IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

12/11

AP No. 169/93

UNDER the Resource Management Act 1991

A N D

[redacted]

IN THE MATTER of an appeal under section 299 of that Act against an interim decision, and report and recommendation, of the Planning Tribunal dated 11 June 1993

BETWEEN NEW ZEALAND RAIL LIMITED a duly incorporated company having its registered office at 4th Floor, Wellington Railway Station, Bunny Street, Wellington, transport operator

Appellant

A N D MARLBOROUGH DISTRICT COUNCIL a territorial authority pursuant to section 37N of the Local Government Act 1974

First Respondent

A N D PORT MARLBOROUGH NEW ZEALAND LIMITED a duly incorporated company having its registered office at 14 Auckland Street, Picton, port operator

Second Respondent

Hearing: 27, 28 and 29 September 1993

Counsel: P T Cavanagh QC and D H Jenkins for Appellant
R D Crosby for First Respondent
R A Fisher and M MacLean for Second Respondent
Sally Brown for Coal Corporation of New Zealand Ltd

Judgment:

JUDGMENT OF GREIG J

This is an appeal by New Zealand Rail and a cross-appeal by Port Marlborough against the decision of the Planning Tribunal dated 11 June 1993. It concerns the proposals and plans of Port Marlborough to develop and expand the port of Picton into the neighbouring Shakespeare Bay and to construct and establish there a port facility to service the export of bulk products, including timber and coal. New Zealand Rail has opposed the proposal in its entirety throughout. It appealed to the Tribunal against the original decisions of the local authorities concerned giving approval to the development, as far as it related to the expansion of the port for the purpose of the export of timber. That appeal was disallowed by the Tribunal. The Tribunal went further than the original approvals and recommendations and allowed the appeal by Port Marlborough against the refusal at the local authority's level to approve the extension and expansion of the port as a coal export service and approved that subject to some terms. New Zealand Rail appeals against the whole of the decision of the Planning Tribunal. Port Marlborough cross-appeals against that part of the decision which determines some conditions of review which are to be contained in the latter.

The decisions given by the Tribunal were not final but comprised interim decisions subject to amendments, modifications and the settlement of the terms of conditions which were necessary to comply with the rulings and observations of the Planning Tribunal in the course of its decision. Furthermore, a part of the decision is a report pursuant to s 118 (6) of the Resource Management Act 1991 directed to the Minister of Conservation as to the recommendations made by a joint hearing committee. Nothing turns on the formal nature of the decision or the inquiry made by the Planning Tribunal or undertaken by the Planning Tribunal. It was common ground that this Court was properly seized of the issues of law raised on the appeal.

Port Marlborough is a limited liability company established under the Port Companies Act 1988. It has two shareholders, the Marlborough District Council as to 92% of the shares and the Kaikoura District Council as to 8% of the shares. Port Marlborough operates the Picton Harbour which caters for a wide range of recreational and tourism activities, and commercial fishing fleets. It also caters for bulk shipping cargoes including, particularly, outgoing cargoes of logs, sawn timber, salt, tallow, meat and coal, and incoming cargoes of cement. Most importantly, however, it is the railhead for the top of the South Island with a ferry terminal for the New Zealand Rail Service between Wellington and Picton for passengers, roll-on/roll-off cargo, stock and other general cargo. Approximately

99% of the tonnage of cargo going through the port is carried through the rail ferries.

Shakespeare Bay is adjacent to Picton Harbour, separated by a peninsula. The bay, which is said to comprise between 60 and 70 hectares, is described in the decision as something of a backwater. Upon the isthmus of the peninsula in a saddle there is a derelict freezing works. There are a few dwellings but the greater part of the area seems to be taken up by reserves and rural uses. The bay has natural deep water. The Port Marlborough proposal is to excavate the saddle on the isthmus to provide road access from the Picton Harbour to Shakespeare Bay, to reclaim an area of some 8 hectares at or near the base of the peninsula. That will, in the end, provide a total area of flat land of approximately 11.4 hectares. It is then intended to provide storage, marshalling back-up areas and other facilities for two deep water berths, one to be dedicated to the export of timber and the other for bulk products generally but in particular for coal.

To obtain the necessary approvals under the Act, Port Marlborough made application to what was then the Nelson/Marlborough Regional Council and to the Marlborough District Council for a number of resource consents. They included applications for coastal permits for the reclamation and development and for the disposal of storm-water into Shakespeare Bay. An application was made for a discharge permit to discharge contaminants to the air and land use consents for the various earthworks and land clearance and for non-complying activity. These applications were duly notified.

In the course of the procedure, beginning with these various applications, the Director-General of Conservation, acting pursuant to s 372 of the Act, issued a direction which required the activities for the two coastal permits to be treated as applications for restricted coastal activities. This transferred the decision to grant these consents to the Minister of Conservation after considering the recommendations of a committee of the Regional Council made pursuant to s 118. As a result it was decided that a joint hearing committee should deal with all the applications and in due course a public hearing was held by that joint hearing committee on 2 and 4 March 1992. Evidence and submissions from a large number of bodies and persons, who had given notice of their desire to take part in the procedure, were heard. The joint hearing committee made its recommendation to the Minister of Conservation that the two coastal permits should be granted except insofar as the consent was sought for the construction of a coal berth and

an associated mooring dolphin. Other consents, as applied for, were granted subject to detailed conditions which were then promulgated. The matter came before the Planning Tribunal by way of appeal against the grant of consents and inquiries against the recommendation of the restricted coastal activity which is treated in all respects as if it was an appeal pursuant to s 118 (6) of the Act.

The distinctive nature of the various appeals and inquiries posed some potential problem to the Planning Tribunal, but if I may say so, with respect, they decided sensibly and properly that all matters should be considered together and be reported upon in one document. As was made clear in their decision, the principal issue in the case was whether land use consent should be granted to allow the port facilities to be established.

After a number of pre-hearing conferences which assisted in clarifying the issues and the parties who remained interested in the matter, the substantive hearing before the Tribunal took place between 1 and 18 February 1993. The principal parties were all represented by counsel. The Tribunal heard detailed evidence from 39 witnesses who were subjected to cross-examination by counsel. As the Tribunal in its decision was able to say, with confidence, "... this proposal has now been the subject of close scrutiny in the course of two detailed hearings, ..." The decision of the Tribunal is set out in 203 pages and deals fully and in close detail with every issue, whether of fact or law, which had been raised before it.

The appeal and the cross-appeal are brought pursuant to s 299 of the Act. They are limited to a point or points of law and that must never be lost sight of. It is often appropriate and necessary for an understanding of the issues at law that the facts should be canvassed but the decisions on the facts are for the Tribunal and not for this Court. It is seldom the case that a decision on the facts can qualify as a question of law or a point of law. In particular, the weight to be given to the evidence is especially a matter for the Tribunal alone.

New Zealand Rail raised a number of points of appeal which, as is not unusual, became refined in the course of submission and one of the points originally raised was not pursued at all. I will deal with each of the points in order but not necessarily the order in which they were presented by Mr Cavanagh Both the District Council and Port Marlborough opposed the appeal, supported the Tribunal's decision and made independent submissions. Coal Corporation joined

the appeal late and without opposition. It adopted the agreement and submissions of the other respondents.

The first point, as presented in Mr Cavanagh's submissions, was "whether the Planning Tribunal misdirected itself or erred in law when holding that a relevant resource management instrument for the purposes of its decision, and report to the Minister of Conservation, was the proposed Regional Coastal Plan as it existed prior to Variation 3."

It was common ground on this appeal that the Tribunal correctly dealt with all the five resource consents as integral parts of the one development, all as non-complying activities, and that the tests to be applied in respect of each are substantially the same except for two small particulars. In that event, therefore, s 105 (2) (b) of the Act applied as a threshold or a prerequisite to the Tribunal's consideration of the other matters to be considered pursuant to s 104. Sections 104 and 105 have been amended by the Resource Management Amendment Act 1993 (see ss 54 and 55 (2)) but the original versions of these sections still apply to this appeal. Section 105 (2) (b) is as follows:

> " 105. (2) A consent authority shall not grant a resource consent— ...
>
> (b) For a *non*-complying activity unless, having considered the matters set out in section 104, it is satisfied that—
>
> (i) Any effect on the environment (other than any effect to which subsection (2) of that section applies) will be minor; or
>
> (ii) Granting the consent will not be contrary to the objectives and policies of the plan or proposed plan; .... "

The Port conceded, as clearly was the case, that the effect on the environment by the proposed development would not be minor so that the objectives and policies of the plan or proposed plan became important.

There were five planning instruments against which the applications were to be considered under this subsection. The first of these was the Marlborough Regional Planning Scheme. On the coming into force of the Act on 1 October 1991 the scheme ceased to have effect pursuant to s 366A except that pursuant to s 367 (1) in carrying out its functions under ss 30 and 31 of the

Act, a territorial authority shall have regard to its provisions. The second was the Marlborough County District Scheme and the third was the Picton Borough District Scheme Review No. 1. Those were deemed to be transitional district plans by virtue of s 373 (1) of the Act, for the Marlborough District Council and divided into the two sections. The last and most relevant to this particular point of appeal, was what was the former proposed Marlborough Sounds Maritime Planning Scheme which was being undertaken pursuant to Part V of the Town and Country Planning Act 1977. Under s 370 of the Resource Management Act that became a Proposed Regional Coastal Plan.

That scheme was publicly notified in July 1988 by the Marlborough Sounds Maritime Planning Authority. The Planning Authority was, at the time, the Marlborough Harbour Board which was the predecessor of Port Marlborough. From November 1989 until 30 June 1992 the scheme was administered by the Nelson/Marlborough Regional Council and thereafter has been administered by the Marlborough District Council. There were a number of objections made to the scheme as originally notified. Some of these objections and submissions were heard by the Planning Authority and appeals were lodged with the Planning Tribunal in some instances. In September 1991 a document described as Variation No. 3 to the proposed maritime scheme was publicly notified. The purpose of this variation was to withdraw all those parts of the scheme that were still the subject of objections that had not been heard. Among other things, parts of the scheme that were withdrawn were those parts which included proposals and policies for port development generally and particularly in relation to Shakespeare Bay. In October 1992 the Marlborough District Council, as Planning Authority, resolved, pursuant to s 104 (6) of the Town and Country Planning Act, to withdraw all proposed variations including Variation 3. By that means it purported to reintroduce into the proposed Regional Coastal Plan the proposals originally included for port development in Shakespeare Bay.

In essence, it is the appellant's contention that the Planning Authority had no jurisdiction to withdraw Variation 3 for two reasons. The first is that, in accordance with s 104 (6) of the Town and Country Planning Act, the Planning Authority's jurisdiction was limited to withdrawal of the whole of the proposed scheme and not just a part of it. The second reason is that, pursuant to Reg 48 (3) of the Town and Country Planning Regulations 1978, the variation had merged with the proposed Regional Coastal Plan. In other words Variation 3 had ceased to be an independent document and could only be withdrawn by withdrawal

of the whole of the proposed scheme or by another variation which was not the step taken.

Under Part V of the Act, after the constitution of a maritime planning area and its planning authority, a preliminary statement of intention to prepare a maritime planning scheme was to be published within six months or within such further time as the Minister might allow. Unlike District Schemes, there was no express obligation to provide and maintain a scheme. Under that part of the Act there was no power for the District Authority to withdraw a proposed scheme in its entirety. The next step was the preparation and public notification of the Draft Scheme pursuant to s 104. The scheme had to make provision for the matters referred to in the Second and Third Schedules of the Act and to be prepared in accordance with regulations. Under s 105 of the Act the provision of ss 45 to 49 of the Act were applied so far as they were applicable and with the necessary modifications. Those sections provided for submissions and objections, alterations and variations of the schemes and the way in which consideration and hearing of submissions and objections should be made and, finally, a right of appeal to the tribunal.

Section 47 (4) of the Act, dealing with variations, provided that:

> " The Council may at any time before a proposed variation is approved, or (if an appeal has been lodged in respect of it) before the Tribunal has made a decision on the appeal, withdraw the proposed variation. "

Following the hearing of the submissions and objections, in accordance with the regime applicable to District Schemes and subject to any amendments required, the Planning Authority then approved the scheme and it became operative.

Section 109 provides authority or jurisdiction to alter by way of change, variation and review of any planning scheme Subsection (4) of s 109 provides:

> " All the provisions of this Part of this Act relating to the preparation and approval of maritime planning schemes shall, so far as they are applicable and with the necessary modifications, apply to every review "

And subs (1) provides likewise in respect of any variation or change.

On a proper reading of the Act the Planning Authority had jurisdiction to change and vary and to withdraw a variation at any time. By reference, the power to withdraw a variation contained in s 47(4) was incorporated into the scheme of maritime planning and applied, expressly, pursuant to s 109 (1) and 105. The provision of s 104 (6) as to withdrawal of the whole of the scheme was an additional right or authority, a right which was not available to District Councils or other Authorities under the earlier part of the Act, whose obligation was to provide and maintain a scheme. It is not the intention of subs (6) of s 104 to limit but is to extend the jurisdiction and rights of the Maritime Planning Authority so that it could withdraw the whole of a scheme and start anew.

Regulation 48 of the Town and Country Planning Regulations 1978 provides as follows:

> " 48. (1) Where the Maritime Planning Authority wishes to vary the draft maritime planning scheme or to change an operative scheme it shall, so far as it is applicable and with the necessary modifications, follow the procedure set out in regulations 46 and 47 of these regulations:
>
> Provided that the time for receiving submissions and objections shall be not less than 6 weeks after the date of public notification.
>
> (2) Every variation and every change shall include a report setting out the reasons for the variation or change and the likely economic, social and environmental effects. Copies of the report shall be included with the public notice and a copy of the variation or change sent to the bodies and persons referred to in regulation 46 (5) of these regulations.
>
> (3) Every variation of a draft scheme shall be merged in and become part of the scheme as soon as the variation and the scheme are both at the same stage of preparation:
>
> Provided that, where the variation includes a provision to be substituted for a provision in the scheme against which an objection or appeal has been lodged, that objection or appeal shall be deemed to be an objection or appeal against the variation. "

Paragraph (3) is to be compared with the corresponding regulation about the variation of district schemes, that is to say reg 28 (3). That opens with the words, "Except as expressly provided in the Act," and instead of referring to the stage of preparation speaks of the same procedural stage. The authority and effect of reg 48 is procedural but it cannot alter or amend the effect of the statute to which it is subordinate. There is nothing in the regulation which expressly provides against a withdrawal of a variation. It is implicit, so it is said, that by requiring merger then the withdrawal is no longer possible but that does not follow dramatically or logically. Although a variation has merged it can still be extracted and excised from what has gone before.

In any event the powers of regulation-making under s 175 of the Town and Country Planning Act were limited to those regulating the procedure to be adopted with respect to the preparation, recommendation, approval, variation and change of maritime planning schemes. That would not permit a regulation which provided substantively for the or against the withdrawal of a variation once made.

There was an argument as to whether, in the circumstances of this case, the scheme, as far as it had gone, and the Variation 3 were at the same stage of preparation. However I have already noted the distinction in the regulations and the reference on the one hand to the stage of preparation and the procedural stage. In Part V there is particular reference to preparation and approval in various sections, as I have already cited, and that seems to point to a particular distinction. It is not necessary to make a decision on this point but I would incline to the view that the variations and the scheme itself were at the same stage of preparation although not at the same factual procedural stage.

In the result the Authority had jurisdiction to withdraw Variation 3 and there being no further challenge to what it did that variation was properly withdrawn and the Tribunal made no error of law in considering that planning instrument in its condition with Variation 3 withdrawn, that is to say in its original terms.

The next point of appeal was whether the Planning Tribunal misdirected itself as to the interpretation of the relevant objectives and policies of the relevant plans when holding that the development was not contrary to those objectives and policies. In its decision the Tribunal, having identified the relevant

resource management instruments and dealt with the question of Variation 3, then undertook a lengthy discussion of the particular parts of those instruments and the evaluations proffered in evidence by the planning witnesses. There is a detailed comparative discussion of the evidence, in particular of Mr R D Witte, Senior Planner with the Marlborough District Council and later Senior Strategic Planner with the unitary authority on the one hand, and on the other of Mr D W Collins, Planning Consultant called by New Zealand Rail.

The Tribunal gave its summary and conclusions at p 164 to 166, referring to each of the planning instruments and coming to a conclusion as to their overall effect, concluding at p 167:

> " It is our judgment that, taken overall, the relevant objectives and policies earlier discussed support such a development in this locality. Indeed, in the proposed regional coastal plan which is relevant to the land use consent because it refers specifically to port development as well as an associated reclamation, it is indicated that Shakespeare Bay might be developed to a much greater extent than Port Marlborough's present proposal. "

And concluded that the -

> " ... the consent to port development ... would not be contrary to those objectives and policies. "

Mr Cavanagh, in the course of his submissions, dealt in some considerable detail with the provisions of the various resource management documents, drawing attention to various parts of them and contending for their meaning and effect. By way of submission he interpreted and demonstrated the various policies and objectives, either expressed or implied in those various documents, analysing each of them and making submissions overall about them individually and collectively. He conceded that the appellant cannot challenge the Tribunal's factual findings in themselves or any value judgment, as he put it, that the Tribunal made as a result. The way he put it, however, was that this was not a challenge on the facts or the findings on the facts, but asserted that the Tribunal had misdirected itself in its interpretation of the relevant objectives. It was the appellant's submission that a proper consideration of the totality of the objectives

and policies in the relevant resource management documents did not support the establishment of such a major project as that proposed by Port Marlborough.

It was not suggested that the Planning Tribunal had failed to have regard to any of the documents or the content or any part of the content of them. It was not contended that the Tribunal had made any error in law in construing s 105 (2) (b) (ii), or that it had incorrectly construed the words "objectives and policies" and the word "contrary", or at least there was no challenge to that. It was not suggested that this was a case of unreasonableness in the *Wednesbury* sense (*Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223) although Mr Cavanagh did express himself in his submissions that the finding by the Tribunal was not one open to a reasonable tribunal properly directed as to the correct interpretation of the objectives and policies in the various relevant documents.

In the end what the appellant submitted was that the proposed development is contrary to the policies and objectives of the relevant resource management documents and that the Tribunal was in error in reaching the opposite conclusion. That was no more and no less than a challenge on the factual findings. It was a challenge as to the inferences and the conclusions drawn by the Planning Tribunal from the facts before it. It was for them to give the weight that they thought fit, both to the evidence that was given and to the very words and meanings of the documents before them. That they attended to the evidence and the documents is plain. That they came to conclusions upon them without error in law is equally plain.

I have myself considered the various words and documents and the tenor of the conclusions reached by the Tribunal. Among the matters that have to be borne in mind, and which I think was clearly in the minds of the Planning Tribunal, as the essential question was whether the consent to the proposed use and development was "contrary" or not to the relevant objectives and policies. The Tribunal correctly I think, with respect, accepted that that should not be restrictively defined and that it contemplated being opposed to in nature different to or opposite. The Oxford English Dictionary in its definition of "contrary" refers also to repugnant and antagonistic. The consideration of this question starts from the point that the proposal is already a non-complying activity but cannot, for that reason alone, be said to be contrary. "Contrary" therefore means something more than just non-complying.

It is relevant here to observe what was said by the Court in *Batchelor v Tauranga District Council (No. 2)* (1992) 2 NZRMA 137 at p 140:

> " There are likely to be difficulties in reconciling the regime of the new Act to an operative district scheme created under and treated as a transitional plan, for plans under the new Act are intended to be different in concept and form from the old district schemes. Yet during the transitional period, the old must be treated as if it were the new. That is a necessary consequences of the statutory situation and must be dealt with in a pragmatic way. "

In my view this point is not a point of law at all but is a question of fact. Insofar as it might be described as a point of law, I am satisfied that there was ample material before the Tribunal which justified the factual finding and the conclusion that it came to, namely, that the proposal and the development was not contrary to the policies and objectives of the plans and the documents.

The next point of appeal was whether the Planning Tribunal misdirected itself in holding that the Act "does not require the proposed development to be dealt with by way of plan change procedure". This issue was a fundamental plank of New Zealand Rail's position in its opposition to the proposed development. It had submitted, as it did before the Court, that it was inappropriate that a proposal of this magnitude and nature should be advanced and concluded by way of a resource consent application as a non-complying activity. As a major development with substantial impact on Picton, Marlborough and the whole of the South Island it was said that it needed to be assessed in the context of a plan change procedure under which, in particular, the provisions of ss 74 and 32 would have been important matters for consideration and disposal.

This was dealt with at some length by the Planning Tribunal. In particular the Planning Tribunal compared the provisions which apply to the plan change procedure under the new Act with the former provisions under the Town and Country Planning Act and concluded at the top of p 458 as follows:

> " Whereas under earlier legislation a disappointed developer had no recourse if consent to a specified departure was refused, unless the territorial authority was prepared to take the initiative by promoting a

> scheme change. Now, if a resource consent is refused, a disappointed developer can itself take steps to have the Plan changed. This is entirely consistent with a finding that to grant a resource consent would be contrary to the relevant objectives and policies of the Plan. "

The Tribunal concluded that the Act does not exhibit a preference for plan change procedures over resource consent procedures.

I think that little assistance is to be gained in this regard from a consideration or a comparison with the previous legislation. This is new legislation which, as the full Court in *Batchelor* said, imposes a significantly different regime for the regulation of land use by territorial local authorities. The Court went on to refer to the concept of direction and control under Town and Country Planning Act and distinguished the movement towards a more permissive system of management focussed on control of the adverse effects of land use activities. The Act expresses importantly the objectives and the purposes of the Act in Part II which sets the scene overall for the construction and application of the Act.

What the appellant submitted was that, where a planning consent application will have implications of significance beyond the proposed site, the matter should be dealt with by way of plan change or review. As noted by the Tribunal and in the submissions before the Court, the Resource Management Act now authorises any person to request a change of a district plan: see s 73 (2). At the same time application for resource consent may be made in accordance with the particular procedure set out in Part VI of the Act. There is nothing in that part of the Act or elsewhere which provides any limitation but, as is crucial in this case, a resource consent application which fails to meet s 105 (2) will not be granted. Thereafter the applicant, if the matter is to be pursued, would have to proceed by way of a request for a change of the plan. That is not to say, however, that that shows any tendency to require an application for plan change in cases in which that threshold might not be passed or where, although it was passed, there could be said to be some significant impact otherwise in the scheme. The legislation authorises the distinct procedures. I agree, with respect, with the conclusions of the Tribunal.

In any event it must be recognised that in this case the proposals and the opposition to them was given a very close and detailed consideration by two tribunals over an extensive period of time. Many, if not all, of the various

considerations which would be relevant to a change of plan procedure were canvassed before the Tribunal and were considered by it. The Tribunal identified ten particular topics for discussion and consideration in the course of the decision and these were each given careful consideration. The ten topics were:

Forestry
The Coal Trade
Log Marshalling and Stevedoring
Coal Transportation
Construction of a Bund Wall and Reclamation
Wharf Construction
Visual Air Quality and Water Quality Effects
Shipping and Navigation
Tourism
Economics

The Tribunal correctly concluded that, although the application had not been the subject of s 32 procedures, it had not suffered as a result. Alternatives were considered, as were economic consequences. It is, I think, difficult to see what other matters or considerations could be effectively pursued simply by adopting the change of plan procedure.

The next point of appeal that I deal with, though not in the order that was presented, is whether the Planning Tribunal in holding that the provisions of Part II of the Resource Management Act are not to be given primacy when considering resource consent applications pursuant to s 104 of the Act. Section 104 sets out the matters to be considered in an application for a resource consent. Part II is particularly referred to and is one of the matters which the consenting authority should have regard to. It is referred to in subs (4) (g) which is the second last of that list, the last being any relevant regulations. That section is now made expressly subject to Part II by virtue of s 54 of the Resource Management Amendment Act 1993, but the Act must be construed for this case in its original form. It was suggested that the 1993 amendment made explicit what was previously implicit in the Act generally and in s 104 specifically. Equally, however, it may be contended that such an amendment is intended to remedy a defect in the Act and is intended to alter what was there before.

Part II of the Act sets out the purpose and the principles which include, among other things, matters of national importance and the Treaty of Waitangi. This matter was the subject of submission and it is an issue in *Batchelor's* case. At p 141 the Court said:

> " In carrying out that exercise, [namely, the regard to the rules of a plan and its relevant policies or objectives], regard must also be had to the other relevant provisions of s 104, including the general purpose provision as set out in s 5. Although s 104 (4) directs the consent authority to have regard to Part II, which includes s 5, it is but one in a list of such matters and is given no special prominence. "

Citing that view the Planning Tribunal in this case noted also the distinguishable decision in *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257 which depended upon the provisions in the Town and Country Planning Act which made the matters, to which regard was had, subject to the provisions in ss 3 and 4 of the 1977 Act which related to the matters of national importance and the general purposes of planning. Here, in the present Act as it was, in the absence of any such provision and with the provisions of Part II merely being one of a number of matters to which regard was to be had, it could not be said that any primacy was given to Part II over all the other Parts. That, I think, must follow from an ordinary reading of the Act.

Mr Cavanagh went on to submit that s 5 and the other sections in Part II set out the central theme of the Act, declaring a specific purpose and principles. This was, he argued, an unusual provision setting a statutory guide-line creating a primary goal and a basic philosophy which controlled and governed any and all exercise of functions and powers under the Act. It was said that the opening words of ss 6, 7 and 8 emphasised that imperative with the words, "In achieving the purpose of this Act, all persons exercising functions and powers under it, ... shall" recognise and provide for the matters of national importance (s 6), have particular regard to the matters in s 7 and take into account the Treaty of Waitangi (s 8).

Reliance was placed on the decision of the Court of Appeal in *Ashburton Acclimatisation Society v Federated Farmers of NZ Inc* [1988] 1 NZLR 78. That was a case under the Water and Soil Conservation Act 1967 to which was added, in an amendment in 1988, a section setting out the object of the Act.

The Court, in a judgment delivered by Cooke P, at p 87, having noted the unusual step of declaring a special object, said, at p 88:

> " A statutory guide-line is thus provided; and I think that the code enacted by the Amendment Act is to be administered in its light. With all respect to the contrary arguments, to treat s 2 as surplusage or irrelevant or mere window-dressing would be, in my opinion, as cynical and unacceptable a mode of statutory interpretation as that which was rejected in *New Zealand Maori Council v Attorney-General* [1978] 1 NZLR 641. The duty of the Court must be to attach significance to and obtain help from this prominent and unusual feature of the Parliamentary enactment. "

I am told that that case was not cited to the full Court in *Batchelor.*

That case is, however, distinguishable because there there was no reference back to the object of the Act in the matters for which consideration had to be given. In this case, however, Part II is specifically referred to as one of a number of items. Whatever its importance and its guidance in the Act generally, s 104 must be taken to have deliberately brought it in as one of the matters without any indication whatsoever that it was to be given any particular primacy and, indeed, it does not even head the list let alone a section which begins with the necessity to have regard to actual and potential effects of allowing the activity. I am in respectful agreement with the view of the full Court and with that of the Tribunal in this case.

The next point was whether the Planning Tribunal misdirected itself as to the interpretation of s 6 (a) of the Act by holding that natural character of the coastal environment could justifiably be set aside in the case of a nationally suitable or fitting use or development.

The Tribunal's decision on this topic noted the wording of the present section and its difference from that of the previous corresponding section. The section now requires that persons exercising the functions and powers under the Act in relation to development shall recognise and provide for -

> " 6. (a) The preservation of the natural character of the coastal environment (including the coastal

> marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development: "

Section 3 of the 1977 Act set out the matters which were declared to be of national importance which shall "in particular be recognised and provided for" including, in s 3 (1) (c), "The preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development:". Having referred to the construction of that previous provision in *Environment Defence Society v Mangonui County Council* and after discussing the meaning of the word "appropriate" the Tribunal said, at p 465:

> " Having regard to the foregoing, it is our judgment that s 6 (a) of the Act should be applied in such a way that the preservation of the natural character of the coastal environment is only to give way to suitable or fitting subdivision, use, and development. Here, of course we only have to consider development. But this does not mean to say that *any* suitable or fitting development will qualify. Although the threshold, as Mr Camp put it, may be passed earlier when considering appropriateness as distinct from need, it has to be remembered that it is appropriateness in a national context that is being considered. It is not, for example, appropriateness in either a regional or a local context. This is made clear by Somers J in the passage from his judgment in *Environmental Defence Society v Mangonui County Council* that we referred to earlier.
>
> Consequently, the development being considered for the purposes of s 6 (a) of the Act would have to be *nationally* suitable or fitting before preservation of the natural character of the coastal environment could justifiably be set aside. "

Later the Tribunal concluded that the provision of log and coal export trade facilities in Shakespeare Bay was suitable or fitting on a national level and the setting aside of the preservation of the natural character of the bay was thus justified to the extent required by the development.

The appellant contended that s 6 and in particular para (a) must be read with reference back to s 5, the purpose and the promotion

> of sustainable management of natural and physical resources. It was suggested that Parliament intended that the primary object is that the effect of any modification to natural character must be adequately mitigated wherever possible and development is to occur only where it is appropriate. It was the environment which was placed in a pre-eminent position in light of the purpose of sustainable management. Preservation of natural character must be achieved even in the case of appropriate development. As Mr Cavanagh put it, an appropriate development must require the coastal location chosen for that activity to be such that it cannot be accommodated elsewhere; its effect can be so mitigated as to minimise its impact on the natural character of that environment and that the permanent modification of a coastal environment can only be justified if the development in question has significance of national importance and the economy of the nation as a whole.

I have somewhat extensively, but I hope accurately, expressed the submissions made in this matter. I have done so because I found some difficulty in understanding precisely what the appellant's contention is, particularly as the last part of the submission that I have described appears to coincide with the tenor of the Tribunal's view that national suitability would justify the setting side of the preservation of the natural character of a coastal environment. The recognition and provision for the preservation of the natural character of the coastal environment in the words of s 6 (a) is to achieve the purpose of the Act, that is to say to promote the sustainable management of natural and physical resources. That means that the preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management. It is not an end or an objective on its own but is accessory to the principal purpose.

"The protection of them", which in its terms means and refers to the coastal environment, wetlands, lakes, rivers and their margins, the items listed, but the protection is as part of the preservation of the natural character. It is not protection of the things in themselves but insofar as they have a natural character. The national importance of preserving or proteceting these things is to achieve and to promote sustainable management.

"Inappropriate" subdivision, use and development has, I think, a wider connotation than the former adjective "unnecessary". In the *Environmental*

Defence Society v Mangonui County Council case that expression was construed by considering "necessary" and the test therefore was whether the proposal was reasonably necessary, although that was no light one: see Cooke P at p 260 and Somers J at p 280 when he said that preservation, declared to be of national importance, is only to give way to necessary subdivision and development and to achieve that standard it must attain that level when viewed in the context of national needs.

"Inappropriate" has a wider connotation in the sense that in the overall scale there is likely to be a broader range of things, including developments which can be said to be inappropriate, compared to those which are said to be reasonably necessary. It is, however, a question of inappropriateness to be decided on a case by case basis in the circumstances of the particular case. It is "inappropriate" from the point of view of the preservation of natural character in order to achieve the promotion of sustainable management as a matter of national importance. It is, however, only one of the matters of national importance, and indeed other matters have to be taken into account. It is certainly not the case that preservation of the natural character is to be achieved at all costs. The achievement which is to be promoted is sustainable management and questions of national importance, national value and benefit, and national needs, must all play their part in the overall consideration and decision.

This part of the Act expresses in ordinary words of wide meaning the overall purpose and principles of the Act. It is not, I think, a part of the Act which should be subjected to strict rules and principles of statutory construction which aim to extract a precise and unique meaning from the words used. There is a deliberate openness about the language, its meanings and its connotations which I think is intended to allow the application of policy in a general and broad way. Indeed, it is for that purpose that the Planning Tribunal, with special expertise and skills, is established and appointed to oversee and to promote the objectives and the policies and the principles under the Act.

In the end I believe that the tenor of the appellant's submissions was to restrict the application of this principle of national importance, to put the absolute preservation of the natural character of a particular environment at the forefront and, if necessary, at the expense of everything except where it was necessary or essential to depart from it. That is not the wording of the Act or its intention. I do not think that the Tribunal erred as a matter of law. In the end it

correctly applied the principles of the Act and had regard to the various matters to which it is directed. It is the Tribunal which is entrusted to construe and to apply those principles, giving the weight that it thinks appropriate. It did so in this case and its decision is not subject to appeal as a point of law.

The next point of appeal was whether the Planning Tribunal misdirected itself or erred in law in holding that financial viability of the proposed development was not relevant to consideration of the application for resource consents or, alternatively, in failing to take into consideration the financial viability of the proposed development when considering the application for resource consents.

One of the planks of New Zealand Rail's challenge of the proposed development was a claim which it supported by evidence and cross-examination that the cost of the whole development was likely to be significantly greater than had been estimated. The result of this would mean that, in order to service the costs, port fees would have to be increased but because, for competitive reasons, it would be necessary to hold the costs to the users of the timber and coal berths the costs would therefore fall on other port users and, in particular, on New Zealand Rail as the predominant and principal user of the port.

The Tribunal was satisfied that it was feasible from an engineering point of view to construct and complete the necessary reclamation and wharf constructions. There was no suggestion that Port Marlborough would be unable to complete the works or to obtain the necessary finance for it. Thus there was no suggestion that the development would not take place for lack of funds or because of engineering or other construction difficulties. The Tribunal did express itself, however, that the port might have under-estimated the costs of achieving the results and that it would be advised to reconsider and to review its costings.

