

**BEFORE THE MANAWATU-WHANGANUI REGIONAL COUNCIL**

**UNDER** the Resource Management Act  
1991

**IN THE MATTER OF** a review of consent conditions  
under section 128 of the RMA 1991  
and an application for a change of  
conditions under section 127 of the  
RMA 1991.

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**Statement of Planning Evidence of  
Gregory John Carlyon**

On behalf of:

- **Hokio Neighbourhood Liaison Community Group**
- **Water and Environmental Care Association Incorporated**
- **Hokio Environmental and Kaitiaki Alliance**
- **Ecofest Education Charitable Trust**
- **Ngāti Pareraukawa**
- **Ngātokowaru Marae Committee**
- **Horowhenua Ratepayers Association**
- **E & D Grange**

**9 September 2016**

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## **A Introduction**

- 1 My name is Gregory John Carlyon. I am the Practice Leader – Planning for The Catalyst Group. The Catalyst Group is a multi-disciplinary resource management company, located in Palmerston North. I am also a Director of that company and have held that role since 2011. I hold the qualification of a Bachelor of Resource and Environmental Planning from Massey University. I am a member of the Resource Management Law Association and am a certified Commissioner under the Ministry for the Environment’s programme, with an additional endorsement for Chair.
- 2 I have been a Resource Management Planner since 1991. Through until 2003 I worked for the Department of Conservation in a variety of roles, but had a particular focus on first generation regional policy statement, regional plan and district plan development processes, alongside re-consenting of large-scale national infrastructure projects.
- 3 In 2004 I was employed as Policy Manager for Manawatu-Whanganui Regional Council, and in 2005 took on the role as Group Manager, responsible for policy, consents, compliance, science and local government engagement processes.
- 4 I led the development of the One Plan, New Zealand’s first fully integrated second generation plan, at the regional council level. I also led re-development of the compliance, monitoring and enforcement programmes, the design and delivery of a comprehensive state of the environment monitoring programme for the region, and was involved directly at the operational and executive level with renewal or replacement consents for in excess of 20 sewage schemes and landfills. I led all enforcement and prosecution activity for the regional council through this period.
- 5 During the period I worked for Manawatu-Whanganui Regional Council, I also led the council’s response to two formal assessments of council performance by the Office of Audit General. These reviews investigated council’s response and competence in relation to its resource management functions. Prior to leaving Manawatu-Whanganui Regional Council in 2011, I developed the concept and first draft of the Manawatu River Accord and generated the first round of signatory parties to that accord.
- 6 In my role with The Catalyst Group, I have been extensively involved with local authorities throughout New Zealand, reviewing resource management practice and implementing change programmes to deliver outcomes which more closely align with statutory directions from the Resource Management Act 1991. In the past 12 months, I have been retained by regional councils and the Ministry for the Environment, to assess current approaches to the protection of outstanding freshwater bodies. I am currently assisting various parties in relation to discharge issues at Pahiatua, Eketahuna, Palmerston North and Foxton. I have also recently provided advice

to parties involved in un-consented works at the mouth of the Hokio Stream, undertaken by Horowhenua District Council, and assessment of options for restoration work at Lake Horowhenua.

- 7 I have recently been appointed by Rangitikei District Council to review consent implementation at Bonny Glenn Landfill (capacity approximately 12 million tonnes).
- 8 I was retained by the collective known as the Hokio Neighbourhood Liaison Community Group (NLG) in mid-2015 to assist them with their contribution to the review process currently before this hearing panel. I have been extensively involved in the process since that time, in a planning capacity. This involvement includes:
  - Attendance at pre-hearings at the Ngātokowaru Marae, on two occasions
  - A site visit with Manawatu-Whanganui Regional Council (Horizons Regional Council - HRC) staff and Horowhenua District Council (HDC) staff to the Levin Landfill, in late 2015.
  - Attendance at all sessions of the Whakawatea forum held at the Ngātokowaru Marae, Levin Library and HDC offices.
  - A meeting with Mr Greg Bevin, Mr Pita Kinaston, and Mr Stuart Standon, of HRC, to discuss compliance matters at the Levin Landfill.
- 9 I have been engaged in a professional capacity on matters relating to the Levin Landfill since early 2004. This has occurred in relation to compliance matters, consent review matters to which I was the delegated decision maker, assistance to the Parliamentary Commission for the Environment's review and subsequent follow up review in relation to the Levin Landfill.
- 10 Through the period I have been involved with the Levin Landfill, I have worked directly with five Group Managers and four third tier Asset Managers at HDC, with responsibility for this site.
- 11 I have read the Code of Conduct for Expert Witnesses in the Environment Court practice note 2014. I agree to comply with that code. Other than where I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## **B Summary**

12 With an extensive professional involvement in the Levin Landfill from the period 2004 until present, more recently for the submitters supported by this evidence, I have formed the following view:

- That the current landfilling operation, operated by HDC on Hokio Beach Road, does not meet the purposes of the Act at section 5, 6, 7 or 8.
- That the operation of the landfill does not safe guard life supporting capacity of air or water.
- That the Hearing Panel has the powers to cancel this consent on the basis that there are significant adverse effects, resulting from the exercise of the consent, and the consent application contained inaccuracies, which materially influenced the decision made on the application.
- That the landfilling operation has not addressed significant adverse effects on the environment, including communities, for a considerable period of time.
- Analysis of the history of this landfilling operation affirms submitter frustration in relation to compliance with conditions, value of conditions and unwillingness to ensure compliance with conditions by regulatory authorities.
- There is a serious disjunct between the requirements of part II and the provisions of s127 and s128 of the Resource Management Act 1991. In particular, the expectation that a review of conditions cannot frustrate the consent in preference to the requirements of part II of the Act. The conditions, as proposed, do not provide for the rights and interests of Maori, set out in section 6, 7 and 8 of the Act. Neither HDC or HRC have addressed this matter in any serious fashion throughout these lengthy proceedings.
- That the expert evidence before this hearing demonstrates significant non-compliance in relation to the discharge of leachate and air quality matters beyond the boundary, which the review of conditions, as currently proposed, cannot resolve.
- That HRC has no programme to ensure compliance, despite extensive commentary on this matter from independent authorities over a period of a decade.
- That attempts to modify conditions by HDC, with the support of HRC, directly undermine commitments both agencies have made to the community, with a consequential loss of confidence from directly affected communities.
- That the current operation of the landfill, with the significant non-compliance that is occurring, must lead to Kapiti Coast District Council ceasing its waste disposal programme with the Levin Landfill (based on formal correspondence of the respective councils).

- That the pejorative commentary from senior executives at HDC to participants in this hearing process is directly contrary to the evidence that initiated the review process, and the ability for that community and HDC to agree positions which will ensure the landfill is operated in a way that is commensurate with the requirements of Section 5 of the Resource Management Act 1991.

## **C Scope of Evidence**

13 This section sets out their context which has motivated the submitter's I am assisting, to engage in the consent review process. It particularly focuses on the planning matters raised through the s128 review process initiated by HRC, and s127 application by HDC for change of conditions.

