

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER OF a review of resource consent
conditions under 128 of the
Resource Management Act 1991

BY **MANAWATU-WANGANUI
REGIONAL COUNCIL**

AND an application for change of consent
conditions under section 127 of the
Resource Management Act 1991

BY **HOROWHENUA DISTRICT
COUNCIL**

**OPENING SUBMISSIONS ON BEHALF OF THE
HOROWHENUA DISTRICT COUNCIL**

19 SEPTEMBER 2016

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1. INTRODUCTION

Summary

- 1.1 On 30 October 2015 the Manawatu-Wanganui Regional Council ("**Horizons**") issued a Notice of Review ("**Review**") of the Levin Landfill's ("**Landfill**") discharge permits 6009, 6010, 6011, 7289 and 102259 pursuant to section 128 of the Resource Management Act 1991 ("**RMA**"). In November 2015 the Horowhenua District Council ("**HDC**") responded to the Notice of Review under section 129, along with an application pursuant to section 127 of the RMA ("**Application**") to change the conditions of the existing Landfill consents.

2. KEY POINTS

- 2.1 There is a large amount of agreement between HDC and Horizons as to the proposed conditions. The only significant disagreement remains in respect of conditions 2, 2A, 11(a), 11(a) of Discharge Permit 6010 (relating to leachate and Tatana Drain), the review conditions of all discharge permits regarding the frequency of review, conditions 32, 33 and 34 of Discharge Permit 6009 relating to the NLG, conditions 3(d) 3(f) and 3(o) and 6A of Discharge Permit 6011 and Condition 5 of Discharge Permit 102259 relating to refuse in stormwater.
- 2.2 This review / application is limited in scope to the matters and conditions specified in the Notice of Review, HDC's response and HDC's application for a change of conditions. This is not a review of the ongoing operation of the Landfill.
- 2.3 The two key issues of this review / application are the effects of leachate from the old landfill on the environment and noxious, dangerous, offensive and objectionable odour. These issues were important aspects of the 1995 consent application, 1998 decision and the 2010 review decision.
- 2.4 This is not an application for a new resource consent through which all the effects of the Landfill are to be considered. It is only more than minor unanticipated adverse effects of this lawfully established activity that are to be considered along with the positive effects of the Landfill.
- 2.5 Any conditions imposed cannot invalidated the operation of the Landfill and a section 128(1)(a)(iii) review cannot cancel the consents.

- 2.6 The section 104 and Part 2 assessment, including having regard to the NPSFM and One Plan, must be undertaken in light of the legal framework for this review / application.
- 2.7 In the 1995 application evidence made clear that leachate was reaching the Hokio Stream and that Hokio Stream was of "*great significance to the tangata whenua*".
- 2.8 The 1998 decision having recognised the "*actual and potential contamination of ground/surface water from landfill leachate*" and giving cultural issues "*serious consideration*" concluded that consent should be granted.
- 2.9 The 2010 review decision considered effects of leachate on surface and groundwater quality and on cultural values and concluded that the review had "*resulted in more stringent mitigation measures (including compliance) to ensure the Landfill operates in a manner that avoids adverse environmental effects.*" The 2010 review decision, approved by Mr Greg Carlyon, concluded "*The outcome of the review is consistent with the purpose and principles of the Resource Management Act 1991.*"
- 2.10 Horizons and other parties have failed to establish an evidential basis to justify the imposition of the conditions beyond those accepted by HDC:
- (a) monitoring shows no measurable differences on the concentrations of key contaminants between the upstream and downstream monitoring sites on the Hokio Stream;
 - (b) there are no adverse effects on cultural values over and above those anticipated in, and approved by, the 1998 decision;
 - (c) the Tatana Drain is an artificial watercourse and not the receiving environment under the One Plan; and
 - (d) there has always been leachate beyond the boundary of the site due to the old landfill and there is no method capable of ceasing all discharges of leachate.
- 2.11 However, HDC proposes conditions that require significant additional monitoring of Landfill leachate effects groundwater on the Hokio Stream, and should issues be identified an appropriate response programme.

- 2.12 While there is evidence of a potential for odour nuisance effects to occur beyond the boundary of the Landfill, HDC's accepted odour control measure conditions will make it unlikely that there will be any further odour nuisance effects in the community (which is below the scope for the review).
- 2.13 HDC proposes a number of other changes, in particular to the NLG so it has a clear purpose and operates effectively and efficiently.
- 2.14 The conditions accepted and proposed by HDC are consistent with the relevant provisions of the NPSFM and the One Plan.
- 2.15 The benefits of the Landfill are significant and, as existing regionally infrastructure, its ongoing operation is to be recognised and provided for under Policy 3-3 of the One Plan. The Landfill enables a vital community service to be delivered by HDC at a cost that the community can afford. The viability and costs of all the consent conditions proposed and accepted by HDC are significant, especially for a small Council. Imposing extra costs would significantly affect the viability of the Landfill, and some of the conditions sought by other parties would force the closure of the landfill (not that the Hearings Panel may impose such conditions).
- 2.16 It has always been recognised and known that the Landfill produces adverse effects. However, especially with the conditions proposed and accepted by HDC, none of these effects are at a level that exceeds those anticipated at the time of the consents being granted. The effects on water quality in the Hokio Stream cannot be measured (but significant additional monitoring is accepted) and with the odour conditions in place odour nuisance effects are unlikely (which is a higher standard than the purpose of the review).
- 2.17 Taking an overall judgment the conditions proposed and accepted by HDC appropriately balance the regionally significant benefits of the Landfill with managing the potential adverse effects of the Landfill subject to the review / application into the future. On this basis they promote the sustainable management purpose of the RMA.

3. PRELIMINARY ISSUE - THE SCOPE OF THIS PROCESS

3.1 This process relates to both:

- (a) a review by Horizons under section 128(1)(a)(iii) of the RMA of conditions of consent associated with the Landfill, and associated proposed conditions by HDC under section 129(1)(d) in response; and
- (b) an application by HDC under section 127(1) of the RMA to change or cancel conditions of consent associated with the Landfill.

3.2 The scope of the review is further limited by the letter from Horizons to HDC dated 30 October 2015, and in turn the response from HDC to Horizons dated November 2015. The initial letter sets out reasons for undertaking the review, and with the response together identify the conditions that are subject to the review (as detailed in **Appendix 1**). Only the conditions stipulated in these documents may be reviewed.¹

3.3 In addition, the conditions subject to HDC's application under s127 were stipulated in application dated 25 November 2015. Again, unless agreed otherwise by HDC, only the conditions stipulated in that application may be considered by the Panel.

3.4 In essence, and as agreed by the parties that participated in the Whakawatea Forum,² the two key matters at issue within the scope of this process are:

- (a) the effects of leachate (from the old closed landfill) on the environment, especially on the Tatana Drain and the Hokio Stream; and
- (b) the current best practice to avoid noxious, dangerous, offensive and objectionable odours beyond the boundary of the Landfill.

3.5 Key to the scope of this review are:

- (a) only the stipulated conditions may be reviewed (or new conditions added within scope);
- (b) the review solely focuses on the adequacy of monitoring conditions, the effectiveness of the other stipulated conditions, and for new

¹ Unless new conditions are found to be "necessary", or conditions are accepted by HDC.

² Whakawatea meeting minutes dated 11 August 2016, section 4.

conditions the necessity, to avoid, remedy or mitigate adverse effects on the environment surrounding the Landfill; and

- (c) the scope of the review is limited to the effects set out in paragraph 3.4 above.

3.6 Submitters have raised a number of other matters relating to the Landfill that are not within scope of this process. As noted by Andrew Bashford in his section 42A report³ such matters outside the scope of this process include the:

- (a) closure/decommissioning of the Landfill;
- (b) the Landfill location
- (c) the importation of waste from outside the Horowhenua District;
- (d) the disposal of leachate to the Levin WWTP and the 'Pot'; and
- (e) the remediation of the closed Landfill.

3.7 To this list can be added broader cultural issues associated with the ongoing management and governance of the Hokio Stream and the surrounding Hokio area and Lake Horowhenua.

3.8 While these are matters that a number of submitters feel passionately about, HDC requests, in the interests of the time and resources of all involved in this process, that the Hearing Panel directs parties not to address irrelevant issues during this process.

4. BACKGROUND

Pre-1995

4.1 The Landfill is located on Hokio Beach Road, on undulating, sandy land surrounded by pastoral farmland 4 kilometres west of Levin and 3 kilometres east of the coast.

4.2 As detailed in evidence of **Mr Gallo Saidy** and **Mr Phillip Landmark**, the site of the current landfill has been used as a rubbish dump since the 1950s. A second rubbish dump was opened in the 1970s.

³ At paragraph 27. In his evidence Mr Carlyon agrees with points (a), (c) and (d) above.

4.3 The 1950 and 1970 landfills pre-dated the introduction of the RMA so were not subjected to the environmental controls that are now commonly imposed through resource consents. In 2008, Tonkin and Taylor prepared a report⁴ ("**T&T Report 1**") for the Parliamentary Commissioner for the Environment ("**PCE**") which commented:⁵

"The old site appears to have been developed and operated to what were, by and large, the standards of the day - standards prevalent around the country at the time...."

and:⁶

...while operations may have been of a low standard that would not have been atypical for a New Zealand landfill (tip) at the time. Historically, the standard of construction and operation of many of the smaller un-lined, uncontrolled tip sites around New Zealand was low, with this situation persisting well into the 1990s."

1995 resource consent application

4.4 Following the introduction of the RMA, in 1994, HDC lodged resource consent applications to:

- (a) enable the closure and ongoing discharges from the old landfill; and
- (b) replace the old landfill with a new landfill (ie the operative Landfill) on an adjacent site.

4.5 The applications were controversial. Following consultation with members of the public, including tangata whenua, several significant changes were made to the consent application including the addition of a synthetic liner (for the new, current, Landfill). The revised application was lodged with Horizons in October 1995 ("**1995 application**").

4.6 Relevantly for the purposes of this review / application two of the key issues identified in the 1995 application were:⁷

- (a) possible contamination by leachate of groundwater and the nearby Hokio Stream; and
- (b) social and cultural concerns.⁸

⁴ Levin Landfill - Operation and Environmental review, 25 March 2008.

⁵ At page 2.

⁶ At page 3.

⁷ These issues remain the same in 2016 over 20 years later.

- 4.7 Odour was identified as a potential effect beyond the boundary of the Landfill site that required resource consent but had been adequately avoided or mitigated.⁹
- 4.8 HDC commissioned Royds Consulting Ltd to undertake a study¹⁰ of the impact of leachate from the Landfill on surface water and groundwater. The study found the shallow groundwater to be of naturally poor quality and some minor contamination of the shallow groundwater in the immediate vicinity of the Landfill, but still meeting the stock watering standards. The study concluded that the Landfill was not having any significant effect on groundwater affecting the continued or potential use of the groundwater for stockwater.
- 4.9 The study also found that there was some upflow of groundwater towards the Hokio Stream but that the Landfill was not having an adverse impact on Hokio Stream. The 1995 application stated that :

"There is no direct discharge of leachate to the Hokio Stream and it can reach the Stream only via the groundwater. Leachate is predicted to be dilute when it reaches the Hokio Stream (less than 0.1% of the stream flow). Flow gauging of the Stream supports the concept of groundwater flow into the Stream. Risk assessment calculations show that water quality in Hokio Stream will not be adversely affected by addition of a small volume of groundwater with contaminants at the concentrations measured in the monitoring bores."¹¹ (our emphasis)

- 4.10 With respect to cultural concerns, the 1995 application recognised that Hokio Stream is "*of great significance to the tangata whenua.*"¹²

1998 decision

- 4.11 Horizons granted all but one of the resource consents applications in 1998 ("**1998 decision**").¹³

⁸ 1995 Application section 4.1 page 12.

⁹ Application for Resource Consents section 4.2 page 12.

¹⁰ Royds Consulting Ltd report entitled 'Assessment of Hydrogeology and Impact of Leachate at Levin Landfill', dated June 1994.

¹¹ Application for Resource Consents section 5.5 page 21.

¹² Application for Resource Consents section 7.2 page 33.

¹³ An additional application for the discharge of stormwater runoff from the landfill site to land was granted in May 2002.