Under the heading of economics the Planning Tribunal discussed and considered the evidence of Dr R R Allan who was called as the witness by New Zealand Rail to demonstrate, from his calculations and evaluations, the thesis that New Zealand Rail might, in the end, be required to subsidise the costs of the use of the timber and coal facilities. The Tribunal noted, as they said, Dr Allan's impressive credentials in the field of transport engineering and economics and found him to be a sound, careful witness to whose opinions they paid a good deal of attention. It was noted, however, that the economic analysis depended upon the

proper calculation as to the costs and the variations which were involved in that. The Tribunal returned to this topic and, at p 172 of its decision and thereafter, said this:

> " On the matter of additional port charges, which of course applies to both timber and coal, although Dr Allan presented an attractive argument to support NZ Rail's case in this regard, in the end we do not think it was sufficiently persuasive to justify refusing consent on economic grounds.
>
> Whether increased port charges will occur depends on several variables, including importantly the final cost of the development. Then too there was no evidence about how Port Marlborough proposes to go about setting its charges for the use of these facilities, except to the extent that with regard to the log trade it intends to be competitive with the port of Nelson. However, by the time this development comes to fruition what that will mean in practical terms is unknown.
>
> It is possible as Dr Allan demonstrated to construct a scenario from which one might conclude that NZ Rail, being the single most important port user at the present time, could face increased port charges to subsidise this development. However, again as his evidence and his cross-examination demonstrated, Dr Allan's scenario is no more than one possibility. We think too that Mr Camp made a strong point when he submitted that the financial viability of a development, as distinct from its wider economic effects, is more properly a matter for the boardroom than the courtroom. "

It was the appellant's submission that financial viability, in the words used by Mr Cavanagh, is a relevant consideration under Part II of the Act. Mr Cavanagh said if the proposal is not viable then it is in conflict with Part II. With comparative reference to the decision in *Environmental Defence Society v Mangonui County Council* it was submitted that there was an onus on an applicant to establish the economic practicability of the proposal. In the result, it was said, the evidence before the Tribunal which showed some doubts as to the costings and the possibility of increased port charges, resulting in undue charges and subsidy by New Zealand Rail, put in doubt the financial viability of the proposal. It was

submitted that the Tribunal had been dismissive of the economic topic and therefore had not taken appropriate consideration of it into account.

It was Mr Cavanagh's contention that, in order that the Court should have a proper understanding of this question, it was necessary that it should consider the evidence given by Dr Allan. To that end Mr Cavanagh applied for leave to produce, as evidence, the transcript of that part of the evidence which included Dr Allan's evidence-in-chief and his cross-examination. That application was opposed by the respondents. I rejected the application on the ground that it would not be necessary or helpful in deciding the question of law, if any, involved in this topic to read or to consider the particular evidence given in the matter. The tenor of the evidence and the material before the Tribunal was, in my view, adequately described in the Tribunal's decision.

Financial viability in those terms is not a topic or a consideration which is expressly provided for anywhere in the Act. That economic considerations are involved is clear enough. They arise directly out of the purpose of promotion of sustainable management. Economic well-being is a factor in the definition of sustainable management in s 5 (2). Economic considerations are also involved in the consideration of the efficient use and development of natural resources in s 7 (b). They would also be likely considerations in regard to actual and potential effects of allowing an activity under s 104 (1). But in any of these considerations it is the broad aspects of economics rather than the narrower consideration of financial viability which involves the consideration of the profitability or otherwise of a venture and the means by which it is to be accomplished. Those are matters for the applicant developer and, as the Tribunal appropriately said, for the boardroom. In the *Environmental Defence Society* case the particular consideration to which Mr Cavanagh referred was the absence of any evidence that the proposed development would actually take place. There was no developer, there was no evidence as to any actual development proposal or their costs. In this case plainly there was a considerable body of evidence given on each side as to the costs and as to the economics and the potential viability of the proposal for the reclamation and construction of all works and buildings required.

The contention that the Tribunal was dismissive of this economic evidence is, I think, to misunderstand what the Tribunal was doing. Clearly it considered all the evidence that was put before it but in the end it dismissed the contentions and opinions of Dr Allan and set them aside It was not satisfied, on

the evidence before it, that the apprehensions of that witness and thereby of New Zealand Rail would be realised. This was a judgment on the facts, on the weight of the evidence before it. The Tribunal took into account economic questions, as it was bound to do, in a broad sense and in a narrower sense upon the projected development itself. In the result they came to the conclusion that that evidence was not "sufficiently persuasive to justify refusing consent on economic grounds". That does not raise a question of law but is a decision on the merits after considering the material before it. It is wrong to suggest, as Mr Cavanagh did, that the economic effects were not addressed. The Tribunal addressed the evidence and came to a conclusion contrary to that of New Zealand Rail. New Zealand Rail has no appeal in law against that finding.

The final point of appeal was directed to the Tribunal's decision upholding the appeal by Port Marlborough and granting resource consents for the provision for the coal export trade. The ground of appeal was expressed, in terms, as to misdirection by the Tribunal of the interpretation of ss 5 and 6 which enabled it to grant the resource consents. The essence of the case of the appellant on this ground was its submission that it is an inappropriate use or development of a coastal environment to impose a development of this nature and significance in circumstances where there is no evidence that the facilities will be used once built.

It was common ground that the proposed development involved reclamation which would be suitable for both the timber and coal facilities although the coal berth and its associated dolphin mooring would not be constructed until it was required. There was therefore no immediate intention to proceed with the coal terminal construction though the whole of the reclamation would take place to provide the necessary flat land for the further expansion into the coal berth. It was the contention of New Zealand Rail that if the coal was excluded the size of the reclamation could be reduced and thus the effect on the land could be reduced proportionately.

The Tribunal gave, as it did to all other aspects of the case, extensive consideration to the coal trade, describing and assessing the evidence given on each side in that regard. As the Tribunal said in its concluding paragraphs on its discussion of this evidence at p 47:

> " ... we have referred at times to some of the evidence about the transportation of coal because that

> evidence is relevant to the principal question here, namely whether there is sufficient justification for granting resource consents to enable a dedicated coal export berth and back-up area to be established in Shakespeare Bay. "

The Tribunal noted the submission on behalf of New Zealand Rail that this was a "straw" proposal, simply a device to enable coal exporters, principally Coal Corporation, to drive a harder bargain with New Zealand Rail for the cartage of coal by rail using the threat of a dedicated coal berth at Shakespeare Bay as a bargaining point in New Zealand Rail's need to maintain the Midland Line for the transport of coal between the West Coast and Lyttelton. The Tribunal noted, however, the evidence on the other side that, while there was no clear-cut intention as was the case with the log exporters, Coal Corporation was looking for a convenient alternative export port facility. The Tribunal concluded that it was unable to say with any degree of confidence that New Zealand Rail's view of the matter was correct. The Tribunal went on, at p 48:

> " The evidence about the need for a dedicated coal berth is less convincing than the evidence about the need for additional log exporting facilities in the Picton/Shakespeare Bay area, but the reasons for this are largely to do with the uncertainties that surround future markets. This no doubt is the reason why Port Marlborough does not propose constructing a coal berth immediately, but it does not follow from this that it is unnecessary to make provision for such a facility. Whether provision should be made as a matter of overall resource management evaluation is of course another question and one that we are not attempting to answer here. On balance, we think that the case made by Port Marlborough and Coal Corp is just sufficient to justify further consideration of this part of the proposed development under later headings. "

The Tribunal returned to this topic, and having noted that it had entertained some reservations about granting consent to provide the opportunity for the coal part of the proposed development to take place, and having referred to the Midland Line as a resource for the purpose of s 5 and making a conclusion as to that, the conclusion made was, at p 172:

" ... we think that permitting provision to be made in Shakespeare Bay for a coal export trade which we also accept is important nationally, is justified. The additional environmental impacts associated with such a development over and above those that will already occur with the timber trade are not such as to warrant refusing consent on those grounds. To the extent that they are different from those arising from the timber trade, and here we are referring in particular to the matter of coal dust, we are satisfied that they can be mitigated by management practices that can be required to be put in place through the conditions of a consent.

On the matter of additional port charges, which of course applies to both timber and coal, although Dr Allan presented an attractive argument to support NZ Rail's case in this regard, in the end we do not think it was sufficiently persuasive to justify refusing consent on economic grounds. "

Once again this is a finding of fact in which the Tribunal has assessed the evidence before it and reached a conclusion in favour of the applicant and against the opposition. This is not a case where there is no evidence, although the evidence was to the effect that there would be no immediate use of the proposed facility. It was the Rail case that this was a prospective application without any real expectation of use. The Tribunal, after considering the matters put before it, concluded that was not the case but that the case made by Port Marlborough and the Coal Corporation was sufficient to justify the further consideration which the Tribunal gave to the matter. I can see no question of law in this and so it too must fail.

I turn then to the cross-appeal by the Marlborough District Council. Only one of the points raised in the notice of cross-appeal was pursued. That was against the terms of a review condition proposed by the Tribunal which it required be incorporated in each of the resource consents. This is a requisite of s 128 which provides as follows:

" 128. A consent authority may, in accordance with section 129, serve notice on a consent holder of its intention to review the conditions of a resource consent—

> (a) At any time specified for that purpose in the consent for any of the following purposes:
>
> (i) To deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
>
> (ii) To require a discharge permit holder to adopt the best practicable option to remove or reduce any adverse effect on the environment; or
>
> (iii) For any other purpose specified in the consent; .... "

I omit the remaining parts of this section as being irrelevant to the question in issue here.

There had been proposed review conditions which were couched as to their relevant parts in these terms:

> " 5. Review of Conditions
>
> At any time after the first six (6) months of the exercise of any resource consents granted for the development of a port facility at Shakespeare Bay by Port Marlborough New Zealand Limited, the Marlborough District Council may review the conditions of consent(s) for any of the following purposes: ... "

The Tribunal took the view that the condition did not comply with s 128 because it did not specify a time with the precision required under the proper meaning of the Act. The Tribunal referred to a decision of the Planning Tribunal in *W P van Beek trading as Christchurch Pet Foods v Christchurch City Council*, Decision No. C 9/93, in which a review condition, pursuant to s 128, was worded as follows:

> " That the Council may review condition (ii) by giving notice of its intention so to do pursuant to section 128 of the Resource Management Act at any time within the period commencing one year after the date of this consent and expiring six months thereafter, for the purpose of ensuring that condition (ii) relating to vibration is adequate. "

The Planning Tribunal, in this case, then said:

> " In our view a condition authorising a consent authority to review should contain this degree of specificity, both as to time and if possible as to purpose. "

It was then left for the parties to review and to rewrite the review conditions.

It was the contention of the District Council on its cross-appeal that the Tribunal had construed s 128 and the phrase "at any time specified for that purpose" incorrectly and that the proposed terms which referred simply to "at any time after six months" was sufficient as it specified any and every day after the expiry of that first period. It was said that, contrary to the approach required under s 5 (j) of the Acts Interpretation Act 1924 and the need to ensure the Council's power to review and monitor the construction and operation of the development on a continuing basis, the Tribunal's decision was unduly restrictive.

No other party took part in this cross-appeal, it being left entirely to the cross-appellant. There was, therefore, no contrary argument put to the Court.

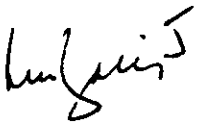
In *Sharp v Amen* [1965] NZLR 760 the Court of Appeal construed the words in s 92 of the Property Law Act 1952 "a notice specifying ... a date on which the power will become exercisable" so as to require the precise time or date to be specified. As a result the notice which expressed the date as "within one calendar month from the date of the receipt of this notice by you" was insufficient. As was said in that case, the construction of a particular statute will be controlled by the text of it and its subject matter. But it cannot be said that an expression which means that every day after a particular time complies with the meaning or purpose of this statute. Review, as the word implies, requires a consideration from time to time but the parties and the persons concerned should not be subject to the daily possibility of review under this provision. I think the Tribunal was perfectly correct in requiring a specification with greater specificity than is provided for in the draft. The proposal that has been made by the Tribunal appears to provide a reasonable guide-line. It would give scope for repeated review in months or years to come.

I think care has to be taken to ensure that what is set down by this condition is not just another policing provision to ensure compliance with the

conditions and the terms of the consent granted. It is for the purpose of reconsidering the conditions of the consent to deal with matters which arise thereafter in the compliance exercise of the consented activity. It is not, I think, in place of the other provisions in the Act for the control and enforcement of the conditions of consent.

In the result, then, the appeal and the cross-appeal are dismissed.

The respondents are entitled to costs which I fix in the sum of $5,000 for each of the first and second respondents together with reasonable travelling and accommodation expenses for counsel and all other disbursements and necessary expenses to be fixed by the Registrar. I make no order for costs in respect of Coal Corporation which took no active part in the matter.



Solicitors: Rudd Watts & Stone, WELLINGTON, for Appellant

Gascoigne Wicks & Co., BLENHEIM, for First Respondent

Radich Dwyer Hardy-Jones, BLENHEIM, for Second Respondent

Phillips Fox, WELLINGTON, for Coal Corporation of New Zealand Ltd

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2014-441-000073
[2014] NZHC 3191

UNDER	the Resource Management Act 1991
IN THE MATTER	of an appeal from a decision of the Board of Inquiry on the Tukituki Catchment Proposal
BETWEEN	HAWKE'S BAY and EASTERN FISH AND GAME COUNCILS
	ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED Appellants
AND	HAWKE'S BAY REGIONAL COUNCIL First Respondent
	HAWKE'S BAY REGIONAL INVESTMENT COMPANY LIMITED Second Respondent

CIV-2014-485-009279

IN THE MATTER	of an appeal under section 299 and clause 14, First Schedule of the Resource Management Act 1991
BETWEEN	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED Appellant
AND	HAWKE'S BAY REGIONAL COUNCIL First Respondent
	HAWKE'S BAY REGIONAL INVESTMENT COMPANY LIMITED Second Respondent
	DAIRYNZ LIMITED FEDERATED FARMERS OF NEW ZEALAND INCORPORATED FONTERRA CO-OPERATIVE GROUP

LIMITED
HORTICULTURE NEW ZEALAND INCORPORATED
IRRIGATION NEW ZEALAND INCORPORATED
(Primary Production Interest Group)

HASTINGS DISTRICT COUNCIL
Section 301 Parties

Hearing: 10-12 November 2014

Counsel: R J Somerville QC and C D H Malone for Hawke's Bay and Eastern Fish and Game Councils
S Gepp and P D Anderson for Royal Forest and Bird Protection Society of New Zealand
R B Enright and N M de Wit for Environmental Defence Society Incorporated
T P Robinson and M J E Williams for Hawke's Bay Regional Council and Hawke's Bay Regional Investment Company Limited
B J Matheson and D J Minhinnick for DairyNZ Ltd, Federated Farmers of New Zealand Incorporated, Fonterra Co-operative Group Ltd, Horticulture New Zealand Incorporated and Irrigation New Zealand Incorporated
M E Casey QC for Hastings District Council

Judgment: 12 December 2014

JUDGMENT OF COLLINS J

Introduction

[1] This judgment answers appeals on questions of law brought by Hawke's Bay and Eastern Fish and Game Councils (Fish and Game), Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest and Bird) and cross-appeals by Environmental Defence Society Incorporated (Environmental Defence). These organisations have challenged an important aspect of a decision of a Board of Inquiry (the Board) established by the Minister for the Environment and the Minister for Conservation pursuant to s 147 of the Resource Management Act 1991 (RMA).

[2] The Board was established to consider and determine proposed changes to the Hawke's Bay Regional Management Plan – Tukituki Catchment (the Regional Plan) and consent applications for a large dam and water storage project called the Ruataniwha Water Storage Scheme. The proposed changes to the Regional Plan were promoted by the Hawke's Bay Regional Council (Regional Council). The consent applications were sought by the Hawke's Bay Regional Investment Company Ltd (Investment Company) a wholly-owned subsidiary of the Regional Council.

[3] Twelve questions of law have been advanced by Fish and Game, Forest and Bird and Environmental Defence. Their appeals and cross-appeals have been opposed by the Regional Council, the Investment Company, the Primary Production Interest Group[1] and the Hastings District Council.

[4] The common theme to all questions of law is the Board's approach to managing nitrogen levels in the Tukituki Catchment Area (Catchment Area). I have concluded the Board did make errors of law when it constructed a factual deeming provision in a rule in the Regional Plan. The rule in question is Rule TT1(j) which applies to farms larger than four hectares.

[5] In the Board's draft report, farms covered by Rule TT1(j) would require resource consents if they caused or contributed to excesses of specified levels of dissolved inorganic nitrogen (DIN)[2] entering the Catchment Area. The Board received submissions from the parties on its draft report.

[6] In the Board's final report, Rule TT1(j) was changed so that farms covered by the rule are deemed not to be contributing to the specified levels of DIN entering the Catchment Area if the farm complies with nitrogen leaching rates specified in a different rule.

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1 DairyNZ Limited, Federated Farmers of New Zealand Incorporated, Fonterra Co-operative Group Limited, Horticulture New Zealand Incorporated and Irrigation New Zealand Incorporated.

2 See [27] of this judgment.

[7] This change produced two overarching errors of law. First, the factual deeming provision was not suggested by any party and was devised by the Board without consultation in circumstances in which the Board had a duty to re-consult the parties about the contents of Rule TT1(j).

[8] Second, an effect of the Board's factual deeming provision in Rule TT1(j) is that the Regional Council will lose an important tool in its management of the amount of DIN that enters significant portions of the Catchment Area. I have concluded the factual deeming provision in Rule TT1(j) does not avoid, remedy or mitigate the adverse effects of activities on the environment[3] or give effect to the National Freshwater Policy Statement 2011.[4]

[9] The effect of my judgment is that the Board will need to reconsider Rule TT1(j) and devise an appropriate mechanism for monitoring the amount of DIN that enters the Catchment Area. The Board will also have to reconsider its terms of consent for the Ruataniwha Water Storage Scheme.

[10] In concluding that the Board made errors of law in relation to Rule TT1(j) I am mindful the Board was working under extreme pressures.[5] Requiring the Board to reconsider Rule TT1(j) will not necessarily cause significant delays to the Ruataniwha Water Storage Scheme.

[11] To help understand my reasons I have divided this judgment into the following parts:

PART I

BACKGROUND

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3 Resource Management Act 1991, s 5(2)(c).

4 Section 67(3)(a).

5 Section 149R(2) of the Resource Management Act 1991 imposes a nine months' time limit on Boards established under Part 6AA of the Resource Management Act 1991. In this case the Minister granted two one-month extensions. The Board received over 28,000 pages of submissions, evidence and reports and delivered a final report totalling 371 pages exclusive of schedules.

PART II

JURISDICTION AND PROCEDURE

PART III

RULE TT1(j)

PART IV

OBJECTIVE TT1(f)

PART V

RUATANIWHA WATER STORAGE SCHEME

PART VI

CONCLUSIONS

[12] The reference in Part IV to Objective TT1(f) is to an objective contained in the Regional Plan that was the subject of a cross-appeal advanced by Environmental Defence.

PART 1

BACKGROUND

The Catchment Area

[13] The headwaters of the Tukituki, Waipawa and Makaroro Rivers are on the eastern flanks of the Ruahine Ranges. These rivers, and other smaller rivers and streams cross the Ruataniwha Plains to the west of Waipukurau and merge into the Tukituki River at a point approximately eight kilometres east of Waipukurau. From there the Tukituki River continues its journey and enters the Pacific Ocean east of Hastings.

[14] There are three distinct zones within the Catchment Area:

(1) The area from the headwaters to the Ruataniwha Plains is used for pastoral farming and forestry.

(2) The Ruataniwha Plains and areas further down the Catchment Area are used for more intensive farming, including some dairy farming, orcharding and horticulture enterprises.

(3) The third zone comprises part of the Heretaunga Plains, which are located along the final 25 kilometres of the Tukituki River. This area is used for horticulture and viticulture.

[15] Of the Catchment Area that is currently used for farming and forestry purposes approximately 74 per cent is used for sheep and dairy farms, 18 per cent for forestry, five per cent for arable farming and less than one per cent for orchards and viticulture.

[16] Beneath the Ruataniwha Plains lies an aquifer which is a multi-layered system covering approximately 800 square kilometres. It is estimated that this aquifer system contains about eight billion cubic metres of water.

[17] Most of the water in the Ruataniwha basin aquifer leaves the basin through the rivers and streams on the basin's eastern boundary.

Irrigation

[18] In 1990 approximately three million cubic metres of water was extracted from the Ruataniwha aquifer system. Today approximately 25 million cubic metres is extracted each year from that aquifer system and is used to irrigate approximately 7,000 hectares.

[19] There are 272 consents authorising the extraction of water in the Catchment Area. Of these, 174 authorised the extraction of ground water. The other 98 consents authorised the extraction of surface water.

Resource concerns

[20] By 2008 the Regional Council had become concerned about a number of issues relating to water allocation, water quality and the management of water resources within the Catchment Area. Specifically, the Regional Council was concerned about:

(1) over-allocation of surface water within the Catchment Area;

(2) a lack of information about ground and surface water connections;

(3) the impacts of drought on irrigation schemes; and

(4) the excessive growth of algae and slime in the middle and lower reaches of the Tukituki River which was impacting on fish and recreational uses of the Tukituki River.

Water quality

[21] The appeal before me focused on the steps taken by the Board to address the quality of water in the Catchment Area.

[22] A feature of parts of the Catchment Area has been an increase of periphyton which is "a complex mixture of algae and slimes that attach to submerged surfaces in rivers".[6] Periphyton occurs naturally in rivers and is an integral part of a healthy river ecosystem. Excessive quantities of periphyton alter the delicate balance of the ecosystems of rivers and streams, thereby causing significant damage to those waterways.

[23] A factor that contributes to excessive growth of periphyton is an increase of nutrients that enter waterways from farms. Phosphorous and nitrogen are two nutrients that can influence the quantity of periphyton in a river.

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6 Hawke's Bay Regional Resource Management Plan, Plan 6 at 36.

[24] Phosphorous enters waterways from a variety of sources which include phosphorous fertilisers, manure and dairy shed effluent. Phosphorous tends to attach to water particles on the surface of the land and enter waterways from water that runs over the surface of land. Dissolved phosphorous (inorganic or dissolved reactive phosphorous) is readily absorbed by periphyton.

[25] The Board's decision relating to the management of phosphorous within the Catchment Area has not been challenged in this appeal. Instead, this appeal questions the Board's approach to the management of nitrogen in the Catchment Area. The following matters relevant to the management of nitrogen require further explanation:

(1) Nitrate-nitrogen;

(2) DIN (Dissolved Inorganic Nitrogen);

(3) LUC (Land Use Capability) systems; and

(4) Farm Environment Management Plans.

Nitrate-nitrogen

[26] Nitrate-nitrogen is a highly soluble compound made up of nitrogen and oxygen. It is an important plant fertiliser which leaches through soils very easily. It is one of the most common contaminants in waterways because it is highly soluble in water.

Dissolved Inorganic Nitrogen (DIN)

[27] DIN is the sum of nitrate in its various forms, and ammonia. In this proceeding DIN refers to the level of nitrogen in a freshwater catchment. Animal urine is a significant source of DIN. When DIN enters waterways it can contribute significantly to the growth of periphyton.[7]

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[7] In setting DIN levels the Board applied a Macroinvertebrate Community Index recommended by some experts as an indicator of the ecological health of waterways.

Land Use Capability System

[28] The LUC system has been used in New Zealand to help achieve sustainable land development and management since 1952. The LUC system takes into account soil type, geology, slope and vegetation cover and can be used as a tool to control the amount of nitrogen on land.[8]

Farm Environmental Management Plans

[29] A farm environmental management plan sets out the management practices used to actively manage environmental issues on a farm where the focus is on managing water quality and quantity issues. A farm environmental management plan is audited regularly by independent assessors in accordance with required audit, compliance and enforcement procedures. A farm environmental management plan can also be used to control the amount of nitrogen on a farm.

[30] In summary, the LUC system and farm environmental management plans focus upon land use as a means of controlling nitrate-nitrogen. The DIN limits focus upon the levels of nitrogen in its various states in waterways. The DIN limits are concerned with the overall ecological health of waterways.

[31] The waters in the middle and lower reaches of the Catchment Area are currently in a degraded state. Excessive quantities of periphyton in these parts of the Catchment Area have contributed to the poor health of the Catchment Area's ecosystem.

[32] The Regional Council's concerns about both the quality and quantity of water in the Catchment Area led it to develop a water management strategy. This strategy

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[8] Land Use Capability class is defined in the Hawke's Bay Regional Resource Management Plan, Plan Change 6 at 35 as meaning "a classification of areas of land within a farm property or farming enterprise in terms of its physical characteristics or attributes (e.g. rock, soil, slope, erosion, vegetation). The land use capability classes can be derived either from the New Zealand Land Resource Inventory or a suitably qualified person specifically assessing and mapping the land use capability classes of land within a farm property or farming enterprise. Where the LUC is assessed by a suitably qualified person that person shall use the land use capacity survey handbook – a New Zealand handbook for the classification of land. (3rd edition, Hamilton., Ag. Research, Lincoln, Landcare Research; Lower Hutt, GNS Science)".

was the genesis of Changes 5 and 6 to the Regional Plan.[9] I will return to the Regional Council's approach to managing periphyton in the Catchment Area when discussing Proposed Plan 6 to the Regional Plan. Before doing so I shall explain the Freshwater Policy Statement 2011.

Freshwater Policy Statement 2011

[33] I will analyse the meaning of the relevant clauses of the National Policy Statement Freshwater Management 2011 (Freshwater Policy Statement 2011) in paragraphs [154] to [177] of this judgment. The following explanation of the Freshwater Policy Statement 2011 is sufficient for the purposes of setting the background to the grounds of appeal and cross-appeal.

[34] Section 46 of the RMA authorises the Minister for the Environment to issue a national policy statement "if the Minister considers it desirable". The purpose of a national policy statement is:[10]

> to state objectives and policies for matters of national significance that are relevant to achieving the purpose of [the RMA].

[35] Section 67(3)(a) of the RMA provides that a regional plan "must give effect" to any national policy statement. Sections 104(1)(b)(iii) and 171(1)(a)(i) of the RMA require consent authorities to "have regard to" a national policy statement when considering consent applications.

[36] The Freshwater Policy Statement 2011 took effect on 1 July 2011. It has since been replaced by the National Policy Statement for Freshwater Management 2014 (Freshwater Policy Statement 2014) which came into effect on 1 August 2014.

[37] The preamble to the Freshwater Policy Statement 2011 explains that the policy:[11]

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9 Change 5 adds objectives and policies into the Regional Policy Statement which forms part of the Regional Plan. Change 5 generated appeals to the Environment Court, most of which were resolved by consent on 26 September 2014.

10 Resource Management Act 1991, s 45(1).

11 National Policy Statement Freshwater Management 2011, Preamble at 3.

> … sets out objectives and policies that direct local government to manage water in an integrated and sustainable way, while providing for economic growth within set water qualities and quantity limits. The national policy statement is a first step to improve freshwater management at a national level.

[38] The preamble to the Freshwater Policy Statement 2011 identifies 11 uses for which water is valued. These uses include:

(1) domestic drinking and washing water;

(2) animal drinking water;

(3) community water supplies;

(4) irrigation;

(5) recreational activities; and

(6) food production and harvesting.

[39] The Freshwater Policy Statement 2011 also recognises freshwater's intrinsic values for "safeguarding the life-supporting capacity of water and associated ecosystems".[12]

[40] To promote the national values recognised in the Freshwater Policy Statement 2011, the policy sets out eight objectives and 14 policies and directs local governments to manage water in an integrated and sustainable way while providing for economic growth within water quantity and quality limits.

[41] The Freshwater Policy Statement 2011 sets out two objectives (Objectives A1 and A2), followed by four policies (Policies A1 to A4) relating to water quality. Policy A1 of the Freshwater Policy Statement 2011 requires Regional Councils to establish freshwater objectives and to set freshwater limits for all water bodies.

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[12] National Policy Statement Freshwater Management 2011, Preamble at 4.

[42] Objective A1 of the Freshwater Policy Statement 2011 explains that an objective of the policy is "to safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the use and development of land, and of[13] discharges of contaminants".[14]

[43] The objectives of the Freshwater Policy Statement 2011 recorded in Objective A2 include maintaining or improving the overall quality of freshwater while:[15]

> (a) protecting the quality of outstanding freshwater bodies…
>
> …
>
> (c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.[16]

[44] Policy A1 refers to:[17]

> … every regional council making or changing regional plans to the extent needed to ensure the [Regional Council's] plans:
>
> (a) establish freshwater objectives and set freshwater quality limits for all bodies of fresh water in their regions to give effect to the objectives in this national policy statement, having regard to at least the following:
>
> …
>
> (ii) the connection between water bodies
>
> (b) establish methods (including rules) to avoid over-allocation.

[45] Policy A2 states that:[18]

> Where water bodies do not meet the freshwater objectives made pursuant to Policy A1, every regional council is to specify targets[19] and implement

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13 The inclusion of the word "of" appears to be a drafting error.

14 National Policy Statement Freshwater Management 2011, Objective A1 at 6.

15 National Policy Statement Freshwater Management 2011, Objective A2 at 6.

16 Over-allocation is defined in the Freshwater Policy Statement 2011 to mean "where the resource:
(a) has been allocated to uses beyond a limit or
(b) is being used to a point where a freshwater objective is no longer being met".

17 National Policy Statement Freshwater Management 2011, Policy A1 at 6.

18 National Policy Statement Freshwater Management 2011, Policy A2 at 6.

19 "Target" is defined in the Freshwater Policy Statement 2011 to mean "a limit which must be met at a defined time in the future. This meaning only applies in the context of over-allocation".

methods (either or both regulatory and non-regulatory) to assist the improvement of water quality in the water bodies, to meet those targets, and within a defined timeframe.

[46] Policy A3 refers to regional councils:[20]

> (a) imposing conditions on discharge permits to ensure the limits and targets specified pursuant to Policy A1 and Policy A2 can be met and
>
> (b) where permissible, making rules requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant into fresh water, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering fresh water.

[47] Policy C1 refers to regional councils:[21]

> … managing freshwater and land use and development in catchments in an integrated and sustainable way, so as to avoid, remedy or mitigate adverse effects, including cumulative effects.

[48] Many of the objectives and policies in the Freshwater Policy Statement 2011 are replicated in the policies and objectives set out in the Freshwater Policy Statement 2014. However, Mr Robinson, senior counsel for the Regional Council and Investment Company submitted that there are important changes to the preamble of the Freshwater Policy Statement 2014 and in Policies CA1 to CA4 in the Freshwater Policy Statement 2014.

[49] It is accepted by the parties that there could be no appeal founded on the Freshwater Policy Statement 2014. More challenging is the question of whether or not the Board should, when reconsidering Rule TT1(j), give effect to the Freshwater Policy Statement 2014 as opposed to the Freshwater Policy Statement 2011. I consider this issue in paragraphs [178] to [184].

Proposed Plan 6

[50] The Regional Council's approach to controlling periphyton in the lower middle reaches of the Catchment Area involved controls on the amount of

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[20] National Policy Statement Freshwater Management 2011, Policy A3 at 6.
[21] National Policy Statement Freshwater Management 2011, Policy C1 at 10.

phosphorous that could be discharged into waterways and limits on nitrate-nitrogen levels. These were to be achieved through Proposed Plan 6 to the Regional Plan.[22]

[51] Proposed Plan 6 aimed to:

(1) give effect to the Freshwater Policy Statement 2011;

(2) address water allocation and quality issues in the Catchment Area;

(3) set water quality limits and targets for freshwater in the Catchment Area;

(4) set new water allocation limits in the Catchment Area;

(5) increase minimum water flows in the Catchment Area; and

(6) provide for future community irrigation schemes.

[52] These objectives are reflected in proposed new chapter 5.9 to the Regional Plan which sets out the objectives, water quality policies and water quantity policies for the Catchment Area. These objectives are also contained in proposed new chapter 6.9 to the Regional Plan which sets out the Catchment Area rules relating to land use, water quality and extraction of water.

[53] The Regional Council's approach to Proposed Plan 6 focused upon nitrate-nitrogen toxicity limits and include requirements that:

(1) Farms over four hectares keep records so that nitrogen budgets could be prepared every three years from 2008.

(2) Industry best practice nitrogen leaching rates be included in the Regional Plan by 2018.

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[22] The Regional Plan came into force in 2006.

(3) Leaching rates be complied with by 2020. Where those limits were exceeded, resource consent would be required as would a farm environment management plan that would take into account all sources of nutrients for the farm activity and identify all relevant nutrient management practices and mitigation measures.

(4) Set a "maximum allowable zone load" for nitrogen in five water management zones.

[54] The Regional Council's approach to the management of nitrate-nitrogen was described by the Board as "hands off" and involved a "single nutrient management approach", namely, the management of phosphorous only.

[55] Proposed Plan 6, as notified by the Regional Council had a number of "conditions" in relation to nitrogen discharge.