14 In preparing my evidence, I have:

- visited the landfill site, visited the Tatana drain, where it discharges unconsented waste to the Hokio Stream; travelled the length of the Hokio Stream from its outlet at Lake Horowhenua to the coast; visited Ngātokowaru Marae and the Grange's property adjacent to the landfilling operation;

I have read and reviewed the following:

- 42A reports of Ms Deborah Ryan, Mr Logan Brown, Mr Stuart Standon and Mr Andrew Bashford;
- joint witness statement, prepared by air quality experts and water quality experts; the reports prepared by the independent facilitator for the pre-hearings and Whakawatea forums; the evidence of Mr Gallow Saily, Mr Phil Landmark, Mr Hywel Edwards, Dr Olivier Ausseil, Mr John Boddy and Mr Stephen Douglass for HDC;
- water quality evidence of Ms Kate McArthur for the submitters;
- decision for the 31` May 2010 review of conditions undertaken by HRC;
- Parliamentary Commissioner for the Environment, Environmental Management Review for the Levin Landfill, dated August 2008; annual reports for odour and water quality discharges prepared by MWH;
- Levin Landfill Water Quality Investigation, MWH, March 2015;
- Parliamentary Commissioner for the Environment, Update Review;
- Pre-hearing minutes in support of 2010 Landfill Consents Review Decision;
- 1998 Original Consent Decision and 2002 Environment Court Order;
- He Ritenga Whakatikatika, Lake Horowhenua and Hokio Stream initiative, 16 June 2013.

- 15 I have paid particular attention to the context in which these reviews are being undertaken.
- 16 The position of the HDC, broadly speaking, is that it is operating a properly consented landfill in an entirely compliant manner, and that it is taking all necessary steps to address issues brought to its attention.
- 17 For the submitters represented by this evidence, the position is that there are many decades of frustration in dealing with the landfill's owner, its agents and the authority responsible for ensuring compliance and operation of the landfill within the scope of Section 5 of the Resource Management Act 1991. Further, the effects of the landfill have an adverse effect on their legitimate rights and interests.

#### **D Context and Site Description**

- 18 The Levin Landfill, located in Hokio Beach Road, and well described in a number of documents before the Panel. The s42A reports of Mr Bashford and Mr Brown for Horizons Regional Council, and the 2010 s 128 review for the Levin Landfill<sup>1</sup> provides an appropriate site description and historical context that do not need to be repeated. For the purposes of this hearing, I highlight matters in addition to that material that are relevant for decision makers.

#### **The 1998 hearing findings**

- 19 Following a "false start" to consenting the Levin Landfill in the early part of the 1990s, a decision was released on 13 March 1998. I highlight for the Panel a number of matters relevant to these proceedings:
1. The Hearing Committee granted a 35-year term and expressed the strong view at paragraph 170 of their decision "the provision for review under s 128 will enable any unforeseen effects to be addressed". They further identified at paragraph 167, "The provision for reviews under s 128 of the Act will facilitate future adjustment to consent conditions if monitoring results highlight the need to address future significant adverse effects".<sup>2</sup>
  2. In relation to iwi consultation, the Consent Authority acknowledged the significant concerns of iwi in relation to inadequate consultation on the proposal. Mr Gerard Albert for the

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<sup>1</sup> Decision on an Application for a notified review of consent conditions under s128 of the Resource Management Act 1991, File reference 1-4-HDC

<sup>2</sup> Landfill consent decision, Horowhenua District Council. Horizons Regional Council, 13 March 1998

Regional Council said that the relationship of tangata whenua with their resources is a matter of significant concern. He further identified that the discharge to waste to groundwater, streams and lakes is a practice seen as “abhorrent to Maori”<sup>3</sup>.

3. In relation to air quality, the Committee’s entire decision on this matter spanned three short paragraphs. This determination was made in light of the Council’s reporting officer confirming that odour had not been a major issue for the site in the past.<sup>4</sup>
4. In relation to water matters, Mr Hamish Lowe, a consultant specialising in design and management of waste treatment operations, confirmed serious concerns in relation to the qualitative data supporting the project and the potential resulting adverse effects. He consequently recommended that the proposed landfill should not be granted consent.<sup>5</sup>
5. In the findings of the Hearing Committee, the following statement was made:

*“The Committee accepts the view that there is contamination of the Hokio Stream and Lake Horowhenua however, it is satisfied that the source of this contamination is clearly not from the existing landfill”.*

In the decision relating to consent 6010 Condition 2 (unchanged to this point) stated:

*“Landfill leachate shall not contaminate adjoining land.”* This accorded with concerns of land owners submitting to the process. Condition 3 of the consent states:

*“The permit holder shall construct and maintain a drain along the north-western boundary of the existing landfill site, by 30 June 1998. The drain shall be designed to capture leachate off the site onto neighbouring properties...”*

I am unable to find any reference within the decision that legitimises a discharge of leachate via any mechanism (point source or diffuse) to the Hokio Stream, with the exception being an acknowledgement of potential discharge via deeper groundwater sources.

- 28 The tenor of the decision in 1998 was that iwi rights and interests were adequately provided for in the conditions, while the concerns of those parties were acknowledged. The Hearing Committee held the clear view that s 128 reviews would adequately ensure that adverse effects could be appropriately addressed. The Committee expressed little concern in relation to odour and provided no significant commentary or direction that leachate would be collected and

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<sup>3</sup> Paragraph 141, Landfill consent decision, Horowhenua District Council. Horizons Regional Council, 13 March 1998

<sup>4</sup> Paragraph 121, Landfill consent decision, Horowhenua District Council. Horizons Regional Council, 13 March 1998

<sup>5</sup> Paragraph 103 Landfill consent decision, Horowhenua District Council. Horizons Regional Council, 13 March 1998

discharged to the Hokio Stream. There was no attempt by Horowhenua District Council to apply for a discharge consent of this type at any stage in the life of this consent. Significant concerns raised by specialists for the Consenting Authority were discounted in favour of monitoring conditions assumed to overcome these concerns.

- 29 The conclusions drawn by witnesses for HDC assume that the consent granted in 1998 provided for leachate discharge via a drainage network to the Hokio Stream. Mr Saidy and Mr Landmark both highlight that it was agreed at the time of consent that leachate was entering freshwater beyond the landfill site.<sup>6</sup> This view is held in spite of Condition 2 being sustained within the consent for a period of approximately 18 years. This is the same condition that HDC is seeking to have removed through their s127 application.
- 30 Where the Hearing Committee affirmed that contamination would clearly not come from the landfill to the Hokio Stream, Mr Saidy's evidence at paragraph 75 identifies Council is unable to avoid adverse effects and further the cost of doing so is disproportionately high. My discussions with HDC staff confirmed that there have been no attempts within the past 12 months to engage with the owners (Tatana) of the land between the landfill site and Hokio Stream to discuss solutions which might address leachate "daylighting" to the Tatana Drain and discharging to the Hokio Stream.
- 28 Following the decision of the Regional Council Committee in 1998, the decision was appealed by a number of parties to the Environment Court. A further four years elapsed while parties engaged for the purposes of finding common ground. A series of amendments to the consent sought resulted in a consent order on 24 May 2002.