- 4.12 In the 1998 decision the Committee considered that the most significant adverse effects of the Landfill related to:¹⁴
- (a) potential groundwater/surface water contamination from the old unlined landfill; and
 - (b) the impact on Māori cultural values.
- 4.13 Relevantly for the purposes of this hearing the Committee not only had the 1995 application (discussed above) before it but also the following evidence and submissions:
- (a) **Water Quality:**
 - (i) The Environmental Scientist for HDC provided evidence that the old landfill impacted on shallow groundwater in close proximity to the landfill. This was considered insignificant in the context of the poor natural water quality and limited potential for use of the groundwater. Leachate indicators were not detected in the Hokio Stream. The witness considered that the original assessment of water quality in the Hokio Stream was conservative and concluded that the effects of the new landfill on groundwater would be no more significant than the old landfill and that the ANZECC stock watering standards were appropriate.¹⁵
 - (ii) The water quality expert for Horizons provided evidence that shallow groundwater was contaminated by the old landfill and was satisfied the monitoring plan proposed by HDC was adequate.¹⁶
 - (iii) Mr Ivan Jones (adjacent landowner) was concerned about water ponding on his property which he considered was due to the discharge of leachate from the landfill. To address part of this concern the HDC indicated a willingness to install a drain on the landfill site adjacent to the boundary with Mr Jones' property (issues regarding the Tatana Drain are discussed below).¹⁷

¹⁴ Original decision paragraph 106.

¹⁵ 1998 decision paragraphs 57, 58 and 59.

¹⁶ 1998 decision paragraph 94.

¹⁷ 1998 decision paragraph 76.

- (b) **Cultural:** A number of submitters stated they were concerned about the potential impact of contamination from the new landfill on Lake Horowhenua, Hokio Stream and Hokio Beach having significant cultural effects.¹⁸
- (c) **Air quality/odour:** The expert for Horizons addressing air discharge issues provided evidence that any odours generated from the site would be minimal providing the procedures outlined in the management plan were followed.¹⁹

4.14 The 1998 decision recognised the potential for the above adverse effects and in granting consent reached the following conclusions:

- (a) **Water Quality:**
 - (i) *"The Committee heard expert evidence from the Applicant regarding actual and potential contamination of ground/surface water from landfill leachate."*²⁰
 - (ii) The groundwater contaminated by the existing landfill was naturally low in quality and had limited potential use and the monitoring results indicated that although leachate was predicted to be entering the Hokio Stream via groundwater it was not detectable.²¹
- (b) **Cultural:**
 - (i) *"The Committee were particular [sic] concerned with the cultural issues raised by submitters. The committee heard much evidence on iwi consultation from applicant, submitters and Council staff."*²²
 - (ii) *"The Committee acknowledges that the degraded water quality of Hokio Stream and Lake Horowhenua is of serious concern however the technical evidence confirms that the landfill is not adding to the reduction of water quality."*²³
 - (iii) *"the concern relating to leachate contamination is largely covered in the assessment of groundwater effects. The*

¹⁸ 1998 decision for example paragraphs 68-70 and 80-83.

¹⁹ 1998 decision paragraph 120.

²⁰ 1998 decision paragraph 107.

²¹ 1998 decision paragraphs 107, 108.

²² Original decision paragraph 109.

²³ Original Decision paragraph 110.

technical evidence provided by the Applicant has concluded that the landfill leachate is having little or no adverse effects on Hokio Stream."²⁴

- (c) **Odour:** with respect to odour emissions the Committee concluded that the potential effects of air discharges could be avoided, remedied or mitigated with appropriate design, operation and management.²⁵

- 4.15 Having considered the relevant planning documents and Part 2 of the RMA, including specifically section 5 sections 6(a), 6(e), sections 7(a), 7(b), 7(c), 7(f) and section 8, the Committee concluded as follows:

"the technical design and management together with appropriate monitoring can adequately safeguard the life supporting capacity of air, water, soil and ecosystems and also ensure appropriate avoidance remedy and mitigation of adverse effects.

The cultural issues intertwined in section 5, 6, 7 and 8 of the Act were given serious consideration by the Committee."²⁶

2002 Consent Order

- 4.16 The appeals against the 1998 decision were resolved by way of an Environment Court consent order in 2002 ("**2002 consent order**"). The two key changes to the conditions for this hearing were:

- (a) the removal of condition 3 of Discharge Permit 6010 (discussed below in relation to Tatana Drain); and
- (b) requiring the formation of the Neighbourhood Liaison Group (Discharge Permit 6009, conditions 32,33 and 34). The NLG was to include representatives of the Lake Horowhenua Trustees, the owners and occupiers of specified properties adjoining the Landfill, a representative from each of the HDC and Horizons and other parties invited by the HDC (NLG could provide potential names).

- 4.17 The conditions provided among other things that the NLG:

- (a) meet at least once a year;

²⁴ Original Decision paragraph 111.

²⁵ Original Decision paragraph 106.

²⁶ Original Decision paragraph 151 and 152.

- (b) receive a copy of the annual report;
- (c) be allowed to inspect operations on the site;
- (d) be consulted as a group prior to any review of the consent conditions;
- (e) be provided with a copy of all monitoring reports and non-commercially sensitive documentation pertaining to the operation of the landfill;
- (f) be kept informed about whether progress is being made towards a regional landfill; and
- (g) receive formal acknowledgement and consideration of members' written suggestions.

PCE Report and T&T Report 1

4.18 In 2004 the PCE initiated an investigation into the Landfill in response to complaints about the operation and effects of the Landfill.²⁷ The PCE commissioned Tonkin and Taylor to conduct a technical and environmental impact review of the old and new Levin Landfills.

4.19 In summary, T&T Report 1 found in relation to groundwater:

*"Effects on surface water have not been recorded to date at the surface water monitoring sites. However, monitoring results show clear evidence of increasing impacts on groundwater quality at down gradient wells..."*²⁸

*Overall we conclude that a thorough review of the significance of these monitoring results, and of the adequacy of the monitoring programme, would be appropriate.*²⁹

*In this particular case there is no current evidence that direct intervention or mitigation is necessary in relation to Area A, or the local shallow groundwater system...*³⁰

²⁷ This culminated in the PCE report "Levin Landfill – Environmental management review", August 2008.

²⁸ Tonkin and Taylor Report 22 January 2008 section 5.

²⁹ Tonkin and Taylor Report 22 January 2008 section 5.

³⁰ Tonkin and Taylor Report 22 January 2008 section 5.

At this stage remedial action is not warranted in terms of the consent conditions. While impacts on local groundwater are very much evident, the resource is not utilised and is of poor quality.³¹ (our emphasis)

- 4.20 The PCE also considered the functioning and efficiency of the NLG and noted that the HDC had been in non-compliance with conditions 33-34 of Discharge Permit 6009 having failed to convene an NLG meeting since January 2005, or to provide annual reports.
- 4.21 The PCE Report considered that it was imperative, given the level of public concern (particularly among tangata whenua) regarding the Landfill, that effective neighbourhood liaison was maintained. However, the PCE Report emphasised:

"At the same time, it is important that such a forum is not perceived, by HDC or the NLG, as a means for the community to interfere with site operations undertaken in accordance with the conditions of resource consents, nor as a medium for enforcing consent conditions. Similarly, the NLG cannot require the consent holder to comply with recommendations arising from meetings. Rather, the purpose of such a group is to ensure that the consent holder provides the opportunity for site neighbours and interested groups to meet with them and discuss issues related to the site as they affect the local community. Such liaison is only likely to be effective, however, if supported by the consent holder - in this case HDC."

- 4.22 The PCE report recommended that Horizons undertake a consent review as a matter of priority.

2008 review

Purpose and Scope

- 4.23 Following the PCE Report, in September 2008 Horizons publicly notified a review. The purpose was to assess the effectiveness of several specific conditions of consent in avoiding, remedying or mitigating adverse effects and to assess the adequacy of specific conditions of consent relating to the monitoring of environmental effects.

³¹ Tonkin and Taylor Report 22 January 2008 section 5.

- 4.24 A number of concerns were raised during the pre-hearing meetings, however the key concerns were that:³²
- (a) the NLG was selective in its membership and was not performing in an open, inclusive and transparent manner; and
 - (b) the old unlined landfill was affecting the local environment as it leached through over time. Monitoring results were unclear and it was difficult to understand when the leachate plume would trigger a problem, and what remedial action could occur.
- 4.25 The review sought to impose a more robust condition framework to address the effects of the Landfill including the:³³
- (a) *Effects on groundwater quality in both shallow (sand) and deep (gravel) aquifers resulting from the discharge of leachate, liquid waste and solid waste to land;*
 - (b) *Effects on surface water quality, particularly within the Hokio Stream, resulting from the discharge of leachate...;*
 - ...
 - (c) *Effects on the water quality of surrounding drinking and/or stock watering bores resulting from the discharge of leachate...;*
 - (d) *Effects on air quality from the discharge of landfill gas, odour and dust to air;*
 - ...
 - (e) *Effects relating to the cultural values associated with the groundwater and surface water, in particular the Hokio Stream."*
- 4.26 Through a series of pre-hearing meetings all parties agreed on a revised set of conditions, without the need to progress to a hearing.

2010 review decision

- 4.27 The outcome of the review (being the conditions agreed by the parties) was approved by Mr Greg Carlyon (acting as Group Manager Regional Planning and Regulatory) and released in May 2010 ("**2010 review decision**").

³² Review of Resource Consent Decision dated May 2010 – preface paragraph 10.

³³ Review of Resource Consent Decision dated May 2010 – section 2 pages 7-8.

4.28 The 2010 review decision made decisions in respect of the conditions related to the NLG, leachate and Māori culture.

NLG

4.29 The 2010 review decision amended conditions 32-34 so that:

- (a) the original discretion of Horizons to initiate a review of consent conditions was replaced with a review being required unless the NLG agreed that a review was unnecessary;
- (b) other parties could be invited to join the NLG by the NLG itself, rather than HDC; and
- (c) the NLG gained the right to be consulted prior to any request for changes to conditions under section 127 of the RMA.

4.30 The 2010 review decision stated that:

"The Horowhenua District Council have unqualifiedly opened the NLG meetings to anyone in their community who is interested, and will provide all the monitoring data, and any new landfill initiatives to those meetings. Horizons Regional Council will be present to give an overview of compliance. NLG members can also raise matters for discussion."³⁴

Leachate

4.31 The 2010 review decision considered a number of technical reports that had been produced between 2005-2010 in particular the report by Golder Associates dated 5 May 2010 ("**Golder Report**").

4.32 In respect of Discharge Permit 6010 (Discharge of leachate) the Golder Report recognised the potential for leachate contamination in the surrounding environment as follows:

"Without taking into account the available groundwater monitoring data, it would appear that the risk of affecting the receiving environment would be high. Given, however, the available monitoring records that cover a period of at least 8 years, the actual effects from the existing landfill to date appear to be negligible. There is no clear reason to

³⁴ Review of Resource Consent Decision dated May 2010 – Preface paras 19-20.

expect that this situation would deteriorate substantially in the future.³⁵

(our emphasis)

- 4.33 The 2010 review decision did not find any evidence of adverse effects arising from the Landfill operation. The 2010 review decision provided as follows:³⁶

"the review and associated changes to conditions will ensure that the Hokio Stream is managed in a manner which sustains its life-supporting capacity and recognises and provides for the values set out in Schedule D.³⁷

...

The review of conditions has set out to specifically address the potential adverse effects associated with contaminants entering the land, underlying groundwater aquifers, and surface water. To date there is no evidence of adverse effects arising from the landfill operation, and as such the changes to conditions are centred on a monitoring programme with early detection imperatives to ensure that in the event of contamination levels reaching certain thresholds appropriate steps can be taken to prevent significant adverse effects on surface water and groundwater quality.

Overall it is considered that the review of conditions has delivered a more stringent mitigation framework to ensure that the operation of the landfill is consistent with the relevant objectives and policies of the Proposed One Plan on an ongoing basis.³⁸ (our emphasis)

Culture

- 4.34 With respect to cultural effects, the 2010 review decision found that:

"The recommended changes to conditions have taken into consideration the relationship of nga hapu and nga iwi and their culture and traditions with their lands and water, largely through the

³⁵ Golder Associates 'Levin landfill – Review of Resource Consent Conditions' Dated 5 May 2010.

³⁶ Review of Resource Consent Decision dated May 2010 – section 2.2.3 page 16.

³⁷ The values are now listed in Schedule B to the One Plan and contain the values associated with the Hokio Stream. When considering values it is important to refer to Table 5-2 of the One Plan which sets out the management outcomes for each value.

³⁸ Review of Resource Consent Decision dated May 2010 – section 2.2.3

establishment of a more robust monitoring programme with specific testing parameters for groundwater and surface water quality."³⁹

Overall Decision

4.35 The 2010 review decision concluded:

*"Overall the Review has resulted in more stringent mitigation measures (including compliance) to ensure the Landfill operates in a manner that avoids adverse environmental effects."*⁴⁰

4.36 The 2010 review decision stated that recognising and providing for the matters in section 6 including 6(e) was a key consideration during the review process and concluded that these matters had been appropriately recognised in the review.⁴¹

4.37 In having particular regard to section 7 matters and taking into account treaty principles under section 8, the 2010 review decision concluded that the proposal would enhance and maintain the quality and amenity of the existing environment, would be consistent with the principles of the Treaty of Waitangi, and consistent with the relevant planning documents (including the proposed One Plan), concluding overall that:⁴²

*"The outcome of the review is consistent with the purpose and principles of the Resource Management Act 1991."*⁴³

5. STATUTORY FRAMEWORK

Horizons Review

5.1 Pursuant to section 128 of the RMA a consent authority may, in accordance with section 129,⁴⁴ serve notice on a consent holder of its intention to review the conditions of a resource consent.