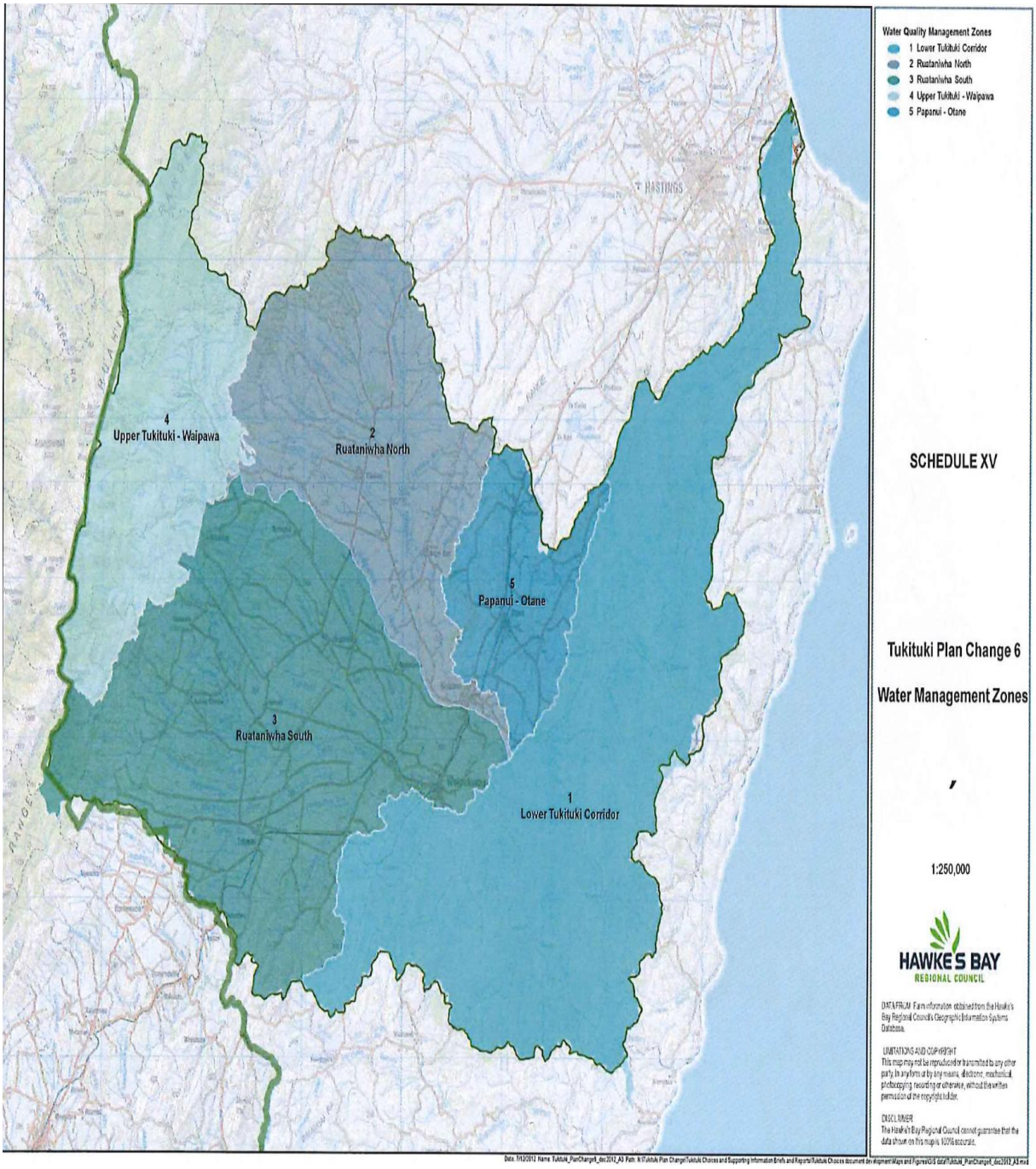
[56] One condition allowed increases in nitrogen leaching in the following ways:

(1) An increase in nitrogen leaching to 15 kg/N/ha/year for the 750 to 850 properties currently leaching less than that amount;

(2) A 10 per cent increase in nitrogen leaching for dairy farms and commercial vegetable cropping operations; and

(3) A 30 per cent increase in nitrogen leaching for sheep and beef farms, arable farms and cropping, mixed arable/livestock farms, permanent horticulture crops, or forestry.

[57] The second condition required farm owners to demonstrate after 1 July 2018 that nitrogen leached from land was not causing or contributing to any measured increase of leaching of nitrate-nitrogen into a waterway above limits specified for the five water management zones depicted in the following map:



Ruataniwha Water Storage Scheme

[58] At the same time the Regional Council was developing the strategy that resulted in Proposed Plan 6. It also investigated ways of improving the quantity of water available in the Catchment Area. These investigations identified 18 potential dam sites and ultimately led to a proposal to produce a reliable supply of irrigation water for approximately 25,000 hectares, mainly on the Ruataniwha Plains.

[59] The proposal which ultimately appealed to the Regional Council involves the construction of a very large dam across the upper reaches of the Makaroro River. This dam would be 83 metres high (at its deepest point), with a 505 metre wide crest behind which 90 million cubic metres of water would be stored. The proposed dam would use 37,500 cubic metres of concrete for the dam surface and foundations and 2.5 million cubic metres of rock and alluvial material for construction.

[60] The irrigation network would involve 36 kilometres of headrace canal and primary pipeline and 121 kilometres of secondary distribution pipeline. Very substantial earthworks would be needed to construct the headrace canal and pipeline network.

[61] The Ruataniwha Water Storage Scheme would be constructed by the Investment Company.

[62] The proposed dam would be the largest dam to be constructed under the RMA and the largest one constructed in New Zealand for irrigation purposes.

[63] The Ruataniwha Water Storage Scheme would affect not only the Regional Council, but also the Central Hawke's Bay Council and the Hastings District Council.

[64] In addition to providing irrigation directly to 25,000 hectares, further farmland would be indirectly influenced so that the land use of the Catchment Area would alter significantly. According to one economic assessment, of the land that would be affected, 37 per cent would be able to be used for dairy farming, 32 per cent for mixed and intensive arable farming, and the remaining 31 per cent would be able to be used for mixed finishing farms, dairy support, orchards and vineyards.

[65] It is estimated that the dam and distribution network would cost approximately $265 million. When on-farm costs are taken into account the total cost of the entire project is likely to be in the vicinity of $650 million.

Board of Inquiry

[66] On 6 May 2014 the Regional Council lodged with the Environmental Protection Authority (the EPA) its Proposed Plan 6 and a notice of request to alter a designation in relation to the Ruataniwha Water Storage Scheme. At the same time the Investment Company lodged with the EPA its 17 applications for resource consent in relation to the Ruataniwha Water Storage Scheme. It was anticipated that the Minister for the Environment would treat the Regional Council's proposals and the Ruataniwha Water Storage Scheme as matters of national significance under s 142 of the RMA and put in place the truncated process for determining the applications set out in Part 6AA of the RMA.

[67] On 5 June 2013 the Ministers for the Environment and Conservation concluded the Regional Council's proposals and the applications relating to the Ruataniwha Water Storage Scheme were matters of national significance and referred them to the Board to determine. This was done pursuant to ss 142 and 147 of the RMA.

[68] The Board was established on 5 June and conducted its hearings between 18 November 2013 and 21 January 2014.

Draft report

[69] The Board released its draft report to the parties on 15 April 2014. In its draft report the Board questioned the Regional Council's approach to the management of nitrate-nitrogen based on toxicity and suggested that an approach based on the "ecological health" of the Catchment Area was more likely to give effect to the Freshwater Policy Statement 2011.

[70] The Board recorded in its draft report that "all the expert witnesses seem to be in agreement that a single nutrient approach [was] fraught with risk".[23] The Board said that a "single nutrient" management approach "would be unsustainable"

[23] Draft Report and Decision of Board of Inquiry, 10 April 2014 at [345].

and that a "dual nutrient" management approach addressing both phosphorous and nitrogen management would be required.[24]

[71] The Board decided to set the following DIN limits in the five water management zones depicted on the map following paragraph [57] of this judgment:

(1) 0.8 mg/l in relation to Zones 1, 2, 3 and 5.

(2) 0.50 mg/l in relation to Zone 4.

[72] These DIN limits were set out in Table 5.9.1B of Proposed Plan 6 as amended by the Board in its draft report and contained limits that were significantly lower than the nitrate-nitrogen targets proposed by the Regional Council in its notified plan. This change was significant because the evidence before the Board suggested that many farms in the Catchment Area were exceeding the DIN limits set by the Board in its draft report and reflected the Board's view that significant changes needed to be made to the management of nitrogen in the Catchment Area.

[73] The Board also decided that compliance with nitrogen limits should be permitted activities. The Board redrafted Rule TT1(j) of Proposed Plan 6 in the following way:

> j. For farm properties or farming enterprises exceeding 4 hectares in area, after 1 June 2018, nitrogen leached from the land shall not be demonstrated [Footnote] to be causing or contributing to any measured exceedence of the Table 5.9.1B limits for the 95th percentile concentration of nitrate-nitrogen or the limit for dissolved inorganic nitrogen in any mainstem (sic) or tributary of a river or to any measured exceedence of the Table 5.9.2 groundwater quality limits for nitrate-nitrogen [Footnote].
>
> Footnote: "Demonstrated" means as a result of monitoring and/or modelling undertaken by the Hawke's Bay Regional Council. Individual land owners seeking Certificates of Compliance under Rule TT1 will not be required to undertake any modelling or water quality monitoring themselves.
>
> Footnote: By 30 June 2018 [the Regional Council] will develop a Procedural Guideline in collaboration with primary sector representatives setting out how POL TT4(1)(d) and conditions (k) and (l) of Rule TT1 will be implemented. The Guideline will

[24] Draft Report and Decision of Board of Inquiry, 10 April 2014 at [346].

> include, but not be limited to: the process for monitoring water quality trends and alerting affected farming properties if water quality limits are being approached; delineation of the captured zone for the relevant water body (the area of groundwater or surface water contributing to the particular part of the water body in question); and, where Rule TT2 is triggered, an adaptive management process for reducing nitrogen leaching from affected farming properties based on the implementation of progressively more stringent on-farm management practices.

[74] The Board also decided that the provisions of Rule TT1 of Proposed Plan 6 as notified by the Regional Council were not appropriate because they set a catchment-wide leaching rate which would benefit farmers whose properties had existing high levels of nitrogen leaching. Instead, in its draft report, the Board adopted a management system for leaching rates for nitrogen based upon the LUC.

[75] The land use leaching rates adopted by the Board in its draft report referred to eight classes of land use in the LUC system. The rates adopted by the Board in relation to each land use class were:

LUC Class	I	II	III	IV	V	VI	VII	VIII
Rate (kg/ha/year)	30.1	27.1	24.8	20.7	20	17	11.6	3

[76] These limits were incorporated by the Board in its draft report into:

(1) Table 5.1.D of Proposed Plan 6; and

(2) Condition 4A of the Ruataniwha Water Storage Scheme, Schedule Three.

Further submissions

[77] When releasing the draft report the EPA was required to:[25]

> invite the persons to whom it sends the draft report to send any comments on minor or technical aspects of the report to the EPA no later than 20 working days after the date of the invitation.

[25] Resource Management Act 1991, s 149Q(4).

[78] The Board received further submissions from 28 parties, including the Regional Council and the Investment Company.

[79] In its submissions the Regional Council "explained that there was an unintended consequence" of Rule TT1(j) as drafted by the Board. The Regional Council explained that an effect of the alterations to Proposed Plan 6 made by the Board in its draft report would mean farming properties over four hectares that were causing or contributing to an excess of the specified DIN levels would become either discretionary activities or non-complying activities. The Regional Council explained that this was likely to require approximately 615 farms to need resource consent from the Regional Council.

[80] The Regional Council suggested that the Board's draft TT1(j) appeared to be inconsistent with the Board's desire to set a "pragmatic" DIN limit and balance the ecological health of the Catchment Area with more intensive land use.[26]

[81] The Regional Council suggested two remedies to the perceived problem. Those two remedies were:

(1) that the Board direct the Regional Council to fix an in-stream DIN limit that more closely reflected existing water quality and provided for reasonable land use intensification to occur; or

(2) approach the 0.8 mg/l DIN "limit" as an "indicator" rather than as a strictly regulated limit.

The Regional Council preferred the second of these two options.

Final report

[82] On 18 June 2014 the Board delivered its final report.

[83] The Board acknowledged in its report that one of the most contentious features of Proposed Plan 6 was the Regional Council's intended approach to

[26] Draft Report and Decision of the Board of Inquiry, 10 April 2014 at [330].

managing phosphorous and nitrogen. The Board reiterated its comments in its draft report that the Regional Council's proposed plan adopted a "single nutrient" approach focusing on the management of phosphorous and that the Regional Council's proposal involved nitrogen controls being employed to avoid the toxicity effects of nitrogen on aquatic ecology.

[84] The Board maintained is rejection of this approach in favour of what it described as a "dual nutrient" control which involved the management of both phosphorous and nitrogen. Rather than basing nitrogen limits on toxicity, the Board took what it described as "in-stream ecological health" as the basis for the levels of nitrogen. With the exception of one zone, DIN levels were set at 0.8 mg/l.

[85] The exception was the zone in the headwaters of the Catchment Area where the limit was set at 0.50 mg/l. On the basis of comments it received in relation to its draft report the Board decided not to continue with its initial proposal which would have required individual farmers in four catchment areas to meet the 0.8 mg/l DIN limits. Instead, leaching rates for nitrogen based on the LUC classification system were adopted and incorporated by the Board into Proposed Plan 6. Further, the Board included a requirement for all farms within the Catchment Area that exceeded four hectares to prepare a farm environment management plan.

[86] The Board explained it would achieve its objectives by introducing a factual deeming qualification to Rule TT1(j). The Board:[27]

> decided to add a proviso to Rule TT1(j) to the effect that a farm property or farming enterprise shall be deemed to be not contributing to an exceedence of the DIN limit in Table 5.9.1B if it complies with the LUC leaching rates in Rule TT1(d).

[87] The Board summarised its new position in the following way:[28]

> … [A] farm property or farming enterprise which does not exceed the LUC leaching rates in Table 5.9.1D will not require a resource consent by virtue of Rule TT1(j). Conversely, if a resource consent is required the fact that the farm is upstream of a nitrogen "hotspot" can be taken into account when the resource consent application is considered.

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27 Final Report and Decisions of the Board of Inquiry, 18 June 2014 at [449].
28 At [450].

[88] Rule TT1(j) as it emerged from the Board's final report reads:

> j. For farm properties or farming enterprises exceeding 4 hectares in area, after 31 May 2020, nitrogen leached from the land shall be demonstrated [Footnote 1] to be not causing or contributing to any measured exceedence of the Table 5.9.1B limits for the 95th percentile concentration of nitrate-nitrogen or the limit for [DIN] in any mainstream or tributary of a river or to any measured exceedence of the Table 5.9.2 groundwater quality limits for nitrate-nitrogen provided that a farm property or farming enterprise shall be deemed to be not contribution to an exceedence of the DIN limit in Table 5.9.1B if it complies with Rule TT1(d).[Footnote 2]
>
> Footnote 1: "Demonstrated" means as a result of monitoring and/or modelling undertaken by the Hawke's Bay Regional Council. Individual land owners seeking Certificates of Compliance under Rule TT1 will not be required to undertake any modelling or water quality monitoring themselves.
>
> Footnote 2: By May 2018 HBRC will develop a Procedural Guideline in collaboration with primary sector representatives setting out how POL TT4(1)(h) and conditions (j) and (k) of Rule TT1 will be implemented. The Guideline will include, but not be limited to the process for monitoring water quality trends and alerting affected farming properties if water quality limits are being approached; delineation of the capture zone for the relevant water body (the area of groundwater or surface water contributing to the particular part of the water body in question); and, where Rule TT2 is triggered, an adaptive management process for reducing nitrogen leaching from affected farming properties based on the implementation of progressively more stringent on-farm management practices.

[89] Table 5.9.1B sets out the LUC rates which I have explained in paragraph [75] of this judgment.

[90] The key effect of the changes made by the Board to Rule TT1(j) was that farms over four hectares no longer have to comply with the DIN limits provided they comply with the LUC leaching rates.

[91] The Board increased the volume of ground water from the Ruataniwha aquifer that might be consented to for irrigation purposes from a proposed 28.5 million cubic metres per year to 43.5 million cubic metres per year provided that any reduction in surface water flows was compensated from deep ground water or storage.

[92] When issuing the consents for the Ruataniwha Water Storage Scheme the Board synchronised the terms of consent with Rule TT1(j). The Board said that in light of its approach to Rule TT1(j) in the Regional Plan "the same philosophy should apply to farms within the [Ruataniwha Water Storage Scheme]".[29] The Board therefore deleted the references to DIN limits for farms within the Ruataniwha Water Storage Scheme which had formed part of the terms of consent in the Board's draft report.

Appeals

Criteria

[93] Sections 149V and 299 of the RMA permits appeals from the Board's decision to the High Court "on a question of law".[30]

[94] An appeal on a question of law may arise where the Board has:

(1) misinterpreted the law;[31] or

(2) incorrectly applied the law;[32] or

(3) taken into account matters which it should not have taken into account;[33] or

(4) failed to take into account matters which it should have taken into account;[34] or

(5) reached a factual finding that was "so insupportable – so clearly untenable – as to amount to an error of law".[35]

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29 Final Report and Decisions of the Board of Inquiry, 18 June 2014 at [1253].
30 Resource Management Act 1991, s 299(1).
31 *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721.
32 *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at 153.
33 *Countdown Properties (Northlands) Ltd v Dunedin City Council*, above n 32.
34 *Bryson v Three Foot Six Ltd*, above n 31 and *Lambton Quay Properties Nominee Ltd v Wellington City Council* [2014] NZHC 878, [2014] NZRMA 257.
35 *Bryson v Three Foot Six Ltd*, above n 31, at [26] and *Lambton Quay Properties Nominee Ltd v Wellington City Council*, above n 34.

[95] The Supreme Court has made it clear:[36]

> An appeal cannot however be said to be on a question of law where the factfinding Court has merely applied law which it has correctly understood to the facts of an individual case. It is for the Court to weigh the relevant facts in the light of the applicable law. Provided that the Court has not overlooked any relevant matter or taken account of some matter which is irrelevant to the proper application of the law, the conclusion is a matter for the fact-finding Court, unless it is clearly insupportable.

Grounds of appeal

[96] Fish and Game has argued the Board made six errors of law, which it has posed as questions.

[97] The six questions asked by Fish and Game are:

(1) Did the submissions of the Regional Council on the Board's draft report go beyond the scope of lawful comments pursuant to s 149Q(4) and (5) of the RMA and as a result, did the Board exceed its jurisdiction?

(2) Was the Board's decision to consider the comments of the Regional Council and act on them in the way that it did procedurally unfair?

(3) Is the factual deeming provision of Rule TT1(j) consistent with the requirement in s 5(2)(c) of the RMA to avoid remedy or mitigate adverse effects?

(4) Does the amendment to Rule TT1(j) meet the provisions of s 66(1) of the RMA?

(5) Given the amendment to Rule TT1(j) do the provisions of Proposed Plan 6 give effect to Policy A2 of the Freshwater Policy Statement 2011?

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[36] *Bryson v Three Foot Six Ltd*, above n 31, at [25].

(6) In relation to deletion of the DIN limit from condition 5 of the Ruataniwha Water Storage Scheme consent conditions did the Board fail to have regard to Objectives A1, A2(c) and Policy C1 of the Freshwater Policy Statement 2011 and Objective TT1(a), Objective TT2 and Policies TT1(1)(a) and TT6 of Proposed Plan 6?

[98] Forest and Bird has pursued four grounds of appeal, which it has also framed as questions.

[99] The four questions asked by Forest and Bird are:

(1) Did the Board err by not satisfying itself that the methods that it approved in Proposed Plan 6 give effect to the Freshwater Policy Statement 2011 requirements to avoid allocation beyond the DIN limit, and to achieve the DIN limit target (where water is already over-allocated) within the defined timeframe?

(2) Did the Board err in granting consent to the Ruataniwha Water Storage Scheme, and in the conditions imposed by having regard to the provisions of Proposed Plan 6?

(3) Could the Board have logically found that the Ruataniwha Water Storage Scheme was "entirely consistent" with the outcome sought to be achieved by the Freshwater Policy Statement 2011 given its finding that an in-stream DIN limit and target of 0.8 mg/l was required to give effect to the Freshwater Policy Statement 2011?

(4) Did the Board err when it failed to have regard to a consent decision-making criteria relating to compliance with the DIN limit – which it had approved as part of Proposed Plan 6 – when it decided to grant consent to the Ruataniwha Water Storage Scheme?

[100] Environmental Defence has filed a cross-appeal under s 305 of the RMA. Environmental Defence's grounds of cross-appeal are contained in the following two questions:

(1) Did the Board err when it introduced a factual deeming provision for Rule TT1(j) in its final decision?

(2) Did the Board err when, in issuing Objective TT1(f) of Proposed Plan 6 by failing to give effect to the directive language and priorities in Objectives A1 and A2 of the Freshwater Policy Statement 2011?

[101] Fish and Game, Forest and Bird and Environmental Defence endorse each other's appeals and cross-appeals.

PART II

JURISDICTION AND PROCEDURE

First and second grounds of appeal – Fish and Game

[102] The essence of the first ground of appeal advanced by Fish and Game is that the submissions made by the Regional Council in relation to the Board's draft report relating to Rule TT1(j) exceeded the scope of s 149Q of the RMA. Fish and Game's case is that the Regional Council's submissions on the draft report were more than comments on "minor or technical aspects of the [draft] report" and that by considering and adopting the Regional Council's submissions the Board exceeded its statutory jurisdiction.

[103] The second ground of appeal evolved during the course of the hearing into a submission that in adopting the factual deeming provision to Rule TT1(j) of Proposed Plan 6 the Board departed so significantly from its draft report that the Board had a duty to consult with the parties before making its amendments. Fish and Game says that the Board's failure to re-consult with the parties about the terms of Rule TT1(j) breached a basic principle of natural justice.

[104] These two grounds of appeal challenge the processes followed by the Board when devising the final version of Rule TT1(j).

[105] In examining these grounds of appeal I shall first consider the scope of the consultation provisions in s 149Q of the RMA and then consider the Board's duty to re-consult.

Draft report procedure in the RMA

[106] In 2009 a Technical Advisory Group reported to the Minister for the Environment and recommended changes to a number of aspects of the RMA. One recommendation was that the RMA be amended so that the opportunity to comment on draft reports prepared by Boards of Inquiry would not be treated as an opportunity "to try and challenge the Board's decision as to whether or not the application should be granted, and is confined to comments merely on the proposed conditions".[37] This recommendation reflected the view that planning and consent issues associated with projects of national significance should be determined expeditiously.

[107] The Resource Management (Simplification and Streamlining) Amendment Act 2009 adopted some of the recommendations contained in the Technical Advisory Group's report. As a result of that legislation s 149Q(4) of the RMA confines comments on a Board of Inquiry's draft report to "minor or technical aspects of the [draft] report". Section 149Q(5) of the RMA explains that:

> Comments on minor or technical aspects of the report—
>
> (a) include comments on minor errors in the report, on the wording of conditions specified in the report, or that there are omissions in the report (for example, the report does not address a certain issue); but
>
> (b) do not include comments on the board's decision or its reasons for the decision.

[108] Parliament's intention when passing the Resource Management (Simplification and Streamlining) Bill can be gleaned from the comments made by

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[37] Report of the Minister for the Environment's Technical Advisory Group, February 2009 at 37.

the Hon Dr N Smith, the responsible Minister. During the Second Reading of the Bill Dr Smith said the focus of the Bill was:[38]

> … on reducing the costs, reducing the delays, and reducing the uncertainties of the Act without compromising its underlying environmental integrity. [The] bill is about addressing the vexatious, frivolous, and anti-competitive objections that can add tens of thousands of dollars to the costs of ratepayers and consent applicants. [The] bill is about getting a single-step process in place to enable major infrastructure projects to get consent in a more timely way. We want to consign to history the notion that it takes longer to get a resource consent for a piece of infrastructure than it takes to actually build it.

Analysis

[109] The Board was alert to the limits of any submissions in relation to its draft report. In its final report the Board recorded that it had not considered a number of submissions that failed to comply with s 149Q(4) and (5) of the RMA but that it had considered all the comments that were within the scope of the statutory limits contained in s 149Q(4) and (5).[39]

[110] In its draft report the Board clearly accepted the submissions from Fish and Game that nitrogen in the Catchment Area needed to be carefully controlled and that the Proposed Plan 6 notified by the Regional Council was inadequate.

[111] It became apparent to the Board when considering submissions on its draft changes to Rule TT1(j) of Proposed Plan 6 that the way its findings were to be implemented needed to be re-examined. However, it is clear the Board did not resile from its fundamental finding that nitrogen levels in the Catchment Area required far more careful management than had been envisaged in the Proposed Plan 6 notified by the Regional Council.

[112] The Regional Council's submissions on the Board's draft report pointed out that the Board's proposed change to Rule TT1(j) in Proposed Plan 6 would have had the unforeseen consequence of requiring 615 farms to obtain resource consent from 1 June 2018.

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38 (9 September 2009) 657 NZPD 6133.

39 Final Report and Decisions of the Board of Inquiry, 18 June 2014 at [135] and [137].

[113] In its final report the Board acknowledged that the Regional Council had identified an "unintended consequence" that "needed to be corrected".[40]

[114] I am satisfied the Regional Council drew the Board's attention to a consequence of the draft report that the Board had not appreciated and which was not consistent with the Board's reasons for its proposed changes to Rule TT1(j).

[115] In this respect the Regional Council's submissions were in the form of a legal interpretation of the consequences which would follow from the Board's re-drafting of Rule TT1(j). A legal interpretation can be fairly categorised as a "technical" submission.[41]

[116] I therefore conclude that the submissions made by the Regional Council in relation to the Board's draft report relating to Rule TT1(j) were within the scope permitted by s 149Q(4) and (5) of the RMA and that the Board made no error of law by receiving and considering the Regional Council's submissions in relation to Rule TT1(j).

Duty to re-consult

[117] Although s 149Q of the RMA envisages limited opportunity to comment on a Board's draft report, s 149Q does not purport to override a Board's duty to adhere to the principles of natural justice.

[118] Fairness is at the heart of the issue.[42] Those who have a right to be consulted must be given an adequate opportunity to express their views and to influence the decision-maker.[43] An assessment of whether or not a decision-maker has acted fairly is a quintessential judicial task that is highly influenced by context.[44]

[119] There have been various formulations of the duty to re-consult when circumstances have changed between the initial consultation and the basis upon

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40 Final Report and Decisions of the Board of Inquiry, 18 June 2014 at [448].

41 See definition of "technical" "The Concise Oxford Dictionary" (Ninth ed, Clarendon Press, Oxford, 1995).

42 *R v Monopoly's Commission ex parte Elders* [1986] QBD 451 at 461.

43 *R v London Borough of Islington ex parte East* [1996] ELR 74 (QBD) at 88D.

44 *R v Secretary of State ex p Islam* [1994] ELR 111 (QBD) at 118.

which a decision is based. In *Smith, R (on the application of) v East Kent Hospital NHS Trust* the Court suggested that the need for re-consultation occurred "if there was a fundamental difference" between a proposal consulted upon and the basis upon which the decision-maker made his or her decision.[45]

[120] In some New Zealand decisions the scope of a decision-maker's duty to re-consult echoes the United Kingdom position to some extent.[46] There can be no doubt a decision-maker must re-consult if the final decision differs in a fundamental way from the decision which was indicated at the time of consultation. However some New Zealand decisions suggest the duty is engaged at a lower threshold. For example, in *Air New Zealand Ltd v Nelson Airport Ltd* Miller J found that further consultation might have been required if advice contained in a report already in the decision-maker's possession differed in a "material[ly] adverse way".[47]

[121] I have previously concluded that the approach taken by Miller J best addresses the need to ensure fairness to those who are consulted and affected by an administrative decision.[48] The RMA acknowledges that during the decision-making process, entities such as the Board must act fairly.[49] Section 149Q is not isolated from the principles of natural justice.[50] The principles of natural justice required the Board to provide the affected parties with an opportunity to comment on material changes to the Board's decision.[51]

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45 *Smith, R (on the application of) v East Kent Hospital NHS Trust* [2002] EWHC 2640 (Admin) (QBD) at [45].

46 See for example *McInnes v Minister of Transport* [2001] 3 NZLR 11 (CA) at [16] and *Contact Energy Ltd v Electricity Commission* HC Wellington CIV-2005-485-624, 29 August 2005 at [30]-[36].

47 *Air New Zealand Ltd v Nelson Airport Ltd* HC Nelson CIV-2007-442-584, 27 November 2008 at [50]. See also *Leigh Fishermen's Association Inc v Minister of Fisheries* HC Wellington CP266/95, 11 June 1997 at 29 in which McGechan J considered further consultation was required for "a new matter, and not one on which the Minister safely could assume the Leigh fishermen would be unconcerned".

48 *Accountants First Ltd v Commissioner of Inland Revenue* [2014] NZHC 2446.

49 Resource Management Act 1991, s 39(1)(e); *Denton v Auckland City* [1969] NZLR 256 (SC).

50 See *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1993] UKHL 12, [1994] 2 AC 264.

51 *New Zealand Co-operative Dairy Co Ltd v Commerce Commission* [1992] 1 NZLR 601 (HC).

Analysis

[122] There are two reasons why I have concluded the Board breached its duty to re-consult when it re-constructed Rule TT1(j) in its final report:

(1) First, the final version of Rule TT1(j) devised by the Board was materially different from the draft Rule TT1(j) issued by the Board. I will deal with this point under the heading of "materiality".

(2) No party had submitted that the Board should re-draft Rule TT1(j) in the way it emerged in the Board's final report and no party had an opportunity to make submissions on the new version of Rule TT1(j). I will deal with this point under the heading of "fairness" which, as I have said in paragraph [118] underpins a decision-maker's duty to re-consult.

Materiality

[123] Mr Robinson emphasised that the Board's approach in its final report to the management of DIN must be viewed in context.

[124] It was submitted on behalf of the Regional Council and the Investment Company that Rule TT1(j) is part of an integrated approach adopted by the Board to the management of nitrogen in the Catchment Area. The Board itself explained that it was introducing:[52]

> … [A]n integrated regime involving [farm environment management plans], LUC based nitrogen leaching rates, phosphorous management, and nutrient budgeting involving both nitrogen and phosphorous.

[125] The Board explained that Rule TT1(j) was devised after it had "evaluated a number of options ranging from a more regulated land use regime to a less regulated regime.[53]

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52 Final Report and Decisions of the Board of Inquiry, 18 June 2014 at [747].
53 At [747].

[126] The Board also explained that when viewed in an overall and integrated manner:[54]

> … [T]he provisions of [Proposed Change 6] will allow for more intensive use and development while giving effect to the [Freshwater Policy Statement 2011] by safeguarding the environment.

[127] Mr Robinson submitted that the appellants' attack on the way Rule TT1(j) is worded in the Board's final report fails to recognise that Rule TT1(j) is just one part of an integrated response to the problems of water quality in the Catchment Area.

[128] Mr Robinson also pointed out that:

(1) no party had sought that Rule TT1(j) should require farms greater than four hectares that contributed in excess of the specified DIN limits should be required to obtain a resource consent; and

(2) Fish and Game's own expert witness supported the use of LUC leaching rates to control nitrogen in the Catchment Area.

[129] All respondents submitted that when Rule TT1(j) is viewed in context it becomes apparent that any errors in that rule are insignificant and do not need to be revisited.

[130] In my assessment, when the Board inserted the factual deeming provision into Rule TT1(j) it made a significant change from its draft decision. The principal consequence of the Board's final version of Rule TT1(j) is that farms over four hectares which comply with the LUC leaching rates are deemed to comply with the in-stream DIN limits even though those farms are in fact *not* complying with the DIN limits. The principles of natural justice required the Board to provide the affected parties with an opportunity to comment on this material change to Rule TT1(j) that has the impact of altering in a significant way the Regional Council's ability to control nitrogen in waterways in the Catchment Area.

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[54] Final Report and Decisions of the Board of Inquiry, 18 June 2014 at [751].

Fairness

[131] No party argued for or anticipated the changes which the Board made to Rule TT1(j) in its final report. No party therefore had the opportunity to comment on and influence the Board's thinking on the contents of the final version of Rule TT1(j).

[132] I appreciate the Board was required to deliver its report in accordance with strict time limits. However, it is significant that two days after the Board released its draft report the Supreme Court delivered its decision in *Environmental Society Inc v New Zealand King Salmon Co Ltd (King Salmon)*.[55] The Board appreciated that the Supreme Court's judgment in *King Salmon* could have significant implications for its final report. Accordingly, on 7 May 2014 the Board issued a minute in which it invited comments from the parties on how the Supreme Court's judgment should be interpreted and how it affected the Board's draft decision. The parties availed themselves of this opportunity and filed submissions relating to the *King Salmon* decision by 16 May 2014. This approach by the Board demonstrates its appreciation that it could require submissions from all parties when considering significant matters that had not been before the parties previously. In addition, the consultation which required the parties to make submissions to the Board on an important matter was able to occur within a short timeframe. A similar opportunity should have been afforded to the parties in relation to the Board's changes to Rule TT1(j).

[133] I therefore conclude that the Board erred in law when it incorporated the factual deeming provision into Rule TT1(j) without consulting with the parties. As a consequence the Board will need to reconsider Rule TT1(j) and devise an appropriate method for managing DIN levels in the Catchment Area. This will need to be achieved after providing the parties with an opportunity to make submissions on the future content and scope of Rule TT1(j).

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[55] *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd (King Salmon)* [2014] NZSC 38, [2014] 1 NZLR 593.

PART III

RULE TT1(j)

Third ground of appeal – Fish and Game
Fourth ground of appeal – Fish and Game
Fifth ground of appeal – Fish and Game
First ground of appeal –Forest and Bird
First ground of cross-appeal – Environmental Defence

[134] In Part II of this judgment I determined the Board must reconsider Rule TT1(j). In view of that decision, I will address the remaining grounds of appeal in a way that is designed to assist the Board in its deliberations.

[135] The third ground of appeal advanced by Fish and Game asks if the factual deeming provision of Rule TT1(j) in the Board's final report complies with s 5(2)(c) of the RMA. That section requires those who apply the RMA to avoid, remedy or mitigate any adverse effects of activities on the environment.

[136] The fourth ground of appeal from Fish and Game asks if the factual deeming provision of Rule TT1(j) in the Board's final report complies with s 66(1) of the RMA. That section provides that any changes to a regional plan have to comply with a number of provisions in the RMA, including the provisions of Part II of that Act and the contents of any evaluation report prepared in accordance with s 32 of the RMA.[56]

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[56] **32 Requirements for preparing and publishing evaluation reports**
(1) An evaluation report required under this Act must–
(a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by–
(i) identifying other reasonably practicable options for achieving the objectives; and
(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
(iii) summarising the reasons for deciding on the provisions; and
(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
(2) An assessment under subsection (1)(b)(ii) must–
(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for–
(i) economic growth that are anticipated to be provided or reduced; and

[137] The fifth question of law posed by Fish and Game asks if the factual deeming provision of Rule TT1(j) contained in the Board's final report gives effect to Policy A2 of the Freshwater Policy Statement 2011. This ground of appeal relies on s 66(3)(a) of the RMA which requires regional plans to give effect to any national policy statement.

[138] The first question of law advanced by Forest and Bird asks if the factual deeming provision of Rule TT1(j) contained in the Board's final report gives effect to Objectives A1 and A2(c) and Policies A1(b) and A2 of the Freshwater Policy Statement 2011.

[139] The first ground of cross-appeal advanced by Environmental Defence asks if the Board erred in law when it incorporated the factual deeming provision into Rule TT1(j) in its final report.

[140] There are three themes to the grounds of appeal and cross-appeal in Part III of this judgment. Those themes all relate to the factual deeming provision of Rule TT1(j) in the Board's final report. The three themes can be conveniently considered by answering the following questions:

(1) Did the Board properly apply Part 2 of the RMA?

(2) Did the Board properly apply the Freshwater Policy Statement 2011?