### **The findings of the Parliamentary Commissioner for the Environment**

- 29 The Parliamentary Commissioner for the Environment's assessment of landfill performance was undertaken while I was employed as Group Manager for Consents, Policy, Science and Compliance at Horizons Regional Council. The document is self-explanatory<sup>7</sup> but I highlight the Commissioners rationale for the review being:
- Concerns raised by Tangata Whenua
  - Community Consultation
  - Compliance with resource consent conditions
  - Monitoring and enforcement of consent conditions

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<sup>6</sup> Gallo Saidy statement of evidence, paragraph 75. Mr Phillip Landmark statement of evidence, paragraph 148

<sup>7</sup> PCE Levin Landfill Environmental Management Review, August 2008

- Compliance with the requirements of the Resource Management Act 1991.
- 30 The Commissioner’s recommendations were wholly accepted by Horizons Regional Council with priority focused on a consent review, independent review of results, preparation of a compliance history, improved monitoring, and involvement of iwi in the Neighbourhood Liaison Group.<sup>8</sup> The record of non-compliance at the site was significant through the period assessed being 2004-2007.
- 31 The Commissioner went further to identify that Horizons had not implemented its monitoring and enforcement role appropriately. At the time HRC agreed with that view and this led to a fundamental change in the programme undertaken by the newly established environmental protection team at Horizons Regional Council.
- 32 The HDC Mayor identified the report highlighted some “very minor non-compliance issues” that were insignificant when compared to the project of managing the old landfill.<sup>9</sup> The Council’s Chief Executive identified the Council was not breaching its consents and would be imported to the Levin Landfill from the end of 2008 generating \$50,000 of income annually.<sup>10</sup> The Kapiti Coast District Council publicly stated that waste would only go to the landfill if it was fully compliant with its resource consent conditions in line with its contract with HDC. This position has been reconfirmed more recently in correspondence to Ms Bernadette Casey where Mayor Ross Church confirmed Council’s expectation that disposal takes place in a properly consented landfill and that his advice is that the landfill is compliant with no additional work required.<sup>11</sup>

### **The 2010 consent review decision for the Levin Landfill operation**

- 33 The consent review for the Levin Landfill was initiated in September 2008 with a series of six pre-hearings undertaken within a mediated context. The effort from the parties resulted in resolution of matters without recourse to a formal hearing. Substantive charges were proposed to consent conditions, foremost amongst them a review condition which provided for a determination by the community/Council Neighbourhood Liaison Group as to the need for future reviews. The wording, as follows:

The Regional Council shall initiate a publicly notified review of Conditions 3, 4 11 (a)-(e), 12, 13, 14, 24, 27, 28 and 29 of this Permit in April, 2015, 2020, 2025, 2030 and 2035, unless

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<sup>8</sup> PCE Levin Landfill Environmental Management Review, August 2008, page 23-24

<sup>9</sup> Torry, B. Clean it up water is issued. Manawatu Standard August 2008.

<sup>10</sup> Blundell, K. Landfill managers told to do better. The Dominion Post. 13 August 2008.

<sup>11</sup> Mayor Ross Church, communication to Bernadette Casey 10 March 2016.

[emphasis added] the Neighbourhood Liaison Group (NLG) agrees that a review is unnecessary. The reviews shall be for the purpose of:

- a. Assessing the adequacy of monitoring outlined in Conditions 3 and 4 of this consent; and
- b. Assessing the effectiveness of Conditions 11(a)-(e), 12, 13, 14, 24, 27, 28 and 29 of this consent, in avoiding, remedying or mitigating adverse effects on the environment surrounding the Levin Landfill.

34 The resolution of the review process was a significant success. This was confirmed in correspondence from the Regional Council which highlighted the following:

- “An interesting development occurred late in the proceedings where the submitters signed off their rights to be heard, provided that Ngāti Pareraukawa were satisfied that their concerns were met”
- “It [the review] should not be seen as final. Rather, there is an agreed way forward which now requires the continued good faith and action of all parties into the future”
- “The importance of the NLG cannot be underestimated. It will be the conduit for all parties to keep abreast of any developments into the future”
- “This meant [meeting at Ngāti Pareraukara’s Marae] that all parties were moving beyond positional, accusatory and defensive posturing to a place where the issues and solutions were being explored far beyond the legal boundaries of the review”
- “The involvement of the Parliamentary Commissioner in the process has been a useful catalyst to spur the Regional Council to rethink its approach to the review. That re-think led to a unique prehearing process that had the participants of that pre-hearing able to direct the destiny of the review”.<sup>12</sup>

35 The record of communication generated during pre-hearings allowed frank advice and feedback from contributing parties. I note that the first pre-hearing, dated 5 March 2009, included feedback from the Regional Council’s compliance officer that non-compliance at the site generated leachate breakouts and losses to the Hokio Stream. He also noted that there had been an inconsistent approach from Horizons Regional Council with regard to consent compliance.<sup>13</sup>

36 I note that there are no HDC staff in the current landfill review process who took an active part in those 2008-2010 proceedings.

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<sup>12</sup> Levin Landfill review of conditions report, 31 May 2010.

<sup>13</sup> Pita Kinaston, Compliance Report, Pre-hearing minutes, Levin Landfill, Tuesday 5 March 2009.

## **The approach taken by HDC to these proceedings**

37 I was retained by the Community Neighbourhood Liaison Group in 2015 to assist with the landfill consent review process. It appeared that the operation of the NLG had degenerated in terms of the relationships between community stake holders and HDC. Significant concerns had been raised in the period since 2010 about compliance at the landfill site, particularly in relation to odour. I initiated a site visit to the Levin Landfill in mid-2015, for HRC officers, to highlight concerns from the community members of the Neighbourhood Liaison Group. The focus of the site visit was an assessment of operational practice and review of concerns in relation to compliance for odour and leachate losses to groundwater and surface water in the Tatana Drain and Hokio Stream. The decision by HRC to review the consent was notified on 30 October 2015. The reasons for the review were set out as follows:

*“In addition to the above requirement, MWRC has received a number of complaints regarding odour from the landfill over recent years, and has observed landfill leachate ‘daylighting’ into an open drain located on an adjoining property (the Tatana Drain) which flows directly into the Hokio Stream.*

*The odour issue has been on-going with no apparent solution proposed. Therefore, the review will examine current best practice in terms of capping of the landfill, surface emission testing and standards, and what further investigations can be carried out and mitigation measures implemented to avoid noxious, dangerous, offensive or objectionable odours beyond the boundary of the site.*

*The review will also focus on the effects of landfill leachate on the environment, particularly in the Tatana Drain and Hokio Stream. It will examine whether existing surface and groundwater standards and parameters are relevant and appropriate, and propose conditions to avoid the contamination of land and groundwater beyond the boundary of the site.”<sup>14</sup>*

38 In addition to the above review process, HRC has received a large number of complaints regarding odour from the landfill over recent years, and has observed landfill leachate ‘daylighting’ into an open drain located on an adjoining property (the Tatana Drain) which flows directly into the Hokio Stream.

39 The Chief Executive of HDC, David Clapperton, summarised the requirement for the review as follows:

*“The NLG was given additional status to work with Council to manage the environmental effects of the Levin Landfill through the last review. They have not worked constructively to*

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<sup>14</sup> Notice of Review correspondence to HDC, 30 October 2015

*achieve a common goal so the effects of the landfill are no more than minor on the environment. What has changed warrants such a review other than the say so of the NLG. This is another example “of a few” costing the rate payers of this District several hundred thousand dollars for no real gains. It has to stop in the future”.*

Further, he commented:

*“Last time the pre-hearings were long-winded and costly” and “note this is a real opportunity to change some of the conditions which are significant waste of time and resources that have no impact on the environmental effects that the consent should be addressing.”<sup>15</sup>*

This position is reconfirmed with a statement to Councillors; *“HDC has requested the review period to be limited to 10 years as it sees no benefit for the community to be paying for a review of a consent that in the main complies, and is not due to expire until 2037.”<sup>16</sup>*