5.2 The legal steps for the Hearing Panel when deciding whether to change a condition, or add a new condition, (unless agreed by HDC) are:

(a) Is the change within the scope of the review (as set out above)?

³⁹ Review of Resource Consent Decision dated May 2010 – section 2.2.1

⁴⁰ Review of Resource Consent Decision dated May 2010 – Preface para 10

⁴¹ Review of Resource Consent Decision dated May 2010 – section 3 page 18

⁴² Review of Resource Consent Decision dated May 2010 – Section 5 pages 18-19

⁴³ Review of Resource Consent Decision dated May 2010 – section 5 page 19

⁴⁴ To this extent the s128 process applies to HDCs proposed new conditions under section 129(1)(d).

- (b) If yes, do they relate to a more than minor effect unanticipated by the granted consents?
- (c) If yes, then the Hearing Panel must have regard to section 104 which requires:
 - (i) that its consideration of the existing environment,⁴⁵ includes, within scope of the assessment, all anticipated effects of the consented activities (it is only effects beyond those anticipated that are assessed under section 104);
 - (ii) that it have regard to the nature and values of the receiving environment;
 - (iii) that, within all the above limitations, it have regard to the relevant provisions of relevant planning documents; and
 - (iv) that it may, within the above limitations, consider any other matter it considers relevant.
- (d) If the Panel is still minded after this process that the change condition is required (or a new condition necessary) then, under section 131, it:
 - (i) must have regard to whether the activity allowed by the consent will continue to be viable after the change;
 - (ii) may have regard to the manner in which the consent has been used; and
 - (iii) if adopting a best practicable option to remove or reduce a more than minor unanticipated adverse effect on the environment, must be satisfied that including the relevant condition is the most efficient and effective means of removing or reducing the adverse effect in question having regard to:
 - (1) the nature of the discharge and the receiving environment;
 - (2) the financial implications for the applicant of including that condition; and

⁴⁵ In accordance with *Queenstown-Lakes District Council v Hawthorn Estates Limited* [2006] NZRMA 424 at [84].

- (3) other alternatives, including a condition requiring the observance of minimum standards of quality of the receiving environment.
- (e) Having applied all the above, if the Hearing Panel is still minded that the changed condition is required (or a new condition necessary) then it must apply an overall broad judgement Part 2 assessment (although this step is required by section 104 (and could occur above) it more practically occurs after the section 131 assessment).
- (f) If, and only if, having completed this process (and subject to the limitations set out below) the Hearings Panel considers that the changes to the conditions are required to achieve the adequacy or effectiveness of conditions, or new conditions are necessary, to avoid, remedy or mitigate adverse effects on the environment then it can impose those changes.

5.3 When applying the steps above in relation to a section 128(1)(a)(iii) review the Hearings Panel:

- (a) cannot impose a condition that would invalidate or frustrate the exercise of the consents;⁴⁶
- (b) cannot impose a condition solely to achieve consistency with future standards;⁴⁷
- (c) as the consents are lawfully granted, should not (beyond the steps above) change consent conditions (or impose new conditions) solely:
 - (i) to reflect modern day aspirations of the community reflected through aspirational objectives and policies;
 - (ii) to achieve environmental enhancement or significant improvement; and
- (d) cannot:
 - (i) impose One Plan 'targets' as 'standards' as it is not a review under section 128(1)(b); and

⁴⁶ *Medical Officer of Health v Canterbury Regional Council* [1995] NZRMA 49 (PT), *Barrett v Wellington City Council* [2000] NZRMA 481 (HC). *Exide Pollution Action Group Incorporated v Wellington Regional Council* [2006] NZRMA 293 (EnvC).

⁴⁷ *Wymondley Against the Motorway Action Group Inc v Auckland Regional Council* A022/03 (EnvC).

- (ii) cancel the consent under section 132(3) or (4) as it is not a review under sections 128(1)(c) or 128(2).⁴⁸

5.4 The onus is on Horizons (and any other party) to establish the evidential basis, within the statutory framework above, to justify the changes (or new conditions) sought from the review.

HDC's application to change conditions

5.5 Section 127 of the RMA allows a consent holder to apply to change the conditions of that consent.

5.6 Key features of section 127 are:

- (a) an application under section 127 is not to be treated as a new application - not all the effects of the Landfill activities are open for debate;
- (b) when assessing the environmental effects (both beneficial and adverse) of a proposal to vary an existing consent, it is only the effects of the changes sought that are relevant⁴⁹ and the effects of any activities already authorised by the consent are disregarded, because those effects form part of the existing environment;⁵⁰
- (c) the application is to be treated as if it were an application for a resource consent for a discretionary activity;⁵¹
- (d) when assessing the application, regard is to be had to the operative One Plan in accordance with section 104, however, as for section 128 reviews, future standards cannot be imposed simply to establish consistency, nor can the consent as granted be invalidated by a change in planning context; and
- (e) the application cannot fundamentally alter the activity originally applied for and consented (if that is the case a new resource consent for the proposed activity is required).⁵²

5.7 The changes HDC is seeking through its application are highly constrained and do not result in a fundamentally different activity or one having materially different adverse effects. The application is appropriately

⁴⁸ On this point the evidence of Mr Carloyn that seeks this outcome cannot be granted.

⁴⁹ Sections 127(3)(b) and 104(1)(a).

⁵⁰ *Body Corporate 970101 v Auckland City Council* [2000] 3 NZLR 513 (CoA).

⁵¹ Section 127(3)(a).

⁵² *Body Corporate 970101 v Auckland City Council* [2000] NZRMA 202 (HC).

considered under section 127 as opposed to a new Landfill activity. Only the effects of the proposed changes of conditions can be taken into account by the Hearings Panel in determining the application.

6. COMMENTS ON SECTION 42A REPORTS AND EVIDENCE

Mr Bashford's Section 42A report

6.1 In August 2014 Mr Bashford provided evidence relating to Horizon's review of consent conditions for Palmerston North City Council's wastewater discharges (PNCC evidence), which also related to section 128(1)(a)(iii). In that evidence Mr Bashford provided a fulsome account of the relevant statutory processes, in particular, he stated:

- (a) in relation to the existing environment:
 - (i) *"The discharge and its effects form part of the existing lawful environment until consent expires",⁵³*
 - (ii) *"for section 128(1)(a) to have any utility it must be able to deal with effects from consented activities which were not anticipated by the consent, including effects of a greater magnitude than anticipated...",⁵⁴*
 - (iii) *"While the review may address unanticipated effects on life supporting capacity, Horizons also seems to suggest that it should address the anticipated effects of the discharge. While this is largely a legal issue, I do not agree with this approach,"⁵⁵ and*
 - (iv) *"It is only those effects that are additional to the effects forming the existing environment that should be subject to assessment under Section 104(1)(a)."⁵⁶*
- (b) In relation to the NPSFM Mr Bashford stated in his PNCC rebuttal evidence:⁵⁷

"Importantly, there is no requirement within the RMA, or the NPSFM itself, that bottom lines or other such provisions

⁵³ At paragraph 73 of his EIC.

⁵⁴ At paragraph 74 of his EIC.

⁵⁵ At paragraph 75 of his EIC.

⁵⁶ At paragraph 76 of his EIC.

⁵⁷ At paragraph 43.

within a National Policy Statement be imposed on existing resource consents."

- (c) In determining what were the anticipated effects for his PNCC evidence Mr Bashford considered the original evidence and hearing decision. Mr Bashford's section 42A report contains no such consideration.
- (d) In relation to viability, which is not addressed in his section 42A report, Mr Bashford includes a section on upgrade options and costs and in his conclusion states: "*in my opinion this level of expenditure to mitigate effects that are not significant, and for an outcome that is unlikely to see any tangible benefit, is neither necessary nor sustainable way to management of public funds.*"⁵⁸
- (e) In relation to positive effects, which beyond Policy 3-3 of the One Plan are not referred to in Mr Bashford's section 42A report, Mr Bashford considered as being relevant to the PNCC review, and applied it in his Part 2 assessment, section 7(b) of the RMA.⁵⁹
- (f) In his section 5 considerations, which in his section 42A report includes no consideration of either viability or positive effects, for PNCC review Mr Bashford included positive effects, including the important physical resource of the treatment plant as well as the investment PNCC had made.⁶⁰

6.2 These approaches by Mr Bashford in his PNCC evidence are supported by HDC.

6.3 While it is recognised that the PNCC review process related to different circumstances, it applied the same statutory framework as the current review. Unfortunately, Mr Bashford has not applied the same approaches in his section 42A report. This has resulted in Mr Bashford applying a flawed legal framework and the value of his conclusions are accordingly diminished.

⁵⁸ At paragraph 285 of his EIC.

⁵⁹ At paragraph 270 of his EIC and paragraph 66 of his rebuttal evidence.

⁶⁰ At paragraph 280 of his EIC and paragraph 71 of his rebuttal evidence.

Mr Carlyon's evidence

- 6.4 In the recent *Tram Lease Limited* decisions⁶¹ the Environment Court has emphasised the importance of the independence of expert witnesses and that they do not move into advocacy.
- 6.5 Mr Carlyon's evidence strongly concludes that the Landfill does not meet the purpose of the RMA. This is in direct contrast to his approval (in his role as Group Manager Regional Planning and Regulatory) of the recommendation completing the 2010 review process which concluded:
- (a) that the proposed conditions (those that are now under review) were "*stringent*";⁶²
 - (b) that "*the review and associated changes to conditions will ensure that the Hokio Stream is managed in a manner which sustains its life-supporting capacity and recognises and provides for the values set out in Schedule D*";
 - (c) that "*the recommended changes to conditions have taken into consideration the relationship of nga hapu and nga iwi and their culture and traditions with their lands and water, largely through the establishment of a more robust monitoring programme with specific testing parameters for groundwater and surface water quality*";⁶³ and
 - (d) that "*the revised conditions are more consistent with the relevant objectives and policies of the Operative Regional Policy Statement, Operative Land and Water Regional Plan, and Proposed One Plan; and the outcome of the review is consistent with the purpose and principles of the Resource Managements Act 1991*".⁶⁴
- 6.6 In addition Mr Carlyon's evidence regularly moves into advocacy, including by:
- (a) seeking that the Hearing Panel "*exercises its discretion to cancel the suite of resource consents held by HDC for the Levin Landfill*".⁶⁵
This matter is not only wrong in law (and beyond Mr Carlyon's experience) but is a clear legal advocacy inappropriate for an

⁶¹ *Tramlease Limited and others v Auckland Council* [2015] NZEnvC 133 and *Tramlease Limited v Auckland Council* [2015] NZEnvC 137.

⁶² 2010 review decision, page 17.

⁶³ Review of Resource Consent Decision dated May 2010 – section 2.2.1

⁶⁴ Page 19.

⁶⁵ Paragraph 121.

independent expert witness to make (the same relates to his request for an adjournment);

- (b) referencing at length what he claims to be "*pejorative commentary from senior executives at HDC*"⁶⁶ in relation to the NLG process undertaken before and during this review⁶⁷ indicating that he finds the approach of Mr Saidy to the NLG to be "*disconcerting*";⁶⁸ and
- (c) by claiming throughout that there has been "*a strong record of non-compliance*"⁶⁹ when the evidence is clear that the Landfill has been operating in accordance with its consent conditions (acknowledging that recently a breach of condition 5 has been claimed by the experts though Mr Saidy's evidence sets out a robust response that this is not the case) and no enforcement action has ever been taken by Horizons in relation to the exercise of the Landfill consents.

6.7 Ms McArthur's expertise are in water quality science but while she does not raise any issues differing with the other experts that there are no measurable water quality effects of leachate on Hokio Stream, and defers to others regarding the status of Tatana Drain, her evidence heavily focuses on cultural effects and provides her conclusion "*that effects on mauri are likely as a result of the discharge*".⁷⁰ With respect this statement, and cultural matters, is beyond her expertise.

7. WATER QUALITY

Scope

- 7.1 As discussed above, Horizons' Notice of Review provides that one of the reasons for initiating the review is to respond to observed landfill leachate 'daylighting' into the Tatana Drain. The review solely focuses on the effects of Landfill leachate on the environment, particularly on Tatana Drain and the Hokio Stream and any best practice responses to avoid contamination of land and groundwater.
- 7.2 The conditions relevant to water quality issues that are proposed by Horizons as part of the Notice of Review pursuant to section 128, HDC's response and HDC's application in **Appendix 1**.