(ii) employment that are anticipated to be provided or reduced; and
(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

(3) If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to–
(a) the provisions and objectives of the amending proposal; and
(b) the objectives of the existing proposal to the extent that those objectives–
(i) are relevant to the objectives of the amending proposal; and
(ii) would remain if the amending proposal were to take effect.

(4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

…

(3) Did the Board make any other legal error when it inserted the factual deeming provision into Rule TT1(j)?

Did the Board properly apply Part 2 of the RMA?

[141] The essence of the third question of law advanced by Fish and Game is that the factual deeming provision of Rule TT1(j) in the Board's final report does not comply with s 5(2)(c) of the RMA, the contents of which I explain in paragraph [144].

[142] Fish and Game submit that the effect of the factual deeming provision in Rule TT1(j) is that a significant number of farm properties within the Catchment Area will be deemed to comply with the DIN discharge limit when in fact they are not doing so. From this position Fish and Game submit that the factual deeming provision does not comply with the purposes set out in s 5(2)(c) of the RMA.

[143] Section 5(2)(c) of the RMA must be read in context. Section 5(1) explains that the RMA's purpose is to promote sustainable management of natural and physical resources.

[144] "Sustainable management" is defined in s 5(2) of the RMA as:

> ... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—
>
> (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
>
> (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
>
> (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

[145] In *King Salmon* the Supreme Court explained that s 5 of the RMA is a carefully formulated statement of principle that:

(1) is intended to guide those who make decisions under the RMA rather than act as an aid to interpretation;[57]

(2) the word "while" in the definition of "sustainable management" means "at the same time as";[58]

(3) the word "avoiding" in "avoiding, remedying, or mitigating" in s 5(2)(c) means "not allowing" or "preventing the outcome of";[59]

(4) the words "remedying" and "mitigating" in s 5(2)(c) indicate that development and uses of natural and physical resources which might have adverse effects if they are not avoided, could be permitted if they are mitigated and/or remedied;[60] and

(5) the use of the word "protection" in the phrase "use, development and protection of natural and physical resources" and the use of the word "avoiding" in s 5(2)(c) of the RMA indicate particular environments may need to be protected from the adverse effects of activities in order to implement the policy of sustainable management. The Supreme Court explained "the definition [of sustainable management] indicates that environment protection is a core element of sustainable management, so that a policy of preventing the adverse effects of development on particular areas is consistent with sustainable management".[61]

[146] Sections 6, 7 and 8 supplement s 5 of the RMA by expanding on the obligations of those who administer the RMA.

[147] Section 6 of the RMA directs decision-makers to "recognise and provide for" certain matters of national importance including:

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57 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd (King Salmon)*, above n 55, at [24](a).
58 At [24](c).
59 At [24](b) and [92]-[97].
60 At [24](b).
61 At [24](d) and [148].

(a) The preservation of the natural character of … rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

…

(c) The protection of areas of … significant habitats of indigenous fauna:

(d) The maintenance and enhancement of public access to and along … rivers:

…

[148] Section 7 of the RMA requires decision-makers to "have particular regard to" 11 specified matters including:

(b) The efficient use and development of natural and physical resources:

…

(d) Intrinsic values of ecosystems:

…

(f) Maintenance and enhancement of the quality of the environment:

(g) Any finite characteristics of natural and physical resources:

(h) The protection of the habitat of trout and salmon:

(i) The effects of climate change:

…

[149] Section 8 of the RMA requires those exercising functions and powers under the Act "take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)".

[150] In summary, s 5(2) of the RMA "contemplates environmental preservation and protection as an element of sustainable management of natural and physical resources. This is reinforced by the terms of s 6(a) and (b)",[62] which, although not giving "primacy to preservation or protection [means] that provision must be made for preservation and protection as part of the concept of sustainable management".[63]

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62 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd (King Salmon)*, above n 55, at [146].

63 At [149].

[151] It is against this statutory background that I turn to consider whether the factual deeming provision in Rule TT1(j) complies with s 5(2)(c) of the RMA.

[152] I agree with Fish and Game that the factual deeming provision in Rule TT1(j) undermines the Regional Council's ability to effectively monitor water quality in the Catchment Area. In particular, a consequence of the way Rule TT1(j) is framed is that if a farm owner causes or contributes to the specified DIN limits being exceeded but nevertheless complies with the leaching limit set in Table 5.9.1D of the Regional Plan then the Regional Council will be unable to require farm owners to avoid, remedy or mitigate their contribution to DIN entering waterways in the Catchment Area.

[153] This consequence is not consistent with the Regional Council's obligation under s 5(2)(c) of the RMA.

Did the Board properly apply the Freshwater Policy Statement 2011?

[154] Section 67(3)(a) of the RMA requires a regional plan to give effect to any national policy statements.

[155] The fifth question of law advanced by Fish and Game, the first question of law advanced by Forest and Bird and the first cross-appeal from Environmental Defence are all presented on the basis that the factual deeming provision in Rule TT1(j) fails to comply with s 67(3)(a) of the RMA because it does not "give effect" to specific provisions of the Freshwater Policy Statement 2011.

[156] In *King Salmon* the Supreme Court explained that on its face "give effect to" in s 67(3)(a) of the RMA "… is a strong directive, creating a firm obligation on the part of those subject to it".[64] However, the Supreme Court also cautioned that the implementation of a national policy will be affected by the contents of the policy. Thus:[65]

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64 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd (King Salmon)*, above n 55, at [77].

65 At [80].

> A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.

[157] It is thus necessary to examine the terms of the relevant provisions of the Freshwater Policy Statement 2011.

[158] In undertaking this exercise the parties which supported the appeals and cross-appeal sought to rely on the approach taken by the Supreme Court in *King Salmon* when it interpreted and gave effect to the New Zealand Coastal Policy Statement. The Supreme Court concluded that the New Zealand Coastal Policy Statement contained objectives and policies which, while generally worded, were intended to give substance to the principles of Part 2 of the RMA. In that case the Supreme Court concluded that the failure by the Board and the High Court to give effect to directives and policies in two provisions of the New Zealand Coastal Policy Statement meant the Board and High Court had failed to give effect to that policy and therefore did not comply with s 67(3)(a) of the RMA. Mr Matheson, senior counsel for the Primary Production Interest Group shouldered many of the arguments in support of the respondents' position that the approach taken by the Supreme Court in *King Salmon* could not be transposed upon the case before me.

[159] The arguments advanced on behalf of the Primary Production Interest Group and other respondents can be distilled to nine key points.

[160] First, it was submitted Proposed Plan 6 needs to be read as a whole and effect must be given to all relevant provisions of the Freshwater Policy Statement 2011. It was stressed that it would be a mistake to focus only on the DIN limits in Proposed Plan 6 when determining if Proposed Plan 6 complies with the Freshwater Policy Statement 2011.

[161] Second, the Freshwater Policy Statement 2011 needs to be read as a whole with particular care given to the language used in the relevant provisions in the policy. It was stressed that the development of the Freshwater Policy Statement 2011 led to modification of the language which the Minister approved so that the

final version of the Freshwater Policy Statement 2011 recognises the importance of sustainable management of natural resources.

[162] Third, the language of the Freshwater Policy Statement 2011 requires that it be read in conjunction with Part 2 of the RMA.

[163] Fourth, even if the Freshwater Policy Statement 2011 is equated with the New Zealand Coastal Policy Statement, it still needs to be read in conjunction with Part 2 of the RMA because:

(1) the Freshwater Policy Statement 2011 is not complete; and/or because

(2) reference needs to be made to Part 2 of the RMA to address uncertainties about the meaning of provisions in the Freshwater Policy Statement 2011.

[164] Fifth, in any event, while Part 2 of the RMA was a material part of the Board's decision, it was not used to override any part of the Freshwater Policy Statement 2011 and therefore the Board's approach was entirely consistent with that of the Supreme Court in *King Salmon*.

[165] Sixth, Part 2 of the RMA allowed the Board to:

(1) set water quality limits, objectives, policies and rules in the Regional Plan which reflected sustainable management just not aquatic ecology;

(2) consider social and economic costs in setting the timeframes for water quality limits to be met; and

(3) develop a pragmatic approach that avoided unnecessary costs to primary producers.

[166] Seventh, the factual deeming provision in Rule TT1(j) was an elegant response to a problem which the Board had not foreseen. It was submitted the Board correctly concluded:

(1) The only way to control in-stream nitrogen was through land-based controls (LUC and farm environmental management plans).

(2) Requiring resource consent because an in-stream limit was breached would not ensure a reduction in nitrogen leaching.

(3) While resource consent would require farmers who exceeded DIN limits to take additional steps it would not be possible for the Regional Council to set controls on the land use activities that would result in in-stream DIN limits being met.

[167] Eighth, the Board's overall approach gave effect to the Freshwater Policy Statement 2011 because the Board's suite of controls will safeguard the ecology of the Catchment Area.

[168] Ninth, how the Freshwater Policy Statement 2011 is applied is a matter of "evaluative judgement" which the Board was best placed to make.

Analysis

[169] The Board recognised that it needed to give effect to the Freshwater Policy Statement 2011 and expressly recorded that it believed its report did give effect to that policy. Thus, for example, at paragraph [151] of its report the Board recorded that when considering Proposed Plan 6 it placed the Freshwater Policy Statement 2011 "… at the forefront of its analysis of water quality, water quantity, integrated management …". The Board said that by undertaking that analysis it was satisfied that Proposed Plan 6, "as modified by the Board, gives effect to the [Freshwater Policy Statement 2011] as required by s 67(3)(a) of the RMA".

[170] In my assessment, the Board correctly recognised the need to give effect to the Freshwater Policy Statement 2011. That is the plain meaning of s 67(3)(a) of the

RMA. It also reflects the detailed and considered process the Freshwater Policy Statement 2011 underwent before the Minister approved the final version of that policy. Those processes included an evaluation under s 32 of the RMA and detailed deliberations by the Board and further reflection and consideration by the Minister for the Environment before issuing the Freshwater Policy Statement 2011. The approach taken by the Board was also consistent with the Supreme Court's view that it is necessary to give effect to a national policy statement without necessarily giving primacy to Part 2 of the RMA.

[171] The Board knew the Freshwater Policy Statement 2011 aimed to give substance to Part 2 of the RMA by stating objectives and policies which apply those principles to the freshwater environment.

[172] However, while the Board accurately stated the key principles contained in *King Salmon*, a careful analysis of the Board's reasoning leaves doubt whether or not the factual deeming provision in Rule TT1(j) gave effect to the Freshwater Policy Statement 2011.

[173] The key freshwater quality controls developed by the Board included the DIN limits set by the Board in both its draft and final reports. Those limits gave effect to Objectives A1 and A2 of the Freshwater Policy Statement 2011 which relate to:

(1) safeguarding the ecosystem processes and freshwater ecosystems in sustainably managing the use of land and discharge of contaminants;[66] and

(2) maintaining the overall quality of freshwater within a region and improving the quality of fresh water in water bodies that have been degraded to the point of being over-allocated.[67]

[174] The DIN limits set by the Board in its draft report also gave effect to Policies A1 and A2 of the Freshwater Policy Statement 2011 relating to:

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66 National Policy Statement Freshwater Management 2011, Objective A1.
67 National Policy Statement Freshwater Management 2011, Objective A2(c).

(1) the need for the Regional Council to establish methods to avoid over-allocation;[68] and

(2) the duty placed on the Regional Council to implement methods to assist the improvement of water quality by meeting specified targets within a defined timeframe.[69]

[175] The DIN limits set by the Board in its draft report would also have given effect to Policy C1 of the Freshwater Policy Statement 2011 which requires the Regional Council to manage freshwater and land use and developments in catchments in an integrated and sustainable way, so as to avoid, remedy or mitigate adverse effects, including cumulative effects.

[176] The Board clearly appreciated how the DIN limits it was setting for freshwater would ensure the Regional Plan complied with the relevant objectives and policies in the Freshwater Policy Statement 2011. However, when the Board introduced the factual deeming provision into Rule TT1(j) it substantially dismantled the effectiveness of the DIN limits as a means of giving effect to the relevant provisions of the Freshwater Policy Statement 2011.

[177] In my view, none of the arguments advanced by the respondents displaces my fundamental concern that the factual deeming provision in Rule TT1(j) is difficult to reconcile with the objectives and policies of the Freshwater Policy Statement 2011 upon which I have focused.

Freshwater Policy Statement 2014

[178] The Freshwater Policy Statement 2011 has now been replaced with the Freshwater Policy Statement 2014. Obviously the Board could not be said to have made an error of law by not giving effect to the Freshwater Policy Statement 2014. However, as there is now a new Freshwater Policy Statement the question which must be answered is whether the Board should, when reconsidering Rule TT1(j),

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68 National Policy Statement Freshwater Management 2011, Policy A1(b).
69 National Policy Statement Freshwater Management 2011, Policy A2.

give effect to the Freshwater Policy Statement 2014 or to the Freshwater Policy Statement 2011 that was in effect at the time the Board made its decision?

[179] In *Man O' War Station Ltd v Auckland Council*[70] the Environment Court examined the limited jurisprudence related to this question. The Environment Court concluded that where an appellate Court orders a full rehearing of a case, the planning instruments in force at the time of the rehearing must be considered. The implication appears to be that where an appellate Court orders a partial rehearing it is the planning instruments in force at the time of the original hearing that should be reconsidered. The Environment Court suggested support for this approach could be found in *Auckland Regional Council v Roman Catholic Diocese of Auckland*.[71]

[180] However, in that case, Andrews J found she did not have to answer the question that is before me.

[181] In *Horticulture New Zealand v Manawatu-Wanganui Regional Council*,[72] Kós J held that the Environment Court did not have to give effect to the Freshwater Policy Statement 2011 which had only come into force after appeals had been filed in the Environment Court. Kós J held the regional council in that case, and on appeal the Environment Court, was not obliged to give effect to the Freshwater Policy Statement 2011.

[182] The Freshwater Policy Statement 2014 came into force on 1 August 2014. The implementation provisions of that policy explain that it "is to be implemented as promptly as possible". Default provisions in the policy provide that it is to be fully in effect by 31 December 2025 or by 31 December 2030 if the Regional Council considers that meeting the 31 December 2025 deadline would result in "lower quality planning" or if it would be impracticable to complete implementation by 31 December 2030.[73] The process for the Regional Council to implement any national policy is prescribed in Schedule 1 to the RMA.

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70 *Man O' War Station Ltd v Auckland Council* [2013] NZEnvC 233.
71 *Auckland Regional Council v Roman Catholic Diocese of Auckland* (2008) 14 ELRNZ 16 (HC).
72 *Horticulture New Zealand v Manawatu-Wanganui Regional Council* [2013] NZHC 2492.
73 National Policy Statement for Freshwater Management 2014 at 19.

[183] As the Freshwater Policy Statement 2014 will be the operative Freshwater Policy Statement when the Board reconsiders Rule TT1(j), the Board should give effect to that policy. This approach:

(1) recognises that the Executive wants the Freshwater Policy Statement 2014 to be implemented as promptly as possible; and

(2) best reflects the requirements of s 67(3)(a) of the RMA which requires the Board to give effect to any national policy statement.

[184] Accordingly, the Board should, as part of its reconsideration of Rule TT1(j) invite the parties to make submissions on the meaning and effect of the Freshwater Policy Statement 2014. I appreciate that this direction will mean the Board will have given effect to the Freshwater Policy Statement 2011 in relation to those parts of its report that have not been challenged and give effect to Freshwater Policy Statement 2014 when re-writing Rule TT1(j). This unfortunate but unavoidable consequence arises from the fact the appeal I have had to consider focuses primarily on Rule TT1(j).

Did the Board make any other legal error when it inserted the factual deeming provision into Rule TT1(j)?

[185] The third and fourth questions of law posed by Fish and Game and the first cross-appeal posed by Environmental Defence raise other challenges to the factual deeming provision in Rule TT1(j). Those challenges can be addressed under two headings:

(1) non-compliance with s 66(1) of the RMA; and

(2) the lawfulness of the factual deeming provision.

Non-compliance with s 66(1) of the RMA

[186] The fourth question of law advanced by Fish and Game includes a concern that when the Board re-drafted Rule TT1(j) it failed to comply with s 66(1) of the

RMA. That section required the Board to have regard to an evaluation report prepared under s 32 of the RMA.

[187] Paragraphs [735] to [753] of the Board's final report clearly record that the Board carried out an evaluation pursuant to s 32 of the RMA.

[188] In my assessment, Fish and Game's criticism of the Board's final report is more of a challenge to the reasonableness of the Board's decision and the way it discharged its responsibilities under s 32 of the RMA rather than a claim that the Board failed to discharge its duty under s 32 of the RMA. In this respect, Fish and Game's submission challenges the evaluative judgement made by the Board. This element of Fish and Game's case is not a genuine question of law and accordingly cannot be upheld.

The lawfulness of the factual deeming provision

[189] The factual deeming provision in Rule TT1(j) creates a factual fiction. A result of that factual fiction is that approximately 615 farms are deemed by Rule TT1(j) not to be contributing to excessive quantities of DIN entering waterways in the Catchment Area when in fact they are likely to be doing so.

[190] Deeming provisions are sometimes used as a drafting tool to create legal fictions.[74] For example, legislative transition provisions will often deem legal compliance when in fact there is no compliance.

[191] The Parliamentary Counsel's Office cautions against the use of deeming provisions. In its Principles of Clear Drafting the Parliamentary Counsel's Office says "deeming" has 'traditionally been used when something is to be what it is not, or something will not be what it is".[75] The authors of that document say the term "deeming" "should only be used to create a legal fiction, and even then it should be avoided if there is a sensible alternative way to achieving the same result".

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74 JF Burrows and RI Carter *Statute Law in New Zealand* (4th ed, LexisNexis, Wellington, 2009) at 430-432.

75 Parliamentary Counsel Office "Principles of Clear Drafting" (2014) Parliamentary Counsel Office <http://www.pco.parliament.govt.nz/clear-drafting/>.

[192] Deeming provisions have been used in the RMA where consents were in place before the RMA was enacted. These consents are deemed to have legal effect following the passing of the RMA.[76] There are other examples of deeming provisions in the RMA.[77]

[193] I accept that in some contexts a legal fiction through a deeming provision may be the only way to give effect to a policy. However, in the present context, the Board has used a deeming provision to create a factual fiction. This is problematic in the context of the RMA and related instruments in which there is a clear emphasis on factual reality. Thus, the definition of "environment"[78] means the actual state of the current environment and the future state of the environment as it evolves and changes.[79]

[194] Similarly, the definition of "effect"[80] in s 3 of the RMA leaves no room for constructing a factual fiction because that term focuses upon "any actual and potential effects on the environment".[81]

[195] While constructing a factual fiction may not in itself amount to an error of law, when the effects of that factual fiction are taken into account in the context of this case it becomes apparent that an unsatisfactory state of affairs is created. The approach taken by the Board has involved the creation of a factual fiction which has

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[76] *Pelorus Wildlife Sanctuaries Ltd v New Zealand King Salmon Co Ltd* [2012] NZHC 995, [2012] NZRMA 321.

[77] See Resource Management Act 1991, ss 10B(2), 80(a), 81(1), 83, 85, 107F(2), 360(1)(ha) and 373.

[78] **environment** includes–
(a) Ecosystems and their constituent parts, including people and communities; and
(b) All natural and physical resources; and
(c) Amenity values; and
(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.

[79] *Far North District Council v Te Rūnanga-Ā-Iwi O Ngāti Kahu* [2013] NZCA 221 at [80] and *Queenstown-Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA) at [84].

[80] **3 Meaning of "effect"**
In this Act, unless the context otherwise requires, the term **effect** includes–
(a) Any positive or adverse effect; and
(b) Any temporary or permanent effect; and
(c) Any past, present, or future effect; and
(d) Any cumulative effect which arises over time or in combination with other effects–
regardless of the scale, intensity, duration, or frequency of the effect, and also includes–
(e) Any potential effect of high probability; and
(f) Any potential effect of low probability which has a high potential impact.

[81] *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) at [37]-[39].

the practical effect of the Regional Council losing an important tool to control further degradation of a significant portion of the Catchment Area. The factual deeming provision in Rule TT1(j) is difficult to reconcile with the Board's desire to impose controls over the discharge of nitrogen in order to manage the "ecological health" of the Catchment Area.

[196] Thus, when the Board reconsiders Rule TT1(j) it should strive to ensure that it does not create any factual fictions when framing the terms of that rule. Farmers who contribute to excessive quantities of DIN entering waterways should not be deemed to be not contributing excessive quantities of DIN into waterways in the Catchment Area.

PART IV

OBJECTIVE TT1(f)

Second ground of cross-appeal – Environmental Defence

[197] The second ground of cross-appeal by Environmental Defence concerns a discrete question about Objective TT1(f) which was incorporated into Proposed Plan 6 by the Board.

[198] Objectives TT1, TT2 and TT4 in Proposed Plan 6 provide:

> OBJ TT1 To sustainably manage the use and development of land, the discharge of contaminants including nutrients and the taking, using, damming, or diverting of fresh water in the Tukituki River catchment so that:
>
> (a) Groundwater levels, river flows, lake and wetland levels and water quality maintain or enhance the habitat and health of aquatic ecosystems, macroinvertebrates, native fish and trout;
>
> (b) Water quality enables safe contact recreation and food gathering;
>
> (ba) Water quality and quantity enables safe and reliable human drinking water supplies;
>
> (c) The frequency and duration of excessive periphtyon growths [Footnote] that adversely affect recreational and cultural uses and amenity are reduced;

(d) The significant values of wetlands are protected;

(e) The mauri of surface water bodies and groundwater is recognised and adverse effects on aspects of water quality and quantity that contribute to healthy mauri are avoided, remedied or mitigated; and

(f) The taking and use of water for primary production and the processing of beverages, food and fibre is provided for.

OBJ TT2 Where the quality of fresh water has been degraded by human activities to such an extent that Objective TT1 is not being achieved, water quality shall not be allowed to degrade further and it shall be improved progressively over time so that OBJ TT1 is achieved by 2030.

…

OBJ TT4 To manage the abstraction of surface water and groundwater within a minimum flow regime and allocation limits that achieve OBJ TT1 while recognising that existing takes support significant investment.

Footnote: growths that exceed the periphyton limits and targets set in Table 5.9.1B.

[199] The essence of the argument advanced by Environmental Defence is that Objective TT1(f) does not safeguard ecological values, is inconsistent with Objective A1 of the Freshwater Policy Statement 2011 and is inconsistent with Objectives TT2 and TT4 of Proposed Plan 6.

[200] Environmental Defence's concern is that Objective TT1(f) and Proposed Plan 6 encourage the balancing of protection considerations with use considerations and that Objective TT1(f) as currently drafted undermines the primacy that Objective TT1(f) otherwise gives to protecting the environment.

[201] Paragraphs [296] to [306] of its report demonstrate that the Board gave careful consideration before incorporating Objective TT1(f) into Proposed Plan 6 and that it made a conscious decision not to make Objective TT1(f) "subservient to the environmental objectives".

[202] I am satisfied that Objective TT1(f) is consistent with s 5(2)(c) of the RMA and the Freshwater Policy Statement 2011.

[203] Objective TT1(f) focuses on the sustainable use and development of land, the discharge of contaminants (including nutrients) and the "taking, using, damming or the diverting of freshwater in the Tukituki Catchment".

[204] Objective TT1(f) provides for nothing more than the taking and using of water for primary production and the processing of beverage, food and fibre in the context of a policy that addresses sustainable land use, the management and contaminants and the taking of water from the Catchment Area.

[205] The inclusion of Objective TT1(f) is not inconsistent with s 5(2)(c) of the RMA or the provisions of the Freshwater Policy Statement 2011. While s 5(2)(c) and the Freshwater Policy Statement 2011 place considerable emphasis on measures to protect the environment, they do so in the context of allowing the sustainable use of water for primary production and processing. The Board therefore did not err in law when it included Objective TT1(f) in Proposed Plan 6.

PART V

RUATANIWHA WATER STORAGE SCHEME

Sixth ground of appeal – Fish and Game
Second ground of appeal – Forest and Bird
Third ground of appeal – Forest and Bird
Fourth ground of appeal – Forest and Bird

[206] The sixth ground of appeal advanced by Fish and Game asks if the Board erred in law when it deleted DIN limit from condition (5) of the Ruataniwha Water Storage Scheme (Schedule 3 – General Consent). In particular, Fish and Game submits that when deleting the DIN limit to the conditions for the Ruataniwha Water Storage Scheme the Board failed to have regard to Objectives A1, A2(c) and Policy C1 of the Freshwater Policy Statement 2011 and Objectives TT1(a), TT2 and Policy TT1(1)(a) and TT6 of Proposed Plan 6.

[207] The second ground of appeal advanced by Forest and Bird is that the Board erred in law by failing to have regard to Proposed Plan 6 and unlawfully failed to

give effect to the Freshwater Policy Statement 2011 when granting the applications for consent for the Ruataniwha Water Storage Scheme.

[208] The third ground of appeal advanced by Forest and Bird is that the Board erred in law when it concluded that the Ruataniwha Water Storage Scheme was entirely consistent with the Freshwater Policy Statement 2011.

[209] The fourth ground of appeal advanced by Forest and Bird is that the Board failed to have regard to Policy TT6(2) of Proposed Plan 6 by permitting the dissolved inorganic nitrogen limit in Table 5.9.1B to be exceeded.

[210] The Board considered the Ruataniwha Water Storage Scheme consent applications under s 104 of the RMA. The relevant parts of s 104 of the RMA provide:

> (1) When considering an application for a resource consent ... the consent authority must, subject to Part 2, have regard to—
>
> (a) any actual and potential effects on the environment of allowing the activity; and
>
> (b) any relevant provisions of—
>
> ...
>
> (iii) a national policy statement:
>
> ...
>
> (vi) a plan or proposed plan…
>
> ...
>
> (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a ... plan permits an activity with that effect.

[211] The obligation of a decision-maker under s 104 of the RMA to have regard to a national policy is less prescriptive than the duty created by s 67(3)(a) which requires those preparing a regional plan to "give effect" to a national policy statement.

[212] When the Board considered the Ruataniwha Water Storage Scheme consent applications it needed only to have regard to the Freshwater Policy Statement 2011 and the Regional Plan. However, it is clear that the Board wanted to ensure that the terms of consent for the Ruataniwha Water Storage Scheme mirrored the terms of Proposed Plan 6 prepared by the Board.

[213] The Board explained its reasoning in the following way:[82]

> Comments received in relation to the draft report have prompted the Board to make several amendments to the conditions. Two of those amendments should be mentioned.
>
> The first concerns condition (5) in Schedule 3 (general conditions – use of water for production land use), which states that the activities authorised by the use component of resource consents … shall be undertaken so as to ensure that those activities do not cause the concentration limits defined in Table 5 to be exceeded or further exceeded. Table 5 included the in stream DIN limit of 0.8mg/l in the receiving water.
>
> We have already accepted in relation to [Plan Change] 6 that it is not appropriate for farm properties or farming enterprises to be made responsible for achieving DIN limits in the receiving water which may be the result of other activities. Given that the same philosophy should apply to farms within the [Ruataniwha Water Storage Scheme], we have deleted reference to the 0.8 mg/l DIN limit in Table 5.

[214] The comments of the Board in paragraphs [1251] to [1253] of its final report demonstrate the Board's view that farming properties and farming enterprises should not be responsible for achieving DIN limits in waterways.

[215] Because the Board believed that the terms of consent for the Ruataniwha Water Storage Scheme were inextricably linked with the terms of Proposed Plan 6, any changes which the Board makes to Rule TT1(j) will of necessity require the Board to reconsider the terms of consent for the Ruataniwha Water Storage Scheme.

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[82] Final Report and Decisions of the Board of Inquiry, 18 June 2014 at [1251]-[1253].

PART VI

CONCLUSIONS, RELIEF AND COSTS

[216] The Board made a material error of law when it inserted the factual deeming provision into Rule TT1(j) without providing the parties with an opportunity to comment on that significant change to the way Rule TT1(j) had been drafted in the Board's interim report.

[217] A consequence of the factual deeming provision that the Board inserted into Rule TT1(j) is the Board failed to give proper effect to ss 5(2)(c) and 67(3)(a) of the RMA.

[218] The parties have all said that if I find the Board made a material error of law I should direct the Board to reconsider the relevant portion of its report in light of my findings. I agree that is the appropriate course to follow. The Board is seized of significant quantities of evidence and information that could not be properly conveyed to me when dealing with appeals based only on questions of law. I therefore direct the Board to reconsider and change Rule TT1(j). When the Board changes Rule TT1(j) it will also need to amend the conditions of consent to the Ruataniwha Water Storage Scheme project. In making this direction I am not suggesting the Board should necessarily revert to its draft Rule TT1(j). The Board will need to consider a range of possibilities and ensure the parties have had a fair opportunity to comment on the final version of Rule TT1(j).

[219] I make these directions pursuant to ss 149V(3)(c) and 299(2) of the RMA and r 20.19(1)(b)(ii) of the High Court Rules.

[220] When the Board reconsiders and changes Rule TT1(j) it should avoid creating a factual fiction and ensure Rule TT1(j) gives effect to all relevant provisions of the Freshwater Policy Statement 2014.

[221] Fish and Game and Forest and Bird have substantially succeeded in their appeals and are entitled to costs on a scale 2B basis. Environmental Defence has

succeeded with half of its cross-appeal but failed in the other half. Environmental Defence should not be awarded costs or have to pay costs.

[222] My provisional view is that the costs payable to Fish and Game and Forest and Bird should be paid by all three respondents on an equal basis. However, I will grant the parties leave to file memoranda if they do not agree with my proposed approach to the apportionment of costs.

D B Collins J

Solicitors:
Berry Simons, Auckland for Hawke's Bay and Eastern Fish and Game Councils
S Gepp, Solicitor, Royal Forest and Bird Protection Society of New Zealand Inc, Nelson for Appellant in CIV-2014-485-009279
Sainsbury Logan & Williams, Napier for Hawke's Bay Regional Council and Hawke's Bay Regional Investment Company Ltd
N M de Wit, Environmental Defence Society, Auckland
Russell McVeagh, Auckland for DairyNZ Ltd, Federated Farmers of New Zealand Incorporated, Fonterra Co-operative Group Ltd, Horticulture New Zealand Incorporated and Irrigation New Zealand Incorporated

DOUBLE SIDED ORIGINAL

Decision No. A049/2002

IN THE MATTER	of the Resource Management Act 199 1
AND	
IN THE MATTER	of two appeals under clause 14 of the First Schedule to the Act
BETWEEN	**WINSTONE** AGGREGATES LIMITED
	(RMA 162/95)
AND	AUCKLAND REGIONAL COUNCIL
	(RMA 174/95)
	Appellants
AND	PAPAKURA DISTRICT COUNCIL
	Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge R G Whiting (presiding)
Environment Commissioner J R Dart
Environment Commissioner R F Gapes

HEARING at AUCKLAND on 1,2,3,4 & 5 December 1997 and 18,19 & 20 February 1998

APPEARANCES

Mr F G Herbert for the Papakura District Council
Mr J M Savage for the Auckland Regional Council
Mr D A Nolan for Winstone Aggregates Limited
Mr J Kingston for the K L Richardson Estate

DECISION

Introduction

[1] This is a final decision in relation to the references lodged by Winstone Aggregates and Auckland Regional Council regarding provisions of the Papakura District Plan (Urban and Rural Section). The references sought amendments to the

District Plan to provide greater protection to areas containing mineral resources from encroachment by potentially conflicting land uses.

[2] In September 1998 Winstone appealed the interim decision to the High Court. That appeal has been adjourned sine die.

[3] The references were heard by us in December 1997 with the Court issuing an interim decision on 14 August 1998[1]. As a result of extensive ongoing discussions between the parties, further investigations, and further expert information obtained; the parties were able to reach an agreement consistent with the ruling of the Court's interim decision. On 25 September 2001 a Memorandum of Consent, signed by all parties, with a draft Consent Order attached, was filed with the Court. The Court issued a further interim decision on 22 November 2001[2], confirming the provisions contained in the draft consent order. In that interim decision we said:[3]

> *In the lengthy memorandum of counsel filed with the proposed consent order counsel for Winstone indicated some concern with the terminology used by the Court in the interim decision. We have considered the issues raised by counsel. We are of the view that: because of the importance of this matter to the parties; because of the considerable sums of money expended by the parties by way of further enquiry and investigation; the negotiations leading to the settlement; and in deference to counsel's detailed submissions; we consider it behoves the Court to address those matters in a final decision.*

Winstone's Concern

[4] Mr Nolan's concerns were founded on the Environment Court's terminology, particularly its indication that effects should be "internalised". Mr Nolan considered that the basic requirement under the RMA in relation to effects is to avoid, remedy or mitigate those effects to the extent required by the overall purpose of the RMA as set out in section 5, and the duties in sections 16 and 17 of the Act. He was of the view that this may, or may not in all cases, result in an intemalising of effects within a site boundary.

[5] Mr Nolan was of the view that the wording of the RMA does not refer to or require any intemalisation of effects as a matter of general principle, or that reverse sensitivity provisions of the type proposed are only appropriate where it is not reasonably possible to intemalise effects. He contended that references to internalisation are an unnecessary gloss to the clear wording of the RMA; which,

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[1] Decision No. A96/98
[2] Decision No. A128/01.
[3] Paragraph 8.

instead, uses the specific language of "avoiding, remedying or mitigating" effects[4]. He submitted that those obligations may require a proponent to demonstrate the reasonableness of its proposals, for example, with regards to noise mitigation, in terms of any costs/inconvenience on the proponent, compared to the effects that would otherwise be caused to adjoining landowners. Moreover, that such an examination is not the result of a statutory obligation to intemalise effects.

[6] Mr Nolan was also particularly concerned that neither the consent order, nor the interim decision be adopted as authority for the principle that there is a general requirement to intemalise effects under the RMA.