- 40 Communication from Mr David Moore, the convener of the Community Neighbourhood Liaison Group, expressed concern about the denigrating and unnecessary comments to the Mayor, Brendan Duffy.<sup>17</sup> Mr Moore received no reply from the Mayor.
- 41 The District Council employed Mr Greg Searle as Asset Manager in early 2015 for the purposes of addressing outstanding consents for council assets. Mr Searle identified publicly that the only reason for the review was because NLG wanted it, not due to any immediate environmental issues. “Horizons are quite happy with what we are doing. The Hokio Stream is no worse off with leachate in it. The review could cost more than \$250,000 and might not result in any changes”, he said.<sup>18</sup> Mr Searle resigned his role at short notice in early 2016.
- 42 In relation to the notification of the landfill review, a direct request was made to Horizons Regional Council and Horowhenua District Council that it not be notified for public submissions through the Christmas period of 2015-2016. My direct communication with Mr Andrew Bashford confirmed Horizons had little concern with delaying notification, but that it was dependent on HDC to extend this courtesy to submitters. HDC declined an extension and the submission period closed with approximately 170 submissions raising concerns in relation to key elements of s127 and 128 reviews.
- 43 Further communication to the District Council CEO on behalf of many stakeholder groups by Mr Moore on 14 January 2016 was not responded to by the Chief Executive. Mr Saidy identifies in his evidence at paragraph 54 that members of the NLG consider the review process to be an

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<sup>15</sup> Chief Executives Report to Councillors, 5 August 2015

<sup>16</sup> Answers to FAQs regarding Levin Landfill on Hokio Beach Road (paper for Councillors)

<sup>17</sup> Formal correspondence to Mayor Duffy, 14 August 2015

<sup>18</sup> Natasha Laidlaw, Horowhenua Chronicle, 9 March 16

opportunity to interfere with the landfill, and even to try and influence the ongoing future of the landfill. He highlights in his evidence at paragraph 57 that the NLG must be contained, must have a constrained role to review and comment only and must not be able to trigger reviews.

44 I find this view disconcerting in the light of the original decision, environment court appeal, Parliamentary Commissioners review, review of conditions in 2008, and pattern of non-compliance that has spanned the life of the landfill (this element addressed further in my evidence).

45 I acknowledge the commitment of Mr Saidy and his team in the recent Whakawatea forum. The District Council resourced expert contributions to that forum in respect of air, water quality and planning. I confirm his assessment of the programme undertaken (with an independent facilitator, Ms Christine Foster) in his paragraphs 66-69. The process has not concluded as expected with the compressed timeframes generated by the fixed hearing date. Additionally, the District Council appointed its water quality and planning advisors to the landfill review approximately one week prior to evidence being lodged so there was little opportunity to engage on consent condition drafting in the way all parties might have expected.

#### **Site compliance**

46 There is a strong record of non-compliance for the Levin Landfill for the period 2002 through until 2008 when the conditions of consent were last reviewed.

47 Mr Stuart Standon has undertaken an excellent assessment of non-compliance for this part few years. In relation to odour, Mr Standon identifies 27 occasions where the most affected property owners adjacent to the Levin Landfill site (Mr and Mrs Grange) were subject to offensive of objectionable odour (paragraph 14). These non-compliances resulted in no compliance action. As the evidence of Mr Standon identifies, the relationship between HDC's Solid Waste officer has broken down to the extent that he is not alerted to odour events. Mr Standon has made significant efforts to monitor odour at the site. Despite his efforts and well in excess of 158 notifications since February 2014, Horizons has taken no enforcement action.

48 HRC has now deemed it appropriate for an enforcement officer to detect odours beyond the landfill boundary in order to consider further enforcement action (paragraph 22). This approach disregards the logistics of a qualified independent officer attending the site from 50 kilometres away (where the closest trained independent officer is available), and completely disregards the legitimate observations from the Granges.

- 49 The joint witness statement of the air quality experts for the review proceedings confirms that the odour complaints of the Granges are credible (answer to Question 3 of expert caucusing) and that there is non-compliance with Condition 3 (Dr Doug Boddy identified potential) and 5 of the consent. In essence, Ms Wickham and Ms Ryan confirm there is no question that there is a discharge of odour beyond the boundary that is noxious, dangerous, offensive or objectionable, while Mr Boddy confirms the potential exists. All three experts concur that the District Council has not taken all practicable steps to avoid, remedy or mitigate significant adverse effects of odour discharges. The Regional Council has taken no compliance or enforcement action in this regard.
- 50 In relation to leachate daylighting to the Tatana Drain, I have serious concerns about the Regional Council's response to this matter. Mr Brown for the Regional Council identifies the Tatana Drain is a water body subject to the directions contained within the NPS FM and the One Plan objectives, policies and rules. The evidence collected from the Tatana Drain demonstrates that leachate is entering and contaminating adjacent land. By Mr Brown's calculations, a flow of less than 1 litre per second is discharging into an unauthorised drain, and from there discharging directly to the Hokio Stream, unconsented. It is not disputed that the leachate from the closed landfill is entering the Tatana Drain or flowing to the Hokio Stream. This occurs on an ongoing basis without the authority of a consent or compliance action by Horizons Regional Council.
- 51 Where HRC did take action, by highlighting a significant non-compliance against Condition 2 of consent 6010 in October 2014, the subsequent report prepared by HDC (Standon evidence, paragraph 27) did not convince Mr Standon to reverse the view on this matter. In a confusing turn of events, the significant non-compliance was withdrawn on 10 April 2015. My direct questioning of Mr Saily and Compliance Officers for Horizons Regional Council confirms the significant non-compliance was withdrawn at the direction of their respective Chief Executives for HDC and HRC. There is formal correspondence on this matter between the Executives of the respective councils. Request for that exchange of communication, by way of an Official Information Request, was declined by the Chief Executive of HDC.<sup>19</sup>
- 52 Mr Standon confirms that all samples from the Tatana Drain post-2014 contain leachate. Horizons has taken no further action from a compliance or enforcement perspective.
- 53 During the Whakawatea forum process, it was agreed that representatives of the NLG would meet with HRC compliance officers for the purposes of confirming a common position on compliance/non-compliance and developing protocols for resolution of future compliance issues. The meeting between NLG members and Mr Greg Bevin (Regulatory Manager), Mr Pita Kinaston

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<sup>19</sup> Letter from David Clapperton to Malcolm Hadlum, 20 July 2015

(Team Leader, Compliance), Mr Stuart Standon (Compliance Officer) for Horizons Regional Council on 12 August 2016.

- 54 The Council staff were direct in their feedback that compliance and enforcement efforts from Horizons required more attention and focus. It is relevant that this is a similar commentary to that made by the same HRC officers in 2010 during the consent review pre-hearing. We agreed that Horizons would initiate a process to allow development of an agreed compliance position for the landfill. The NLG would provide their perspective for the purposes of validating the data provided by Horizons. Horizons did not provide this material and has not responded to correspondence on this matter.<sup>20</sup>

### **Rights and Interests of Iwi**

- 55 The positions held by iwi has been well documented in the consent decision, Environment Court, consent order, Parliamentary Commissioner's report, and 2008 consent review process. The respect for Ngāti Pareraukawa leadership in these matters is reflected in previous determinations by submitters to follow their kaupapa on resolving landfill issues. Throughout the recent process, Mr David Moore has taken a key leadership role in facilitating a diverse group of stakeholders to the review process, and has continued to make the Ngātokowaru Marae available for pre-hearing and mediation processes.
- 56 It is clear on reading the 1998 decision in relation to the landfill that the rights and interests of iwi are better understood and provided for in statutory processes and decision making now, than was the case in the 1990s. I comment in my statutory assessment on s6, 7 and 8 matters.
- 57 Importantly, I note that both Mr Moore and I highlighted in the consent pre-hearing process, and in the Whakawatea forum that the District Council and Regional Council needed to actively address cultural matters in their design of conditions and s 104 assessments. The councils were also reminded by Ms Foster (the independent facilitator of the above processes) that these matters would be important considerations for this Hearing Panel.
- 58 In the event neither HDC or HRC have undertaken any expert assessment, have undertaken no engagement with iwi on these matters, and neither planning expert for the respective Councils has undertaken an analysis of the material available to them in respect of s6, 7 and 8 matters. They have deferred to submitters assuming they would address this in the forthcoming hearing. I note this approach has not been adopted for any other Part II consideration.