⁶⁶ Paragraph 12.

⁶⁷ Paragraphs 40-44.

⁶⁸ Paragraph 44.

⁶⁹ Paragraph 46.

⁷⁰ At paragraph 37.

Anticipated effects

7.3 As discussed above, the potential for contamination of groundwater and the nearby Hokio Stream by leachate from the Landfill and the impact of this contamination on the relationship of Māori and their culture and traditions was the focus of the 1995 consent application, 1998 decision and the 2010 review decision as follows:

- (a) the 1995 application provided evidence of minor contamination of the shallow groundwater in the immediate vicinity of the Landfill and of some upflow of this groundwater towards (and into) the Hokio Stream. The evidence however concluded the Landfill was not having an adverse impact on Hokio Stream;
- (b) evidence provided during the 2010 review again demonstrated that although there was a high risk of leachate affecting the receiving environment, the actual effects were negligible; and
- (c) both decisions recognised that the old landfill was affecting groundwater. Irrespective of this, both decisions were satisfied that with the imposition of conditions requiring monitoring, the life supporting capacity of the Hokio Stream and groundwater would be protected.

Evidence of effects on water quality

Groundwater

7.4 The evidence of **Mr Stephen Douglass** provides the following key points:

- (a) the monitoring data does not show any impact of leachate on the deep groundwater system;
- (b) the monitoring data confirms that the shallow groundwater system down gradient to the old landfill is affected by leachate and this is discharging to Tatana Drain and Hokio Stream;
- (c) the flux of the contaminated groundwater entering Hokio Stream is likely to be very small relative to the stream's flow and monitoring data indicates that adverse effects are unlikely;
- (d) discharge of groundwater to the Tatana Drain would be expected because the shallow groundwater is found near the ground surface;

- (e) methods to cease the discharge of leachate to the Tatana Drain are questionable as to their likely success without further investigation. If condition 2A is included HDC must be provided with adequate opportunity for the HDC to undertake further investigations to determine the likely effects of the various intervention options;
- (f) there is no need to increase the frequency of surface water monitoring to monthly between November and April (proposed conditions 3H and 3P); and
- (g) the ANZECC ecosystem health trigger values will not be met in the Tatana Drain without direct intervention to prevent groundwater discharging to the drain (the effectiveness of which is questioned as above) (proposed conditions 11(a) and 11(aa)).

7.5 **Mr Douglass** recommends (and HDC accepts):

- (a) a new upstream monitoring site on Hokio Stream;
- (b) additional monitoring sites for shallow groundwater adjacent to Hokio Stream; and
- (c) A new deep groundwater monitoring well to the west of the unlined landfill.

Tatana Drain

7.6 As is discussed in the evidence of **Mr Landmark**:

- (a) during the original consent application process Mr Ivan Jones (adjacent landowner) raised concerns about water ponding on his property that he considered was caused by the discharge of leachate from the Landfill (this was before the old Landfill was re-engineered to ensure overland runoff was directed into the site and it was capped and re-vegetated);
- (b) the 1998 decision records that to address part of this concern the HDC indicated a willingness to install a drain on the Landfill site adjacent to the boundary with Mr Jones' property;
- (c) Condition 3 of the 1998 decision was imposed to require the HDC to install a drain to address Mr Jones' concerns by intercepting the leachate to avoid ponding;

- (d) Condition 3 was not included in the 2002 consent order decision, presumably because a drain had already been installed by this time, or it had been agreed among the parties that the existing Tatana Drain be used for this purpose or deepened to serve that purpose; and
- (e) Condition 2 was not consequently removed or amended to acknowledge that at that time the leachate may flow over a small part of the adjoining land.

7.7 As is discussed in the evidence of **Dr Olivier Ausseil**:

- (a) Tatana Drain is an artificial watercourse and is akin to a "farm drainage canal" which is specifically excluded from the RMA definition of a 'river';
- (b) there is leachate contamination of Tatana Drain (especially at the top end) via shallow groundwater from the Landfill;
- (c) Tatana Drain is also influenced by contamination from other upstream sources;
- (d) the upper reach of the Tatana Drain has extremely limited aquatic life and the lower has limited actual and potential aquatic habitat; and
- (e) the application of the ANZECC ecosystem health trigger values to the drain is questionable and is likely to impose frequently reporting requirements (conditions 11(a) and 11(aa) proposed by Horizons).

Surface Water - Hokio Stream

7.8 As discussed in the evidence of **Dr Ausseil**:

- (a) the Hokio Stream is a natural waterway;
- (b) leachate enters the Hokio Stream via the Tatana Drain and also via shallow groundwater from the Landfill;
- (c) the monitoring data does not indicate any measurable leachate effects on the concentrations of key contaminants between the upstream and downstream monitoring sites;

- (d) the Hokio Stream is influenced by contamination from upstream sources;
- (e) the concentrations of key contaminants in the Hokio Stream meet the relevant One Plan and ANZECC aquatic ecosystem trigger values, indicating a low risk of toxic effects on aquatic life;
- (f) there is no evidence that more than minor effects are occurring or are at risk of occurring on aquatic life in the Hokio Stream as a result of the discharge of leachate including cumulatively with any other sources of contaminants;
- (g) there is no need to increase the frequency of surface water monitoring to monthly between November and April (conditions 3H and 3P proposed by Horizons); and
- (h) it is appropriate for the ANZECC ecosystem health Trigger Values to apply to the Hokio Stream, however they need to be applied correctly so not to lead to frequent unnecessary reporting requirements (conditions 11(a) and 11(aa) proposed by Horizons).

7.9 Dr Ausseil recommends that a new upstream monitoring site be established on the Hokio Stream along with additional monitoring.

Section 42 A report - Mr Logan Brown

7.10 The evidence of Mr Logan Brown also states that monitoring within the Hokio Stream is showing no measureable difference in the monitoring parameters at the sites that are measured along the Hokio Stream.⁷¹

7.11 In respect of Tatana Drain, Mr Brown's conclusion that this a modified watercourse is reached without the benefit of the additional information provided in **Dr Ausseil's** evidence.⁷² Mr Brown's evidence also states that there is a lack of any riparian vegetation and stock access to the Tatana Drain.⁷³

⁷¹ At paragraph 8.

⁷² At paragraph 17.

⁷³ At paragraph 16.

Options costs and benefits

7.12 As is discussed in the evidence of **Mr Saidy**:

- (a) HDC has been considering various mitigation options for addressing the discharge of leachate from the Landfill which range in capital cost from \$86,000 to \$347,000 and annual maintenance costs from \$19,000 to \$58,000;
- (b) none of these options would completely avoid leachate contamination on neighbouring land/the Tatana Drain (the water quality conferencing statement records agreement that total capture of leachate is not possible);⁷⁴
- (c) some (if not all) of these options may require additional resource consents;
- (d) some of these options would require third party/landowner approval (and therefore cannot be imposed as consent conditions);
- (e) all of these options involve significant cost and as stated in Mr Douglass' evidence there is insufficient information to determine how effective any of them would be; and
- (f) HDC is supportive of the significant additional monitoring proposed by **Dr Ausseil** and **Mr Douglass**.

Submissions

7.13 As Tatana Drain is an artificial watercourse it is not the receiving environment to be considered under the One Plan - that is the Hokio Stream.

7.14 Condition 2 and proposed condition 2A to Discharge Permit 6010 should be deleted because they:

- (a) fail to reflect the history of the consents and the conditions (which were not even considered by Mr Bashford);
- (b) fail to acknowledge that leachate discharge beyond the site was an anticipated effect (and an actual effect) of the 1995 consent and its conditions (and was considered in the 1998 decision and 2010 review decision);

⁷⁴ Question 19 Water Quality Joint Witnessing Statement

- (c) fail to recognise that leachate discharge to groundwater was also anticipated, and given its proximity to the Tatana Drain could have been expected to daylight in the drain (indeed, Mr Standen's section 42A report states that the Tatana Drain was installed to capture leachate⁷⁵); and
- (d) fail to acknowledge that there are no measurable effects of leachate on Hokio Stream (the receiving environment);
- (e) fail to recognise that there is currently no known method to cease all discharges of leachate, as agreed by the water quality experts in their conferencing,⁷⁶ and the condition as interpreted by Horizons illegally invalidates the grant of consent; and
- (f) the potential costs of mitigating such effects is high and not in proportion to the level of effect.

7.15 Condition 2 relates to leachate contamination on adjoining land. It must be interpreted at the time of the 1998 decision. The issue at that time was overland flow causing ponding on the adjoining (now Tatana property). Condition 3 required a cut off drain to be installed to solve this overland flow problem. Condition 3 was removed in the 2002 consent order conditions. The assumption must be that this condition was removed because either it had been complied with to the satisfaction of the parties or the overland flow had ceased due to the re-engineering of the Landfill. Indeed, Mr Standen's section 42A report states that the Tatana Drain was installed to capture leachate.⁷⁷

7.16 Condition 2 should have been deleted at the same time as condition 3 because it was directly linked to the remedy provided for in condition 3.

7.17 Further, given that contamination of groundwater was already occurring beyond the site, condition 2 could never have been intended to require complete avoidance of all contamination beyond the site as argued in the evidence of Mr Standen.

7.18 Finally, the interpretation of condition 2 by Mr Standen would void the exercise of the consent. It is a well recognised principle that a consent condition cannot nullify the exercise of the granted consent.

⁷⁵ At paragraph 29.

⁷⁶ In response to Question 19.

⁷⁷ At paragraph 29.

- 7.19 There is currently no mitigation that HDC could undertake to ensure compliance with condition 2 as interpreted by Horizons and the water quality experts have agreed that total capture of leachate is not possible.⁷⁸
- 7.20 In respect of proposed condition 2A it suffers from the same fundamental defects as condition 2 in that, it was always known that there was groundwater contamination beyond the site and this formed part of the consented activity, as agreed by the water quality experts during conferencing⁷⁹ total capture of leachate is not possible; and it would invalidate the exercise of the Landfill consents. As stated in **Mr Douglass'** evidence the effectiveness of measures to mitigate the leachate discharge to Tatana Drain is unknown.⁸⁰ **Mr Saidy's** evidence reflects on the good intentions in relation to Tatana Drain capturing leachate which are now raising issues.⁸¹
- 7.21 On this basis the Hearing Panel cannot lawfully impose proposed condition 2A.
- 7.22 However, in response to this issue HDC and its experts are developing a proposed condition⁸² that will, generally:
- (a) require additional monitoring data to be gathered (as proposed by **Dr Ausseil** and **Mr Douglass**) to determine the extent of groundwater contamination associated with Landfill leachate and its effects (if any) on surface water;
 - (b) if significant adverse effects associated with Landfill leachate are identified on the Hokio Stream, an independent expert will prepare a report on the various cost effective options to appropriately mitigate those significant effects; and
 - (c) HDC will submit the report to Horizons along with its proposed mitigation option and the reasons for selecting that option and the timeframes for implementing that option.
- 7.23 With respect to conditions 3H and 3P proposed by Horizons, based on the evidence of **Dr Ausseil** and **Mr Douglass** the frequency of surface water monitoring to monthly between November and April is unnecessary. It must

⁷⁸ In response to Question 19.

⁷⁹ In response to Question 19.

⁸⁰ Paragraph 69 and 91

⁸¹ At paragraph 84.

⁸² Counsel understand that this condition, along with the others remaining in dispute, will be discussed with Horizons staff this afternoon while the panel is on its site visit.

be noted that the Hokio Stream's water flow is managed by a weir at the outlet of Lake Horowhenua.

- 7.24 With respect to conditions 11(a) and 11(aa) proposed by Horizons the ANZECC ecosystem health trigger values are not appropriate for the Tatana Drain. This is because the Tatana Drain is an artificial watercourse (a farm drain). Apply these standards to an artificial farm drain will have significant precedent effect across the Manawtau-Wanganui Region. The 1998 decision specifically referred to evidence that ANZECC stockwater standards would be most appropriate. Application of the ecosystem health standards would impose costly, excessive, continuous and unproductive reporting requirements on the basis that the standards are already exceeded for no environmental benefit. In addition the application of the ecosystem standards fails to reflect the existing environment in Tatana Drain, in particular it being accessible to stock on the Tatana property.
- 7.25 While the ecosystem standards are appropriate for Hokio Stream, as set out in the evidence of **Dr Ausseil** these conditions should be amended as proposed by **Dr Ausseil** so that they do not lead to frequent unnecessary and costly reporting requirements.⁸³

8. ODOUR

Scope

- 8.1 As noted above, one of the reasons for initiating the review was to respond to complaints regarding odour from the Landfill and to examine best practice mitigation to avoid noxious, dangerous, offensive or objectionably odours beyond the boundary of the Landfill site.
- 8.2 The conditions relevant to air quality proposed by Horizons, HDC and contained in HDC's section 127 application are set out in **Appendix 1**.