Passages of the Interim Judgment that Cause Concern to Winstone

[7] The passages in the first interim decision that gave rise to Mr Nolan's submissions are:

> *We remind ourselves that we are currently considering a reference, rather than an appeal for resource consent. The statute requires different things of a territorial authority in the formulating of a district plan. Nevertheless, we are of the view that in promoting the sustainable management of natural and physical resources, particularly having regard to s.32(1)(c), the adverse effects of quarrying should, as far as possible, be confined to the site within which those activities causing the effects are carried out. We consider that this is in accord with the purpose of the Act. When Part II of the Act is taken as a whole, there is a clear mandate for controls to be included in plans which will prevent undue adverse effects and reduction in amenity values.'*

And:

> *We consider that in controlling undesirable effects, territorial authorities should impose restrictions to internalise adverse effects as much as* ***reasonably*** *possible. It is only where those effects cannot be reasonably controlled by restrictions and controls aimed at internalisation, that the sort of restrictions on other sites (as sought by the appellants) might be appropriate. Those are relatively rare circumstances and will vary from site to site.'*

And:

> *That the districtplan should contain objectives, policies and methods to control the effects of quarrying, is not in dispute. It is whether those objectives, policies and methods should be directed at internalising all of the adverse effects, or whether a combination of those restrictions should be combined with restrictions constraining the* use *of land owned by adjacent landowners. We have already held that we are of the view that adverse effects should be internalised where possible, but that such restrictions should be reasonable. In the event of adverse effects escaping from the site after the imposition of reasonable controls, then restrictions constraining*

[4] Sections 5, 16 & 17
[5] Paragraph 97.
[6] Paragraph 98.

> *adjacent landowners can and should be implemented. It is only when reasonable controls for the containing of effects at the boundary of the quarry site have been implemented can it be property and adequately assessed that the perimeter of effects extends beyond the quarry zone thus making it necessary to impose restrictions on adjacent landowners.*[7]

And:

> *After a careful evaluation of the evidence, we are satisfied that there has not been a full consideration of options for noise management, and that the best practicable option may not have been selected. We agree with Mr Hart that further work is required to establish what are the best practicable options. Before we reconsider justifying the imposition of restrictions on residents' rights to use their own land, we need to be satisfied that all reasonable andpracticable steps have been taken to internalise effects.*[8]

[8] In summary, Mr Nolan's submissions asserted that the passages appear to be philosophically inconsistent with other cases that have addressed reserve sensitivity issues, and seem to create a new duty under the RMA by requiring the intemalisation of adverse effects. This he says is inconsistent with the duty to avoid, remedy or mitigate adverse effects.

[9] First, we say that as a Court of first instance any decision, even of principle, has no binding effect. Secondly, there appears to be little or no difference on matters of principle between our approach and that submitted by Mr Nolan. He appears, to us, to be reading more into our decision than was intended, by asserting it creates a new duty under the RMA. As a Court of first instance we are required to make decisions on a wide variety of factual circumstances. By far the majority of our decisions are fact specific. Analysts must therefore be weary of elevating comments made in respect of specific fact situations to matters of principle.

[10] Perhaps the wording of our decision has given rise to Mr Nolan's concerns. We regret if there is any lack of precision and any apparent failure to tether our reasonings to the Act. We therefore propose to set out the basis upon which we made our decision and then endeavour to clarify our decision as it related to the fact specific circumstances.

Reverse Sensitivity as an adverse "effect"

[11] Section 3 of the Act defines "effect" as:

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7 Paragraph 101.
8 Paragraph 145.

> 3. ***Meaning of "effect"*** *– In this Act, unless the context otherwise requires, the term "effect" includes –*
>
> *(a) Any positive or adverse effect; and*
>
> *(b) Any temporary orpermanent effect; and*
>
> *(c) Anypastpresent, or future effects; and*
>
> *(d) Any cumulative effect which arises over time or in combination with other effects –*
>
> *regardless of the scale, intensity duration or frequency of the effect, and also includes –*
>
> *(e) Any potential effect of high probability; and*
>
> *(f) Any potential effect of low probability which has a high potential impact.*

[12] The concept of reverse sensitivity has not been defined under the Act, although it has been recognised in case law, and it is well settled that reverse sensitivity is an effect on the environment. In ***Auckland Regional Council v Auckland City Council***[9] Judge Sheppard defined the concept as:

> *The term "reverse sensitivity" is used to refer to the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in the carrying on of those other activities.*

[13] In the present circumstances the "reverse sensitivity" at issue was the restriction on activities within the vicinity of the quarry sensitive to the effects of the quarry, such as subdivision, residential uses and educational facilities. Thus if reverse sensitivity is an "effect" under the Act, then there is a duty to "avoid, *remedy, or mitigate*".

The Basis of our Decision

[14] The starting point is section 5 of the Resource Management Act 1991. It states:

[9] Decision No. A0 1 0/97

5. Purpose

(I) The purpose of this Act is to promote the sustainable management of natural andphysical resources.

(2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while-

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of the activities on the environment.

[15] Section 5 sets out the purpose and principles of the Act, which is to promote the sustainable management of natural and physical resources. Section 5 is accorded primacy and has been described as the "lodestar"[10]. Thus, section 5 guides the functions of regional and territorial authorities in plan-making and policy decisions[11], and, when territorial authorities are making decisions as to whether to grant or refuse resource consent applications[12].

[16] There has been some debate about the ambiguous meaning of the word "while" within the context of s5(2), and whether it is used conservatively or loosely. In other words, whether "while" is used as a subordinating conjunction, or a co-ordinating conjunction.

[17] If "while" is used as a subordinating conjunction meaning "if ', or "as long as" then sustainable management can only occur if the matters in subsections (a) (b) and (c) are secured.

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[10] Lee v Auckland City Council [1995] MZRMA
[11] Sections 31 and 32 RMA
[12] Sections *104* and 105, and s108 if consent is granted.

[18] If "while" is used as a co-ordinating conjunction meaning "at the same time as", then sustainable management can occur if the matters in subsections (a), (b) and (c) have equal value to, and therefore in any decision-making process are afforded the same weight as, the matters set out in the words preceding "while" and prefaced by the word "managing".

[19] In ***Peninsula Watchdog Group Inc v Waikato District Council***[13], the Tribunal was invited to form an opinion on the word "while". Counsel in that case submitted that the correct interpretation to be given to the word "while" in s5(2) was that human values are conditional upon ecological values[14]. The Tribunal declined to address the meaning of the word "while" in s 5(2) and adopted the reasoning of Grieg J in ***NZ Rail v Marlborough District Council***[15]. The Tribunal was of the view that the case should be decided on the basis of submissions, and the evidence before it, rather than on an academic analysis of s5.

[20] ***In*** the ***NZ Rail*** case, Greig J held that:

> *This Part of the Act expresses in ordinary words of wide meaning the overall purpose **and** principles of the Act. It is not, I think, a part of the Act which should be subjected to strict rules **and** principles of statutory construction which aim to extract **a** precise and unique meaning from, the words used. There is a deliberate openness about the language, its meanings and its connotations which I think is intended to allow the application of policy in a general and broad way.*[16]

[21] In ***North Shore City Council v Auckland Regional Council",*** the Environment Court in the application of s5, adopted the reasoning in ***Trio Holdings Ltd v Marlborough District Council***[18], and held that:

> *The method of applying section 5 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 considerations and the scale or degree of them, and their relative significance or proportion in the final outcome.*[19]

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[13] Decision No. AO52/94 (Planning Tribunal)
[14] Fisher, D *"Clarity in a Little 'While'* ", Terra Nova, 11 November 1991, pp50-51
[15] [1994] NZRMA 70 (High Court)
[16] Page 87.
[17] [1996] 2 ELRNZ 305; [1999] NZRMA 59.
[18] [1996] 2 ELRNZ 353
[19] Page 94 supra.

[22] The application of section 5(2)(c) cannot fulfil the overall purpose of sustainable management, if the section is interpreted in such a way as to give primacy to the ecological values over the management function. To do that would not *always* fulfil the purpose of sustainable management, but may in some cases. What is required is a consideration of all aspects of the case, and then a weighing of factors in order to evaluate which will best achieve the purpose and principles of the Act.

[23] One of the fundamental elements of sustainable management is controlling the adverse effects on the environment, which is provided for by section 5(2)(c), the key words being "avoid, remedy, or mitigate". In ***Mangakahia Maori Komiti v Northland Regional Council***[20], it was held that "each paragraph of s5 is to be accorded full significance and applied accordingly in the circumstance of the particular case so that the promotion of the Act's purpose may be effectively achieved".

[24] While in the wording of the subsection the words "avoid, remedy, or mitigate" follow a continuum, we are of the view that the grammatical construction is such, that the words are to be read conjunctively and with equal importance.

[25] Accordingly, whether emphasis is given to avoidance, remedying or mitigation will depend on the facts of a particular case and the application of section 5 to those facts. A judgment is required to be made which *"allows for a comparison of conflicting considerations and the scale or degree of them, and their relative significance* **or** *proportion in the final outcome"*[21].

[26] ***In*** some cases mitigation of an adverse effect is sufficient. In other cases avoidance may be required. An example of the latter is ***Te Aroha Air Quality Protection Appeal Group v Waikato Regional Council***[22]. The then Planning Tribunal held that even with the strict conditions of consent contemplated, in

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20 Decision No. A107/95 Planning Tribunal
21 North Shore City Council supra.
22 (No. 2) (1993) 2 NZRMA 574.

conjunction with the enforcement provisions of the Act, properties adjacent to a proposed rendering plant would be likely to be affected by unintentional, but unavoidable, emissions of offensive odours from the proposed plant. The Tribunal said:

> *For both applications the decisive issue is odour emission. The odour from the rendering process is offensive and can be nauseating. Occupiers of properties in the Rural Al and Rural B zones in the vicinity of the site are entitled to be free from having to experience that odour. Proprietors of businesses on properties in the vicinity of the site are entitled to be able to conduct those businesses without their patrons or customers being deterred by experiencing renderingplant odour.*
>
> *Occupiers, business people and their patrons should be free of rendering plant odour at all times without condition or qualification. It would not be sufficient for the proprietor of a rendering plant to demonstrate that emission of rendering plant odour which reached adjacent properties was the result of an unforeseen or random accident or malfunction. Nor would it be sufficient for the proprietor of a rendering plant to demonstrate that the best practicable option had been taken to avoid emission of odour which might reach adjacent properties. Defences available under s.342 should not be a sufficient response where a rendering plant has been established out of zone on land where that activity is not* a *permitted activity.*[23]
>
> *However, avoidance of adverse effects is more consistent with the purpose of the Act than enforcement proceedings after adverse effects have been experienced. Further, the evidence did not satisfy us that the plant would be designed and built to prevent adverse effects on the environment.*[24]

[27] The Tribunal considered that an escape of rendering odour would have a high potential impact on the social, economic, aesthetic and cultural conditions, and the amenity values of the area. As the proposal did not provide the full duplication of systems needed to avoid emanations of objectionable odour the consents were refused. In the Tribunal's judgment, such potential effects deserved such weight, against the grant of the consents sought, that it must prevail. The Tribunal came to a fact specific judgment after balancing and weighing the factors required to give effect to the single purpose of the Act.

[28] Two further examples of where the Court emphasised the need for avoidance are two cases involving this division of the Court. They are ***P H van den Brink (Karaka) Limited v Franklin District Council*** [25] and ***Hill v Matamata-Piako District Council***[26]. ***In*** the former case the adverse effects emanating from a poultry processing plant were noise and odour. The applicant, who was the appellant, led technical evidence to the effect that those adverse effects could be confined on site,

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[23] Page 582 and 583.
[24] Page 583.
[25] 1997 NZRMA 552.
[26] Decision No. A65/99.

albeit at cost, and proposed conditions accordingly. The emphasis was on odour, which, like the Tribunal in the ***Te Aroha*** decision, we found on the evidence to be objectionable.

[29] In the latter case, which concerned chicken broiler sheds, the emphasis and focus was again on odour. Again, on the evidence we found it objectionable. Again, the technical evidence was that conditions could be imposed that would eliminate odour.

[30] On the evidence in those cases the Court came to the conclusion that it was appropriate and reasonable for the adverse effects causing concern to adjacent neighbours to be intemalised on site. In other words, the emanation of those adverse effects outside the site boundary was to be avoided.

[31] While all of those cases stressed the need to avoid adverse effects by putting in place systems to avoid emanations of the adverse effects, they were all fact specific.

[32] The word "intemalised" was used in ***Machinery Movers Limited v Auckland Regional Council***[27]. ***In*** that case the full division of the High Court quoted principle 16 of the Rio Declaration on Environment and Development adopted at the United Nations Conference on Environment and Development, Rio de Janeiro 3-14 June 1992, [1992] International Legal Materials 876, 879. New Zealand is a signatory to the Declaration. Principle 16 states:

> *National authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.*[28]

[33] In our view the avoidance of adverse effects by the imposition of systems means that the cost of avoidance is borne by the organisation that generates them. It is a matter of judgment as to whether in a particular case the adverse effects are such that the cost of avoidance should be totally intemalised. It is a question of what is reasonable in the circumstances.

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[27] [1994] 1 NZLR 492.
[28] Ibid page 502.

[34] While we have focused on avoidance there are many cases where mitigation measures to reduce adverse effects are all that is required. There are many examples that include noise and dust mitigation measures as well as, of course, many others.

What We Meant

[35] **In** our interim decision we were directly concerned with the potential conflict between quarrying activities, and other land use activities, sensitive to adverse effects, that it is well-known can emanate from quarries.

[36] It was proposed that an aggregate resource protection area (or buffer zone) extending 500 metres from the boundary of the present and future operations of the quarry be imposed. This was to be on land owned by entities other than the quarry owner. The proposal was vigorously opposed by one of the landowners, affected, namely the K L Richardson Estate.

[37] Considerable evidence relating to significant adverse effects, and systems to control them, was given over a period of 8 days. The evidence also addressed the difficulty of confining those effects within the quarry boundary. The evidence did indicate that many of the effects could be confined on site, albeit at some considerable cost. For example, measures could be taken to prevent dust annoyance; measures could also be taken to prevent sediment entering waterways; and measures could be taken to confine noise and vibration.

[38] It was clear from the evidence that the most difficult and costly effects to confine are noise and the effects of blasting. We accordingly heard extensive and detailed expert evidence relating to both noise and vibration.

[39] The evidence suggested that noise and vibration could be confined on site at cost. In other words could be intemalised. We accordingly defined the issue as *"to what extent is it reasonable to expect a quarry operator to internalise those effects".*[29]

[40] As we said *"this involves a careful consideration of the evidence, including an assessment of the practical mitigation measures available with present technology, and the economics of implementing those measures".*

[29] Paragraph 80 of Interim Decision No. A96/98.

[41] One of our concerns about a buffer zone over private land is that it imposes restrictions on the land which it overlays. When that land is owned by the quarry operator, there is no problem. When it is not, then there is a problem and a potential conflict. In this case, the Richardson Estate land was zoned Rural Residential in the then proposed district scheme. That part of the Estate's land contained within the buffer zone would be affected considerably by the implementation of the buffer zone. The evidence established that this could have serious economic effects. Therefore, indirectly, the Richardson Estate would be bearing the cost of the adverse effects emanating from the quarry.

[42] Accordingly, before we were prepared to countenance the imposition of a buffer zone, we required evidence to satisfy us that all reasonable attempts had been made by the quarry operator to impose systems which could avoid adverse effects beyond the quarry boundary. The appropriate way of doing this in our view was to set noise standards and vibration standards at the quarry boundary, thus reflecting the reasonable restraints that should be imposed on the quarry operator. What is reasonable, is a question of fact in the circumstances of each particular case. There are many factors to be considered including such as the cost to the quarry operator.

[43] The application of section 5(2)(c), therefore, must necessarily involve a consideration of all aspects of a proposal within the broader context of sustainable management dependent upon the factual matrix of each circumstance. This calls for an assessment to be made in terms of the scale and degree of those effects and their significance or proportion in the final outcome[30]. It is a pragmatic approach to sustainable management, and also one that is designed to achieved an outcome that is fair and reasonable in each particular circumstance.

[44] The word "intemalisation" was used in the interim decision with a qualification. For example the following phrases:

> *. . . the adverse effects of quarrying should, as far as possible, be confined to the site within which those activities causing the effects are carried out."*
>
> *... internalise adverse effects as much as reasonably possible.*[32]
>
> *...adverse effects should be internalised where possible, but that such restrictions should be reasonable. In the event of adverse effects escaping from the site after*

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[30] *North Shore City Council v Auckland Regional Council* Decision No. A86/96
[31] *Winstone Aggregates v Papakura District Council,* Decision No.A 96/98; Para 97,
[32] Ibid; Para 98

the imposition of reasonable controls, then restrictions constraining adjacent landowners can and should be implemented.[33] (Emphasis added)

[45] What is to be considered, is the extent to which the associated adverse effects of mining aggregate resources should be reasonably internalised so as to avoid the need to restrict the use of land owned by others. This incorporates "the polluter pays" approach.[34]

[46] "Reasonable Intemalisation" is part of the method of applying with the Act's requirements to "avoid, remedy, or mitigate", and is not intended to be interpreted as a separate duty. In considering the imposition of a buffer zone we formulated what, for the sake of simplicity, can be viewed as a two step process. The first part of the consideration is to require emitters to take all reasonable steps to intemalise effects. Only those effects which cannot be reasonably intemalised provide the basis for constraints on nearby land-use activities. This method thus incorporates "the polluter pays" approach, in conjunction with a practical evaluation of who can reasonably mitigate. This is analogous to the duty to "avoid, remedy or mitigate", in that if an effect cannot be avoided, then, the emitter must remedy or mitigate through conditions of consent. "Intemalise" is not to be interpreted as to "intemalise at all costs".

[47] A determination of what is reasonable is dependent upon a careful consideration of the evidence, including an assessment of the practicable mitigation measures available, and the economics of implementing those measures.

Determination

[48] **In** the present case, after consideration of all of the evidence incorporating the various conflicting factors as above, we are satisfied that not all of the adverse effects of the quarry, particularly those of noise and vibration, could reasonably and

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[33] Ibid; Para 101

[34] *Machinery Movers v Auckland Regional Council* [1994] 1 NZLR 492 (High

economically be contained within the site. Accordingly, in such circumstances we consider the imposition of an ARPA Zone (Reverse Sensitivity Buffer Zone) as being appropriate to the extent set out in the consent order.

DATED at **AUCKLAND** this 26th day of February **2002.**

For the Court:

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

R Gordon Whiting
Environment Judge

BEFORE THE ENVIRONMENT COURT

Decision No. [2014] NZEnvC 223

IN THE MATTER	of the Resource Management Act 1991 and of appeals pursuant to Section 120 of the Act
BETWEEN	PUKE COAL LIMITED (ENV-2013-AKL-000183)
	PAR SOCIETY INCORPORATED (ENV-2013-AKL-000184)
	ROGER HOWLETT (ENV-2013-AKL-000185)
	Appellants
AND	WAIKATO REGIONAL COUNCIL WAIKATO DISTRICT COUNCIL
	Respondents
AND	LUDGER HINSE PETER WILLIAM DAVIE
	Section 274 parties

Hearing:	28 July – 31 July, 4 August 2014
Court:	Environment Judge J A Smith Environment Commissioner A C E Leijnen Environment Commissioner D J Bunting
Appearances:	Mr P H Mulligan and Ms V S Evitt for Puke Coal Limited (**Puke Coal**) Ms B A Parham for the Waikato Regional Council and Waikato District Council (**the Councils**) Mr R A Walden for the PAR Society Incorporated (**the PAR Society**) Mr L Hinse - Section 274 party to Puke Coal appeal
Date of Decision:	23 October 2014
Date of Issue:	23 October 2014

INTERIM DECISION OF THE ENVIRONMENT COURT

A. **The Court is of the tentative view that consent can be granted on settlement of appropriate conditions. The conditions would need to satisfy the Court that cumulative effects and other issues identified in this Interim Decision can be adequately addressed.**

B. **The applicant is to prepare conditions addressing this decision and in particular:**

1. **In respect of stormwater:**

a. **The monitoring point at the outlet of the dam requires that adequate standards remove most of the sediment, coal dust, nitrates, and that e-coli be addressed. The objective is to discharge water consistent with the quality of the water at the contact water level to the culvert and thus into the Waitawhara River;**

b. **We also note that the proposal to now install a contingency pond up stream of the main pond is likely to require a resource consent. This would need to be clarified in the conditions;**

c. **Identifying a method by which the stream as a whole can be improved including riparian planting, riparian fencing and planting along the edge of the stream as it goes through the site to the stormwater pond, and practical improvements beyond/downstream within at least the application site; and**

d. **Providing intermediate settlement ponds both within the landfill footprint and before the main treatment pond which captures both landfill and mine stormwater. This concept now forms part of the proposal although there is no plan or design for it. Consideration could be given to a**

sump or catchpit that could be cleaned out to assist in sediment removal.

e. To undertake real time monitoring of the clean stormwater diverted around the landfill prior to discharge to the stormwater pods.

2. How cumulative effects will be dealt with (this may require changing other consents) including stormwater, cumulative traffic effects, cumulative dust effects, impact of mining operations, how 50 metres separation is to be obtained from any possible coal mining, coal storage and the land fill operations. The separation regime will require an appropriate definition of any material containing coal or coal products by volume (say, containing more than 5%);

3. Addressing cumulative operational effects such as inter connectedness of the various operations and activities around the site and an appropriate whole of site management plan to address these for example traffic management and fire risk;

4. Surrender of the tyre storage facility consent;

5. In relation to odour:

a. How monitoring for early detection can be provided;

b. Dispersion and early warning systems where precursors to odour are identified in odour modelling;

c. In the event of adverse effects on people, how this would be addressed which might include:

i. Compensation, assessment for loss or damage,

ii. Filtered air control inside the house, and

iii. Management of waste cover/capping and location.

d. **The additional feature of a bio-filter such that the leachate storage tanks will be vented through this filter to control potential odour.**

6. **For completeness we add that Mr Mulligan also offered a condition under which a 500 metre separation distance would be maintained from the landfill working face to the nearest boundary to minimise the potential for odour to affect adjoining properties.**

C. **The applicant is to liaise with the Councils in preparing a set of consents with conditions and Draft Management Plans to address the findings and recommendations contained in the Interim Decision. These are to replace the Proposed Consents with Conditions and Draft Management Plans as attached in Annexure A, together with further amendments suggested in closing by the appellant as contained in A and Annexure B hereto.**

D. **We direct:**

1. **The Applicant is to liaise with the Councils to develop a set of consents, conditions and Draft Management Plans (the Documents);**

2. **If the Documents are circulated to all parties by 20 December 2014, the Section 274 parties are to provide their feedback by the 28 February 2015;**

3. **If the Documents are circulated between 20 December 2014 and 28 February 2015, the other parties have until the end of March to comment; and**

4. **Within 15 working days of receiving the Section 274 parties' comments, the applicant is to circulate and file its final preferred conditions, with a memorandum setting out areas of dispute and its reasoning for its preference.**

The Court will then convene a judicial prehearing conference (possibly by telephone) to determine further steps to resolution. If the conditions are not circulated by 28 February 2015, the Regional Council is to advise the Court and a telephone conference will be convened. If the parties reach a

consensus, a memorandum setting out reasoning, signed by all parties should be filed.

E. Costs are reserved.

REASONS FOR THE DECISION

Introduction

[1] Should the court confirm in principle the grant of consents for Puke Coal to operate a Class A Municipal Solid Waste landfill (**MSW**) on their site at Glen Afton in addition to existing activities? Coal mining, a Construction and Demolition landfill (**C&D**) and an end of life storage of tyres are all currently consented and operational.

[1] In particular:

[a] Can MSW be managed, in conjunction with the existing activities, to appropriately avoid, remedy or mitigate adverse effects, including:

[i] Odour such that there is no offensive odour beyond the boundary of the property; and

[ii] There are no contaminant discharges to ground or water?

[b] If the court concludes that consent is appropriate in principle, can the environmental effects generated from the site be adequately controlled by conditions?

Outline

[2] The determination of this appeal also involves questions as to whether or not the Vision Strategy for the Waikato River, now contained in the regional and district planning documents for the protection and restoration of the river, will be satisfied. This relates particularly to consent conditions for controlling stormwater and erosion discharges from the landfill and the risk of leachate affecting the waters of the river.

[3] It became clear during the course of the hearing that in the event that we considered a consent might be appropriate in principle, further significant work

needed to be done in respect of the appellants' proposed consent, its conditions, and management plans to:

[a] Clarify their intent and effect;

[b] Clarify what consents are already in place for the existing activities on the Puke Coal site;

[c] Deal with the cumulative effects from the combination of the existing coal extraction and landfill activities on the site which may in themselves require further consents or modifications to the consents already in place;

[d] Clarify questions in relation to a number of proposed landfill management plans including the standards to be achieved and the effect of these plans on the operation of the site including their ongoing enforcement; and

[e] Ensuring enforceable standards are contained within the Conditions of Consent with actions in the event of failure to achieve a standard.

[4] There was evidence from the opposition parties about Puke Coal's existing coal mining and end-of-life tyre operations which highlighted poor management in the past and which has resulted in prosecution and enforcement action.

PROPOSAL

[5] Puke Coal proposes to construct and operate a Class A municipal landfill. It is to be located on the same site as an open cast coal mine, a C&D landfill and a consented end-of-life tyre landfill which is currently being developed. The landfill consent requirements being sought under these proceedings are focussed on stormwater collection and discharge, leachate collection and discharge and air discharge. The proposal relies on a mix of existing and new consents.

[6] The landfill would essentially fill a 20ha land depression created by open cast coal mining activities which more or less ceased in this part of the Puke Coal site in about 1995. The resultant final mounded landform will we were told, fit the natural context of the surrounding topography. The northern perimeter capping level roughly matches the southern high wall level. The eastern perimeter capping level meets the

existing access road used by trucks removing coal from the northern portion of the site.[1]

[7] As a consequence, the landfill is best described in cubic capacity rather than as a weight measure. As the hearing progressed it was confirmed that the cubic capacity was 8,000,000m^3 being the volume consented by both the Regional and District Councils and the subject of these proceedings. We were told that the maximum annual waste received at the landfill would be 250,000m^3 (compacted volume) and its expected life would be in the range of 35 years.

[8] Coal will continue to be extracted on the remainder of the Puke Coal property contemporaneously with the operation of the landfill. By the end of the hearing, Puke Coal undertook that should consent be confirmed for the MWS, its existing consent for the end-of-life tyre disposal would be surrendered and that operation would cease.

[9] There is no liner underneath the existing C&D landfill which is itself located within the footprint of the proposed new landfill. This C&D landfill will therefore be relocated to another area within the new landfill site to allow the construction of a sealed liner over the full extent of the combined new site.

[10] The proposal requires consents from both the Waikato Regional and the Waikato District Councils. A table setting out those consent requirements is attached as Annexure **C**.

[11] Overall, relative to both the regional and district planning instruments the proposal is a discretionary activity. We intend to address matters under Section 104 before a final evaluation under Part 2 of the Act. We commence by outlining the application and the parties.

The Site Environs

[12] The Puke Coal site, Lot 60 DP 427961, is 12 kilometres west of Huntly along Rotowaro Road past the Solid Energy Rotowaro open cast mine. It is located in the western most extremity of the Rotowaro Coal mining Policy Area defined in the Waikato District Council's District Plan. The Puke Coal property extends almost as far as the former coal mining townships of Glen Afton and Pukemiro.

[1] Coombe, EiC at [3.3]

[13] It would be fair to describe the scale of Puke Coal's mine as being relatively modest compared with the nearby Solid Energy mine. While the whole area has a long history of coal mining, the former Glen Afton and Pukemiro mine workings are no longer evident at least to the untrained eye. Various ponds and indentations in the landscape, however, show tell-tale signs of former open cast and underground mining with the Puke Coal site overlying part of the seams of the Glen Afton and Pukemiro mines. We gather that the process on site uses machinery to extract the remnant coal left from the previous underground mining of the area (**Adits**).

[14] There are about 10 homes on Hangapipi Road, which bounds the eastern side of the site. Most of these are owned by Mr J Campbell, the principal of Puke Coal, although two are owned by the now deceased and intestate parents of two parties to the proceedings, one who supports the application and one who opposes it. We will collectively refer to these two parties as the Tumohe family. Apart from the dwellings on Hangapipi Road, adjoining properties consist mainly of pastoral farm land.

[15] The site is shown in Annexure **D** hereto with the proposed MSW landfill site located in the south western corner. Immediately to the north and northeast are the Pukemiro rail line and bush tramway club premises. To the south is rural land owned by a Mr Howlett and to the west a mixture of rural land and outlying residences of the Glen Afton and Pukemiro townships.

[16] In addition to the houses on Hangapipi Road, Puke Coal owns a house located on the western edge of the site closest to Glen Afton and accessed via Glen Road.

[17] Located between the landfill footprint and the eastern boundary is the access road for the site and an unnamed tributary which flows from the south to the northeast of the site where it joins the Waitawhara stream. The majority of the site drains to this tributary with the Waitawhara stream more or less following Rotowaro Road eastwards towards Huntly where it enters Lake Waahi, and ultimately the Waikato River.

[18] Upstream, the unnamed tributary flows through farm land before entering the Puke Coal site. Over much of its length within the site it broadens out to form a settlement pond which is used to treat the stormwater which discharges from the coal mine and the existing C&D landfill. It is intended that this system also be used to treat the stormwater from the proposed landfill.

[19] The treated water from this settlement pond then flows downstream through a valley and some bush before passing through two culverts, one under the site access

road and the other under Rotowaro Road where it joins the Waitawhara Stream. Each culvert at its outlet is perched above the downstream bed.

[20] After leaving Rotowaro Road, the access road to the site makes its way south between the stream and the eastern boundary generally following the alignment of the unnamed tributary. It then opens out into an area which contains concrete pads (we understand for tyre storage and sorting) and a weighbridge, the coal mine site office and coal hopper as well as staff parking. From here one access road continues into the north eastern corner of the site where we were told more permanent tyre storage bunkers are intended to be constructed or are under construction and further to where the existing C&D landfill operates.

[21] A further access road crosses the unnamed tributary towards the southern end of the site before turning back in the direction of both the landfill and the coal mine on the opposite side of the tributary. We understand that coal extraction has been undertaken in the area covered by the western wall of the proposed landfill footprint and also in the area several hundred metres to its immediate north.

[22] From evidence given by local residents, it appears that some tailings from the current open cast mining operation have been placed in the north western corner of the site, with an allegation that some of those tailings have washed into the Waitawhara stream in heavy rain conditions as a result of slips. We observed silt in the stream from that area on our site visit.

[23] The current coal extraction method is open cast and appears to be following the tail of various seams located in the coal measures of this area. Ms D Fellows (an experienced geological engineer called by Puke Coal) set out a clear description of the geology for us in her evidence in chief. Included in that description is a layer of what was commonly referred to by witnesses as "fire clay" which is to be used to line the landfill in a compacted form prior to the placement of a synthetic flexible membrane liner (HDPE liner). There is no detail as to how much of the site may be affected by this fire clay although suggestions were made by some witnesses for the PAR Society that its sharpness and brittleness could penetrate the landfill liner.

The Landfill System

[24] As we understand the proposal, the base of the landfill site will be prepared through excavation and removal of reworked overburden and C&D landfill deposits to provide a solid base upon which the liner system can be founded. This will include

the removal of any remaining underground mines or Adits which have not yet been removed as part of Puke Coal's current open cast mining operations.

[25] Geological drilling will be undertaken to confirm that the landfill footprint and its surrounds are clear of any underlying Adits and if any Adits are discovered these will be removed or dewatered to meet the requirements of the landfill design.

[26] The southern and western high walls will be designed to be self supporting during the development and initial phases of the landfill operations. These walls will then be buttressed with waste material separated from the liner with reworked overburden as the filling progresses.

[27] The liner system for the landfill consists of a drainage system beneath a compacted clay liner which is then covered with an HDPE liner. The underground drainage system is designed to collect groundwater beneath the landfill. There will also be a drainage collection system constructed along the outer edge of the landfill to capture surface stormwater and prevent it from flowing into the landfill.

[28] The collected groundwater and stormwater will be discharged into the existing stormwater treatment pond on the site. The proposal relies on an existing consent for that stormwater treatment facility and the existing specifications pertaining to it.

[29] A gravity fed leachate drainage collection system is to be installed above the HDPE liner and this will be directed to catchment tanks which will be periodically emptied by a tanker with the leachate being removed from the site and disposed of elsewhere at an industrial waste facility.[2] These tanks will sit within a bunded enclosure sized to contain any leachate spillage or leakage.

[30] In closing, Mr Mulligan for Puke Coal put forward a number of additional features which he said would form part of the proposal including the construction of a contingency pond to provide additional capacity to temporally store leachate in the event of an emergency so as to protect the integrity of the stormwater treatment pond. He also offered:

[a] To undertake real time monitoring of the clean stormwater diverted around the landfill prior to discharge to the stormwater pods; and

[2] Bundle of Key Documents, Vol 3 Consent Plan *Typical details*, DWG: 42045680-C-016 at p.1632

[b] The additional feature of a bio-filter such that the leachate storage tanks will be vented through this filter to control potential odour. These additional measures will form part of our consideration as to whether or not consent should be granted for the landfill.

[31] For completeness we add that Mr Mulligan also offered a condition under which a 500 metre separation distance would be maintained from the landfill working face to the nearest boundary to minimise the potential for odour to affect adjoining properties. We return to discuss this later.

[32] Landfill gas resulting from the decomposition of the waste materials, is to be collected by a reticulated system which will be progressively installed as the volume of waste material placed increases. This will include flares to burn off the gas in accordance with the National Environmental Standard for Air Quality (**NESAQ**) which applies to landfill operations. An additional feature of this landfill is the proposal to operate a temporary gas flare system from the start of the filling operation until the point where permanent reticulation is practical. This we were told will address potential gas emissions much earlier than has been the practice for this type of operation on many other landfills. We will come back to this later.

[33] Operation of the landfill will follow a staged approach based on filling *cells* in either a clockwise or anti clockwise fashion. It was agreed with one of the neighbours, Mr Davie (a Section 274 party to the Puke Coal appeal), that the sequencing of cell filling should follow a pattern whereby the emission of odour and its likely impact upon him (and others) can be ascertained and managed. With that in mind and with some other minor amendments to condition drafting Mr Davie agreed to a consent arrangement with Puke Coal. The papers for this have been lodged with the court but held over to the completion of this hearing and decision. These are intended as part of the proposal. We have already referred to a further concession on this issue made by Puke Coal for a 500m separation distance to be imposed between the workface and the nearest property boundary. All these agreements will be carried into the final documents.

