but for substantially the same reasons which I have given in the Chuwar Recycling case, I am satisfied that a combination of measures could be imposed which should materially reduce the risk of non-compliance although, given the obvious attraction of the alternate route, there is likely to be a level of non-compliance, at least at times, with some impact. That is relevant although not, in my view, determinative of and in itself.
- [17] The question of whether the landfill would adversely impact on perceptions of the nature, character and amenity of the locality raise substantially the same considerations as those which apply in the Chuwar Recycling case. The respondent again tendered statements from local residents whose concerns included matters of perception<sup>13</sup>. The planners in this case, as in the Chuwar Recycling case, acknowledged the potential for landfills to affect perceptions. Mr Schomburgk, in cross examination, conceded that:-  
“Most people are concerned about activities like this being put close to them because of those perception issues, yes”
- [18] While the onsite activities will be screened from view from existing residences (so long as further development does not occur in the viewshed) and specific amenity impacts managed and ameliorated to acceptable levels, the existence and nature of the use would most likely be well known, as Mr Schomburgk accepted. One difference, in this respect, between the subject proposal and the Chuwar Recycling proposal, is that trucks accessing the Parcel One site travel somewhat further into the locality, thereby giving a more visible reminder of the land use. The joint report of the visual amenity experts (including Mr Schomburgk) recorded agreement that while specific impacts were being addressed by other consultants “nevertheless those impacts will make local residents aware of the landfills operation, even though it may be screened from view”.
- [19] For the reasons which I have given in the Chuwar Recycling case, I accept that the landfill is a type of use which, by its nature, is likely to have some detrimental effect on perceptions of the nature, character and amenity of this locality. That is a matter to which some weight should be afforded in the overall assessment.
- [20] As I also observed in the Chuwar Recycling case, it is appropriate to note, in the context of amenity, that the landfill would ultimately improve the condition of the site by filling the void and leaving it in a state which is potentially useable as an open space/recreation area. That does not however, obviate the need to consider amenity impacts during its operational life.

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<sup>13</sup> Ex 13.

## Town Planning

- [21] As with the Chuwar Recycling case, the application was made during the life of the transitional planning scheme and the appeal is to be decided by reference to that scheme, whilst giving such weight as is considered appropriate to the *IPA* scheme. The other observations, in the “introduction” section under the heading “town planning” in the reasons for judgment in the Chuwar Recycling case are also applicable. Mr Haydon stopped short, in this case, of conceding conflict, although Mr Schomburgk acknowledged some conflict with at least some of the words in the planning scheme. The relevant provisions of each of the schemes are discussed in my reasons in the Chuwar Recycling case.
- [22] Although the two landfill proposals are broadly similar, there are relevant differences of relevance, or potential relevance, to the planning issues. These are discussed below.
- [23] Unlike the Chuwar Recycling site, the subject site does not fall within the designated Tivoli Raceway buffer under the Structure Plan.
- [24] Insofar as the characterisation of the use is concerned, the considerations are largely the same. There is some difference with respect to the recycling component. Unlike in the Chuwar Recycling proposal, the Parcel One proposal involves not only sorting and storing recyclable material, but subjecting it to a shredding process. Further, the extent of the recycling appears to be greater. Mr O’Donnell’s statement estimates 40 per cent of material would be recycled during the lined landfill stage. It is more arguable that the proposal involves a use for “recycling premises”. In my view however, the recycling component remains “ancillary” for the purposes of the transitional planning scheme<sup>14</sup>. In any event, for reasons similar to those given in the Chuwar Recycling case, I do not regard the definitional issues as determinative of this appeal.
- [25] There is also a difference in the active life of each of the proposed landfills. The Parcel One landfill is estimated to have a shorter life than the Chuwar Recycling landfill. A central plank of the case for the appellant, and the opinions expressed by its consultant town planner Mr Schomburgk, was that the use will only function in an interim way and will be completed well before the site and locality are otherwise likely to be ready for conversion to large lot residential development. Counsel for the appellant submitted that, in this context, an “interim” use is one which can occur without prejudicing the potential of the land to be put to its ultimate use when it otherwise would have been available for that use and does not postpone the potential for the land to be put to that ultimate use<sup>15</sup>. As Mr Schomburgk said in his report:
- “It is an integral part of this application that the subject site will be rehabilitated in an environmentally acceptable form by the time

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<sup>14</sup> I note the annexures to Mr Davis’ report – Ex 9.