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<sup>20</sup> Email correspondence with Mr Greg Bevin, 23 August 2016, "*Agreed compliance position*".

## **E Submissions**

59 This evidence addresses matters raised in the following submissions:

- Hokio Neighbourhood Liaison Community Group (NLG)
- Water and Environmental Care Association Incorporated (WECA)
- Hokio Environmental and Kaitiaki Alliance
- Ecofest Education Charitable Trust
- Ngāti Pareraukawa
- Ngātokowaru Marae Committee
- Horowhenua Ratepayers Association
- E & D Grange

60 The issues raised by these submitters can be summarised as follows:

- That the interests of hapu and iwi are undermined by the ongoing discharge of leachate to the Hokio Stream.
- That the landfill operator and HRC are not complying with their obligations to engage with tangata whenua.
- That HRC and HDC are not proactive in their engagement with the hapu or marae representatives adjacent to the landfill.
- That there is offensive and objectionable odour being discharged beyond the boundaries of the landfill.
- That waterways, wetlands and the coastal environment require proactive management to reduce the impact of discharges.
- That the discharge of leachate to the Hokio Stream was not envisaged and is not authorised by these consents.
- Fear from the Hokio community that leachate is, or will, affect the coastal environment and ability of the community to take kai, swim or fish.
- That conditions should be strengthened to ensure the above matters are addressed.
- Opposition to conditions are reducing the impact of the resource consents, for discharges in particular.
- Submitters express particular concern that the role of the CNLG, as a voice for the Hokio community, is undermined as a consequence of the proposed condition changes.

- 61 Matters I consider are beyond the scope of the review, that are consistently raised by submitters, include:
- Closure of the landfill
  - Diversion of leachate from the landfill to the waste treatment site known as the “pot”
  - The commercial arrangements HDC has made for the importation of waste and the economic consequences of doing so.
- 62 I bring to the Hearing Panel’s attention the submission of E and D Grange (submission 153). The Granges have been significantly impacted by discharges of odour from the landfill. This matter has been well addressed by experts, is accepted by HDC in joint statements produced from the pre-hearing process, and will be addressed by the Granges in their oral submission to the hearing. The original submission lodged by the Granges, on 28 January 2016, identified “support” for the applications lodged. I wish to clarify that the Grange’s intention was to support the stronger provisions proposed by HRC for the purposes of reducing the impact of odour on their amenity. The position of HDC, where they strengthened or supported HRC proposals, was also supported by the Granges. Their submission should not be seen to support those elements of the s128 and s127 review proposals where they reduce the impact of conditions. The Grange’s submission is a reflection of community members not experienced with these processes. HDC and HRC know this is the case, and have accepted the legitimacy of the Grange’s concerns.
- 63 I highlight for the Panel that the above submitters represent large stakeholder groups representing public or iwi interests. A number of the groups are incorporated societies and all of them have a long-standing documented interest in this matter. For some of them, including the Ngātokowaru Marae Committee, their concerns go back many decades.
- 64 While I can find no assessment of submitter issues that has been undertaken by Mr Edwards, Mr Bashford provides a short summary of submissions in his paragraph 34-36. There were 169 submissions to this process, and while many of them were *pro forma*, the matters raised were not inconsistent with the matters set out by submitters I am assisting before this hearing. The depth of feeling expressed by many submitters may be understandable in the light of the summary of issues represented in my earlier evidence.

## F Statutory Matters

### Scope of Applications

65 I agree with Mr Bashford's position in relation to the matters that this hearing can lawfully consider at his paragraph 31. In my view, the importation of waste from Kapiti Coast District Council, the transportation and discharge of leachate to the "pot" (HDC's disposal site for treated effluent), and the closure of the landfill are outside the scope of the hearing. I also note that the compliance matters referred to in previous independent assessments and consent reviews, are not matters directly able to be addressed by the Hearing Panel. However, it is my view that the inability of the landfill operator to ensure compliance with the current consents is a significant consideration for the Hearing Panel.

66 Both Mr Bashford as his paragraph 28, and Mr Edwards at paragraph 9 and 46 identify the legitimate view that the decision in relation to consent conditions cannot frustrate the operation of the consent. This is a problematic matter for the Hearing Panel where the s 104 and Part II assessment lead me to the view that the purpose of the Act at s 5 is not provided for. In my view, the "frustration" of consent comes about as a consequence of:

- Discharge of odour beyond the boundary not addressed in the evidence by the Applicant
- Discharge of leachate beyond the boundary to land and water in a way that is not consistent with the consent, or consented in the case of the discharge to the Hokio Stream
- Assumptions made by HDC Officers that current discharges were anticipated and legitimised in the 1990s, in a way that is not correct.

67 I draw to the attention of the Hearing Panel to s132 of the Act which allows for a Consent Authority to cancel a resource consent.

A consent authority may cancel a resource consent if:

- (a) it reviews the consent under s128(1)(c); and
- (b) the application for the consent contained inaccuracies that the consent authority considers materially influenced the decision made on the application; and
- (c) there are significant adverse effects on the environment resulting from the exercise of the consent.

68 The submissions from the parties that this evidence supports, the evidence of Mr Brown, Ms McArthur, and record of non-compliance for this site support consideration of a s 132 (3) (b) and (c) determination. In my view, there are significant adverse effects on the environment resulting from the exercise of this consent and there were material inaccuracies in the application before the original hearing in 1998 that influenced the decision.

69 While I generally agree with the scope of the review assessments provided by Mr Bashford and Mr Edwards, I highlight a difference of view of the following matters:

- Mr Edwards highlights the requirement that the proposed change of conditions do not undermine the viability or workability of the landfill consents, while having regard to s 104 and Part II matters. As I have highlighted earlier in my evidence, this is a difficult proposition given the current operation and historical record for this site. Mr Edwards is effectively inviting the Panel to have regard to and put aside the purpose of the Act, matters of national importance, and principles of the Treaty of Waitangi in making a decision.
- With the evidence of Mr Brown in relation to the Tatana Drain as water body, Mr Edwards is also inviting the Panel to disregard the National Policy Statement for Freshwater Management 2014 (paragraph 46).
- While Mr Bashford and Mr Edwards have constrained the scope of the review to those conditions they have assessed in line with Condition 30, the condition explicitly provides for addition of new consents as necessary to avoid, remedy, or mitigate adverse effects on the environment surrounding the Levin Landfill.<sup>21</sup> This provides scope to the Hearing Panel to adopt conditions beyond the proposed changes advanced by HRC and HDC, and allows submitters to advance additional conditions consistent with Condition 30 scope. I have appended my response to the Applicant's conditions and additional conditions to address adverse effects at Annex 1.

### **Statutory Framework**

70 Mr Bashford completes an assessment of the statutory framework at paragraph 37 and Mr Edwards at paragraph 33. The assessment of the applications is undertaken within the framework of s 104 and Part II of the Act as if it were a resource consent application, notwithstanding the limitations of a review as described in ss127 and 128. For efficiency purposes, I have highlighted those matters where there is additional material required or an alternate opinion to Mr Bashford or Mr Edwards in my assessment of statutory matters.