Anticipated effects

- 8.3 As discussed above, odour effects were assessed in the 1995 application and considered in the 1998 consent decision and the 2010 consent review.
- 8.4 In the 1998 decision and the 2010 review concluded that any odours generated from the site would be minimal providing the procedures outlined in the management plan were followed.

⁸³ Paragraph 65.

Evidence

- 8.5 **Dr Doug Boddy** concludes in his evidence that there is potential for odour nuisance effects to occur beyond the boundary of the Landfill. Importantly however, **Dr Boddy's** evidence concludes that provided additional odour control (or mitigation) measures are implemented by HDC and the Landfill operator it is unlikely that there will be any further odour nuisance effects arising in the community as a result of odour emissions at the Landfill.
- 8.6 A number of the conditions proposed by Horizons in respect of air quality are accepted by HDC as follows:
- (a) Conditions 3(c) Discharge Permit 6011 - Daily cover requirements;
 - (b) Conditions 3 (h)-(k) Discharge Permit 6011 - Biofilter requirements;
 - (c) Condition 6F Discharge Permit 6011 - Record of investigations; and
 - (d) Condition 6E discharge Permit 6011 - Weekly walk over site inspections.
- 8.7 HDC agrees with the following conditions proposed by Horizons subject to minor amendment:
- (a) Condition 3(e) Discharge Permit 6011 - Monthly surface emission testing;
 - (b) Condition 3(f) Discharge Permit 6011 - Trigger levels and remedial action following emission testing;
 - (c) Condition 3(g) Discharge Permit 6011 - Record of emission testing;
 - (d) Conditions 3(l)-(n) Discharge Permit 6011 - Investigation of potential additional odour source;
 - (e) Condition 3(p) Discharge Permit 6011 - Requirement to develop an Odour Management Plan;
 - (f) Conditions 6B and 6C Discharge Permit 6011 - Complaints procedure; and
 - (g) Condition 6D Discharge Permit 6011 - odour investigations.
- 8.8 While HDC accepts that **Dr Boddy** has agreed to Condition 3(f) and stands by its agreement with the Whakawatea Forum, **Mr Saidy** raises practical

issues with whether such extremely low limits can be met at the Landfill, especially as its limits for methane are down to 100ppm compared to 5,000ppm (with a 500ppm trigger for investigations) for the recently consented Bonny Glen Landfill.⁸⁴

- 8.9 HDC agrees in part with the following conditions proposed by Horizons subject to amendment (and it is these conditions that are addressed below):
- (a) Condition 3(d) Discharge Permit 6011 - intermediate cover requirements.
 - (b) Condition 3(o) Discharge Permit 6011 - Installation of flare.
 - (c) Condition 6A Discharge Permit 6011 - odour complaint procedure.
- 8.10 In summary, HDC has agreed to additional daily and intermediate cover requirements, further monitoring and reporting requirements, lower trigger levels for methane (with the concern noted above), the installation of a biofilter and flare, agreed to investigate the potential additional odour source and undertake remedial action if necessary, the development of an odour management plan, and more rigorous complaint procedures.
- 8.11 The Hearing Panel must consider any more than minor unanticipated air quality effects in light of the mitigation conditions that HDC has agreed to when assessing the effects under section 104 and whether any further amendments are necessary.
- 8.12 As discussed in the evidence of **Mr Saidy**, in line with expert recommendations the HDC is continuing to progress the implementation of mitigation measures including:
- (a) implementation of an Odour Management Plan is being explored;
 - (b) controlling odour at the working face through cover processes is occurring;
 - (c) clay capping has commenced at a cost of \$70,000 to date;
 - (d) ongoing tender discussions are occurring for a new Landfill gas flare with an approximate cost of \$500,000;

⁸⁴ Air Discharge Condition 8.

- (e) the leachate pond was de-sludged last year at a cost of approximately \$40,000 and a weather station was installed for monitoring; and
- (f) HDC is constructing a biofilter to mitigate odours from the leachate collection manhole at a cost of approximately \$50,000.

8.13 The costs involved of implementing the expert recommendations is considerable (approximately \$120,000 spent on investigations and \$170,000 on mitigation measures excluding the flare) to date.

Submissions

- 8.14 These submissions only address the conditions that HDC disagrees with in part.
- 8.15 It was agreed in the joint witnessing statement that sand alone cannot provide adequate intermediate cover. However, condition 3(d) should be amended to provide flexibility for raw sand to be mixed with other materials.
- 8.16 The condition proposed by **Dr Boddy** in the joint witness statement and in the conditions attached to **Mr Edwards'** evidence (including the further amendments he has proposed post conferencing) is supported by HDC. This condition provides flexibility for sand to be used (along with other materials) in the intermediate cover. It is noted that there is significant sand available on site so the ability to combine sand with other materials is cost efficient and affects the viability of the Landfill to continue operating.
- 8.17 With respect to condition 3(o), HDC opposes the 6 month timeframe for installing a flare. As set out in the evidence of **Mr Saidy** negotiations regarding the tender of a flare are ongoing and may continue for some months given the significant cost. This is a significant investment for HDC and it is obligated to undertake such an investment in a robust manner. It is also likely to take up to 6 months to install the GCS and have the flare operational. HDC seeks 12 months from the commencement date of the 2015 review of conditions to install a GCS and flare on the site. Any lesser time period will not be able to be complied with by HDC and will invalidate the exercise of the consent. Given all the other mitigation measures being implemented by HDC it is submitted that a 12 month timeframe is reasonable and that adverse odour effects would have already reduced through the implemented measures.

8.18 Condition 6A as currently drafted is not practicable. It requires HDC to have a person available at all times to respond to odour or dust complaints. This requirement is unrealistic and will render the consents unviable and incapable of implementation. For this reason it must be amended as sought by HDC. It goes significantly beyond what is required for the much larger Bonny Glen Landfill.

9. HDCS RESPONSE TO HORIZON'S NOTICE OF REVIEW AND SECTION 127 APPLICATION FOR CHANGE OF CONDITIONS

HDC's response to the review

9.1 HDC's proposed changes to the consent conditions which are not agreed with Horizons include the following conditions:

- (a) Conditions 32, 33, 34 of Discharge Permit 6009 to refine the purpose, and rationalise the membership of, the NLG as set out in the conditions attached to **Mr Edwards'** evidence;
- (b) Condition 5 of Discharge Permit 102259 (relating to rubbish in stormwater drains) for the purpose of ensuring that the condition is practicable to implement; and
- (c) Condition 19 of Discharge Permit 102259, as far as the ability to initiate a review should be confined to 10 yearly intervals.

HDC's section 127 application to change conditions

9.2 HDC disagrees or seeks amendment to the following conditions as recommended in the section 42A reports:

- (a) as discussed above, remove condition 2 of Discharge Permit 6010 (the reasons for this deletion are discussed above); and
- (b) amend conditions 7 Discharge Permit 6011, 30 Discharge Permit 6010, 31 Discharge Permit 6009, 19 Discharge Permit 7289 to confine the ability to initiate a review to 10 yearly intervals.

Submissions

Neighbourhood Liaison Group

- 9.3 The history to the formation of the NLG via the 2002 consent order, the comments from the PCE, and the strengthening of the role of the NLG in the 2010 review decision have been discussed above.
- 9.4 As discussed in the evidence of **Mr Saidy**:
- (a) in recent years the operation of the NLG has deteriorated largely due to the large number of members (currently 26) and the members beginning to position themselves for the 2015 review;
 - (b) the NLG has suffered from progressively confrontational discussions on matters far beyond the ambit of the NLG. Productive discussions and the resolution of matters has been impossible;
 - (c) the HDC is not proposing to remove the NLG;
 - (d) amendments are being sought to clarify the NLG's role and purpose, manage the number of members and remove the NLG's ability to control whether a review is initiated;
 - (e) the purpose of these amendments is to try and overcome the difficulties that have been experienced in recent years and make the NLG more effective and efficient;
 - (f) the Whakawatea Forum is a smaller grouping that has resulted in constructive discussion of issues;
 - (g) the changes proposed by HDC and accepted in the section 42A Officer's report in relation to Horizons deciding whether to initiate the review are supported; and
 - (h) the HDC proposes amendments to the conditions as recommended in the section 42A reports.
- 9.5 With respect to condition 32 it should be amended as per the condition proposed in **Mr Edwards'** evidence:
- (a) as the consent holder, it is important for HDC to have its relevant staff and contractors attend NLG meetings. This enables staff

involved in the management and operation of the Landfill to hear issues directly;

- (b) entitling all adjacent owners and occupiers to be NLG members fails to address the problems highlighted in **Mr Saidu's** evidence. The experience is the Whakawatea Forum which has a smaller group of people, reporting back to the community, works; and
- (c) requiring the agreement of NLG to invite technical advisors to NLG meetings is likely to prevent the attendance of technical advisors and therefore the dissemination of information that can make an invaluable contribution toward resolving issues.

9.6 With respect to condition 33 it should be amended as proposed in **Mr Edwards'** evidence. The condition should only require HDC to hold meetings of the NLG at intervals of no more than 12 months as the holding of more regular meetings is unnecessary given the function of the NLG.

9.7 Condition 34 as recommended in Mr Bashford's section 42A report should be amended as proposed in **Mr Edwards'** evidence:

- (a) conditions 34(a) and (b). This purpose is too broad allowing the NLG to raise any matter of concern. These provisions are even broader than the current provisions. The PCE Report noted the problems with the NLG interfering with site operations and that it must have clear guidance in order to be effective. Without clearer guidance the difficulties as discussed in **Mr Saidu's** evidence will continue; and
- (b) conditions 34(v) and (vi). This gives the NLG wide ambit to raise any issue and requires the HDC to respond. Without refinement of the matters that can be raised for the reasons set out above, the existing difficulties with the NLG will continue.

Stormwater

9.8 HDC proposes to amend condition 5 of Discharge Permit 102259 so it is not obliged to keep the stormwater system clear of refuse at all times.

Mr Bashford in his section 42A report has rejected this amendment.

9.9 As worded by Horizons this condition is impractical and impossible to achieve rendering the exercise of the consent invalid. It is therefore unlawful to impose. It will also affect the viability of the consents. The

existing lawfully consented activities are for a landfill operation which by their very nature have windblown rubbish. It was clearly an anticipated effect. The key environmental issue at the time of granting consent was not that there is no refuse, but that what refuse may collect is cleared on a regular basis.

- 9.10 The 2015 conditions of consent for Bonny Glen (a much larger landfill compared with the Levin landfill) do not impose any such conditions on the operation of that landfill and the litter conditions require collection where practicable.
- 9.11 Condition 5 as amended by HDC is included in the table of conditions attached to the evidence of Mr Edwards.

Review condition

- 9.12 HDC seeks that condition 19 of Discharge Permit 102259, as accepted in Mr Bashford's section 42A report, be amended to provide that a review can be initiated at ten yearly intervals.
- 9.13 Mr Bashford's justification for refusing this amendment is that the "*current issues of odour and the daylighting of leachate only seem to have come to light since the previous review in 2010*".⁸⁵ As discussed in detail above, these issues have been at the forefront of the 1995 consent application (1994 Royds consulting report), 1998 decision and the 2010 review decision. Unfortunately Mr Bashford did not consider these relevant documents in his report.
- 9.14 As Mr Bashford acknowledges in his report, "*reviews of conditions can be costly and are often seen to derogate the rights of the consent*".⁸⁶
- 9.15 The existing and proposed monitoring and mitigation conditions will ensure that any potential significant odour and leachate adverse effects of the Landfill are identified and adequately responded to negating the need for such frequent reviews. In particular this review imposes significantly greater odour management conditions, including more stringent limits and additional monitoring of water quality. In addition the costs of the 5 yearly review significantly affect the viability of the consents.
- 9.16 For these reasons a ten yearly review interval is appropriate.

⁸⁵ Conditions table in relation to Condition 30 DP 6010.

⁸⁶ Ibid.

- 9.17 As per the conditions attached to the evidence of **Mr Edwards** the proposed amendment to condition 19 needs to be consequently reflected in all permits that include review conditions.

10. APPLICATION OF LEGAL FRAMEWORK

Section 104(1)(a) - effects of the proposal

Positive effects

- 10.1 The Landfill is the only landfill in the Horowhenua District and also receives waste from the Kapiti Coast District. The Landfill provides a vital community service for the Horowhenua District and Kāpiti Coast District and is of regional significance.
- 10.2 As explained in the evidence of **Mr Saïdy**, it is also one of the HDC's largest assets with a replacement cost at \$6,830,000 and is anticipated to generate a net income of between \$68,968 and \$482,640 per year over the years 2014/2015 to 2023/2024. If the Landfill was to close this would create a significant financial burden on HDC, and ultimately on the ratepayers of the district.