<sup>15</sup> See 433-434

urban development in this locality is properly contemplated and needed.”

- [26] The life of the Parcel One landfill, although likely to be less than the Chuwar Recycling landfill, is subject to uncertainty and estimates have varied (upwards) over time. The site management manual contemplates processing at 100,000 to 150,000 tonnes of material per year over a life of 10 years. That is the estimate originally given in the statement of Mr O’Donnell.
- [27] Estimates of the life of the landfill involve assumptions as to how long it will take to fill the base of the landfill with clean inert material, the proportion of the market for C & D waste which the operator will then be able to attract in order to fill the 200,000 cubic metres of air space in the lined landfill, the proportion of waste which will be diverted to recycling rather than used as landfill and the volume which will be taken up by a given tonnage of material. Mr O’Donnell’s 10 year estimate was, in the course of the trial, revised by him to 11 years and 9 months as a result of reviewing his estimate of the time it would take to fill the base of the landfill with clean inert material. That estimate was then further revised, in the evidence of Mr Davis, an expert on the waste management market, to 13.5 years on the basis that the operator may achieve a lower market share for C&D waste than Mr O’Donnell anticipates (and so take 3 years instead of 1 year and 4 months to fill the 200,000 cubic metres of air space in the lined landfill phase). Attraction of an even lower share of the market would further elongate that estimate.
- [28] Further, Mr O’Donnell’s estimates were on the basis of processing 150,000 tonnes of material per year, which is the maximum production assumed by the experts, including the air quality experts, in forming their opinions. Processing less material per year would also elongate the estimate. As has already been noted, the estimate is also subject to assumptions about the proportion of material to be diverted from the waste stream for recycling and on the relativities of tonnes of material received to cubic metres of air space which will be filled by that material.
- [29] There remains a potential for the landfill to overlap with, and form a constraint to, large lot residential development, even on the basis of the 13.5 year estimate. This is a matter upon which Mr Schomburgk and Professor Brannock disagreed.
- [30] The planning documents are no more specific about the likely time frame for future large lot residential development than to indicate that it will be post 2013. Mr Schomburgk’s view is that the site and locality are unlikely to otherwise be ready for conversion to large lot residential development until well after the conclusion of the life of the landfill. In that regard, he pointed out that development could be expected to proceed from east to west. In his view, development in and around the subject site was unlikely to occur until the Tivoli Raceway had ceased at some unknown point in the future. Further, in his view, the existence of the Kholo hard rock haul route reduces the desirability and likelihood of development for that purpose. Water infrastructure planning has yet to progress.