[34] A Management Plan system is proposed for the landfill to manage the deposition of particular putrid waste as well as hazardous waste. Monitoring and various management systems are encapsulated in a draft Outline Landfill Management and Operations Plan which was attached to Mr T Matthews' (the project manager for Puke Coal's consultants) evidence-in-chief. We understand that this document also forms part of the application material before us.

[35] It is proposed that the Landfill operate as follows:

[a] Access to the landfill only between the hours of 7.00am - 4.00pm Monday to Saturday inclusive;

[b] On site works at the landfill only between the hours of 7.00am - 6.00pm Monday to Saturday inclusive; and

[c] No activities associated with the MSW landfill to be undertaken outside of these hours, or on Sundays or Public holidays.

[36] Again we assume these will be in the final Conditions of Consent.

The Parties

[37] As we have discussed, Puke Coal appealed the Councils' decisions acknowledging the need to modify and clarify certain conditions. The position between Puke Coal and the Councils is that these parties have now reached agreement on a comprehensive set of conditions relevant to their consent jurisdiction.

[38] Mr Hinse is a Section 274 party to the Puke Coal appeal. He owns a house in Pukemiro and opposes the landfill bundle of applications in their entirety. He was self represented and did not provide evidence to us. He did however provide submissions and was able to ask questions of the witnesses called by Puke Coal and the councils.

[39] Mr Howlett lodged an appeal in his own right and has had his concerns met through agreement reached with the Councils and Puke Coal for Puke Coal to provide a litter control fence along the boundary of his property. He therefore did not attend the hearing. Those agreements are now part of the proposal before us and will be incorporated into any Final Conditions and Management Plans.

[40] As we have already described, Mr Davie who was a Section 274 party to the Puke Coal appeal has also had his concerns attended to and did not attend the hearing. Those agreements are now part of the proposal before us.

[41] The PAR Society Inc is an appellant in its own right and maintains its position that the consents should be declined. The Society is made up of many of the residents of Glen Afton and Pukemiro and some members of Waikato-Tainui hapu living in Hangapipi Road, whom we have referred to by the family name Tumohe. They were represented by Mr Walden, a former barrister and solicitor and law educator who has

continued to take an active interest in resource management matters and the practice of law as it relates to communities. The PAR Society called no technical expert witnesses but did call a number of local residents who are members of the Society as well as one member of the Tumohe family.

Remaining Appeal Issues

[42] Mr Walden set out the issues for his clients which can be summarised as:

[a] Legal issues which while broadly introduced, generally concern the application of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 including cultural matters and a precautionary approach;

[b] The suitability of the site for a MSW landfill;

[c] Odour control;

[d] Ground water, surface water and leachate management; and

[e] Potential fresh water contamination.

[43] While this list seems relatively modest it appears to address the heart of the proposal. Other issues not pursued at appeal were traffic and roading, landscape and visual matters, litter, vermin, contaminated and hazardous substances, as well as archaeological and cultural heritage matters. These are, in a sense, more peripheral to the scheme of this proposal on a highly modified site and rural and mining environment setting.

[44] We now further elaborate on the detail of the proposal and its potential environmental effects as it relates to these issues.

Past mining on the landfill site

[45] Ms Fellows in her evidence for the applicant noted that a number of bore holes had been drilled around the edges of the MSW site and these indicated that there may still be coal seams in the higher walls of the landfill site and in the south-eastern corner.

[46] A map produced by Ms Fellows identified the approximate extent of historical underground mine workings (Adits). This map indicated that the entire area was

worked through fairly extensively using the pillar and bord method over the last century or so. This includes the areas of Hangapipi Road, the south eastern corner of the site and the area covering around two-thirds of the proposed landfill, as well as the area to the immediate north and northeast of the landfill site which is currently being mined by Puke Coal.

[47] The full extent of the mine Adits is a little unclear although we understand that most of the MSW footprint, has been excavated and partially filled with reworked overburden and C&D landfill materials.

[48] In short, the full extent of existing mine Adits on the site is unknown and some may have collapsed. If not attended to, any remaining Adits that have not been worked through the more recent open cast mining operation could form a weakness within the MSW site and its edge walls. This could lead to a failure of either the landfill liner to allow penetration of leachate to ground water and thus compromise the stability and the integrity of the proposed MSW operations management system. If this happened, leachate associated with the landfill could also migrate into these Adits and find its way into the catchment and surface waters and eventually into the Waikato River.

[49] The evidence was that preliminary site investigation and excavation will ensure that no Adits will be left under the base of the MSW. Ms Fellows also advised that because of concerns over remnant underground mine workings, the concept design was amended to ensure that that all of these workings would be removed from beneath the MSW side walls and the liner.

Relationship to the multiple uses taking place on the site

[50] The offer by counsel, Mr Mulligan, on behalf of Puke Coal to relinquish the consent for the end-of-life tyre depot has removed the need for us to further consider the relationship of the MSW proposal to that activity. We have taken the view that the tyre operation no longer forms part of the proposal. This offer has had a profound effect on our thinking. Without that concession, we could well have concluded that the effects of the various aspects of the landfill activity relative to the cumulative effects of all of the activities on the site and the risk of catastrophic failure were just too high.

[51] We record that we received no evidence from an Inspector of Mines or a person with expertise in mining to examine the risks of having an operating mine working alongside this MSW.

[52] There appears little argument that coal being mined can oxidise and catch fire spontaneously, although we were told that there is little risk of coal dust from the ongoing open cast mining escaping and thus explosion of coal dust does not constitute a significant risk.

[53] There appeared to be a consensus amongst the experts that it was important to separate any coal seam from the landfill because of the potential for a fire starting in one to affect the other, and because of the significant problems in extinguishing either a landfill or a coal fire. We were told that a separation distance of 50 metres would be sufficient and desirable between any coal workings and the landfill site.

Integrity of the liner system

[54] To accommodate the proposed sequence of filling the cells in the landfill, it is intended that vehicles transporting the waste will cross a bund to enter the landfill and then follow a formed central spine track road over the HDPE liner until they reach the appropriate cell where the waste is to be dumped. It is our understanding that the access track would be formed by placing an initial layer of waste, and then cover material which would provide a cushion to the base. The working face of the landfill would extend over an area of approximately $30m^2$ with the waste being tipped straight into position and then compacted by machine before being covered with a layer of cover material.

[55] Given that faults in the liner can develop both during installation or through machinery operator error, we were concerned about the amount of damage which might occur to the landfill liner after its installation, and also about the likelihood of any fault actually being detected as material was pushed over it. Any damage would be out of sight relatively quickly.

[56] These concerns were responded to by Mr A Kirk, an environmental scientist called by Puke Coal who addressed hydrogeology and leachate matters. His calculations indicated a peak production of leachate from the landfill of around 325 cubic metres per day. Even with some relatively major tears and damage to the liner, Mr Kirk was relatively confident that, with an underground interception drain system coupled with the relative impermeability of the underlying foundation material, leachate would be appropriately dispersed so as to be negligible. He considered the possibility of leakage based on a combination of manufacture and installation failure would have a predicted leachate leakage of 0.004 cubic metres, or 4 litres, per day. He also provided an estimate of a further four litres per day assuming damage to the liner which we assume would double the leakage to some

eight litres per day or 0.008 cubic metres per day. These figures were assumed at peak production. Mr Kirk said this escaped leachate, which may reach and be mixed with existing ground water of 20 cubic metres per day, would constitute less than 0.05% of the groundwater flow.

[57] A key leachate indicator is the quantum of ammoniacal nitrogen present in the receiving waters with Mr Kirk predicting an increase in concentration in the order of 0.015 milligrams per litre. This would be an increase of approximately 1%, over the median concentration in the existing groundwater and approximately 0.5% of the variation in amount of nitrogen concentration measured over the previous period from 2007 to 2012. Mr Kirk said that this was a negligible amount.

[58] The main stormwater treatment pond has a capacity of some 2,200 cubic metres. There is an outlet that would allow the entire pond to be drained although, despite some assertions being made, there was no evidence that this has ever occurred. We repeat that the proposal as it now stands includes a new contingency pond to provide additional capacity to temporally store leachate in the event of emergency.

[59] It is clear, however, that even with the existing treatment system, elevated levels of sediments still travel downstream and that the unnamed tributary shows signs of degradation. Mr R Montgomerie, a freshwater scientist called by Puke Coal, said that the existing water quality in the tributary at a site about 20 metres upstream of its confluence with the Waitawhara Stream is not capable of supporting a healthy bethnic community. He said that this is not unexpected given the highly modified industrial nature of the site. He also said that Puke Coal is currently meeting most of its consented discharge limits.

[60] The added effects from the stormwater or the groundwater leachate from the landfill are likely to be minimal. Mr Montgomerie said that monitoring undertaken some 200 metres downstream of the confluence shows that currently the Waitawhara Stream is capable of supporting healthy bethnic invertebrate and native fish communities at this location. He anticipates this would continue to be the case.

Effects of existing operations

[61] We note that the proposal is for the existing stormwater consent to be modified to include the discharges relating to this landfill. While the existing stormwater consent is primarily intended to deal with the mining operation, little, if any, detail was given to us about stormwater management in the mining operation beyond that it is in area of an open cast mine.

[62] The area to the north-west of the site appears to have been utilised for coal mine tailings. Mr L Boyd, a long-time resident and former underground miner, told us that Puke Coal has been storing tailings from the mining operation in the north-west corner, and that these practices have lead to collapses or slides which have then entered the Waitawhara Stream. Whether that is the case or not, it is clearly an outcome relating to the mining operation, given that Mr Boyd and others have acknowledged that there would be no potential for water from the landfill to make its way to this north eastern corner of the site.

[63] As we have said, little detail was available to us about the open cast mining operation except for the contribution to the traffic predicted to be generated from the site. We note that the end-of-life tyre operation will no longer be included in the traffic figures. In any case, traffic was not at issue under this appeal.

[64] Whether or not a mine of this sort can operationally co-exist with the landfill was also unclear to us from the evidence. We assume, however, that Puke Coal considers this possible and practical including that the general odour from the landfill would be acceptable to the coal mine site management and operators even though some of the working and load out areas for the mine appear to be relatively close to the proposed landfill faces.

Non-contended Effects of the Activity

Landscape and visual

[65] As we have said, a number of effects were not in contention in these proceedings. In relation to landscape and visual effects, we accept that the area in question has been a worked over mining landscape and overall has no outstanding or special features. Visual effects will be low to negligible subject to implementation of a landscape rehabilitation plan. Given the very restricted viewpoints and visual receptors, we anticipate the impact on landscape/visual amenity will be low.

Traffic

[66] We have already noted that the issues surrounding traffic have been resolved and do not form part of the appeal. The traffic links are acceptable, with some 164 movements per day, although the analysis included the tyre disposal facility, so that figure would now reduce. Overall, there is an intent that the landfill will become more predominant as an activity as the mining comes to an end on the site. We accept the evidence that traffic movements can be safely accommodated on the existing road

network. In particular, we note that truck movements are mixed with Solid Energy traffic only a short distance from the site.

Noise

[67] We accept that noise in relation to the proposed activity would be relatively low and in any event is well-screened not only by distance from the boundaries but by topography. The range of noise anticipated is similar to that for the open cast mining, although after establishment we accept the ongoing noise will be mainly from placement of waste and cover.

Fauna and Flora

[68] The potential increase in bird and pest numbers will be addressed by Management and is intended to be included within the Landfill Management and Operations Plan. Our overall view is that the appropriate management practices would avoid significant effects on flora and fauna near the site.

[69] We discussed the possibility of improvement to the riparian margins of the unnamed tributary with Mr R Montgomerie, a freshwater scientist called by Puke Coal. He acknowledged Puke Coal had offered to undertake riparian planting to improve the tributary upstream of the site with riparian fencing to help improve the overall quality of the water. This offer was not taken up in the relevant decision of the Council Commissioners.

[70] The possibility of doing this kind of remedial work downstream of the stormwater pond was also discussed with this witness, but the court was told that this area is largely already in bush and gully. If there were any open areas, it was agreed that these could be planted to improve the riparian margin and consequentially the quality of surface water making its way to the stream system at these locations. On our site visit we noticed the large treatment pond is bounded by the road. Fencing and planting of the pond's riparian margin would have benefits for the site amenity and waters.

Heritage Matters

[71] The footprint of the landfill does not cover any particular cultural or historic sites. There is a recorded archaeological site, being the colliery houses located some 50-100 metres from the southern high wall. These would not be affected by the landfill.

[72] There is also a heritage railway line beyond the boundary of the Puke Coal site operated by the Bush Tramway Club which crosses an internal access road which services Puke Coal. There do not appear to be any concerns that the landfill would affect the operation of this railway.

Dust

[73] It is intended to control dust through the application of water. Given the existing activities which occur on the site and the distance between the sites which generate dust and the nearest homes under prevalent wind conditions, we understand that any effects from dust are not at issue. Any intermediate stormwater/water quality ponds on the site could be used in part for pumping water for dust suppression and we understand that an on-site water truck would also be available. Overall, with the exception of the haul roads, it is likely that the landfill itself would generate little dust. We conclude that the proposed Site Management Plan could properly deal with avoiding a dust nuisance on or beyond the site.

Wind Blown Litter

[74] There is of course the prospect of wind-blown litter, and to this end we have already noted that Mr Howlett has signed a consent agreement for there to be extensive provisions for litter fences to be placed along his boundary and for these to be cleared regularly. It appears to us that there could be some sense in requiring litter fences to be placed in other locations such as on the eastern side of the roadway, on the south eastern portion of the site and around the north-west side of the landfill. This could be addressed in any Consent Conditions and relevant Management Plans.

Disputed Effects

Leachate

[75] A key concern raised by the PAR Society is the potential for the landfill to adversely impact on groundwater and freshwater. As we have already noted, the PAR society were particularly concerned at the potential for leachate to contaminate groundwater and reach the unnamed tributary on the site. The response of the applicant is that there are likely to be very low levels of leachate reaching groundwater, and it is most unlikely that this leachate would have a measurable effect on the tributary.

[76] We accept the evidence of relatively low levels of leachate to ground, even for HDPE failure would be in the order of 8 litres a day. Interceptor drains should remove any leachate reaching groundwater with monitoring between the MSW and the waterway to pick up if leachate migrates further. The interceptor drains can be diverted to separate treatment ponds if necessary.

[77] We conclude that this issue is partly addressed by the interceptor drains proposal, but should also be supported by several monitoring points between the landfill and the waterway. We are not sure how and when water will be diverted to the separate treatment pond. However, this could be addressed in the Consent Conditions and relevant Management Plan. We accept that the low risk, combined with monitoring, will ensure negligible, if any, contamination of surface or ground water beyond the site.

Cultural matters

[78] The status of the groundwater and waterway of this catchment becomes more important because of the relevant Regional and District and Tainui Management Plans, all of which have as a first priority (taking priority over National Policy Statements) that the **Waikato River will be protected and restored**. This led into another issue in contention being the cultural dimension of the application.

[79] The cultural matters were not fully explored in the evidence before us. As we have said, the Tumohe family own two properties on Hangapipi Road but these were purchased as European titles in the 1950s and 1960s. Nevertheless, the family is Tainui Waikato and clearly has a close association with this particular property and area. Given that some four generations have now seen the property as the base for their whanau, we understand the strong attachment. However, as we have already said, different views are held by different members of the family.

[80] Argument was advanced both in respect of the Tumohe family and also in a general sense that the association of Tainui Waikato with the Waikato River was a critical element of their culture and central to their identity. We see those principles as non-contentious.

Protection and Restoration of the Waikato

[81] We also acknowledge that the Crown settlement and iwi plan objectives have resulted in provisions that have now been inserted into the relevant Regional and District Plans. In particular we note that the Waikato-Tainui Raupatu Claims

(Waikato River) Settlement Act 2010 (**the Settlement Act**) took priority over National Policy Statements. The important concept for current purposes is the requirement to *protect and restore the Waikato River*.

[82] The court acknowledges the concern of some of the Tumohe family and of the Tainui people as a whole for the protection of their waterways and for the restoration of the catchment of the Waikato River so as to improve the maui of the river as a whole.

[83] The relevant iwi plan (refer Section 35A RMA) entitled *The Waikato-Tainui Environmental Plan* (August 2013) provides at Clause 8.2.1 for a hierarchy of steps in respect of the management of adverse effects on the environment. The first step is for avoidance, and if avoidance is not possible, then remedy and then questions of mitigation, balance and the like.

[84] The Regional and District Council witnesses recognised the importance of the provisions now contained within their Regional and District Plans in relation to the restoration and protection of the river. Ms Drew, for the District Council, felt that this could be achieved through rehabilitation of the site after the works were completed. The Regional Council was somewhat more ambivalent adopting essentially the standard approach in relation to Section 5 thus allowing mitigation to be a sufficient satisfaction of the obligations.

[85] This was also the approach taken by the applicant's witnesses although, as noted, the ecologist suggested improvements could be made to the riparian margin of the unnamed tributary which flows through the site to improve its existing poor quality.

Protect and restore surface waters paramount

[86] We are unanimous in our view that the adoption of the Vision and Strategy Statement of the Settlement Act within the Regional and District Plans, has led to a stepwise change in the approach to consents affecting the catchment of the Waikato River.

[87] We consider that looking at the Waikato River Settlement Act and the Regional and District Plans as a whole, the only reasonable conclusion that can be reached is that there is an intention to improve the catchment of the river and of the

river itself within a reasonable period of time (several decades) to a condition where it is safe for swimming and food gathering over its entire length.[3]

[88] Reasons for our conclusion in this regard are as follows:

[a] The Settlement Act includes in its definition of the Waikato River all tributaries, streams and watercourses relevant to this proposal;

[b] The Vision and Strategy for Waikato River set out in Schedule 2 to the Settlement Act and in particular Section 1(3)(a), (f), (g), (h), (k) and Section 2(a) and (i) of Schedule 2; and

[c] Sections 9 to 12 of that Act;

Recognition of vision and strategy for Waikato River

Te Ture Whaimana

9 Scope of vision and strategy

(1) The Waikato River and its contribution to New Zealand's cultural, social, environmental, and economic wellbeing are of national importance.

(2) The vision and strategy applies to the Waikato River and activities within its catchment affecting the Waikato River.

(3) The vision and strategy is Te Ture Whaimana o Te Awa o Waikato.

Status

10 Relationship of sections 11 to 15 with Resource Management Act 1991

(1) Sections 11 to 15 have effect to the extent to which the content of the vision and strategy relates to matters covered by the Resource Management Act 1991.

(2) Sections 11 to 15 prevail over sections 59 to 77 of the Resource Management Act 1991.

11 Vision and strategy is part of Waikato Regional Policy Statement

(1) On and from the commencement date, the vision and strategy in its entirety is deemed to be part of the Waikato Regional Policy Statement without the use of the process in Schedule 1 of the Resource Management Act 1991.

(2) As soon as reasonably practicable after the commencement date, the Council must—

[3] Schedule 2(l)(k)

(a) insert the vision and strategy into the policy statement without using the process in Schedule 1 of the Resource Management Act 1991; and

(b) make consequential amendments to records and publications to reflect paragraph (a).

(3) On and from the commencement date, the Council must ensure that the policy statement does not remain inconsistent with the vision and strategy for any longer than is necessary to amend the policy statement to make it consistent with the vision and strategy.

(4) The vision and strategy prevails over the policy statement during any period of inconsistency described in subsection (3).

12 Effect of vision and strategy on Resource Management Act 1991 planning documents

(1) The vision and strategy prevails over any inconsistent provision in—

(a) a national policy statement issued under section 52 of the Resource Management Act 1991; and

(b) a New Zealand coastal policy statement issued under section 57 of the Resource Management Act 1991.

(2) The Council must not review or amend under section 79 of the Resource Management Act 1991 the vision and strategy inserted in the Waikato Regional Policy Statement.

(3) A local authority must not amend under section 55 of the Resource Management Act 1991 a document defined in section 55(1) of the Act if the amendment would make the document inconsistent with the vision and strategy.

(4) A rule included in a regional or district plan for the purpose of giving effect to the vision and strategy prevails over a national environmental standard made under section 43 of the Resource Management Act 1991, if it is more stringent than the standard.

(5) A rule included in a regional or district plan for the purpose of giving effect to the vision and strategy prevails over a water conservation order made under section 214 of the Resource Management Act 1991, if it is more stringent than the order.

[d] Schedule 2 provides:

Schedule 2

Vision and strategy for Waikato River

1 Vision

(1) Tooku awa koiora me oona pikonga he kura tangihia o te maataamuri. The river of life, each curve more beautiful than the last.

(2) Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the

health and wellbeing of the Waikato River, and all it embraces, for generations to come.

(3) In order to realise the vision, the following objectives will be pursued:

(a) the restoration and protection of the health and wellbeing of the Waikato River:

(b) the restoration and protection of the relationships of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships:

(c) the restoration and protection of the relationships of Waikato River iwi according to their tikanga and kawa with the Waikato River, including their economic, social, cultural, and spiritual relationships:

(d) the restoration and protection of the relationships of the Waikato Region's communities with the Waikato River, including their economic, social, cultural, and spiritual relationships:

(e) the integrated, holistic, and co-ordinated approach to management of the natural, physical, cultural, and historic resources of the Waikato River:

(f) the adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River and, in particular, those effects that threaten serious or irreversible damage to the Waikato River:

(g) the recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within the catchment on the health and wellbeing of the Waikato River:

(h) the recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities:

(i) the protection and enhancement of significant sites, fisheries, flora, and fauna:

(j) the recognition that the strategic importance of the Waikato River to New Zealand's social, cultural, environmental, and economic wellbeing requires the restoration and protection of the health and wellbeing of the Waikato River:

(k) the restoration of water quality within the Waikato River so that it is safe for people to swim in and take food from over its entire length:

(l) the promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities:

(m) the application to the above of both maatauranga Maaori and the latest available scientific methods.

2 Strategy

To achieve the vision, the following strategies will be followed:

(a) ensure that the highest level of recognition is given to the restoration and protection of the Waikato River:

(b) establish what the current health status of the Waikato River is by utilising maatauranga Maaori and the latest available scientific methods:

(c) develop targets for improving the health and wellbeing of the Waikato River by utilising maatauranga Maaori and the latest available scientific methods:

(d) develop and implement a programme of action to achieve the targets for improving the health and wellbeing of the Waikato River:

(e) develop and share local, national, and international expertise, including indigenous expertise, on rivers and activities within their catchments that may be applied to the restoration and protection of the health and wellbeing of the Waikato River:

(f) recognise and protect waahi tapu and sites of significance to Waikato-Tainui and other Waikato River iwi (where they do decide) to promote their cultural, spiritual, and historic relationship with the Waikato River:

(g) recognise and protect appropriate sites associated with the Waikato River that are of significance to the Waikato regional community:

(h) actively promote and foster public knowledge and understanding of the health and wellbeing of the Waikato River among all sectors of the Waikato regional community:

(i) encourage and foster a "whole of river" approach to the restoration and protection of the Waikato River, including the development, recognition, and promotion of best practice methods for restoring and protecting the health and wellbeing of the Waikato River:

(j) establish new, and enhance existing, relationships between Waikato-Tainui, other Waikato River iwi (where they so decide), and stakeholders with an interest in advancing, restoring, and protecting the health and wellbeing of the Waikato River:

(k) ensure that cumulative adverse effects on the Waikato River of activities are appropriately managed in statutory planning documents at the time of their review:

(l) ensure appropriate public access to the Waikato River while protecting and enhancing the health and wellbeing of the Waikato River.

[89] This Vision and Strategy Statement affects all decisions made which may affect the river or its catchment. As the Supreme Court noted in ***EDS v King Salmon*** at [149]:[4]

[4] [2014] NZSC 38, Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors, Elias CJ, McGrath, Glazebrook, William Young, Arnold JJ

> [149] Section 6 does not, we agree, give primacy to preservation or protection; it simply means that provision must be made for preservation and protection as part of the concept of sustainable management. The fact that s 6(a) and (b) do not give primacy to preservation or protection within the concept of sustainable management does not mean, however, that a particular planning document may not give primacy to preservation or protection in particular circumstances. This is what policies 13(1)(a) and 15(a) in the NZCPS do. Those policies are, as we have interpreted them, entirely consistent with the principle of sustainable management as expressed in s 5(2) and elaborated in s 6.

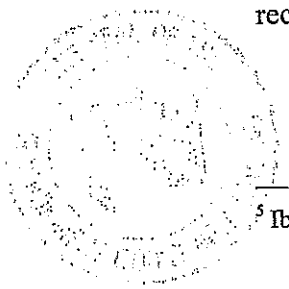
[90] We have concluded that the Supreme Court has identified that instruments may give primacy to some aspects of the matters under Part 2. Further, it is clear that the Settlement Act was intended, and did take effect, as a statutory provision overriding national policy documents. The Supreme Court noted in ***EDS v King Salmon*** at [152]:[5]

> [152] The NZCPS is an instrument at the top of the hierarchy. It contains objectives and policies that, while necessarily generally worded, are intended to give substance to the principles in Part 2 in relation to the coastal environment. Those objectives and policies reflect considered choices that have been made on a variety of topics. As their wording indicates, particular policies leave those who must give effect to them greater or lesser flexibility or scope for choice. Given that environmental protection is an element of the concept of sustainable management, we consider that the Minister was fully entitled to require in the NZCPS that particular parts of the coastal environment be protected from the adverse effects of development. That is what she did in policies 13(1)(a) and 15(a), in relation to coastal areas with features designated as "outstanding". As we have said, no party challenged the validity of the NZCPS.

This equally must be true for the Settlement Act to the extent that an application affects the Waikato River.

[91] In this case there was no dispute that the waterway was covered by the Act and was part of the Waikato River as defined. We conclude that this application must, to the extent relevant, protect and restore the river (particularly this portion of it).

[92] Implicit in the Supreme Court decision was the matter of workable practicality thus any protection or restoration must be proportionate to the impact of the application on the catchment. However, it is clear that it intends to go further than avoiding effect. We have concluded protection and restoration includes preservation from future and restoration from past damage. Restoration can only involve recreation of a past state. Thus, some element of betterment is intended.



[5] Ibid at [152]

[93] We now examine the proposal on this basis. We are satisfied that this proposal will protect the waterways with appropriate consent conditions:

[a] Further intermediate pond/s are installed to protect water before it joins the main stormwater treatment pond. In particular, these ponds should allow for removal of sediments and treatment if contaminated;

[b] Further steps are taken to improve water quality before it is released further downstream;

[c] Steps indicated are taken to ensure leachate does not reach the tributary;

[d] There are stringent standards for water quality for discharge from the main settlement pond for:

[i] removal of contaminants including floating oils, scum etc;

[ii] pH levels; and

[iii] ecological standards to support benthic ecology.

[e] Some maps showed additional new ponds or near to the mine and landfill sites. These is no doubt that primary treatment/settling ponds of this type would allow sediments and other materials to be removed prior to discharge to the final settlement pond in the stream.

[94] We conclude the Settlement Act requires the improvement of Waikato water quality over a reasonable period. We conclude that this can be achieved in this case by:

[a] A comprehensive stormwater and leachate management plan to integrate water control from the various activities on site;

[b] Setting of standards for water discharge to the tributary after treatment;

[c] Using intermediate ponds/sump or other treatments to ensure any unacceptable level of contamination is prevented from reaching the final treatment pond and reducing sediment discharge and other contaminants in surface and groundwater; and

[d] Improving riparian margins through fencing and planting.

[95] In short, we agree that this application must, to an appropriate extent, protect and restore the Waikato River. However, we conclude that the applicant can do so by the imposition of consent conditions and appropriate Management Plans.

Odour and landfill gas

[96] There is no doubt that the discharge of odour from the decomposition of refuse and from landfill gas and their potential to affect neighbours is a primary issue in this case. We acknowledge Mr B Campbell, for the Regional Council, and Mr A Curtis, an experienced air quality scientist, indicating that the odour management and control provisions proposed for this consent are the most stringent in the Waikato region and among the most stringent utilised in New Zealand.

[97] The question is whether or not those are sufficient for us to be satisfied that the level of the effects will be acceptable. The first issue of course, is how odour is measured. Experienced compliance officers such as Mr Campbell say it is very easy to recognise the distinction between landfill gas and landfill odour. Odour is generated from the working face and the materials placed in the landfill; landfill gas is generated from the decomposition of the landfill materials which is expelled in a gaseous form.

[98] In respect of the working face, Mr Campbell says that rarely are these smells detectable beyond 300 metres[6] and that they are not offensive provided reasonable management has been maintained. We take that to mean that putrescible materials when placed in the landfill must be covered immediately with adequate cover so that the odour does not penetrate that material. For large quantities of putrescible material such as offal, seafood remains and the like, special arrangements need to be made with a special dumping position prepared and the refuse material being covered immediately with capping material. We have assumed all of these steps would be taken which would, as Mr Campbell said, be normal and expected. While the draft outline Landfill Management and Operations Plan is intended to address this, as already pointed out, we do have concerns with the specificity of conditions of consent which must underlie this plan.

[6] We have already noted Puke Coal's offer of a condition for the distance from the landfill working face to the nearest boundary to be a minimum of 500 metres

Escaping Odour

[99] We were told that the major odour problem from landfills is landfill gas, and in Mr Campbell's experience this begins to generate with the accumulation of larger tonnages (over say 200,000 tonnes) at the landfill. They became a problem at the Hampton Downs landfill at 500,000 tonnes. Mr Campbell said that there needs to be a gas collection system in place coupled with immediate capping of the landfill which is sufficiently secure to contain the gas and not allow it to percolate to air. Landfill gas systems are required by the relevant New Zealand Standard to be flared.

[100] Mr Campbell told us that with some of the early landfills, the lighters on the gas stacks were insufficient to ignite the gas or were extinguished during wind events. This then meant that gas was able to escape and create a nuisance. More recently, the flares are supplemented by LPG to ensure that whatever gas is present is flamed without delay. Nevertheless, Mr Campbell did not see that gas odour problems arise solely for this reason. He pointed out that gas escapes through the landfill cover had been a major problem with many landfills. This required weekly walkovers of the cap to detect any small cracks and ensure that they were repaired to stop them from leaking gas. He also indicated that it required a planned and proactive system in respect of the placement of the flares to ensure that all gas was captured and flared before it became a nuisance.

[101] Even though Mr Campbell told us that Hampton Downs Landfill was operated carefully with pro-active management, this landfill has had a significant number of complaints each year. It has been only in the last two years that the level of complaints has reduced from up to around 40 per year to around 10 per year. Attached hereto as Annexure **E** is the record of the complaints produced to the court for Hampton Downs.

[102] From this record it can be seen that many of the incidents were not only highly offensive but were such that people had to leave their homes or became unwell as a result of the gas. In nearly all cases, Mr Campbell explained that this was due to fugitive landfill gas which had ponded and travelled in some cases up to five kilometres from the site. He also said that in the earlier years there had been problems with the operation of the collection and flaring of the gas.

[103] We acknowledge that there is a different landform at the Puke Coal site from Hampton Downs in that the landform rises from the site to the villages of Glen Afton and Pukemiro. The effect of this is that any escaping gas would need to rely on a light

wind to carry the gas over the surrounding contour before it reaches Glen Afton and Pukemiro.

[104] We observed on our site visit that on the eastern side of the property, the main Puke Coal offices and coal crusher and storage plant occupy the lower lying land next to the stormwater ponds. Given that the landfill gas or odour is likely to move downhill on cold days from the landfill in windless conditions, it should first affect those facilities. It would need to rise some 50 metres and travel mainly through bush to reach the Tumohe properties on Hangapipi Road. This would require the appropriate wind direction and speed. What is more likely is that any odour would be directed down and towards the stormwater treatment ponds and then towards Rotowaro Road.

[105] Having said this, we appreciate that odour plumes do not follow any strict pattern and that patches of odour can often be detected in other places from time to time. It also seems to us to be less likely that odour would be pushed across the higher land to the west through the deep valley and then into the villages of Glen Afton and Pukemiro. Again, however, we do not preclude the possibility that some patches of odour could be detected in other places from time to time.

Consents of parties

[106] As well as the consents already referred to, consent has also been obtained from the principal of the local Pukemiro School. It is unclear whether this goes beyond the role as principal to include the children for which the principal is responsible or if this also includes the Board of Trustees. Ms J Tumohe, who lives in Huntly and is a teacher aide at the school, said she does not agree with that consent although she said that she has no authority to speak for the school.

[107] More importantly, Ms Tumohe's sister, Mrs L Kingi (who appeared as a witness for Puke Coal) and her husband who have resided in one of the Tumohe houses for 30 years have signed a consent. They are clearly key parties likely to be affected. Mrs Kingi's brother, Mr A Tumohe, has not provided a consent. He is a key party who also lives in Hangipipi Road, is opposed to the MSW, and who may be affected. We understand that other parties such as the occupants of Mr Campbell's properties on Hangapipi Road have signed consents.

[108] Section 104(3)(ii) of the Act excludes us from considering the effects on consenting parties. Given this circumstance and mixture of opinions relating to the

same properties we find that this limitation has little relevance to the Tumohe properties in our assessment in this case.

Evaluation of effects

[109] We have concluded that all affects, other than odour, can be adequately controlled by conditions of consent. We also conclude that consent conditions and Management Plans can be drafted which will protect and restore the stream and margins. We acknowledge that the RMA is not a *no-effects* Act. Nevertheless, it is clear that the more significant the effect, the more the court will be looking to the avoidance and remedial steps of the Act rather than mitigation.

[110] We now turn to odour on which the evidence was ambivalent. We note the key concession made by Mr Curtis, Puke Coal's odour expert, that there would still be occasions when neighbours would find the odour from the landfill site (we imagine mainly landfill gas) to be offensive. We rely on Mr Curtis's use of the FIDOL[7] factors and in particular the *O* or the offensiveness factor. He said that when odours are detected beyond the boundary of landfills they are generally considered to be offensive and that this would be the case for any odours from the Puke Coal landfill. In the context of the degree of offensiveness, Mr Curtis described for us the German VDI Standard which is used for assessing the level of intensity (or offensiveness) of odour within a range of 0 (low) to 6 (high). These are often referred to as the FIDOL levels.

[111] Mr Campbell has considerable experience for the Regional Council in dealing with landfill gas, and his view was that the changes to the conditions in this case, particularly the early installation of landfill gas receptors and flaring, and the regular checks of the land cap, would avoid most of the problems which have occurred at Hampton Downs. Even so, Mr Campbell was not prepared to go so far as to say there would be no effects from time to time on neighbouring properties.