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<sup>21</sup> Consent 6010, Condition 30 (e).

## Assessment of Effects

### Water Quality Matters

- 71 The evidence of contamination of land and water is strong, and the evidence of impacts in the Hokio Stream is highly qualified by the observations of Dr Aussiel, Ms McArthur, and Mr Brown who jointly confirm their concerns about the current monitoring sites and data produced from them. I agree with Mr Bashford's position at paragraph 69 of his evidence that the life supporting capacity, indigenous species and ecosystems within the Tatana Drain are not provided for by the current discharge. I agree with his view that the proposal to cease the discharge will provide for those matters both in the Drain and the Hokio Stream, notwithstanding the discharge from deeper groundwater sources.
- 72 It is clear from the agreed evidence that there is "day-lighting" of leachate to the Hokio Stream. The extent of leachate flows is completely unquantified, with the only assessment to this hearing provided by Mr Brown (a visual assessment at a point in time). It is also agreed that the impact of leachate to the Tatana Drain puts the water quality in Band D of the NPSFW 2014. The site in which the Tatana Drain is located has been identified "most certainly" as a wetland, by Ms McArthur, and as a stream by Mr Brown. I do not agree with Mr Edwards' view, at his paragraph 90-92, that the site cannot be assessed as a water body. Importantly, his view that the One Plan provisions should only be applied if unanticipated effects on the Hokio Stream were evidenced, is incorrect.<sup>22</sup> The One Plan standards do apply in an assessment, and further the physical effects of the discharge on the Hokio Stream are still in question after 18 years of monitoring. The discharge to the Hokio Stream, of the type occurring, was not anticipated and is not supported by documentation I have seen.
- 73 While it is interesting to see a desktop assessment from Mr Sadie's team, addressing mitigation of leachate matters, it is of some concern that this assessment was initiated and completed within one week of evidence being lodged. It provided no opportunity for engagement of stakeholders to this process. It also makes a number of assumptions, for which there is no evidence to allow validation. Ultimately, Mr Sadie confirms that the options are not required, given that HDC view they can legitimately discharge leachate, and the benefits of mitigation options are unknown. Mr Sadie incorrectly uses the lack of data and poor monitoring over a long period, to rationalise his view that there are little or no impacts on the Hokio Stream.<sup>23</sup>

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<sup>22</sup> Edwards' Evidence, paragraph 93

<sup>23</sup> Sadie Evidence, paragraph 78-85

## Air Quality Matters

74 It is difficult to separate out, for the purposes of determining effects, those matters that relate to the consented landfill discharges, from the ongoing non-compliant discharges beyond the boundary. The Granges will provide an oral submission to the hearing demonstrating the significant effect odour discharges have had on their lives. In respect of the impact on the Granges, the joint expert caucusing confirmed a high degree of non-compliance with Conditions 3 and 5, and the Granges themselves have done an outstanding job to maintain a disciplined record of reporting in relation to odour events. I accept the view expressed by Dr Boddy, Ms Wickham and Ms Ryan, that the proposals for landfill gas flaring, a bio-filter and better practice in waste cover, will have a significant role in reducing offensive or objectionable odour beyond the boundary. I am, however, mindful of the Condition 3, which states;

*“there shall be no discharge of odour or dust from the landfill, that in the opinion of a regional council enforcement officer, is noxious, dangerous, offensive or objectionable beyond the property boundary.”*

75 A review of Dr Boddy’s evidence and Mr Sadie’s statement, raises ongoing uncertainty that this condition can be complied with. In my view, the re-drafted conditions must provide a very high level of certainty that the outcome achieved will ensure compliance with Condition 3, which remains fundamental to achieving the purposes of the Act. In respect of the cost of options and the cost benefit of landfilling operations (against the current programme approved by council), HDC staff have consistently refused to engage in any exercise which would allow cost and benefits of options to be assessed. For example, the concerns expressed in Mr Landmark and Mr Sadie’s evidence for the cost of landfill gas flaring, and the concerns of the joint experts in relation to the unknown state of the landfill gas reticulation pipework, have the potential to “frustrate” HDC’s ability to comply with reasonable consent conditions.

## Iwi and Hapu Issues

76 Despite recommendations from submitters, expert parties, and independent facilitators, neither HDC nor HRC have commissioned a cultural impact assessment or any specific engagement with the many tangata whenua parties to these proceedings. There are now well accepted methodologies for assessing cultural values in association with awa.<sup>24</sup> The historical nature of iwi concerns is clear and consistent. This has been recognised in the PCE’s report, the review of conditions in 2008, and original consent decision. The proposals advanced by HDC and HRC are a

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<sup>24</sup> Statement of Evidence, Ms McArthur, paragraph 37-39

substantial step towards eroding the rights and interests of iwi and hapu. They limit the involvement of a number of iwi interests and the removal of the previously agreed ability to trigger reviews will marginalise iwi in any future process.

77 For Mr Bashford's part, there is no assessment of iwi rights and interests as a matter of national importance, in respect of effects.

78 For Mr Edward's part, he states:

*"This is therefore a case of there being no bio-physical effect ... it was always anticipated that leachate from the landfill would reach Hokio Stream, and this was explicitly addressed in the 1999 decision granting consent."*<sup>25</sup>

The 1998 decision did not explicitly do this, and it is agreed, amongst the experts to this hearing, that the bio-physical effects are at best, not well understood. At paragraphs 112-115 of his evidence, Mr Edwards reaffirms his view that the reduced involvement of iwi and hapu in a de-powered NLG condition, and the ongoing effects to the Hokio Stream recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga. There is no evidence from any iwi, hapu or tikanga specialist that support this view.

79 The evidence of Mr Moore and many other parties to these proceedings will demonstrate an increasing disconnect between the rights and interests of iwi and the use of the Hokio Stream that is part of their lives. It could not be said that iwi can effectively exercise mana whenua in relation to their awa, the Hokio Stream.

#### **National Policy Statement for Freshwater Management 2014**

80 I broadly agree with the assessments undertaken by Mr Edwards and Mr Bashford. I confirm my alternate opinion that the Tatana Drain falls within the definition of a waterbody, consistent with the Act. This view is based on the evidence of Mr Brown's technical assessment of the site status, the view of Ms McArthur that the site of the Tatana Drain was "almost certainly" a wetland.<sup>26</sup> I also agree with Mr Bashford's view at paragraph 64-65 in relation to the degree to which the One Plan adopts the objectives of the NPS FM.

81 I note that the One Plan predated this NPS. However, HRC engaged extensively with the Ministry for the Environment through the One Plan process for the purposes of ensuring the Plan tied as

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<sup>25</sup> Edwards Evidence, paragraph 76

<sup>26</sup> Statement of Evidence, Ms McArthur, paragraph 25

closely as possible to the emerging NPS FM. To some degree, the NPS FM mimicked the approach taken by the One Plan. This is somewhat inevitable as policy development of this type is an iterative process.

- 82 The objectives A1 and A2 of the NPS FM (Bashford evidence at paragraph 66) are not provided for by the application from HDC and review proposals from HRC.
- 83 Objective D1 and Policy D1 of the NPS FM provide for iwi and hapu rights and interests. These matters have not been provided for or considered in any thorough way by HDC or HRC within this process. Neither HRC, nor HDC can rely on the concept that tangata whenua can engage if they choose to. The regulatory authority has an obligation to proactively engage, and has not done so in this case.
- 84 The evidence of Mr Bashford and Mr Edwards, which propose amendments to conditions eroding the conditions framework, agreed in mediation in 2010, further undermine the degree to which the s127 and s128 reviews give effect to Objective D1 and Policy D1.