- [31] Professor Brannock, on the other hand, was of the opinion that large lot residential development might well be ready to proceed at or about 2013. He pointed out that, with the resolution of the Kholo hard rock haul route, infrastructure planning could now proceed. The planning documents envisage that land within the locality may be put “in sequence” before the cessation of the Tivoli Raceway. The planning documents also envisage development notwithstanding the existence of the haul route. I do not regard the existence of the haul route over part of the site as necessarily rendering the balance unsuitable for future development.
- [32] In my view, all that can confidently be said, at this stage, is that development of the area is not envisaged until after 2013. The life of the landfill, even on current estimates would be into 2021. To put that in a town planning context, the landfill would survive past the time for review of the current planning scheme<sup>16</sup> and to the review after that<sup>17</sup>. It is possible that there might be no overlap between the life of the landfill and the emergence of a future large lot residential development pattern, but I am not prepared to find that is likely. There is a significant risk that overlap might occur if development occurs, or is otherwise ready to occur, earlier than Mr Schomburgk considers likely or if the life of the landfill extends beyond the current estimate, or a combination of both.
- [33] It was suggested, on behalf of the appellants, that a conclusion could be imposed limiting the life of the landfill, but I am not persuaded that is practical. The life of the landfill is dependant on the time taken to fill the void. The appellant did not demonstrate the acceptability of a part finished landfill, in the event that the use was required to cease before it was otherwise finished.
- [34] I am not prepared to find that the life of the landfill would expire in advance of the potential of the locality otherwise to be converted to large lot residential development. The shorter anticipated life of the Parcel One landfill, compared with the Chuwar Recycling landfill, reduces both the potential and likely duration of that overlap, but a significant risk of overlap remains, in my view. A central plank of the appellant’s case has not been made out.
- [35] Another difference is that the Parcel One site does not appear as constrained as the Chuwar Recycling site. The mapped constraints, under the *IPA* Planning Scheme, relate to the disturbance caused by the previous mining activities on northern part of the site, the Kholo hard rock haul route and the high voltage electricity transmission lines which each traverse generally the same part of the site. The *IPA* Planning Scheme also notes a “possible” future east west connector road. That is shown indicatively as including part of the subject site, but the proposal is not one in respect of which any detailed planning appears to have been undertaken.
- [36] While these constraints mean that part of the site, particularly towards its northern end, would be unsuitable for large lot residential allotments, it was not demonstrated

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<sup>16</sup> Being 2012, if the 8 years for a review is taken from 2004, or 2014 otherwise.

<sup>17</sup> Being 2020 or 2022, depending on when the current scheme is reviewed.

that the southern part of the site could not be developed for such purposes in the future. Further, as Mr Schomburgk acknowledged, the site, including parts in the north, has potential for incorporation into a broader development for large lot residential purposes. Indeed, the appellant urges, as a benefit of the proposal, that it will ultimately leave the void in a state where, although not fit for residential use, it could be incorporated into a broader area of development to serve a recreation/open space purpose.

- [37] The Parcel One site is substantially smaller than the Chuwar Recycling site. It is however, a significant site and the landfill would have a viewshed extending over a 1 km radius. Agreement that long term visual impacts will be negated was subject to the qualification that the landfill is finished, rehabilitated and landscaped by the time that urban development occurs in the viewshed. Further, as Professor Brannock emphasised, an operational landfill may have impacts on any emergent large lot residential development pattern beyond simply the inability of that pattern to extend to the subject site.
- [38] The landfill would, during its life, isolate both the northern part of the site, where operations would be occurring, and the balance of the site, which is traversed by the landfill haul route, from urban development. Professor Brannock's evidence was to the effect that the existence of the landfill would likely have a prejudicial effect upon planning for large lot residential development in the vicinity. His view was that it would be a "brave Council" to plan for residential development to the boundary of an operating landfill, even if, technically speaking, the landfill could be operated so that its impacts were managed and mitigated. Planning responses could include a reconsideration of the designation of the area, or the provision of a buffer area around the development, similar to that for the Tivoli Raceway.
- [39] Separation of potentially incompatible uses is one conventional planning approach. There have been cases in which this court has refused development in close proximity to potentially incompatible uses rather than rely on the ability of those uses to ameliorate their potential amenity impacts<sup>18</sup>. While I do not intend to speculate upon what planning approach might be taken with respect to the future orderly conversion of the area to large lot residential development, in the event the landfill was approved, I accept that the existence of an operational landfill, even one which is managed to mitigate impacts, is likely to be taken in to account and may have an effect on planning for such development, beyond simply the limits of the boundary of the subject site.
- [40] My conclusions in relation to the strategic plan and my findings, recorded at para [50], in relation to the apparent discord between the Chuwar Recycling proposal and the planning strategy for the Large Lot Residential Investigation Area in the Structure Plan also generally apply in this case<sup>19</sup>.