Adverse effects - introduction

- 10.3 As stated above, the existing environment includes the anticipated effects arising from the consented Landfill activities. It is clear from case law⁸⁷ that the effects are to be assessed within the environment as it exists, including lawfully established activities. In the Case of *Marr*, the Environment Court considered new consents for an upgrade of an existing wastewater treatment plant while its consents were ongoing and stated:⁸⁸

"However in this case, the existing treatment plant and discharge were lawfully being continued throughout the period of the appeal hearing. The environment that existed at the time [on which] the Court has to assess the effects of allowing the activity was an environment affected by those activities."

- 10.4 It is only more than minor unanticipated adverse effects that are the subject to a section 104 assessment.

⁸⁷ *Tainui Hapu v Waikato regional Council* (EnvC) A 63/2004, *Aley v North Shore City Council* [1998] NZRMA 361 and *Marr v Bay of Plenty Regional Council* [2010] NZEnvC 347.

⁸⁸ At paragraph [62].

10.5 When undertaking an assessment of effects under section 104 the receiving environment is an important consideration. In this case the receiving environment is highly modified as set out below.

Illegal dumping on land to the north west of the Levin Landfill

10.6 In 1997, following a complaint relating to the dumping of wastewater, Horizons staff visited the Tatana property in Hokio Beach Rd which led to prosecution proceedings under the RMA.⁸⁹ The defendants pleaded guilty and in 2009 were sentenced in the District Court.⁹⁰

10.7 In 2007 Tonkin and Taylor was commissioned to undertake an assessment of the potential and actual effects of the illegal dumping ("**T&T Report 2**").⁹¹ The T&T Report 2 stated that Horizons estimated at least 300,000 litres of wastewater associated with the cleaning/service of Carter Holt Harvey's print machines to have been dumped at the pit between August 2003 - June 2007.

10.8 The T & T Report 2 found that the pit was located above both a shallow and deep aquifer and within 500m of the Hokio Stream and there was a "*high potential for contaminant transport to the groundwater (and subsequently, to any downgradient groundwater bores and the Hokio Stream)*".⁹² After considering the Landfill water quality monitoring report, the T&T Report 2 found:⁹³

"the metals concentrations recorded in the wastewater are generally higher than those measured in the landfill monitoring bores. In many cases they are 1 or 2 orders of magnitude higher. This indicates that the wastewater is likely to be having a greater impact on the ambient water quality in the area than the landfill. (our emphasis)

10.9 The T & T Report 2 recommended that:

- (a) soil testing be undertaken to characterise the nature and extent of contamination, including in relation to metals and hydrocarbons; and

⁸⁹ Neither the section 42A reports for Horizons Regional Council, nor the evidence of Mr Carlyon (which states at paragraph 4 that he led all of Horizon's prosecution activity at the time), refer to this prosecution, nor more recent enforcement action that Horizons has taken in the local area.

⁹⁰ *Horizons Regional Council v Tatana Contracting Ltd and another*, (District Court Palmerston North, 14 May 2009, CRI-2008-031-000233, Judge Ross).

⁹¹ The report entitled 'Disposal of wastewater associated with ink machines Hokio Beach Rd, Levin' dated 20 May 2008.

⁹² Tonkin and Taylor Report 20 May 2008 page 3.

⁹³ Tonkin and Taylor Report 20 May 2008 page 11.

- (b) a monitoring well be located immediately down gradient to characterise the actual nature and extent of residual contamination, including metals and hydrocarbons.
- 10.10 Despite the successful prosecution, the scale and duration of the offending, the conclusion of T & T Report 2 that the effects on ambient water quality were greater than those than the Landfill and the recommendations of monitoring, Horizons has confirmed that no monitoring has been undertaken in relation to this illegal discharge.
- 10.11 This leaves all parties, and the Hearings Panel, in the dark as to what effect this illegal discharge is having on the monitoring associated with the Landfill. In particular, there is the potential for cumulative effects of these contaminants with Landfill leachate. This lack of information must be borne in mind by the Hearing Panel when considering potential effects of leachate from the Landfill on groundwater and the Hokio Stream.

Tatana Drain property

- 10.12 The effects of Landfill leachate discharge on the Tatana Drain is a key focus for Horizons in its review. Firstly, based on the evidence of **Dr Ausseil** the Tatana Drain is not a river and is not the receiving environment under the One Plan. However, setting that aside, the environment surrounding the Tatana Drain is highly modified.
- 10.13 As discussed in the evidence of **Mr Landmark** the Tatana Drain is situated on private land owned by the Tatana Family lying immediately to the north of the Landfill. The property surrounding the drain has been split into several paddocks and heavily modified in the following ways:
- (a) the land along the first 120 metres of the drain has been built up by the land owner using fill materials. The drain used to extend around the base of the dune which projects into Tatana property but has now been filled in; and
 - (b) cattle graze the property. The drain is not fenced and stock can access it easily.

Hokio Stream

- 10.14 The effects of Landfill leachate discharge on the Hokio Stream is also a key focus of this review/application. Again, it is important to understand the

background water quality of the Hokio Stream when assessing the effects of leachate on the Hokio Stream under section 104.

- 10.15 The poor water quality of the Hokio Stream was recognised in the 1995 consent application. As the evidence of Caleb Royal notes, the poor water quality of Lake Horowhenua has adversely impacted the water quality in Hokio Stream. As discussed in the evidence of **Dr Ausseil**, Lake Horowhenua carries large loads of planktonic cyanobacteria in late summer/early autumn. This large organic load is likely to have flow-on implications in the Hokio Stream, and may explain, at least in part, the relatively elevated ammoniacal nitrogen concentrations present in the Hokio Stream.
- 10.16 It is readily apparent that many other factors, beyond Landfill leachate, have had a much worse effect on the Hokio Stream.
- 10.17 In relation to the scope of this review / application the expert evidence is that there are no measurable adverse effects of leachate from the old unlined landfill on the Hokio Stream.

Adverse effects - water quality related cultural values

- 10.18 A number of submissions, and the evidence of Mahina-a-rangi Baker and Caleb Royal, raise broad cultural wellbeing and relationship issues. The Hearing Panel must be very careful in ensuring that the consideration of such issues is related to the scope and purpose of the review and fits within the legal framework above. In particular, this process only relates to more than minor unanticipated adverse effects related to water quality. This is not an opportunity to re-litigate all cultural matters.
- 10.19 Mahina-a-rangi Baker's evidence is that Māori have a distinct relationship with Hokio Stream, in that they have regular contact with it and use it to access food resources.⁹⁴
- 10.20 The evidence of Caleb Royal takes a different approach in stating that the kai from the Hokio Stream is no longer fit for consumption and that this effect is permanent because even if the discharge ceases the cultural memory of the polluted stream is retained.⁹⁵

⁹⁴ At paragraph 16.

⁹⁵ Despite this inconsistency of evidence as to the gathering of mahinga kai the fact that there are no measurable bio-physical effects of leachate indicates that the leachate itself is not affecting mahinga kai.

Submissions

- 10.21 The potential for Landfill leachate to reach the Hokio Stream was recognised in the 1995 application (see paragraph 4.9 above). The 1995 application also recognised that Hokio Stream was "*of great significance to the tangata whenua.*"⁹⁶
- 10.22 The 1998 decision recognised the "*actual and potential contamination of ground/surface water from landfill leachate.*"⁹⁷ The Committee was "*in particular concerned with the cultural issues raised by submitters.*"⁹⁸ The Committee acknowledge "*that the degraded water quality of Hokio Stream and Lake Horowhenua is of serious concern....*"⁹⁹ However irrespective of these concerns the Committee concluded that consents for the Landfill should granted because "*The technical evidence provided by the Applicant has concluded that the landfill leachate is having little or no adverse effects on Hokio Stream.*"¹⁰⁰
- 10.23 Having considered the effects of Landfill leachate on the significant cultural values, and having had recognised and provided for section 6(e), the 1998 decision granted consent subject to conditions.
- 10.24 The 2010 review decision considered the effects of Landfill leachate on the cultural values associated with the groundwater and surface water, in particular the Hokio Stream, and concluded that the review conditions delivered a more stringent mitigation framework that would be consistent with the purpose and principles of the RMA including section 6(e).
- 10.25 Cultural effects of the discharge of Landfill leachate were always anticipated and now form part of the existing environment.
- 10.26 The evidence of **Dr Ausseil** and Mr Brown concludes that there is no bio-physical effect of leachate on Hokio Stream.¹⁰¹ While that does not negate a potential meta-physical cultural effect, such effects
- (a) were clearly recognised and accepted in the earlier decisions;
 - (b) are no different now than what they were at the time consent was granted; and

⁹⁶ Application for Resource Consents section 7.2 page 33.

⁹⁷ Original decision paragraph 107.

⁹⁸ Original decision paragraph 109.

⁹⁹ Original Decision paragraph 110.

¹⁰⁰ Original Decision paragraph 111.

¹⁰¹ See for example *Te Runanga O Ngai Te Rangi Iwi Trust v Bay of Plenty Regional Council* [2011] NZEnvC 402.

(c) the submissions and evidence for this review have not raised any additional adverse effects on cultural values over and above those raised by submissions on the 1995 consent application.

10.27 The Environment Court has repeatedly found that bio-physical effects provide useful, tangible, evidence as to the scale of meta-physical effects.¹⁰² In terms of meta-physical cultural effects that relate to beliefs the High Court has observed that beliefs are not resources that can be sustainably managed.¹⁰³

10.28 The water quality joint witnessing statement makes clear that the total capture of leachate is not possible.¹⁰⁴ This is because even if leachate was diverted from the Tatana Drain (the effectiveness of which is questioned in the evidence of **Mr Douglass** and **Dr Ausseil**) some leachate will still (and since at least 1995 always has) reach the Hokio Stream via shallow groundwater. **Mr Douglass** makes clear in his evidence that the "*complete interception of groundwater affected by the Landfill is unlikely, meaning that whilst Tatana Drain discharge may be able to be addressed, the discharge of groundwater to Hokio Stream would continue.*"¹⁰⁵

10.29 To the extent (as discussed below) that submitters seek that there be no cultural effects at all on the Hokio Stream then that is not an outcome able to be accommodated through the legal framework for this review / application process as it would invalidate the exercise of the consents.¹⁰⁶ In addition, case law is clear that the RMA is not a "no effects" statute.¹⁰⁷

10.30 However, HDC proposes through its consent conditions to significantly increase monitoring of groundwater and the Hokio Stream to provide more accurate data as to potential effects of Landfill leachate (if any).

Air Quality

10.31 Given the significant agreement to the proposed changes to conditions relating to odour limits and management the concerns raised in the review (which relates solely to noxious, dangerous, offensive and objectionable odours beyond the boundary) have been well and truly mitigated in terms of the scope of the review. The evidence of **Dr Boddy** is that with his

¹⁰² See for example *Mahuta v Waikato Regional Council* (EnvC) A91/98

¹⁰³ *Friends and Community of Ngawha incorporation v Minister of Corrections* [2002] NZRMA 401.

¹⁰⁴ Question 19

¹⁰⁵ Paragraph 91

¹⁰⁶ However, the evidence of Caleb Royal indicates that even with complete avoidance the cultural values of Hokio Stream have been permanently lost and cannot be recovered.

¹⁰⁷ See for example *Royal Forest and Bird protections Society v Buller District Council and West Coast Regional Council* [2013] NZRMA 293 at [52] and *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66.

recommendations implemented there is unlikely to be any further odour nuisance effects arising in the community.

Section 104(1)(b) - relevant provisions of planning instruments

NPSFM

10.32 In applying the NPSFM the Hearing Panel must, in accordance with the legal framework above:

- (a) have regard to Objectives A1 and A2;
- (b) not consider those provisions in the NPSFM, including the National Objectives Framework and its associated attributes and bottom lines in Appendices 1 and 2, because:
 - (i) the preamble makes it clear that national bottom lines are not standards that must be achieved immediately;
 - (ii) Policies A1 and A2 are clear that the freshwater objectives, established by regional councils under the processes set out in Policies CA1-4, can only be applied through regional plans;
 - (iii) Pursuant to Policy A3, conditions on discharge permits developed through Policies A1 and A2 can only be imposed through limits and targets set in regional plans and not directly through resource consent conditions; and
 - (iv) Although Policy A4 provides for stated provisions to be directly included in regional plans, none of those provisions relate to water quality limits or targets;
- (c) Objective D1 applies only to management of freshwater and decision-making regarding freshwater planning (not consenting). Although Policy D1(c) requires local authorities to take reasonable steps to reflect tāngata whenua values and interests in decision-making regarding freshwater and freshwater ecosystems, this must be read in light of Objective D1 and its focus on management (under section 31 as a function of regional councils) and planning mechanisms, not consenting processes.