### **One Plan**

- 85 As previously noted, Mr Edwards and Mr Bashford have provided a reasonably comprehensive assessment of the One Plan. I highlight those matters where there are additional considerations, or my position is at odds with them. Mr Bashford sets out the function of the One Plan at his paragraph 72.

### Te Ao Maori Chapter

- 86 I have not repeated my opinion on Mr Bashford and Mr Edward's assessment of compliance with the statutory provisions in this respect. They apply equally to the application of Chapter 2 of the One Plan. I note the specific identification of the Hokio Stream as a degraded waterbody (at Issue 2-1). This affirms the consistently stated view of iwi in relation to the Hokio Stream. I very clearly recall the meeting with Mr Moore and his hapu membership in the latter part of preparing the draft One Plan, where he led concerns at a regional level on Maori interests and rights in relation to water.
- 87 I highlight Policy 2-3, which provides for a temporary cessation of resource activities in exceptional circumstances. This policy is consistent with the intent of s132, which allows design makers to cancel a resource consent. The consistent position of iwi over many decades, has been the cessation of discharges, no new discharges and restoration of the Hokio awa. In my view (and consistent with that of Mr Bashford), there should be no discharge of leachate to the Hokio

Stream, either by way of the current unconsented discharge or through any consent regime, as it is incompatible with the purposes of the Act.

- 88 I also note; Resource Management Issues of Significance to Hapu and Iwi - Monitoring and Enforcement.<sup>27</sup> This issue was recognised by HRC with the statement; *“monitoring and enforcement of environmental standards, including those contained in regional plans, district plans and consents, are insufficient at times.”* The record of non-compliance and lack of enforcement of these consents is a fair example of that issue statement.

#### Water Quality

- 89 Mr Bashford provides a useful assessment of the provisions of the One Plan relating to water quality. He particularly notes the directions contained in the Objectives and Schedule E Water Quality Targets. As Mr Brown and Ms McArthur have identified, a number of targets are breached for both the Tatana Drain and Hokio Stream. In my view, it is entirely feasible to impose consent conditions to ensure that objectives of the One Plan are met. It is all the more relevant to this particular review, that HDC and HRC are signatories to the Lake Horowhenua Accord, which confirms their strong desire to restore the lake and its tributaries. HDC has not demonstrated that leachate containment and disposal (off the Tatana block, and out of the Hokio Stream), is not feasible. To continue with discharges of this type, is contrary to the One Plan objectives at 5-1 and 5-2. I do however note there is discretion for decision makers on these matters. They are not absolute.

#### Odour

- 90 Mr Bashford, at his evidence paragraph 82-84, addresses the relevant One Plan matters contained in Chapter 7 and Chapter 15. On the basis that the proposed changes in operation are appropriately conditioned, implemented and monitored, I am of the view that the proposals are consistent with the One Plan.
- 91 I restate my strong reservation, that non-compliance with conditions is demonstrated to result in significant adverse effects on amenity. With the historical record of non-compliance and poor enforcement, the concern raised earlier in my evidence remains. While I acknowledge compliance and enforcement is clearly a matter for the regional council to address, if it is not (as has regularly been the case since 1998), it makes the process of review ineffective.

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<sup>27</sup> Page 2-21, One Plan 2014

## **Other Matters**

- 92 The s104 (1)(c) allows consideration of any other matter the consent authority considers relevant. I agree with Mr Bashford's inclusion of the Lake Horowhenua Accord 2013 as a relevant matter. The Accord is focused on the Lake, but also includes its tributaries. Naturally, the Hokio Stream is the beneficiary (or otherwise) of inflows from the Lake. Historically effluent was discharged to the Lake, untreated urban stormwater still is, and nutrient loads from intensive agriculture and horticulture are currently well out of step with the provisions of the One Plan. These are all matters the Accord seeks to address.
- 93 While no witness for HDC has addressed the commitments of HDC to freshwater clean up actions, as a signatory, that agency has made a significant undertaking to do its share. I particularly refer to the commitments made to iwi and hapu values in this regard.

## **Assessment of Conditions and Proposed Changes – Additions**

- 94 These are contained in Annex 1.

## **Part II Assessment**

- 95 As I highlighted elsewhere in my evidence, I have addressed Part II matters only where they differ, or are an addition to, the evidence of Mr Bashford and Mr Edwards.

## **Section 6 Matters of National Importance**

- 96 Section 6(a), (e) and (g) are relevant to the Hearing Panel's consideration. The area in which the Tatana Drain is located was historically wetland and may have had a waterbody flowing through it at some stage. It has been degraded through the unconsented drainage activity, unconsented earthworks over a long period, and was the subject of a major prosecution in the latter part of last decade (discharge of waste printing products to the wetland site). It appears HDC has no active management of the site, and there is no formal relationship with the Tatana's or any correspondence indicating a commitment to maintenance or restoration of the site. The values of the site are degraded to the point that any focus should be on maintaining water quality.
- 97 HRC's determination that leachate not enter the drain will go some way to providing for s6(a) matters.
- 98 Both Mr Edwards and Mr Bashford are awaiting the feedback from iwi and hapu to determine a perspective on whether s6(e) matters are recognised and provided for. The public record and

submissions to these proceedings clearly demonstrate they are not. It is problematic for the Hearing Panel that there are no proposals from the applicant or HRC that address this element. It is my view that there are solutions that recognise and provide for s6(e). I recommend the Hearing Panel adjourns the hearing, at the appropriate time, in order that a cultural impact assessment is commissioned and completed to allow fully informed decision making. The view formed by Mr Edwards that the reduced rights proposed in the s127 and s128 conditions provide for 6(a) matters, is not correct in my view. I reconfirm the view expressed earlier in my evidence, that there are a number of unanticipated, poorly monitored, or unconsented activities occurring. Mr Edwards characterises any attempt to address these matters as relitigation of the original consent. That is not my view and I recommend the Hearing Panel is cognisant of the submitter's views on these issues, in making its determination.

### Section 7 Other Matters

99 The relevant s7 matters are 7(a), (aa), (b), (c), (d), (f), (g). Mr Edwards' view is that any assessment of these values must be undertaken as if the existing conditioned position is the baseline for decision making. That is not the case, as the review conditions clearly specify review of conditions in full or addition of new conditions.

100 In respect of s7, the proposal to reduce the influence of parties in the NLG severely undermines the kaitiakitanga and stewardship role of iwi and the community at large. The natural and physical resources of the Hokio Stream and environment are having significant environmental costs externalised to them. These costs were not anticipated or planned for, and the consequences are either negative or unclear. Alternative approaches to addressing s7(b) matters have not been undertaken with any robustness.

101 Amenity values and the intrinsic values of ecosystems at 7(c), (d), (f) and (g) continue to be degraded by unconsented discharges and ad hoc land use.

### Section 8 Treaty of Waitangi

102 Contrary to Mr Edwards' view, it follows that the Treaty of Waitangi principles have not been at the forefront of thinking from the applicant and consent authority. The engagement process with iwi and hapu has not been active. The submitters will say that there is no partnership or effort by HDC or HRC to act in good faith. Further, the ability for iwi to exercise mana in relation to their lands, resources (water) and taonga has not been provided for.

## Section 5

### *Section 5 (2)*

- (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 a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being 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.*

103 The Levin Landfill is a regionally significant asset generating limited income prior to its closure, and the eventual transfer of Kapiti Coast and Horowhenua waste to Bonny Glenn Landfill.