[112] The court is therefore left in a difficult situation. We agree with Mr Curtis that if the odour effect using the FIDOL levels reaches 3 or more it is offensive and therefore a significant adverse effect. It seemed to us that there was the potential for this level to occur several times per year during at least the peak generation period.

[7] Frequency, Intensity, Duration, Offensiveness, Location

[113] An extensive consideration of alternative methods for odour reduction on the site has been made by the applicants and their advisors. What is proposed is as close as possible to the best practical option. Nevertheless, no guarantee can be given that there will not be offensive odours beyond the site boundary. If consent is granted, this cannot easily be rescinded given that the landfill would continue to produce landfill gases and odours even if there was to be no further placement of waste.

[114] We remain at this stage in a difficult position in relation to management of odour. However, it is our view:

[a] That Puke Coal's offer of a condition for the distance from the landfill working face to the nearest boundary to be a minimum of 500m aligns well with Mr Campbell's advice that at this distance with good landfill management practices, waste odour should not be detectable;

[b] That there should be additional requirements over those proposed in the application documents including the installation of early monitoring devices around the landfill in association with the existing requirement for a weather station to identify wind direction and speed, with an early alarm system protocol being developed to identify conditions where odour or landfill gas may be produced. This could assist in prevention and provide an ability to warn neighbours;

[c] We conclude that there is the potential in this case for conditions to be developed which would compensate owners for any inconvenience and/or displacement from their homes in times of offensive odour. Although no specific discussion has been entered into, this may include an emolument for such inconvenience, alternative accommodation during any period of displacement or some form of liquated damages agreed in advance;

[d] There is potential to install in selected individual homes an odour filtering mechanical air device to enable windows to be kept closed when landfill gas or odour is detected and thus enable families to remain within their homes;

[e] This might be coupled with a mechanism such as the use of a community liaison committee with funding provided and payments for community benefits, scholarships, or payments to affected owners (and reviewed from time to time by the Regional Council at its six-monthly

> or annual review of the odour). The consent conditions on odour could be reviewed and varied if necessary. It is most likely reviews would need to continue six-monthly from the critical stage of the consent, say, after the placement of 200,000 tonnes of refuse prior to that being annually and continuing until, say, the placement of one million tonnes where if there were no non-compliances it could drop back to annually or bi-annually. Any subsequent complaints would then provoke the re-instigation of the six-monthly review. The review conditions would constantly enable the Council to update to the latest best practical option in the event that there were FIDOL 3 or above odours on neighbouring properties or whether they considered that prevention can be achieved by the installation of the technology.

[115] In the end even with this mitigation, this would not necessarily satisfy us under Part 2 of the Act as it needs to be balanced with other positive and potential adverse effects of the application with a view to reaching a holistic decision. Overall, we need to make a decision as to whether these effects as avoided, remedied and mitigated would nevertheless be acceptable in the context of the entire application.

Past non-compliance

[116] Evidence and submissions were made relating to past non compliance on the site. This has included one major prosecution relating to a tyre fire on site. Witnesses also addressed the tailing issue at the north western corner of the site, with its sediment loading to the stream. The Tumohe family gave evidence of aerial spraying adjacent to their homes and suggested a blasé approach to environmental matters by the applicant.

[117] Mr Mulligan acknowledged his client's environmental history, but said his client has significantly improved his operation in the last ten years, and had been operating within his consents.

[118] There is a PhD thesis by Dr M Brown on compliance with environmental conditions in New Zealand.[8] This has shown limited compliance with complex conditions by some individuals or smaller companies. The court suggested to Mr

[8] *Towards Cobust Exchanges: Evaluating Ecological Compensation in NZ,* M A Brown doctoral thesis.

Mulligan that the Court reconsider the view in earlier cases that compliance should be assumed.

[119] For this case, however, we accept that the Regional Council have detected compliance offences in the past and will be diligent in ensuring any conditions of consent for the MSW are complied with. We were assured regular checks of all MSW facilities take place and the Regional Council is diligent in proactive inspection and response to complaints. Furthermore, regular consent reviews are intended and any non-compliance could be addressed on the basis the terms of such a review are stated widely enough to include a bond for mitigation and even cancellation if certain parameters are not met.

Application of the plan matters

National directives

[120] Two National Environmental Standards apply:

[a] National Environment Standard for Air Quality (**NESAQ**). The evidence provided was that the proposal is designed to meet the relevant regulations under the NESAQ. Clearly, it would be the failure to achieve these standards which is the issue in this case. Regular monitoring, compliance checks, and review are appropriate means of ensuring the standards are met;

[b] National Environment Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES Soil**). The evidence was that the landfill will accommodate activities identified on the Ministry for the Environment's Hazardous Activities and Industries List (**HAL**) and the volume of earthworks required for the landfill will exceed the permitted activity criteria set out in the NES Soil regulations. This situation requires a detailed site investigation (**DSI**) to be undertaken in accordance with the NES Soil regulations. This has not been done. Where this is not undertaken, the status of the activity is a discretionary activity by reference to these regulations.

Again, it seems the matter can be addressed by consent conditions and Management Plans. Mr Fellows recommended investigative drilling at the design stage. The detailed investigation of the Landfill footprint is clearly intended to ensure there are no residual Adits. The

Management Plan will need to address how these Adits are to be removed or dewatered to meet the requirements of the landfill design. We conclude a consent condition should require a full preliminary DSI for the landfill footprint under the National Standard. This may be supported by a Management Plan, although we suspect any report is likely to inform such a Plan. This should be approved by the Councils before any works commence.

[c] The National Policy Statement for Freshwater Management (**NPS Freshwater**). We were advised of the key objectives (A1 and A2) of the NPS Freshwater 2011. This document was superseded on 1 August 2014 part-way through the hearing. Parties were not alert to this fact and it was not discussed at the hearing. We set out both versions for comparative purposes below:

NPS Freshwater 2011

A. Water quality

Objective A1

To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the use and development of land, and of discharges of contaminants.

Objective A2

The overall quality of fresh water within a region is maintained or improved while:

a. protecting the quality of outstanding freshwater bodies

b. protecting the significant values of wetlands and

c. improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

NPS Freshwater Management 2014

A. Water quality

Objective A1

To safeguard:

a) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water; and

b) the health of people and communities, at least as affected by secondary contact with fresh water;

in sustainably managing the use and development of land, and of discharges of contaminants.

Objective A2

The overall quality of fresh water within a region is maintained or improved while:

a) protecting the significant values of outstanding freshwater bodies;

b) protecting the significant values of wetlands; and

c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

There appears to be a softening of the Policy in relation to outstanding water bodies from protecting the quality to protecting the significant values. Given the tributary is not an outstanding waterbody, this change is of little moment. The meaning of (c) is unclear but its wording is inelegant.

[121] We have discussed the evidence of the likely impact on the quality of surface water and the existing ecological values of the waterways elsewhere. Suffice to say, we consider that, irrespective of the changed wording of the NPS Freshwater, it is clear that the Settlement Act is both specific to these waterways and in accordance with Section 12 of that Act, prevails over the NPS Freshwater 2011 and 2014:

[122] We have specifically addressed the Vision and Strategy promulgated by the Settlement Act elsewhere and have noted the emphasis on restoration and protection of the health and well being of the Waikato River and its tributaries and waterways.

Regional directives

[123] Mr Campbell advised that the relevant policies and objectives of the proposed Waikato Regional Policy Statement (**RPS**) are similar to the operative RPS. We note that the parts relevant to the Waikato River and its waterways are captured by Section 11 of the Settlement Act which we have referred to earlier. This means the Vision and Strategy promulgated that Act is deemed in its entirety to be part of the Waikato Regional Policy Statement.

[124] In respect of other matters we rely on the evidence of Mr Campbell (for the Regional Council) which was not at odds with, but more detailed in respect of this document than Mr Jenkins planning evidence for the Applicant. Mr Campbell

concluded, that assuming the relevant practices and methodologies that have been outlined in the Land Management and Operations Plan are adopted, that the proposal adopted best practice for the MSW design and was is not inconsistent with the RPS (operative or proposed).

[125] Mr Campbell and Mr Jenkins were in agreement on the relevant parts of this Plan and reached the conclusion that the MSW will not be contrary to the relevant provisions of the National Environmental Standards, Policy Statements and Plans prepared under the Act.

[126] We note that the five MSW consent applications were processed as a bundle as a Discretionary Activity[9]. These concerned the discharge of contaminants to land and any subsequent discharges of contaminants into water or air. We have concluded that, in respect of the interpretation of Rule 3.2.4.2, the fact that Surface Water Class Standards will be maintained, misses the point, in our view, of the higher threshold now inserted by reference to the Settlement Act. Thus while this situation may be achieved, maintaining the water class standard per se, this will not meet the policy directives which now apply.

District Plan

[127] Ms L Drew, planner for the District Council, set out for us the relevant parts of the District Plan. She referred to Chapter 1A which relates to the Waikato Growth Strategy and the objective relating to the retention of rural land for rural production. She indicated that the existing site is heavily modified and degraded by the existing consented activities and that it has limited potential as a productive rural property. We accept her point but note the intention for rehabilitation after the activity is completed and the potential for ongoing pasture use.

[128] She accepted that appropriate management of the activity would ensure the activity would not be inappropriate given its context. We concur with this general view. Ms Drew then covered the various Chapters of the Plan which are relevant some of which were not in contention during the hearing. Specifically, we conclude Chapters 9 Contaminated Land, 10 Solid Waste, 13 Amenity Values, and 14 Hazardous Substances to be most relevant given where the matter had progressed by time of hearing.

[9] Campbell, EiC at [17] – [20]

[129] Essentially Ms Drew was reliant on consent conditions to provide an outcome which would be consistent with these parts of the Plan. We concur with that view should such conditions be able to be determined and be found to be practicable.

[130] We note her conclusions regarding amenity values which she maintained include a compromise position. While there is a strong preference to contain effects within the site, if this is not possible then they should be remedied or mitigated. We accept that this is the case and that the ability of the activity to be considered consistent with these provisions will rely on the scale of the adverse effects and whether they can be practicably remedied or mitigated. This is however, subject to the effects on the Waikato River which must see a positive outcome overall.

[131] In relation to odour, the evidence shows that at least landfill gas cannot confidently be expected to remain on the site at all times. This will clearly affect amenity, but we had little guidance from the District Council witness as to how such impacts would be seen in terms of the Plan. We conclude the Plan does nothing to assist us in the assessment of odour effect (on amenity) and its acceptability.

Other documents

[132] The Waikato-Tainui Environment Plan is relevant to our determination (Section 104(1)(c)) and we have addressed it earlier. We find that this Plan is entirely consistent with the Vision and Strategy for the Waikato River and supports the views articulated in this decision.

Part 2

[133] As we have indicated, we are unanimously of the view that the Vision and Strategy for Waikato River and its consequent adoption in the Regional and District Plans has led to a change in the interpretation of the provisions of Part 2 for the purposes of the Waikato region.

[134] Accordingly, it is our view that every application affecting the river catchment will need to demonstrate ways in which it protects and restores the river in proportion to:

[a] The activity to be undertaken;

[b] Any historical adverse effects; and

[c] The state of degradation of the environment. Section 8.2.1 of the Iwi Management Plan assists us in an approach to achieve protection and restoration.

[135] Various examples of the scope of this were seen by the court during the time of our visit at or around the site. In most cases the stream outside the site had willow, some of which had been killed through poisoning regimes but still remained in the river. There was no riparian planting and in places the banks were eroded. In farm areas the streams were heavily pugged by stock and there was little or no riparian planting.

[136] The Vision and Strategy acknowledges the existing, highly degraded state of the Waikato region waterways and as noted it is not possible in the ordinary course for stepwise change and stepwise improvement to be achieved if people are undertaking permitted activities such as farming. Under the Act at least, there can be no requirement to install riparian planting and fencing although this can be encouraged by other methods such as subsidies. Furthermore, the nitrate loading on the waterways requires plan changes before an enforceable regime can be put in place.

[137] It is our view that the Vision and Strategy recognises that on an application for a resource consent, affecting the Waikato waterways, there is an important opportunity to provide for the protection and restoration of the river in a more direct fashion. In such a case, the applicant would need to show that, in proportion to the impact of the proposal, there was real benefit to the river catchment.

[138] We use the words *in proportion* as qualifying because it is clear from a reading of the whole of the Vision and Strategy that it does not intend that the first applicant is responsible for the entire upgrade of the river catchment, nor could such an approach be in accordance with the Act. But nevertheless, the generational impacts upon the river should be recognised and addressed.

[139] The scale of that is clearly a matter for the discretion of the Council relevant to each case, but we would expect that it would be interpreted as there being an opportunity wherever possible within the catchment to improve any streams or waterways and the water quality within it. This can largely be achieved by consent conditions requiring the provision of riparian planting or other methods to avoid contaminated runoff, to improve the water quality, in particular the MCI index, lower the nitrate levels, lower e-coli, and improve habitat for fish and other forms of stream taxa.

Part 2 and the Vision

[140] It is our view that the Vision Statement is not an exponential change given the provisions of Section 5(2)(a) and (b). Essentially, what is acknowledged in terms of the Vision Statement is that the potential of natural and physical resources to meet foreseeable needs of future generations and its life-supporting capacity, particularly of water and eco systems, has been compromised by past conduct and should be protected and restored. This closely reflects Section 5(2)(a) and (b) of the Act.

[141] We conclude, looking at the Act as a whole, that it intends that the general purposes of the Act will be reflected:

[a] At a national level through policy statements;

[b] At a regional level through regional documents; and

[c] At a district level through district documents.

[142] Although the tests vary, essentially a lower order document must give effect to those higher order documents. Within most plans there are broad areas which do not militate towards one particular action. The clearest example is the usual reference to avoid, remedy or mitigate.

[143] It seems to us that ***EDS v King Salmon***[10] has established the principle that it is possible for national documents, and we would suggest by analogy both regional and district documents, to promulgate particular approaches within their area of influence which are not in conflict with superior documents. Lower order documents must give effect to that approach if sufficiently clear.

[144] In this regard, we are unable to see any conflict between the requirement of the Vision and Strategy to protect and restore the Waikato River and the provisions of Part 2 of the Act, or any of the other documents. Therefore, in terms of the analysis suggested in ***King Salmon***, there is no need to give priority to other parts of Part 2 over the Vision and Strategy for Waikato River.

[10] [2014] NZSC 38, ***Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors***, Elias CJ, McGrath, Glazebrook, William Young, Arnold JJ

[145] We conclude that the intent of the Act is that it can provide for regional or district interpretation of the requirements of that Act to fit the particular circumstances of that region. Where the Government or the Regional Council has identified an area of importance (such as in the National Coastal Policy Statement) and provided an emphasis to avoid affects, then that is a matter which binds documents lower in the hierarchy. Regional and Local Plans cannot be inconsistent with the superior document i.e. they must give effect to that policy.

[146] We are unable to see anything in the Vision and Strategy for the Waikato River, adopted by legislation, which conflicts with the Act, and in fact as Mr Mulligan suggests, these documents fit remarkably well together. We suggest that this is intentional and is intended to demonstrate that within the Waikato region the restoration and protection of the river is to be regarded as a primary objective guiding policy and outcomes under the Act.

CONCLUSION

[147] We have discussed our concerns with odour relating mainly to fugitive landfill gas. The issue concerns us and we conclude that complaints at the level (40 per year) experienced by Hampton Downs Landfill several years ago would be unacceptable. However, with appropriate consent conditions and a Management Plan, consent might be appropriate. We would need to be satisfied the conditions were rigorous, and if there was a failure there was a real remedy to those affected.

[148] At this point, the court assumes for current purposes that it would be possible to generate a set of consent conditions and Management Plans that would meet its requirements for granting consent. The parties have asked for the opportunity to be involved in the drafting of conditions if the court is minded to consider consent in principle.

[149] We confirm again that the offer by Mr Mulligan on behalf of Puke Coal to close the end-of-life tyre depot has had a profound effect on our thinking. Without that concession, we would have concluded that the overall effects of the various aspects of the activity including cumulative effects and the risk of catastrophic failure were just too high.

[150] With that concession, matters are now much more finely balanced. Nevertheless, we remain unsure as to whether or not we can be satisfied that the application with the conditions of consent and Management Plans will meet the purpose of the Act. That turns in part on how issues of cumulative effects can be

dealt with such as stormwater and the like, and also how issues of odour can be dealt with through conditions and Management Plans.

[151] We consider the question of fire risk is significantly lower, given the absence of the tyre depot, and that this should be able to be controlled through adequate conditions.

[152] We have a tentative view that appropriate conditions could satisfy us that consent can be granted. However, the court is not prepared to reach a conclusion as to the application itself until it can consider a set of consent conditions and Management Plans to address the adverse effects and issues identified in this decision.

[153] On that basis, our interim decision is that consent might be granted by the court if the court can settle upon satisfactory consent conditions.

Section 290A of the Act

[154] The Councils through the Hearing Commissioners concluded that the consents should be granted on the basis of comprehensive conditions. We conclude the Council Decision was largely concerned with the same issues we address but did not address the change of emphasis now required as a result of the Settlement Act and the Vision and Strategy for Waikato River. This resulted in decisions which failed to seek an enhancement and placed the balance on effort to maintain current environmental outcomes. We have also found specific concerns with odour, whereas the Hearing Commissioners considered that minimisation was sufficient.

Effective Interim Decision

[155] Ultimately, we tentatively come to a view that consent may be possible with developed thinking on appropriate conditions.

[156] This requires the parties to now address the conditions. Particular emphasis needs to be given on how jurisdictional questions of cumulative effects can be addressed. In preparing such conditions, can we particularly suggest:

[a] In respect of stormwater:

[i] The monitoring point at the outlet of the dam requires that adequate standards remove most of the sediment, coal dust, nitrates, and that e-coli be addressed. The objective is to

discharge water consistent with the quality of the water at the contact water level to the culvert and thus into the Waitawhara River;

[ii] We also note that the proposal to now install a contingency pond up stream of the main pond is likely to require a resource consent. This would need to be clarified in the conditions;

[iii] Identifying a method by which the stream as a whole can be improved including riparian planting, riparian fencing and planting along the edge of the stream as it goes through the site to the stormwater pond, and practical improvements beyond/downstream within at least the application site;

[iv] Providing intermediate settlement pond both within the landfill footprint and before the main treatment pond which captures both landfill and mine stormwater. This concept now forms part of the proposal although there is no plan or design for it. Consideration could be given to a sump or catchpit that could be cleaned out to assist in sediment removal; and

[v] To undertake real time monitoring of the clean stormwater diverted around the landfill prior to discharge to the stormwater pods.

[b] How cumulative effects will be dealt with (this may require changing other consents) including stormwater, cumulative traffic effects, cumulative dust effects, impact of mining operations, how 50 metres separation is to be obtained from any possible coal mining, coal storage and the land fill operations. The separation regime will require an appropriate definition of any material containing coal or coal products by volume (say, containing more than 5%);

[c] Addressing cumulative operational effects such as inter connectedness of the various operations and activities around the site and an appropriate whole of site management plan to address these for example traffic management and fire risk;

[d] Surrender of the tyre storage facility consent;

[e] In relation to odour:

[i] How monitoring for early detection can be provided;

[ii] Dispersion and early warning systems where precursors to odour identified in modelling occur;

[iii] In the event of adverse effects on people, how this would be addressed which might include:

1. Compensation, assessment for loss or damage,

2. Filtered air control inside the house, and

3. Management of waste cover/capping and location.

[iv] The additional feature of a bio-filter such that the leachate storage tanks will be vented through this filter to control potential odour.

[f] For completeness we add that Mr Mulligan also offered a condition under which a 500 metre separation distance would be maintained from the landfill working face to the nearest boundary to minimise the potential for odour to affect adjoining properties.

[157] The applicant is to liaise with the Councils in preparing a set of consents with conditions and Draft Management Plans to address the findings and recommendations contained in the Interim Decision. These are to replace the Proposed Consents with Conditions and Draft Management Plans as attached in Annexure **A**, together with further amendments suggested in closing by the appellant as contained in A and Annexure **B** hereto.

Directions

[158] We direct:

[a] The Applicant is to liaise with the Councils to develop a set of consents, conditions and Draft Management Plans (**the Documents**);

[b] If the Documents are circulated to all parties by 20 December 2014, the Section 274 parties are to provide their feedback by the 28 February 2015;

[c] If the Documents are circulated between 20 December 2014 and 28 February 2015, the other parties have until the end of March to comment; and

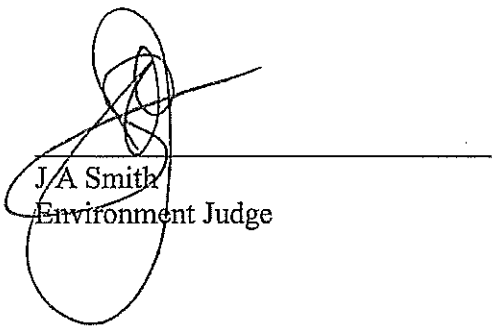
[d] Within 15 working days of receiving the Section 274 parties' comments, the applicant is to circulate and file its final preferred conditions, with a memorandum setting out areas of dispute and its reasoning for its preference.

[159] The Court will then convene a judicial prehearing conference (possibly by telephone) to determine further steps to resolution. If the conditions are not circulated by 28 February 2015, the Regional Council is to advise the Court and a telephone conference will be convened. If the parties reach a consensus, a memorandum setting out reasoning, signed by all parties should be filed.

[160] Costs are reserved.

SIGNED at AUCKLAND this 23rd day of October 2014

For the Court:



J A Smith
Environment Judge

Annexure A

125466 Attachment (1) (a)

SCHEDULE 4 - GENERAL CONDITIONS

The granting of the consents, numbers 125466, 125467 and 125469 is subject to the following general conditions, which shall apply to each individual consent:

1 The consent holder shall develop and operate the site in general accordance with the principles contained within the following documents:

- Application for Resource Consents and Assessment of Environmental Effects, Puke Coal Limited Proposed Municipal Solid Waste Landfill, dated 19/10/12, received 29/10/12, prepared by URS Ltd, WRCdocs#2287044 & #2287036.
- Application under section 127 RMA to change resource consents 104244 (discharge stormwater) and 102303 (take surface water), received 29/5/13, WRCdoc#2702892 & #2702889.

as modified by

- Further information responses from or on behalf of Puke Coal Limited to the Waikato Regional Council dated 21 February 2013, WRCdoc#2354798.
- Further information response from or on behalf of Puke Coal Limited to the Waikato Regional Council dated 21 August 2013, WRCdoc#2819273.
- The Revised Regional Council Consenting Strategy, dated 17 May 2013, WRCdoc#2535459.
- URS Response to Tonkin & Taylor Review Comments (2 August 2013), dated 22/8/13, WRCdoc#2819674.

and by

- The evidence presented to the consent authority hearing by Puke Coal Limited and any agents or consultants acting on its behalf.

In accordance with the following concept drawings, which supercede any earlier revisions provided in the above-mentioned documents

DRAWING NO.	DRAWING TITLE	REVISION
42045680-C-000	Cover Sheet	-
42045680-C-001	Site Plan	B
42045680-C-002	General Arrangement and Surface Water Controls	C
42045680-C-003	Leachate Drainage	B
42045680-C-004	Groundwater Management	B
42045680-C-005	Finished Surface Plan	B
42045680-C-006	Finished Surface and Gas Collection	B
42045680-C-007	Landfill Long Section	C
42045680-C-008	Landfill Eastern Cross Section	B
42045680-C-009	Landfill Western Cross Section	B
42045680-C-010	Leachate Sump and Toe Bund Detail Prior to Closure of Last Cell	B
42045680-C-011	Leachate Sump and Toe Bund Detail at Closure	B
42045680-C-012	Northern and Southern Highwall Liner	C

	Detail	
42045680-C-013	Treatment of Existing Mine Adits on Southern Highwall	C
42045680-C-014	Connection of Upper Liner Bench to Lower Liner Bench	C
42045680-C-015	Inferred Fault Treatment Detail	D
42045680-C-016	Typical Details	C
42045680-C-017	Gas Well Detail	C
42045680-C-018	Longsection (West-East) Site Geology Proposed landfill	C
42045680-C-019	Treatment of Mine Workings Under Landfill Footprint	C
42045680-C-020	Borehole Location Plan	A
42045680-C-021	Hydrogeology	A
42045680-C-022	Engineering Geology Site Observation Map	B
42045680-C-023	Existing Site Geology Plan	C

2 The consent holder shall develop an environmental induction programme, which shall be intended to ensure that staff and contractors working on the site are generally aware of the contents of these consents as they apply to the activities in which the staff/contractors are involved. Copies of the consents shall be kept on-site at all times, and be made available to all staff and contractors.

3 All investigations, design, supervision of construction, operation, monitoring and after-care shall be undertaken by suitably qualified personnel experienced in such works, or works of a similar nature, and to the satisfaction of the Waikato Regional Council.

Design – Liner, Cover and Capping

4 The landfill base liner system shall comprise, from bottom to top, at least the following materials:

(i) 600 millimetres of compacted clay, compacted to achieve a permeability of not greater than 1×10^{-9} metres per second;

(ii) a 1.5 millimetre thick textured high density polyethylene (HDPE) liner, or an equivalent liner approved by the Waikato Regional Council; and

(iii) a leachate drainage layer approved in writing by the Waikato Regional Council.

5 The landfill side liner system shall comprise, from bottom to top, at least the following materials:

(i) 600 millimetres of compacted clay, compacted to achieve a permeability of not greater than 1×10^{-8} metres per second;

(ii) a 1.5 millimetre thick textured high density polyethylene (HDPE) liner, or an equivalent liner approved by the Waikato Regional Council; and

(iii) a leachate drainage layer approved in writing by the Waikato Regional Council.

6 The landfill liner system shall be constructed in accordance with the synthetic materials manufacturer's recommended quality assurance/quality control procedures.

7 Alternative liner designs and materials for the base liner or side liner will be considered for acceptance by Waikato Regional Council prior to the development of a new stage of the landfill where these are demonstrated to provide equivalent or superior performance in terms of:

- Resistance to chemical degradation
- Hydraulic containment
- Physical strength and deformation characteristics under service and seismic loads
- General installation procedures
- Expected service life.

8 Final cover on all stages shall comprise from, bottom to top, at least:

(i) a 300 mm intermediate cover layer;

(ii) a 600 mm compacted clay cap with a permeability no greater than 1×10^{-8} m/s;

(iii a 450 mm layer of lightly placed soil; and

(iv) 150 mm of topsoil.

Detailed design for final cover shall be forwarded to the Waikato Regional Council 6 months prior to any stage final capping works commencing.

9 The consent holder shall monitor the stability of the western and southern high walls. To this end the consent holder shall undertake an appropriate monitoring programme on these high walls at least six months prior to the construction of Stage 1 and shall develop an appropriate response plan. Monitoring shall be undertaken on a regular basis during construction, and until completion of placement of the engineered fill between the high walls and the landfill, and shall include visual observations and mapping.

The monitoring programme shall include such measures that allow for quantitative assessment of the rate and direction of movement and shall be approved in writing by the Waikato Regional Council prior to implementation. Data obtained from the monitoring programme shall be forwarded to Waikato Regional Council in a form that demonstrates the rate and direction of any movement detected.

10 The consent holder shall undertake an inspection of the cap of the landfill site following significant storm events (greater than 50% AEP at a duration of less than 1 day), but at least every six months. The inspection shall check for:

- vegetation die-off;
- cracking of the landfill cap;
- subsidence and erosion;
- leachate breakout through the cap;
- damage by stock;
- new groundwater springs; and
- refuse protruding through the cap.

Any defects noticed during the inspection shall be remedied immediately.

A report on the inspection and details of any remedial actions undertaken as a result shall be forwarded to the Waikato Regional Council within two months of each inspection.

Staging and Sequencing

11 Following construction of any stage, the consent holder shall not place any refuse in that stage until the Waikato Regional Council has received as-built records, and full QA/QC records to confirm that the landfill liner has been constructed in accordance with the approved design, and that all necessary infrastructure is in place to collect and store leachate according to the approved design, and for clean stormwater to be diverted in accordance with the approved design, and provides written approval of this.

12 Prior to provision of a landfill design for Independent Peer Review as required by Condition 15, the consent holder shall:

a) undertake an investigation of groundwater levels under the upper slope of the southern high wall, to intersect working voids, and to determine if dewatering is necessary. Should dewatering be required then a dewatering plan should be prepared and submitted to the peer reviewers for approval prior to commencement. The plan should outline the requirements for treatment, if necessary, to meet the relevant receiving water quality requirements; and

b) undertake sufficient investigatory drilling in the South Eastern corner to determine the absence or presence of underground mine workings beneath the MSW Landfill footprint. The investigation plan shall be submitted to the peer reviewers for approval prior to commencement. Should underground mine workings be discovered they are to be excavated and replaced with engineered fill that will be subject to detailed design.

Advice note: *In the event the quantity or quality of mine water encountered is such that it cannot be treated on site to meet the surface water quality requirements (Schedule 3 of consent 104244) for discharge to the unnamed tributary, separate consent may be required to permit the mine water to be discharged or removed off-site for disposal at an appropriate treatment facility.*

13. Unless written approval is obtained from all property owners and occupiers between 164-238 Hangapipi Road, ~~Prior to the use of Cell A and Cell F as shown on Drawing 42045680-C-002 Rev:C,~~ the consent holder shall first complete Cells B and C (or Cells G and H if an initial counter-clockwise rotation is commenced) prior to the use of Cell A and Cell F as shown on Drawing 42045680-C-002 Rev:C. If during the 24 months prior to completion of ~~filling and capping of these cells~~ Cell C (or Cell H if an initial counter-clockwise rotation is commenced) ~~monitoring of~~ odour monitoring at the boundary with properties ~~on~~ between 164-238 Hangapipi Road (whose written approval has not been given) validates incidents of objectionable or offensive odour arising directly ~~from or~~ from activities in association with Cells B and C (or Cells G and H if an initial counter-clockwise rotation is commenced) ~~these cells in the 24 months prior to completing the last of the two respective cells (i.e. either C or H),~~ then Cells A and F shall not be used for MSW landfilling unless or until written approval is obtained for so doing from all ~~affected~~ property owners and occupiers between 164-238~~on~~ Hangapipi Road and is provided to Waikato Regional Council. For the avoidance of doubt nothing in this condition shall prevent the consent holder from using Cells A and F:

(i) for the placement of construction and demolition waste; and

(ii) for the placement of MSW waste if the written approval of all property owners and occupiers between 164-238 Hangapipi Road is provided to the Waikato Regional Council; or

(iii) for the placement of MSW waste once Cells B and C (or Cells G and H) have been completed without any validated odour incidents at the boundary with properties between 164-238 on Hangapipi Road (whose written approval has not been given) during the 24 months prior to completion of Cell C (or Cell H if an initial counter-clockwise rotation is commenced).

Advice Notes

1. For the purposes of assessing compliance with this condition, the Waikato Regional Council shall consider whether the discharge of odour occurred as a result of the consent holder complying with the requirements of another condition of this consent.

2. For the purposes of this condition "completion of a Cell" or to "complete a Cell" means that it has been filled to such an extent that no further MSW can be placed in the Cell but may not include final cover.

~~14. Prior to commencing Cell D (or Cell I if an initial counter-clockwise rotation is commenced) Council may review the relevant consents listed at the head of this Schedule under section 128 of the RMA for the purpose of setting additional conditions if validated odour complaints have occurred as indicated under condition 13.~~

Peer Review Panel

15 The consent holder shall engage, at its own cost, an independent Peer Review Panel to review the design (and any significant future amendments to the design), construction, operation and maintenance of the landfill, and to assess whether or not the work is undertaken by appropriately qualified personnel in accordance with good practice.

The independent Peer Review Panel shall comprise at least three persons and shall be:

- independent of the planning, design, construction, management and monitoring of this site;
- experienced in landfill design (including design of steep walled liner systems), construction and management;
- experienced in landfill geotechnical, groundwater and surface water aspects;
- experienced in landfill gas collection, treatment and odour control (both from landfill gas and other sources);
- recognised by their peers as having such experience, knowledge and skill;
- approved in writing by the Waikato Regional Council.

The primary role of the independent Peer Review Panel is to advise the Waikato Regional Council on the matters below, and shall report to the Waikato Regional Council at least annually and/or at least two months prior to the development of each Stage on the following matters:

a) landfill management, including leachate and nuisance control;

b) management and monitoring plans;

c) results of detailed geotechnical investigation, site preparation, and hydrological and geotechnical issues;

d) liner design (including the risks associated with steep walled liner systems) and use of on-site materials, including any alternative materials proposed for the liner and drainage construction;

e) construction quality assurance;

f) water control, including groundwater, stormwater and leachate management;

g) landfill gas collection system, including the extent to which gas collection will be optimised and the potential for gas migration via mine adits;

h) waste compaction, including method and degree;

i) special/hazardous waste disposal;

j) acceptable and unacceptable wastes;

k) cover material used;

l) monitoring, modelling and records; and

m) rehabilitation, including the management of surface water runoff from rehabilitated landfill areas.

Where the independent Peer Review Panel does not have the expertise in any of the areas it is required to report on, as detailed above, it shall engage the services of an appropriate expert to report on the relevant matter to the independent Peer Review Panel. The report shall form part of the review provided by the Peer Review Panel as required by this condition.

Copies of all Peer Review reports shall be sent directly to the consent holder and the Waikato Regional Council.

A Terms of Reference to guide and direct the Peer Review Panel is to be established in consultation with Waikato Regional Council.

16 Following receipt of the Peer Review Panel report(s) required under condition 15, the consent holder shall forward the following final design documents to Waikato Regional Council for approval in writing:

- the detailed designs of the landfill liner and leachate collection system,
- the leachate storage facilities,
- the leachate flow balancing calculations and contingency leachate storage structures,
- stormwater systems,
- groundwater drainage system and hydraulic trap,
- landfill gas collection system and gas flare(s)
- final landform,
- quality assurance procedures for construction of the landfill liner and landfill cap, and
- waste acceptance procedures.

All works shall be carried out in accordance with the designs, as accepted in writing by the Waikato Regional Council.