- 10.33 In summary, apart from having regard to Objectives A1 and A2 of the NPSFM all the other relevant NPSFM provisions apply through a regional planning process and not directly to resource consents.¹⁰⁸
- 10.34 The extensive changes to the conditions attached to these submissions are, as appropriate for a lawfully established existing activity, consistent with Objective A1 and Objective A2.
- One Plan*
- 10.35 While regard must be had by the Hearing Panel to the relevant provisions of the One Plan in doing so it must:
- (a) apply the statutory framework set out above, in particular that this is a review/application for changes for existing consents (the operation of which cannot be invalidated by conditions); and
 - (b) remember that the requirement is to have regard to and not give effect to.
- 10.36 In having regard to Chapter 2 and Objective 2-1 (Te Ao Maori) the Hearing Panel should recognise that this review:

- (a) is limited to more than minor unanticipated cultural effects related to leachate and odour within the scope of the review, recognising a lawfully consented activity (this is not, and cannot be, a full assessment of all cultural matters);
- (b) is not about achieving "*significant improvement*" of the Hokio Stream as sought by Mr Bashford¹⁰⁹ (such an outcome is beyond scope and the legal framework);
- (c) cultural effects arising from leachate were explicitly recognised in the 1995 AEE and considered and determined in the 1998 decision granting consent (and the 2010 Review);
- (d) the scientific water quality evidence is that there is no measurable bio-physical effect of leachate on the Hokio Stream, although this does not necessarily exclude a meta-physical effect;

¹⁰⁸ At paragraph 53 of his evidence Mr Bashford, in relation to the Tatana Drain, states "It is noted that the NPSFM simply applies to freshwater regardless of whether it is in a river or not". For the reasons stated above, the applicants position that the Tatana Drain is an artificial watercourse and for the correct application of "freshwater management unit" and "waterbody" within the NPSFM.

¹⁰⁹ At paragraph 74 of his evidence.

- (e) to the extent claimed by Mr Carlyon¹¹⁰ that Policy 2-3(b) enables the cessation of resource activities in special circumstances, this policy only allows a temporary cessation and applies to a voluntary rāhui following consultation. Further, Policy 2-3(b) is to be read in light of Policy 2-3(a) which is concerned with implementing Policy 2-1(a)-(i) (fostering increased participation of Māori in resource management processes), and Policies 5-18 that are concerned with restricting and suspending water takes in times of minimum flow. Both matters are not of relevance to this review/application. Lastly, any application of Policy 2-3 as interpreted by Mr Carlyon would be inconsistent with Policy 3-3 (see below); and
- (f) to the extent claimed by Mr Carlyon that the consents can be cancelled through this review process, this is incorrect in law (as discussed above).

10.37 For these reasons the conditions as accepted and proposed by HDC, in particular the significant additional water quality monitoring, are consistent with these provisions.

10.38 In having regard to Chapter 3 (Infrastructure) the following provisions are relevant to the Hearing Panel:

- (a) Objective 3-1 relates to the benefits of infrastructure and other physical resources of regional importance (such as the Levin Landfill); and
- (b) Policy 3-3 is highly relevant to lawfully established regionally significant infrastructure and therefore highly relevant to the Hearing Panel's consideration of the review reads (as relevant):

"In managing any adverse environmental effects arising from the establishment, operation, maintenance and upgrading of infrastructure or other physical resources of regional or national importance, the Regional Council and Territorial Authorities must:

¹¹⁰ At paragraph 87 of his evidence.

- (a) recognise and provide for the operation, maintenance and upgrading of all such activities once they have been established ..." (our emphasis)

10.39 The conditions as accepted and proposed by HDC are consistent with these provisions.

10.40 When having regard to Chapters 5 and 14 (Water Quality and Discharges) the Hearing Panel should:

- (a) remember that enhancement per se is not within the scope and legal framework of a review for a consented activity, particularly where the water quality effects on the Hokio Stream are not discernible and leachate entering the stream was anticipated at the time the consents were granted;
- (b) when having regard to Objectives 5-1 and 5-2, Policy 5-1 and the values identified in Schedule B remember that:
- (i) the values relate only to more than minor unanticipated effects of the lawfully consented activities;
- (ii) that the values are not standards and this is not a review under section 128(1)(b);
- (iii) that the values must be read in light of Table 5-2¹¹¹ such that, for example, the management outcome for the mauri value, recognised by Ms McArthur,¹¹² states "*the mauri of the water body and its bed is maintained or enhanced*" and in this case is maintained; and
- (iv) the review cannot invalidate the exercise of the consented activities (and as set out above any consideration of the One Plan leading to this outcome would be inconsistent with Policy 3-3 above); and
- (c) when having regard to Policy 5-2 and Schedule E, remember that:
- (i) this is not a review under section 128(1)(b) and that the Schedule E targets are solely that and not standards to be applied to a consent; and

¹¹¹ Which sets out the management outcome for each value.

¹¹² At paragraph 37 of her evidence.

- (ii) as stated in Mr Brown's evidence¹¹³ the targets are designed to achieve "*the best level of protection for the values within a water management sub-zone*" and as the activities are already consented and this is a review / application for change of conditions the Hearing Panel's function is not about "*the best level of protection*" for identified values.

10.41 The conditions as accepted and proposed by HDC, especially the significant additional water quality monitoring, are consistent with these provisions.

10.42 When having regard to Chapter 7 (Air Quality and Discharges) the following provisions are relevant for the Hearings Panel:

- (a) Objective 7-1, which must be read as applying across the region and requires maintenance of air quality;
- (b) Policy 7-2 which makes clear that the regional standard for odour must be set to not cause any offensive or objectionable odour beyond the property boundary (which is consistent with the relevant consent condition and does not mean odour must be avoided beyond the boundary);
- (c) Objective 15-1 which seeks the maintenance or enhancement of air quality and to the degree it relates to managing air quality must be read in light of the legal framework for this review of a lawfully established activity and Policy 3-3 discussed above; and
- (d) Policy 15-2 which requires regard to be had to the above objectives and policies, in particular compliance with the regional standards discussed above, and to the extent guidelines are considered they must be considered in light of Policy 3-3, must solely relate to more than minor unanticipated adverse effects and cannot invalidate the exercise of the consent.

10.43 The conditions as accepted and proposed by HDC, which provide for significant odour mitigation measures, are consistent with these provisions.

¹¹³ Paragraph 14

Other matters

10.44 The evidence of Mr Bashford states that the Lake Horowhenua Accord is relevant to this review. While from a legal perspective this is rejected by HDC, and the Accord's management goals are solely focused on the Lake, given the lack of any measurable water quality effects on the Hokio Stream and the significant extra groundwater and water quality monitoring, and a response process, proposed by HDC, it is considered that the conditions proposed and accepted by HDC, especially the significant additional water quality monitoring, are consistent with any more broadly extrapolated aims of the Accord.

Other Section 131 matters to be considered in the review

Viability

- 10.45 As set out above, in addition to the section 104 assessment the Hearing Panel shall have regard to whether the activity allowed by the consent will continue to be viable after the change.
- 10.46 The evidence of **Mr Saidy**, as discussed above, sets out the considerable costs involved in the various mitigation proposals and options. In respect of air quality significant amounts of money will need to be invested to achieve the amended conditions accepted by HDC. Given HDC's small size and rating base, any additional requirements that the Hearings Panel may be minded to make must first be considered in light of ongoing viability of the Landfill. On that basis the Hearing Panel should not apply any additional odour mitigation conditions beyond those accepted by HDC.
- 10.47 In relation to water quality **Dr Ausseil** and **Mr Douglass** have proposed considerable additional monitoring requirements which HDC has accepted which will add to the existing extensive water quality monitoring regime costs. As stated above, Horizons proposed conditions in relation to Tatana Drain will invalidate the exercise of the consents (and fail to reflect its artificial nature). The provisions currently proposed by Horizons would significantly affect the viability of the consent and even at great cost are unlikely (at best), on the evidence, to be achievable.
- 10.48 Overall, the Hearings Panel must consider the totality of the full suite of conditions being reviewed in considering the ongoing viability of the Landfill. On this basis it is readily apparent that these costs are significant for a small Landfill owned by a small council with a limited rating base. In light of

this only the conditions proposed or accepted by HDC will ensure the ongoing viability of the Landfill.

Manner in which the consents have been used

10.49 The consents have been used to provide a long-term, affordable landfill for the benefit of the Horowhenua District (and the Kāpiti Coast District). For the current Landfill they provide for waste disposal into the future. For the old, unlined landfill they provide appropriate monitoring mechanisms to determine what, if any, more than minor unanticipated adverse effects are occurring.¹¹⁴

Air quality

10.50 In a letter of significant non-compliance from Horizons to HDC dated 9 February 2015, Horizons stated that HDC was in breach of Condition 3 of Discharge Permit 6011. Condition 3 prohibits the 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. Mr Standen in his section 42A report¹¹⁵ contends that the complaints record of the Granges was sufficient grounds to deem the Landfill operations as being non-compliant with condition 3. As stated in **Dr Boddy's** evidence, none of the odour complaints received by Horizons that were the subject of the letter of non-compliance had been verified by a regional council officer.¹¹⁶ It is clear that Horizons has wrongly applied condition 3 in issuing the non-compliance notice. Irrespective of this, this notice caused HDC to involve **Dr Boddy** in undertaking two detailed air quality assessments addressed in his evidence.¹¹⁷

10.51 In the joint witnessing statement for air quality the experts agreed that Condition 5 of Discharge Permit 6011 which requires the HDC to take all practicable steps to avoid, remedy or mitigate significant adverse effects of the discharge of landfill gases to air had not been complied with.¹¹⁸

10.52 However, as **Mr Saidy** highlights in his evidence, and as has been discussed above, HDC is committed to continuing to implement the mitigation and management measures recommended by **Dr Boddy**.

¹¹⁴ Ironically, if the consents were cancelled as sought by Mr Carlyon there would then be no controls on monitoring of the old landfill unless successful enforcement proceedings were undertaken.

¹¹⁵ Paragraph 14

¹¹⁶ Paragraph 82

¹¹⁷ Paragraph 82

¹¹⁸ Question 2

Dr Boddy's reports are dated February, July and October 2015. In less than a year HDC has invested significantly in undertaking investigations (\$120,000) and additional mitigation measures (\$170,000 to date, excluding the flare at an approximate cost \$500,000). Such an investment is significant for a small council with a small funding resource such that HDC must be prudent in ensuring that it implements cost efficient and environmentally effective options. In addition this review process commenced in October 2015 and HDC has committed considerable resources to it and the Whakawatea Forum.

10.53 With respect to the air quality experts the test of "all practicable steps" is not simply a technical assessment and exercise requiring implementation but to take all practicable steps to proceed to do so in a realistic timeframe. No enforcement action has been undertaken by Horizons in relation to this matter.

Tatana Drain

10.54 As set out in the evidence of Mr Standen in compliance report dated 31 October 2014 Horizons graded condition 2 of Discharge Permit 6010 as significant non-comply in respect of water quality samples showing that groundwater contaminated with landfill leachate was day lighting into the Tatana Drain.

10.55 Mr Standen's issue of contaminated groundwater entering the Tatana Drain fails to reflect the history of this matter whereby groundwater beyond the site has always been contaminated and fails to recognise that HDC holds consent under section 15(1)(b) of the RMA to discharge contaminants on to and into land in circumstances where they may enter water.¹¹⁹

10.56 As set out in Mr Douglass' evidence day lighting of groundwater in Tatana Drain is an expected outcome of the consented discharge of leachate on to and into land.

10.57 In addition as set out above, it is clear from condition 3 in the 1998 consent decision that it was intended that overland flow of leachate would be captured by a drain and it appears that the parties agreed that Tatana Drain would serve that purpose, hence condition 3 was later deleted in the 2002

¹¹⁹ This also addresses Mr Carlyon's concern relating to what he claims to be current unconsented discharges to Tatana Drain and Hokio Stream.

consent order conditions. Indeed, Mr Standen's section 42A report states that Tatana Drain was installed to capture leachate runoff.¹²⁰

10.58 Unsurprisingly Horizons rescinded the significant non-compliance notice on 10 April 2015.

Best Practicable Solution

10.59 To the extent that BPO provisions¹²¹ are applicable, only those in the conditions accepted by HDC enable the Hearings Panel to be satisfied that they are the most effective and efficient means of reducing the adverse effect having regard to the nature of the receiving environment, financial implications and other alternatives. For example as stated in the evidence of **Mr Douglass** he is uncertain what analysis horizons has undertaken to determine that proposed condition 2A can be achieved and what effects they are proposing to address.¹²²

11. PART 2 OF THE RMA

11.1 The Hearing Panel's decision on the review / application under s 104 is subject to Part 2 of the RMA, which sets out the purpose and principles of the RMA. The overriding purpose of the RMA is to "*promote the sustainable management of natural and physical resources*". Sustainable management is defined in section 5(2) of the RMA and is discussed in more detail below.