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<sup>18</sup> See eg *Norris Clark & O'Brien Pty Ltd v Brisbane City Council* [1996] QPELR 262, *Clan Holdings Pty Ltd v Brisbane City Council* [1999] QPELR 13.

<sup>19</sup> With respect to criteria (ii) of s 4.3.6, that trucks associated with the landfill will intrude further into the locality than is the case with the Chuwar Recycling proposal, but that was not a matter of concern to

- [41] Insofar as the proper characterisation of the proposal is concerned, the recycling component has been discussed above. I note that, insofar as it is part of the “special industry” said to be constituted by the landfill, it introduces an element of “breaking up or dismantling” which is one of the processes referred to in the definition of “industry”. Otherwise, the issues are the same. In this case, unlike in the Chuwar Recycling case, the appellant’s primary position was that it accepted the correctness of the Council’s characterisation of the landfill as a special industry and the characterisation of the use as a type B use. Its Counsel only adopted the submissions advanced by the appellant in the Chuwar Recycling case in the alternative and to avoid inconsistent conclusions.
- [42] In each case the appellants contended that the proposals were at least broadly consistent with the relevant planning strategy, although the arguments in support of that proposition were different, at least in emphasis. In the Parcel One case, less emphasis was placed on alleged unsuitability and undesirability of the site for future large lot residential development and greater emphasis on the asserted likelihood of the landfill coming to an end before the area is otherwise ready for conversion to a large lot residential development. For the reasons discussed above, I am not satisfied that the landfill would only operate in that interim period. I am satisfied that there is a real risk that the life of the landfill would overlap with the potential for the locality otherwise to convert the ultimate intended land use and that, in such circumstances, the landfill would operate as a constraint, preventing incorporation of the subject site into an emerging land pattern, at least for the life of the landfill and also potentially affecting planning for such development beyond the boundaries of the site.
- [43] Further, even if the landfill functioned only in the period prior to the arrival of a future large lot residential pattern, there appears little support in the transitional planning scheme for development, in the interim, of a non-residential use, such as a substantial landfill, which would have some impact on amenity and character for the term of its significant life and is not required to satisfy a demonstrated community need.
- [44] The relevant provisions of the *IPA* planning scheme are discussed in the Chuwar Recycling judgment. The observations and findings at paras [75] to [77] are generally applicable to the Parcel One proposal, except in relation to the land to the immediate north of the Chuwar recycling proposal. The extent of the viewshed of the Parcel One proposal and its screening is discussed earlier.
- [45] The characterisation of the use under the *IPA* planning scheme is the same for both proposals.

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the experts, so long as the haul route was adhered to. Reference to the raceway, the land to the immediate north, and the two decade life of the use are specific to the Chuwar recycling proposal, (the differences are discussed earlier).

- [46] The difference between the cases with respect to the constraint mapping in the *IPA* planning scheme, and the different emphasis placed on the impact of those constraints, in each case, has already been discussed.
- [47] The conclusions on town planning, expressed in paras [91] –[93] of the Chuwar Recycling judgment are generally applicable. There are some differences, which have been discussed. On the one hand Parcel One site does not appear as constrained as the Chuwar Recycling site. On the other hand, however, the subject site is smaller and the expected life of the landfill is shorter. Overall the level of conflict and its gravity can, in this case, also be described as more than trivial or minor, but not severe.

### **Grounds Justifying Approval**

- [48] The matters in support of the proposal were discussed by Mr Schomburgk in section 6 of his report. In part, the grounds refer to matters already discussed in the context of discussing the nature and extent of the conflict. That includes the temporary nature of the use, that the site and locality will not be required for urban development for some time, that the site is subject to some constraints and that direct amenity impacts emanating from the site are proposed to be managed and mitigated. Other matters said to support the proposal may be summarised as:-
1. The need for rehabilitation, in the public interest, to obviate safety concerns and negate the site being used as a dumping ground, and also, as a matter of planning need, to better prepare the site for any future urban development.
  2. The public or community need for this landfill.