104 The existing operation of the landfill generates significant adverse effects on the Hokio Stream environment, rights and interests of iwi and hapu, and amenity values of adjacent neighbours with respect to odour.

105 The expert assessment in relation to water quality, demonstrates a high level of uncertainty with respect to impacts on the Hokio Stream. There is a very high level of confidence in respect of the impact of discharges to the Tatana Drain and associated environment.

106 The effects of ongoing odour discharges on the Grange family (and periodically others in the vicinity), cannot be underestimated. The proposals (broadly agreed) will go some way to addressing those effects, in the event HDC implement them in line with their consents and HRC holds them to account. Historically this has not been the case.

107 The impacts of the ongoing discharge to the rohi of iwi and hapu submitters is not addressed at all by the proposed review conditions from either HDC or HRC.

108 There is a conscious determination by the applicant and regulatory authority to amend previously agreed approaches to managing this consent. In particular, the conditions amending the ability to undertake mandatory reviews and clear limitations on the operation and membership of the NLG, do not provide for sustainable management outcomes.

109 There has not been sufficient opportunity for caucusing on consent conditions or resolution of outstanding matters raised in the Whakawatea Forum. The potential for beneficial outcomes from that process remains.

110 In my view, the purpose of the Act at s5, is not provided for in the recommended conditions advanced by HRC in its s128 review, or the s127 changes sought by HDC.

111 It is my view that the purpose of the Act to promote sustainable management of natural and physical resources is not provided for in the current proposals. I note there is not an agreed position between HRC and HDC on key conditions at this time.

### **Recommendations to the Hearing Committee**

112 I recommend that the Hearing Panel exercises its discretion to cancel the suite of resource consents held by HDC for the Levin Landfill.

113 Alternatively, I recommend the Hearing Panel hears the evidence and submitters, and thereafter adjourns the hearing for the purposes of commissioning cultural impact monitoring and direction to the parties to undertake further caucusing, in order to produce an agreed suite of conditions (to the extent that can be achieved).

114 That the new conditions and amendments proposed in my evidence, be adopted.

**Greg Carlyon**

9 September 2016

## H Annex 1: Response to Conditions, Proposed Amendments and Additions

- This annex contains responses against the table produced by Mr Edwards, as appended to his evidence. This table is the most complete assessment of all responses to conditions.
- It is not clear that the proposed conditions Mr Edwards is advancing is his response or the position of HDC. Annex 1 reflects my view of the proposed conditions.
- I have a strong preference for any condition advanced as an agreed position by the water quality and air quality specialists who took part in expert conferencing.

Consent	Condition Number	Comments
Discharge Permit 6010	2	No change to current condition
	2(a)	Adopt position of s 42A report of Mr Bashford with advice note as follows:  This permit does not authorise the discharge of leachate to the Hokio Stream in any form
	3(a) and 3(b)	Adopt position of s 42A report of Mr Bashford
	5	Agreed
	9	Agreed
	10	Adopt position of s 42A report of Mr Bashford
	11(a)	Adopt condition as follows:  Should any shallow aquifer groundwater parameters tested for under Condition 3 of this consent exceed the Australian and New Zealand Environment and Conservation Council water quality guidelines (2000) for stock drinking and the exceedance is attributed to the landfill, the permit holder shall report to the Regional Council within one month the methods by which it shall ensure compliance with the guideline. Following approval of the methodology by the Regional Council's Regulatory Manager, the consent holder shall implement the changes as soon as practicable but within a 12-month period in order to ensure compliance.
	11(aa)	Adopt condition as follows:  Should any surface water parameters tested for under Condition 3 of this consent exceed the Australian and New Zealand Environment and Conservation Council water quality guidelines (2000) for stock drinking and the exceedance is attributed to the landfill, the permit holder shall

Consent	Condition Number	Comments
		report to the Regional Council within one month the methods by which it shall ensure compliance with the guideline. Following approval of the methodology by the Regional Council's Regulatory Manager, the consent holder shall implement the changes as soon as practicable but within a 12-month period in order to ensure compliance.
	15(f)	Agreed
	18	Agree. I note that the discharge consents for the Levin Wastewater Treatment Plant are due for review. This is the site to which leachate is being discharged in place of irrigation at the landfill.
	19-27	Agreed
	30	Maintain existing consent condition as per 2010 Review Decision. The rationale for amending this condition has been extensively canvassed in evidence. This condition was offered up on a voluntary basis by the Applicant. There is a wealth of evidence supporting a requirement for consent review in 2015-2016, as was the case in 2008-2010. The Act provides for volunteered conditions. In my view, the removal of the trigger and removal of public notification severely erodes the rights and interests of affected parties. In return for the offered conditions, it is clear that submitters to the 2008 review process waved other outcomes sought. The period proposed for regional council initiated reviews is somewhat academic in the context of HRC's programme of consent review.
	New condition	The consent holder shall commission a Cultural Impact Assessment in respect of the operation of this consent and its conditions. It shall engage with iwi, hapu and marae in proximity to the landfill, for the purposes of establishing a methodology that follows national best practice and determining the appropriate party or parties to undertake that review. The draft review shall be subject to assessment by iwi, hapu and marae prior to lodging with HRC Regulatory Manager. The process shall be concluded within six months of a decision being released following the 2016 consent review.
	New condition	In the event the Cultural Impact Assessment highlights matters with the potential to produce a significant adverse effect on the rights and interests of iwi, HRC shall initiate a review of consent conditions for the purposes of ensuring those effects are avoided, remedied or mitigated. The review must be initiated within three months of the Cultural Impact Assessment being completed and will be notified to iwi, hapu and marae in proximity to the landfill.

Consent	Condition Number	Comments
Discharge Permit 6009	8	Agreed
	14-29	Agreed
	31	See commentary for Condition 30, Consent 6010
	32	<p>Maintain original condition with additional element, that is the appointment of an independent chair to be determined by participants at the first meeting of the NLG following consent review. This condition is fundamental to the successful operation of the NLG and any ability to generate a collaborative approach between the parties. The exercise undertaken by HRC and HDC to limit parties to the NLG (including iwi) and associated removal of the ability to trigger a review, substantially undermines the rights and interests of affected parties. The Whakawatea forum under the guidance of Ms Christine Foster, was on the cusp of addressing this issue. The Community Neighbourhood Liaison Group has also undertaken significant work in this regard.</p> <p>In my view, the submitters to this process will not engage in the advisory forum promulgated by HRC and HDC, on the basis that conditions developed over 18 years have been undermined by these proposals.</p>
	33	Adopt position of s 42A report of Mr Bashford
	34	See previous commentary. These earlier matters require resolution, expert caucusing and stakeholder engagement prior to determining administrative approaches.
	Discharge Permit 6011	3(c)(d)(e)(f) (g)(h)(i)(j)(k) (l)(m)(n)(o) (p)
6(a)		Agreed
6(b)		Agreed. I note HRC's view that a qualified independent officer must make the determination of offensive or objectionable odour, without relying on a complainant. As per my evidence, this is problematic, impractical and may miss odour events of concern.
6(c)		Agree with HDC position
6(d)		Adopt position of s 42A report of Mr Bashford
6(e)(f)		Agreed

<b>Consent</b>	<b>Condition Number</b>	<b>Comments</b>
	7	See commentary for Condition 30, Consent 6010
Discharge Permit 7289	5	Adopt position of s 42A report of Mr Bashford
	19	See commentary for Condition 30, Consent 6010
Discharge Permit 102259	5,7,9,18	Adopt position of s 42A report of Mr Bashford
	19	See commentary for Condition 30, Consent 6010