11.2 In considering Part 2 the Hearing Panel must apply the limitations of the scope and purpose of the review / application and the legal framework set out above. Again, this review applies to a lawfully established activity and it cannot invalidate the exercise of those granted consents. It is only more than minor unanticipated adverse effects that are relevant to the Part 2 assessment.

¹²⁰ At paragraph 29.

¹²¹ Defined in section 2 of the RMA.

¹²² At paragraph 69.

Section 6

- 11.3 Section 6 sets out a number of matters of national importance that all persons exercising functions and powers under the RMA shall recognise and provide for including:
- (a) Section 6(a) the natural character of wetlands rivers and their margins, and the protection of them from inappropriate subdivision, use and development;
 - (b) Section 6(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
- 11.4 With respect to section 6(a) as discussed in the evidence of **Mr Edwards** the changes to the conditions proposed by HDC will not cause any unanticipated adverse effects on the natural character of the area surrounding the Landfill over and above those effects which are already permitted by way of consent. This review/application process is not an opportunity to re-litigate the effects of the Landfill on natural character.
- 11.5 With respect to section 6(e) as discussed above, while there are no bio-physical effects of the discharge of landfill leachate on the Hokio Stream, the meta-physical cultural effects were well known and understood at the time the consents were granted and the 1998 decision explicitly referenced section 6(e) and in respect of sections 5, 6, 7, and 8 stated that cultural values were given serious consideration.¹²³
- 11.6 The 2010 review decision reiterated the importance of recognising and providing for the matters in section 6(e) and concluded that the review had appropriately recognised section 6 of the RMA by providing enhanced monitoring conditions.¹²⁴
- 11.7 There are no unanticipated cultural effects requiring the imposition of additional mitigation measures, and in any case the submissions and evidence are clear that total avoidance is required which is not possible through this review process as it would invalidate the exercise of the consents.

¹²³ 1998 decision paragraph 152

¹²⁴ 2010 review decision page 18 section 3

- 11.8 Even if there were more than minor unanticipated cultural effects the Courts have consistently held that Māori do not have a right of veto under the RMA,¹²⁵ nor do any sections 6(e), 7(a) or (8) concerns 'trump' other considerations such that absolute protection of cultural values and beliefs is required.¹²⁶
- 11.9 Irrespective of this position HDC has proposed significant additional monitoring of groundwater and surface water quality in the Hokio Stream, and, if necessary, an appropriate response process.

Section 7

- 11.10 Section 7 contains a number of matters to which particular regard must be had. HDC's position on how each of these matters is met through the proposed conditions is discussed in the evidence of **Mr Edwards** and outlined below:

Section 7(a) and (aa) kaitiakitanga and the ethic of stewardship

- 11.11 Sections 7(a) and (aa) are to be assessed within the scope and legal framework of the review / application. In particular, this process only relates to more than minor unanticipated adverse effects related to water quality and odour.¹²⁷ This is not an opportunity to re-litigate all cultural matters.
- 11.12 The Landfill is a lawfully established existing activity and there is no evidence of any unanticipated adverse cultural effects on either groundwater, or the Hokio Stream.
- 11.13 The 1998 decision gave "*due consideration*"¹²⁸ to section 7(a) and stated that "*the cultural issues intertwined in section 5, 6, 7, and 8 of the Act were given serious consideration by the Committee.*"¹²⁹ The Committee concluded that:¹³⁰

"the Committee appreciate the strong cultural objection to the proposal, however, there was no clear evidence submitted to the Hearing that would support refusal of the applications on cultural grounds. The particular issues raised in the cultural submissions related to contamination of Hokio Stream and Lake Horowhenua..."

¹²⁵ Watercare services v Minhinick [1998] NZRMA 113 (CoA).

¹²⁶ *Tainui Hapu v Waikato regional Council* (EnvC) A 63/2004, *Aley v North Shore City Council* [1998] NZRMA 361 and *Marr v Bay of Plenty Regional Council* [2010] NZEnvC 347.

¹²⁷ For odour the scope of the review relates to noxious, dangerous, offensive and objectionable odours only.

¹²⁸ 1998 decision paragraph 147.

¹²⁹ 1998 decision paragraph 157.

¹³⁰ 1998 decision paragraph 153.

- 11.14 The 2010 review decision did not consider that there were any significant other matters that needed consideration and concluded that the review of conditions had delivered a more stringent mitigation framework.¹³¹
- 11.15 HDC's proposed conditions add yet more robustness to the stringent framework set in the 2010 review decision by significantly expanding the monitoring of groundwater and the Hokio Stream and, if necessary, proposing an appropriate response process.
- 11.16 In addition the NLG provides an appropriate forum for ongoing engagement with iwi.

Section 7(b) the efficient use and development of natural and physical resources.

- 11.17 As set out in the evidence of **Mr Saidy** the Landfill is a significant existing asset for the Horowhenua (and the Kapiti Coast District) and represents infrastructure of regional significance. As one of the most significant HDC owned physical resources in the District, and given its regionally significant nature, Policy 3-3 of the One Plan is directly relevant, requiring the Hearing Panel to recognise and provide for its ongoing operation while managing adverse effects. In addition section 131 of the RMA requires the Hearing Panel to have regard to the ongoing viability of the Landfill when reviewing the conditions. To impose unnecessarily onerous and costly conditions beyond those sought by HDC, or conditions that would invalidate the consents, would fail to have particular regard to section 7(b).

Sections 7(c), (d) and (f) the maintenance and enhancement of amenity values and quality of the environment and intrinsic values of ecosystems.

- 11.18 A review process of lawfully established existing activities is not an opportunity to require environmental enhancement.
- 11.19 As stated above the anticipated effects of the existing activities form part of the existing environment. With the conditions proposed by HDC there will be no unanticipated adverse effects. In particular HDC has accepted a large range of new odour management and control conditions which **Dr Boddy** considers is likely to prevent any further nuisance odour effects.
- 11.20 Any consideration of maintenance the current overall amenity values and quality, including intrinsic values, of the Tatana Drain and Hokio Stream

¹³¹ 2010 review decision section 2.2.3 page 16

must include anticipated effects. The additional monitoring and response process proposed by HDC in relation to Landfill leachate effects on the Hokio Stream provides assurance that water quality effects will be maintained within the scope of the consents as granted.

Section 8 - Treaty of Waitangi

11.21 Finally, section 8 requires that the Hearing Panel take into account the principles of the Treaty of Waitangi. The 1998 decision in granting the consents stated:

*"The Committee were conscious of their obligations in section 8 of the Act and were reminded of such obligation by several submitters."*¹³²

11.22 Therefore, issues raised by submitters and in evidence regarding section 8 matters are not new and "*were given serious consideration*" in the 1998 decision.¹³³ There is no evidence of unanticipated effects on section 8 matters. This is not an opportunity to re-litigate section 8 matters.

11.23 However, the consents require the establishment and operation of the NLG. In addition through this review process the HDC has worked with iwi (and other members of the local community) in establishing the Whakawatea Forum. The purpose of the Whakawatea Forum was to provide an opportunity for fresh discussion of long standing issues associated with the Landfill. HDC provided considerable funding to assist the Whakawatea Forum to obtain expert advice on the key issues of this review.

11.24 For these reasons, and as appropriate within the scope of a review process, HDC has appropriately complied with the principles of the Treaty of Waitangi.

Purpose of the RMA - Section 5

11.25 The Environment Court in *North Shore City Council v Auckland City Council* described the application of section 5 as follows:¹³⁴

"The method of applying s5 then involves an overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources. That recognises that the Act has a single purpose. Such a judgment allows for comparison of conflicting

¹³² Paragraph 148

¹³³ Paragraph 152

¹³⁴ (1996) 2 ELRNZ 305 (EnvC) at 347.

considerations and the scale or degree of them, and their relative significance or proportion in the final outcome."

11.26 The matters in sections 6 to 8 inform and assist the consideration of the section 5 purpose:¹³⁵

"The remaining sections in Part 2, subsequent to s5, inform and assist the purpose of the Act. We may accord such weight as we think fit to any competing consideration under Part 2, bearing in mind the purpose of the Act. These subsequent sections must not be allowed to obscure the sustainable management purpose of the Act. Rather, they should be approached as factors in the overall balancing exercise to be conducted by the Court."

11.27 Ultimately, the Hearing Panel must exercise an overall broad judgment and determine whether changing the conditions (or imposing new conditions), within the statutory framework above, meets the sustainable management purpose of the RMA.

11.28 The benefits of the Landfill are significant and, as existing regionally infrastructure, its ongoing operation is to be recognised and provided for under Policy 3-3 of the One Plan. The Landfill enables a vital community service to be delivered by HDC at a cost that the community can afford. The viability and costs of all the consent conditions proposed and accepted by HDC are significant, especially for a small Council. Imposing extra costs would significantly affect the viability of the Landfill, and some of the conditions sought by other parties would force the closure of the landfill (not that the Hearings Panel may impose such conditions).

11.29 It has always been recognised and known that the Landfill produces adverse effects. However, especially with the conditions proposed and accepted by HDC, none of these effects are at a level that exceeds those anticipated at the time of the consents being granted. The effects on water quality in the Hokio Stream cannot be measured (but significant additional monitoring is accepted) and with the odour conditions in place odour nuisance effects are unlikely (which is a higher standard than the purpose of the review).

11.30 Taking an overall judgment the conditions proposed and accepted by HDC appropriately balance the regionally significant benefits of the Landfill with

¹³⁵ *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 (EnvC), at [53].

managing the potential adverse effects of the Landfill subject to the review / application into the future. On this basis they promote the sustainable management purpose of the RMA.

12. WITNESSES

12.1 HDC will be calling the following witnesses:

- (a) Mr **Gallo Saidy** (Landfill history, operations, infrastructure costs and NLG).
- (b) Mr **Phillip Landmark** (Landfill design and operations)
- (c) Dr **Doug Boddy** (Air quality)
- (d) Dr **Olivier Ausseil** (Water quality)
- (e) Mr **Stephen Douglass** (Water quality)
- (f) Mr **Hywel Edwards** (Planning).

David Allen / Victoria Brunton
Counsel for HDC

1. APPENDIX 1 - SCOPE OF THE REVIEW AND CHANGES

Horizons section 128 review

- 1.1 The review is triggered by the various review conditions in those consents which, in summary is for the purposes of:
- (a) assessing the adequacy of stipulated monitoring conditions and the effectiveness of other stipulated conditions in avoiding, remedying or mitigating adverse effects on the environment surrounding the Landfill;
 - (b) allow for changes to stipulated conditions, or new conditions as necessary, to avoid, remedy or mitigate adverse effects on the environment surrounding the Landfill;
- 1.2 The scope of the review as set out in the letter from Horizons dated 30 October 2015 relates to conditions of discharge permits 6009 (discharge of solid waste to land), 6010 (discharge of leachate onto and into land), 6011 (discharge of landfill gas, odour and dust to air), 7289 (discharge of liquid waste onto and into land) and 102259 (discharge of stormwater to land that may enter water) for the Landfill.
- 1.3 The review relates solely to the following conditions (or new conditions as necessary as in (b) above), noting that not all of these conditions are subject to proposed amendments:
- (a) Permit 6009 - 2, 8, 14(a) to (m), 28, 29, 32, 33 and 34;
 - (b) Permit 6010 - 3, 4, 11(a) to (e), 12, 13, 14, 27, 28 and 29;
 - (c) Permit 6011 - 3 and 6;
 - (d) Permit 7289 - 5, 9, 12 and 17; and
 - (e) Permit 1022259 - all conditions;

1.4 Under section 129(1)(d) Horizons invited HDC to propose conditions. Following that invitation HDC proposed the following conditions in response:

- (a) Permit 6009 - conditions 14(m) (green waste composting), 28(d) (side slope liner configuration), 29 (LMP requirement now complied with), and 32-34 (the NLG);
- (b) Permit 6010 - condition 3 (Tables A, B, C and D) (monitoring locations and dates);
- (c) Permit 7289 - condition 5 (notice of waste disposal); and
- (d) Permit 102259 - conditions 5 (stormwater drain refuse); condition 9 (the stormwater design has changed); and condition 19 (review condition).

HDC's proposed section 127 changes

1.5 Under section 127(1) of the RMA, HDC applied to change or delete the following conditions:

- (a) Permit 6009 - condition 2 (landfill leachate), conditions 8 and 14 (to make the date of reporting to be 30 September each year), condition 10 (laboratory accreditation) and condition 31 (initiation of a review);
- (b) Permit 6010 - conditions 5, 9 and 15(f) (to make the date of reporting to be 30 September each year), conditions 17-24, 26 and 27 (leachate irrigation) and condition 30 (initiation of a review);
- (c) Permit 6011 - condition 7 (initiation of a review); and
- (d) Permit 7289 - condition 19 (initiation of a review).