### **Rehabilitation**

- [49] As in the Chuwar Recycling case, the void on the Parcel One site does not currently add positively to the amenity of the area, creates a safety risk for trespassers and without considerable changes to its edges, is not suitable, in its current condition, for incorporation into a future urban development form, even as an amenity feature<sup>20</sup>. The landfill will have the benefit of remediating the land in the long term and, in the short term, providing some added security.
- [50] On the other hand however:
- (i) Aside from the safety issue, there is, as Mr Schomburgk conceded, no planning imperative for the void to be rehabilitated at this time.
  - (ii) The landfill is not the only potential vehicle for site rehabilitation. It could, at least theoretically, be done as part of the future development of a broader area, although Mr Schomburgk questioned the economics of that. In any event, there is a current obligation on the land owner to carry out rehabilitation pursuant to the EMOS, the provisions of which

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<sup>20</sup> Ex 1 pg 41.

are overviewed in the reasons for judgment in the Chuwar Recycling case. While the rehabilitation contemplated by that document is different to that contemplated as a result of the landfill, it could potentially be completed over a shorter period<sup>21</sup> and would, as Mr Schomburgk conceded, address the safety issues. It would permit the land to be held as a rural lot pending determination of any higher use and would potentially be available for inclusion, as a feature, in the event of incorporation into other development.

- (iii) While Mr Schomburg spoke of the need to create a financial incentive for rehabilitation, I am, as I indicated in the Chuwar Recycling judgment, unpersuaded that is an appropriate basis for granting approval.

[51] In the course of oral submissions, Mr Haydon conceded that his written submission, that the landfill was “necessary” to allow for the future establishment of an urban settlement pattern, was “probably overstating it”. The observations about the EMOS, in the Chuwar Recycling judgment are generally applicable.

[52] I note that, while making a virtue of the rehabilitation to be effected by the landfill rather than the EMOS, the appellant did not present expert evidence which carried out a detailed comparative analysis of the extent, adequacy and effectiveness of the rehabilitation regimes proposed with the landfill proposal as against the EMOS structure. That is despite the fact that the appellants raised, as an issue in the appeal, that filling the void, in the manner proposed, would achieve a “better planning and community outcome” than would be the case if the EMOS was implemented. By letter dated 28 March 2007 the solicitors for the respondent drew attention to the fact that the joint experts’ reports did not carry out a comparison between the two regimes. On 20 April 2007 the solicitors for the appellant served a “Notice to Admit Facts” which called upon the respondent to admit that the Rehabilitation under the Site Management Manual and Concept Design Report is a better rehabilitation outcome than that introduced under the EMOS. The respondent did not admit that fact<sup>22</sup>.

### **Community Need**

[53] The evidence falls well short of demonstrating a community need, far less a local community need, for this proposed landfill.

[54] As in the Chuwar Recycling case, the evidence in this case establishes little more than there will be growth, within the market, of demand for the services of landfills to dispose of the type of material proposed to be accommodated in the Parcel One facility. That falls well short of establishing that there is a public or community need to establish such a facility at Chuwar at this time.

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<sup>21</sup> although it is not possible to make a finding as to when that will now occur.

<sup>22</sup> Ex 2A.

- [55] Ultimately, Mr Haydon put the case for need more on the basis of the benefit to be obtained by providing additional choice and competition within a competitive market. The concepts of competition and choice can be relevant to an assessment of need and the proposal would add another competitor in the market, but the evidence falls short of satisfying me that this would fill an existing identified need, of any particular strength, for a landfill at Chuwar to provide further competition and choice or have a significantly beneficial effect in this regard.

### **Ecological Sustainability**

- [56] I do not consider that the proposal makes any significant contribution to advancing the Act's purpose.

### **Conclusion**

- [57] While there are differences between this proposal and the Chuwar Recycling proposal, my conclusion is ultimately the same. Overall, I was left short of being persuaded that the appeal should be allowed and the application approved. The appeal is dismissed