Landfill Management and Operations Plan

17 Three months prior to the commencement of any works associated with this consent (including site preparation works), and following the steps outlined in conditions 19 and 20, the consent holder shall prepare a Landfill Management and Operations Plan.

The objective of the Landfill Management and Operations Plan is to combine and collate all management practices and procedures to be implemented on the site to achieve compliance with the conditions of this consent, and to minimise the potential for nuisances and adverse effects from the operation of the landfill.

18 To achieve the objective specified in condition 17, the Landfill Management and Operations Plan shall include details on management, operations and monitoring procedures, and methodologies and contingency plans necessary to comply with the conditions of this consent. It shall include, but not be limited to, the following matters:

a) procedures associated with the acceptance of municipal solid waste and prohibited wastes;
b) landfill design parameters;
c) details of landfill operations (i.e. earthworks, site preparation, landfill liner and side wall construction, procedures for the control of the site and tipping face, the placement of waste, waste compaction, and daily cover (including procedures for the selection of cover materials or alternatively a prescriptive list of materials that will be used, and the thickness of daily cover material), water control, landfill gas control and leachate control);
d) the sequential staging of the landfill and closure of the landfill;
e) procedures for mapping the location of special waste burials;
f) management procedures to identify the presence (or otherwise) of flooded mine workings that may be exposed as well as assessment and implementation of appropriate dewatering and disposal procedures if required;
g) management procedures for the control of perched leachate layers;
h) routine maintenance procedures to be undertaken on the leachate and gas collection systems, including procedures for cleaning the leachate collection pipes;
i) an erosion and sediment control plan;
j) management and monitoring practices for the collection and disposal of leachate and landfill gas;
k) management and monitoring procedures for the control of odour;
l) management and mitigation practices, including monitoring, to control nuisance effects from noise, birds, vermin and litter;
m) management and monitoring procedures for the control of dust;
n) the specific location of the continuous dust monitor for measuring dust emissions and the specific location of the weather monitoring station;
o) procedures for the management of traffic volumes in accordance with the conditions of this consent including methods of monitoring and reporting compliance with the conditions of this consent;
p) parking, manoeuvring and loading arrangements to ensure queuing and loading space is available and to avoid any effects from parking or queuing at the entrance;
q) procedures and methods to control the speed limit on the site;

r) driver behaviour guidelines to be included in contracts involving regular haulers over one month duration to cover debris, covered loads and safety briefing;

s) procedures to manage any debris spillage onto Rotowaro Road caused by trucks exiting or entering the site;

t) spill prevention and response protocols;

u) an accidental discovery protocol;

v) specific management procedures for the control and management of any landfill fires, including details of the firefighting equipment to be kept on site to extinguish fire of a general or chemical nature;

w) at a minimum, requirements for installation of primary litter fences for each stage of the landfill to a minimum height of 6m on the predominant downwind side as fixed location fences. The LMP shall also include requirement for the use of secondary litter fences to a minimum height of 2m, being mobile fences and able to be relocated as required to provide a litter barrier as close as practicable downwind of the active working face.

x) other actions necessary to comply with the requirements of this resource consent.

19 The Landfill Management and Operations Plan shall be submitted for review by the Peer Review Panel and must be approved in writing by the Waikato Regional Council, acting in a technical certification capacity, prior to the commencement of any works associated with this consent (including site preparation works and the deposition of refuse). For the avoidance of doubt, the Waikato Regional Council is only required to review and approve those matters in the Landfill Management and Operations Plan which are within their jurisdiction, which shall exclude those matters specified in condition 18(l), 18(o), 18(p), 18(r), and 18(s), and 18(w).

20 Prior to submitting the Landfill Management and Operations Plan in accordance with condition 19, and prior to the review, and any amendments to the Landfill Management and Operations Plan in accordance with condition 21, the consent holder shall provide an opportunity for the Community Liaison Group established by condition 22 to:

a) provide written input and feedback into the initial preparation, or any subsequent review of the Landfill Management and Operations Plan. In the event that no written input and feedback is received from the Community Liaison Group within 15 working days of their receipt of the initial draft of the Landfill Management and Operations Plan or within 10 working days in relation to any subsequent review of the Landfill Management and Operations Plan then the consent holder shall be deemed to have complied with this condition; and

b) review and discuss the results of all monitoring and reports as required by the conditions of this consent.

The consent holder shall provide the Peer Review Panel with a record of any input and feedback received from the Community Liaison Group, for the Panel to consider.

21 The Landfill Management and Operations Plan shall be reviewed and updated at least once every two (2) years by the consent holder and may be amended accordingly to take into account any changes required. The review of the Landfill Management and Operations Plan shall assess whether management practices are resulting in compliance with the conditions of this consent, and whether the objective

of the Landfill Management and Operations Plan is being met through the actions and methods undertaken. The review shall result in amendments that are necessary to better achieve the objective of the Landfill Management and Operations Plan.

Community Liaison Group

22 The consent holder shall undertake ongoing liaison and consultation with local residents within a radius of 3.0 km of the landfill footprint during the establishment and operation of the landfill.

To facilitate this, and prior to the lodgement of the Landfill Management and Operations Plan, the consent holder shall undertake an open, public process to offer local residents and interested people the opportunity to be part of a Community Liaison Group. The consent holder shall offer this opportunity to the following parties:

(a) Waikato District Council;
(b) Waikato Regional Council;
(c) Waahi Whanui Trust;
(d) Pukemiro School;
(e) Bush Tramway Club Inc;
(f) Adjoining landowners; and
~~(g)~~ Residents of the Pukemiro and Glen Afton ~~settlements (to be represented by two people from each settlement).~~

23 The Community Liaison Group shall be comprised of representatives of those parties referred to in Condition 22 who elect to take up the opportunity.

24 The main purpose of the meetings of the Community Liaison Group is to:

(a) Enable the consent holder to explain the progress of the various activities associated with the landfill;
(b) Enable the consent holder to facilitate site inspections;
(c) Provide input and feedback into the preparation, implementation, review and adaption of the Landfill Management and Operations Plan;
(d) Receive and discuss the results of monitoring and reporting as required by the conditions of this consent;
(e) Discuss and make recommendations to the consent holder regarding any community concerns regarding the effects of the exercise of this consent, including social impacts;
(f) To identify and discuss appropriate measures to address issues raised, including provisions of further information; ~~and~~
(g) Receive reports on actions taken by the consent holder on any concerns raised.

25 The consent holder shall provide reasonable administrative and logistical support to facilitate the functions of the Community Liaison Group including provision of an independent facilitator to chair the Community Liaison Group meetings if necessary. The extent of the support to be provided is to be determined in consultation with the Waikato District Council and Waikato Regional Council.

26 The consent holder shall use its best endeavours to ensure that meetings of the Community Liaison Group are held for the duration of the consent from the commencement of the consent:

(a) at least once every three (3) months during the establishment of the landfill; and

(b) at least once every six (6) months once municipal solid waste is being deposited at the landfill (unless the Community Liaison Group determines that meetings should be held less frequently or are no longer required and advises the consent holder, Waikato District Council and Waikato Regional Council accordingly).

27 The consent holder shall inform the Waikato Regional Council and the Waikato District Council's General Manager Customer Support of any meeting of the Community Liaison Group a minimum of ten (10) working days in advance of that meeting.

28 The consent holder shall ensure that the minutes of the Community Liaison Group meetings are forwarded to the Community Liaison Group, the Waikato Regional Council and the Waikato District Council's General Manager Customer Support within ten (10) working days of any meeting being held.

29 The consent holder shall assist the Community Liaison Group to fulfil its purpose by, among other things:

(a) arranging an appropriate venue in the local area for meetings of the Community Liaison Group;

(b) appointing one of the consent holder's senior representatives to represent it on the Community Liaison Group and ensuring at least one of its representatives attends all of the formal meetings of the Community Liaison Group (unless the Community Liaison Group determines that the consent holder should not be represented on the Group or does not need to attend a specific meeting and advises the consent holder and Waikato District Council and Waikato Regional Council accordingly);

(c) providing information to the Community Liaison Group about progress in relation to the project, including the environmental effects of the project and compliance with consent conditions;

(d) being prepared to discuss the environmental effects of the landfill, any concerns in relation to human health and safety, and any complaints from the local community, including provision of further information and identification of appropriate measures to address issues raised; and

(e) timely provision of all monitoring data collected by the consent holder during the period between meetings of the Community Liaison Group

30 In the event that a Community Liaison Group fails to establish as provided for in condition 11 or is disestablished at any time, then provided that the consent holder has complied with conditions 22, 25, 26 and 29 as may apply, then the relevant requirements of this consent shall be deemed to be met.

For the avoidance of doubt, the Community Liaison Group shall be disestablished when 3 successive meetings attract fewer than 3 of the parties specified in condition 22, in addition to the Waikato Regional Council and Waikato District Council.

Landfill Manager

31 The consent holder shall retain an appropriately experienced Landfill Manager to supervise the operation of the landfill operations on the site.

For the purpose of this condition an appropriately experienced Landfill Manager means a person who holds at minimum NZCE (or equivalent qualification) and has prior work experience that includes:

- Heavy earthworks construction;
- Solid waste handling; and
- Environmental/consent compliance experience.

The Landfill Manager shall compile an Annual Performance Report on the operation of the landfill, including:

i) the status of landfilling operations on the site and work completed during the preceding year;

ii) any difficulties which have arisen in the preceding year and measures taken to address those difficulties; and

iii) activities proposed for the next year of the landfill operation; and

iv) its record of compliance with the relevant consents.

The first report shall be forwarded to the Waikato Regional Council by the anniversary of the day on which the consent holder gives effect to this consent, and annually thereafter, unless otherwise agreed in writing with the Waikato Regional Council.

Archaeological Items

32 In the event that any human remains or archaeological items are discovered, the works in that area of the site shall cease immediately and the Police, Tangata Whenua, and/or the NZ Historic Places Trust, and also the Waikato Regional Council, shall be notified by the consent holder as soon as practicable. Works may recommence with the written approval of the Waikato Regional Council. Such approval shall be given after the Waikato Regional Council has considered:

(i) Tangata Whenua interests and values;

(ii) the consent holders interests;

(i) any archaeological or scientific evidence;

(iv) any requirements of the Police; and

(v) whether any necessary statutory authorisations have been obtained from the Historic Places Trust.

Review

33 The Waikato Regional Council may during the month of the second anniversary of the granting of these consents, and every fifth (5) year thereafter, or upon cessation of landfilling operations at the site, serve notice on the consent holder under section 128 (1) of the Resource Management Act 1991, of its intention to review the conditions of this resource consent for the following purposes:

(i) to review the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the environment from the exercise of this

resource consent and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions; or

(ii) if necessary and appropriate, to require the holder of this resource consent to adopt the best practicable option to remove or reduce adverse effects on the surrounding environment due to the exercise of these consents; or

(iii) to review the adequacy of and the necessity for monitoring undertaken by the consent holder.; or

(iv) to review the effectiveness of the conditions of resource consents relating to odour control, in the event of odour incidents which have been confirmed as being objectionable by the Waikato Regional Council.

Note: *Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.*

Note: *The purpose of 33(iv) is to review conditions where there have been objectionable odour incidents, possibly but not necessarily persistent in nature, and where the odour may be better addressed through a change of consent conditions, rather than recourse to the normal compliance enforcement options available to the Waikato Regional Council.*

Rehabilitation and Aftercare Plan

34 Prior to the commencement of each stage development, the consent holder shall submit a concept Rehabilitation and Aftercare Plan to the Waikato Regional Council for acceptance in writing. That Plan shall describe the key aspects of closure and rehabilitation that will be implemented should the site close permanently at the completion of the proposed stage.

At least twelve months prior to landfill operations ceasing on this site, the consent holder shall provide to Waikato Regional Council a detailed Rehabilitation and Aftercare Plan, for acceptance in writing. This plan shall be prepared after consultation with the owners of the site, the owners of adjacent properties and the Waikato District Council. The plan shall address at least the following issues:

- land ownership and liability for contamination
- responsibilities for aftercare
- final contours
- capping and re-vegetation
- maintenance of the landfill cap to prevent cracking and ponding of stormwater
- management of land uses to prevent contamination of surface water runoff by sediment or nutrients
- operation and maintenance of leachate management systems
- operation and maintenance of landfill gas management systems
- ongoing monitoring, including groundwater, surface water, landfill gas and site capping; and
- funding of aftercare.

Following acceptance of the proposal, the consent holder shall implement the Plan to the satisfaction of the Waikato Regional Council

Administration

35 The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulations made under section 36 of the Resource Management Act 1991.

36 The consent holder shall notify the Waikato Regional Council in advance of the date of first exercise of this consent.

37 From the start of construction activities at the site the consent holder shall maintain an environmental log and shall record in that log at least the following:

(i) the times and dates on which the landfill operates;

(ii) all public complaints, including particulate matter or odour. The record is to include the:

(a) type and time of the complaint;

(b) name and address of the complainant (if available);

(c) location from which the complaint arose;

(d) wind direction at the time of the complaint and rainfall prior to the complaint;

(e) the response made by the consent holder and the likely cause of complaint; and

(f) action taken or proposed as a result of the complaint.

The environmental log shall be made available to Waikato Regional Council and the Community Liaison Group on request at any reasonable time.

The consent holder shall notify the Waikato Regional Council of any complaints received as soon as practicable in any event within 48 hours of the complaint being received. The consent holder shall submit a monthly report of all complaints received along with comments on the result of any investigation of the complaint to Waikato Regional Council.

Where the Waikato Regional Council validates the complaint, then the consent holder shall provide a report to the Waikato Regional Council within three working days of the validation, including details of the cause(s) of the incident and any measures taken to prevent recurrence.

Bond

38 Prior to the commencement of the placement of refuse at the site the consent holder shall provide and maintain in favour of the Waikato Regional Council a bond of $5 million to:

- Secure compliance with all the conditions of this consent and to enable any adverse effects on the environment resulting from the consent holder's MSW landfilling activities, including any C&D wastes placed in the MWS landfill, and not authorised by a resource consent to be avoided, remedied or mitigated;
- Secure the completion of rehabilitation and closure in accordance with the Rehabilitation and Aftercare Plan;

- Ensure the performance of any monitoring obligations of the consent holder under this consent; and
- Enable the Waikato Regional Council to undertake monitoring and management of the site until completion of closure of the site.

  Note: *"Completion of closure" means when the Waikato Regional Council deems that resource consents for the site are no longer required, and that there is no reasonable risk of the site causing further adverse impacts on the environment.*

39 The quantum of the bond shall be sufficient to cover the general items listed in condition 38, and in particular:

(i) the estimated costs (including any contingency necessary) of rehabilitation and closure of the landfill in accordance with the conditions of the Waikato Regional Council consents;

(ii) the estimated costs (including any contingency necessary) of monitoring and management of the site and its effects following closure or abandonment, for as long as may be required to comply with conditions of Waikato Regional Council consents. This shall include the ongoing operation and maintenance of stormwater, leachate and landfill gas management systems;

(iii) the estimated costs of prevention and/or remediation of any adverse effect on the environment that may arise from the landfill including planting and landscaping provisions; and

(iv) any further sum which the Waikato Regional Council considers necessary for monitoring any adverse effect on the environment that may arise from the landfill including monitoring anything which is done to avoid, remedy, or mitigate an adverse effect.

40 The bond shall be in a form approved by the Waikato Regional Council and shall, subject to these conditions, be on the terms and conditions required by the Waikato Regional Council.

41 Unless the bond is a cash bond, the performance of all the conditions of the bond shall be guaranteed by a guarantor acceptable to the Waikato Regional Council. The guarantor shall bind itself to pay for the carrying out and completion of any condition of the bond in the event of any default of the consent holder, or any occurrence of any adverse environmental effect requiring remedy resulting from such default by the consent holder.

42 The amount of the bond may be varied and shall be fixed by the Waikato Regional Council prior to the anniversary of the first refuse placement, and every anniversary thereafter. The amount of the rehabilitation bond shall be advised in writing to the consent holder at least one month prior to the review date.

43 Should the consent holder not agree with the amount of the bond fixed by the Waikato Regional Council then the matter shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996. Arbitration shall be commenced by written notice by the consent holder to the Waikato Regional Council advising that the amount of the rehabilitation bond is disputed, such notice to be given by the consent holder within two weeks of notification of the amount of the rehabilitation bond. If the parties cannot agree upon an arbitrator within a week of receiving the notice from the consent holder, then an arbitrator shall be appointed by the President of the Institute of Professional Engineers of New Zealand. Such arbitrator shall give an award in writing within 30 days after his or her appointment, unless the consent holder and the Waikato Regional Council agree

that time shall be extended. The parties shall bear their own costs in connection with the arbitration. In all other respects, the provisions of the Arbitration Act 1996 shall apply. Pending the outcome of that arbitration, and subject to condition 44, the existing bond shall continue in force. That sum shall be adjusted in accordance with the arbitration determination.

44 If the decision of the arbitrator is not made available by the 30th day referred to above, then the amount of the bond shall be the sum fixed by the Waikato Regional Council, until such time as the arbitrator does make his/her decision. At that stage the new amount shall apply. The consent holder shall not place further refuse at the site if the variation of the existing bond or new bond is not provided in accordance with this condition.

45 If, on annual review, the amount of the bond to be provided by the consent holder is greater than the sum secured by the current bond, then within one month of the consent holder being given written notice of the new amount to be secured by the bond, the consent holder and the guarantor shall execute and lodge with the Waikato Regional Council a variation of the existing bond or a new bond for the amount fixed on review by the Waikato Regional Council. No further refuse shall be placed at the site if the variation of the existing bond or new bond is not provided in accordance with this condition.

46 The bond may be varied, cancelled, or renewed at any time by agreement between the consent holder and the Councils.

47 The bond shall be released on completion of closure of the site, as defined in Condition 38.

48 All reasonable and actual costs relating to the bond shall be paid by the consent holder.

Notes

1. *In accordance with section 125 RMA, this consent shall lapse five (5) years after the date on which it was granted unless it has been given effect to before the end of that period.*

2. *Where a resource consent has been issued in relation to any type of construction (e.g. dam, bridge, jetty) this consent does not constitute authority to build and it may be necessary to apply for a Building Consent from the relevant territorial authority.*

3. *This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.*

4. *This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).*

5. *The consent holder may apply to change the conditions of the resource consent under s.127 RMA.*

6. *The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may*

include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.

7. *Note that pursuant to s333 of the RMA 1991, enforcement officers may at all reasonable times go onto the property that is the subject of this consent, for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.*

8. *If you intend to replace this consent upon its expiry, please note that an application for a new consent made at least 6 months prior to this consent's expiry gives you the right to continue exercising this consent after it expires in the event that your application is not processed prior to this consent's expiry.*

Dated at Hamilton this **20th** *day of* ***November*** *2013*

For and on behalf of the
Waikato Regional Council

Aud Hill

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Attachment (1) (b)

Resource Consent Certificate

Resource Consent: 125466

File Number: 60 52 63F

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Puke Coal Limited
Box C5
RD 1
Glen Afton
Huntly 3771

(hereinafter referred to as the Consent Holder)

Consent Type: Discharge permit

Consent Subtype: Discharge to land

Activity authorised: Discharge up to 8,000,000 cubic metres of solid municipal waste to land

Location: 1058 Rotowaro Rd - Glen Afton

Spatial Reference: NZTM 1780721 E 5835043 N

Consent Duration: This consent will commence on the date of decision notification, unless otherwise stated in the consent's conditions, and expire on 1/11/48

Subject to the conditions overleaf:

1. This consent is subject to the general conditions listed in Schedule 4. Where there may be differences or apparent conflict between those general conditions and the conditions below, the conditions below shall prevail.

2. No hazardous waste shall be accepted for disposal at the landfill. The definition of "hazardous waste" shall be any waste:

   (i) defined as either explosive, flammable, oxidising, corrosive, toxic, or ecotoxic in terms of the HSNO regulations; or

   (ii) which does not meet the waste acceptance criteria as outlined within the AEE, Appendix D, Section 4.1.1 (Acceptable wastes).

   The definition of "hazardous waste" shall not include waste products containing potentially hazardous components that are present in such small quantities that they are not expected to have adverse effects on the environment, and are such as can reasonably be expected to be contained in the municipal waste stream.

3. Healthcare wastes, as set out in NZS4304:2002 "Management of Healthcare Waste" shall be acceptable for disposal at the landfill in accordance with NZS4304.

4. To minimise the potential for hazardous waste or unacceptable healthcare waste to be disposed of at the landfill the following measures shall be taken:

   (i) notice shall be clearly positioned at the landfill entrance, and at any transfer stations under the control of the consent holder, to identify the wastes which are unacceptable at the landfill; and

   (ii) random inspections of incoming loads for the presence of unacceptable wastes shall be undertaken.

5. In the event that the consent holder is made aware of a delivery of hazardous waste to the site which does not meet the site waste acceptance criteria outlined in condition 2 this consent, the consent holder shall take immediate steps to inform the Waikato Regional Council of:

   (i) the date and time at which the vehicle was turned away
   (ii) the registration number of the vehicle
   (iii) the identity of the carrier (if known)
   (iv) the size and type of the load
   (v) the source of the load (if known)
   (vi) the category of the hazard (if known).

   This condition may be reviewed by the Waikato Regional Council upon the release of any alteration to the Resource Management Act, or any document accepted as a New Zealand Guideline or Standard, which addresses the tracking and/or responsibilities of hazardous waste materials. Such review may be initiated within two months of each anniversary of the date of commencement of this consent.

6. The Waikato Regional Council may commence a review of conditions 2 and 3 of this consent, after consultation with the consent holder, in response to development of or changes in the national definition of hazardous wastes, or the release of new national hazardous waste treatment and/or disposal guidelines, or changes to the standards relating to healthcare wastes. Such review may be initiated within two months of each anniversary of the date of commencement of this consent.

   Costs relating to the above review will be borne by the consent holder

7. The consent holder shall maintain to the satisfaction of the Waikato Regional Council a record of the quantities and types of refuse accepted at the landfill.

   A copy of this record shall be forwarded to the Waikato Regional Council by 1 September each year, unless otherwise agreed in writing with the Waikato Regional Council.

8. The consent holder shall keep a record of the location of all special waste burials that have been accepted by passing the elutriation criteria.

   A copy of these records shall be made available to the Waikato Regional Council at any reasonable time upon request.

9. Sludges, soils and similar fine particle size materials, special wastes or waste that will chemically react with the HDPE liner, shall not be placed within 3 metres of the top of the drainage layer that is to be placed on top of the landfill liner.

10. No liquids shall be placed within the landfill without the written approval of the Waikato Regional Council. Notwithstanding conditions 2, 3 and 9 (which define unacceptable wastes), sludges that have a solids content of at least 20% w/w, or have a "spadeable" consistency and are not free-flowing, are acceptable.

11. The discharge of material authorised by this consent shall not occur outside of the area described as "Proposed Landfill Footprint", as shown in Drawing C-002 in the document "URS Response to T&T", dated 22/8/13, wrcdoc#2829674.

12. As a result of the placement of refuse and cover material at this site the final contours of the filled area, following settlement, shall not exceed those shown in Drawings C-007, C-008, C-009 in the document "URS Response to T&T", dated 22/8/13, wrcdoc#2829674.

13. Refuse shall be covered at the end of each working day with a minimum of 150mm of soil or other material approved by the Waikato Regional Council.

14. The volume of refuse authorised by this consent is that volume contained within the design void of up to 8 million cubic metres, including the HDPE liner and the final cap, within the contours shown on Plan 42045680-C-005 (dated 16/8/13) and as measured at the time of completion of the cap.

Dated at Hamilton this 20th day of November 2013

For and on behalf of the
Waikato Regional Council

David Hill

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125466

Advice notes

1. *In accordance with section 125 RMA, this consent shall lapse five (5) years after the date on which it was granted unless it has been given effect to before the end of that period.*
2. *Where a resource consent has been issued in relation to any type of construction (e.g. dam, bridge, jetty) this consent does not constitute authority to build and it may be necessary to apply for a Building Consent from the relevant territorial authority.*
3. *This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.*
4. *This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).*
5. *The consent holder may apply to change the conditions of the resource consent under s.127 RMA.*
6. *The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.*
7. *Note that pursuant to s333 of the RMA 1991, enforcement officers may at all reasonable times go onto the property that is the subject of this consent, for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.*
8. *If you intend to replace this consent upon its expiry, please note that an application for a new consent made at least 6 months prior to this consent's expiry gives you the right to continue exercising this consent after it expires in the event that your application is not processed prior to this consent's expiry.*

Resource Consent Certificate

Resource Consent: 125467

File Number: 60 52 63F

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Puke Coal Limited
Box C5
RD 1
Glen Afton
Huntly 3771

(hereinafter referred to as the Consent Holder)

Consent Type: Discharge permit

Consent Subtype: Discharge to air

Activity authorised: Discharge contaminants to air from a municipal solid waste landfill

Location: 1058 Rotowaro Rd - Glen Afton

Spatial Reference: NZTM 1780721 E 5835043 N

Consent Duration: This consent will commence on the date of decision notification, unless otherwise stated in the consent's conditions, and expire on 1/11/2048

Subject to the conditions overleaf:

1 This consent is subject to the general conditions listed in Schedule 4. Where there may be differences or apparent conflict between those general conditions and the conditions below, the conditions below shall prevail.

2 As a result of the activities authorised by this resource consent the discharge shall not result in odour or particulate matter that is objectionable or offensive to the extent that it causes an adverse effect at or beyond the boundary of the land owned by or under the control of the consent holder.

Advice Note. For the purposes of assessing compliance with this condition, the Waikato Regional Council shall consider whether the discharge of odour occurred as a result of the consent holder complying with the requirements of another condition of this consent.

3 If directed in writing by the Waikato Regional Council following odour complaints that are validated as originating from the landfill and after consultation with the consent holder, the consent holder shall undertake a community odour survey. The design of the odour survey questionnaire and methodology shall be approved in writing by the Waikato Regional Council prior to the survey being undertaken and any subsequent amendments to the survey questionnaire or methodology shall be approved by the Waikato Regional Council.

The results and interpretations of the odour survey shall be submitted to the Waikato Regional Council within two months of the survey being conducted.

4 The consent holder shall collect meteorological data from a location approved by the Waikato Regional Council either within the site, or at some other appropriate location which the Council considers is fairly representative of conditions at the landfill site. Data recorded shall be for no longer than 10 minute averages for wind direction, wind speed, air temperature, atmospheric pressure, rainfall, solar radiation and standard deviation of wind direction. The data shall be of an appropriate standard to enable its use for odour dispersion modelling.

The meteorological data shall be provided to the Waikato Regional Council upon request at any reasonable time.

5 If directed in writing by the Waikato Regional Council, following odour complaints that are validated as originating from the landfill, and after consultation with the consent holder, the consent holder shall develop an odour dispersion model using on-site odour emission rates and meteorological data, as required under condition 4 of this consent, to a standard satisfactory to the Waikato Regional Council.

6 The consent holder shall provide vehicle wheel wash facilities. The wheel washing facilities shall be well maintained and shall be used by all vehicles exiting the landill as required to minimise the tracking of particulate matter off-site. Unless recycled, the water draining from the wash facility shall be treated as contaminated stormwater.

7 The consent holder shall, during the month of the fifth anniversary of the first placement of refuse at the site, and every fifth year thereafter, submit a written report to the Waikato Regional Council that compares recorded landfill gas composition and volumes with those used for assessment in the document "*AEE, Appendix D, Assessment of Air Quality Effects associated with the Proposed Municipal Solid Waste Landfill at Pukemiro*", dated August 2012.

Upon receipt of each written report as referred to above, if, in the opinion of the Waikato Regional Council, there is a significant difference in the landfill gas composition and volumes recorded compared with those used in the original model, the Waikato Regional Council may require that the consent holder prepares a Health Risk Assessment using the collected on-site data.

Upon receipt of any Health Risk Assessment the Waikato Regional Council may initiate a review of the conditions of this consent for the purposes of dealing with any potential adverse effects as a result of landfill gas emissions from the landfill site.

Costs relating to the above review will be borne by the consent holder.

8 The consent holder shall monitor total suspended particulates (TSP) as follows:

(i) Prior to commencement of construction activities at the site the consent holder shall install a continuous total suspended particulate matter monitor. Results shall be reported to the Waikato Regional Council six monthly unless the trigger level defined in part (iv) of this clause is exceeded. If trigger levels are exceeded these shall be reported as provided for in (iv) below;

(ii) the TSP monitor shall be generally located to the east of the landfill footprint at a location to be agreed with the Waikato Regional Council;

(iii) the method of measurement shall be a USEPA equivalent method appropriate to the instrument used, or other method approved in writing by the Waikato Regional Council. The consent holder shall record hourly and 24 hour average concentrations; and

(iv) the concentration of TSP in ambient air at or beyond the eastern boundary of the site as a result of onsite activities shall not exceed 120 micrograms per cubic metres as a 24 hour average. In the event this trigger level is exceeded the consent holder shall report to the Waikato Regional Council within 7 days of receiving the result. The report shall include an explanation of any reasons for the exceedance and any remedial measures taken to prevent any further exceedances.

Landfill Gas

9 The consent holder shall provide the Waikato Regional Council with a Landfill Gas and Odour Management Plan, which details the design and construction, operation and maintenance, and monitoring of the landfill gas collection system. The Landfill Gas Management Plan shall be lodged with the Waikato Regional Council within three months following the first deposition of refuse at the site. In particular, the Landfill Gas Management Plan shall address, but does not need to be limited to, the following issues:

(i) the design and construction of the landfill gas system, including flares;

(ii) operation and maintenance of the landfill gas system;

(iii) specific procedures for monitoring the landfill gas collection system, subsurface migration and onsite buildings. This should include the types of equipment to be used and procedures for using the equipment, sampling, collecting data and recording data;

(iv) procedures for removing and disposing of condensate from condensate traps;

(v) contingency plan to address the protection of public health and safety and the environment in the event of emergency situations, including landfill fires;

(vi) procedures for the relocation of C&D material, in terms of managing odour;

(vii) procedures about stripping of intermediate cover from Cells, in terms of managing odour;

(viii) procedures for drilling for retrospective installation of gas extraction wells, in terms of managing odour;

(ix) procedures for utilisation of a sacrificial gas collection system around the working face in any area; and

(x) procedures for progressive installation of a gas collection system around the working face, including vertical extendable wells, retrofitting wells as the waste depth increases, and gas extraction where there is 10m or more of waste in situ.

The Landfill Gas Management Plan shall be approved in writing by the Waikato Regional Council, after review by the Peer Review Panel.

The consent holder shall undertake the operation of the landfill in accordance with the Landfill Gas Management Plan.

10 The consent holder shall not allow the deliberate burning of refuse on-site, and shall extinguish any fire which does occur as soon as possible.

11 Prior to construction of the landfill, the consent holder shall investigate the potential for landfill gas migration (including migration in mine adits and other manmade structures) and identify migration measures to be carried out during construction. The report shall be forwarded to the Independent Peer Review Panel for comment and to the Waikato Regional Council, prior to construction of the landfill.

12 Within six months of commencement of deposition of waste, the consent holder shall install landfill gas monitoring probes at 100 metre intervals along the western and southern boundaries ~~of~~ adjacent to the ~~site~~MSW landfill footprint as shown on drawing 42045680-C-001 Revision B. The consent holder shall use the landfill gas monitoring probes to monitor, to the satisfaction of the Waikato Regional Council, for landfill gas migration. The design and location of the landfill gas monitoring probes shall be approved in writing by the Waikato Regional Council prior to the probes being installed.

To this end the consent holder shall, unless otherwise directed in writing by the Waikato Regional Council, monitor any landfill gas monitoring probes for the following parameters every month, commencing one month after installation of the probes:

(i) methane;

(ii) carbon dioxide;

(iii) oxygen; and

(iv) barometric pressure the day before and the day of reading

The method and equipment used to monitor the probes and the detection limits to be adopted shall be approved by the Waikato Regional Council prior to monitoring commencing.

The results of such monitoring shall be reported to the Waikato Regional Council within one month of sampling.

The frequency of monitoring may be reviewed by the Waikato Regional Council following the results from twelve monitoring rounds with a view to reducing the frequency of monitoring.

13 If the concentration of methane in a monitoring probe exceeds 1.25% by volume as a result of landfill activities then the consent holder shall increase the frequency of monitoring from that required by condition 12 to fortnightly for all probes. Should the concentration of methane exceed 1.25% by volume as a result of landfill activities for three successive monitoring rounds the consent holder shall make adjustments to the landfill gas collection system, or undertake appropriate remedial actions to reduce the level caused by landfill activities to below 1.25% by volume.

14 The consent holder shall monitor landfill gas at the inlet and outlet of each ground gas flare and at the inlet of each open flare to the satisfaction of the Waikato Regional Council.

To this end the consent holder shall, unless otherwise directed in writing by the Waikato Regional Council, monitor for the following parameters every six months:

(a) gas flow rate;

(b) methane (percentage);

(c) carbon dioxide (percentage);

(d) oxygen (percentage);

(e) nitrogen (percentage);

(f) carbon monoxide (parts per million);

(g) hydrogen sulphide (parts per million);

(h) gas pressure (inlet only);

(i) total non methane organic compounds (NMOCs); and

(j) temperature.

The consent holder shall immediately notify Waikato Regional Council if at any time the monitoring of raw gas provides an indication that CO_2 is present at a level that clearly indicates that refuse within the landfill is subject to a process of combustion.

For each monitoring round the consent nolder shall record the barometric pressure.

The results of such monitoring shall be reported to the Waikato Regional Council within one month of sampling.

Note: *The purpose of the monitoring, in part, is to confirm compliance with condition 17(viii) in terms of combustion efficiency.*

15 The consent holder shall install a gas collection system for any waste that is more than 10 metres deep, or has been in place more than 6 months, and all practicable measures shall be taken to optimise the extraction of landfill gas. This may include, but not be restricted to, use of temporary or sacrificial horizontal gas collectors around the working face.

16 Once the landfill contains not less than 200,000 tonnes of waste, a gas collection system must be installed, and all collected landfill gas shall be conveyed to an enclosed flare(s) and treated by burning. The landfill gas collection system shall maximise the volume of landfill gas collected at all times.

17 The enclosed landfill gas flare(s) shall be designed and operated in full accordance with Regulation 27 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, and subsequent Amendments, and monitored in accordance with the following minimum specifications:

The principal flare must -

(i) have a flame arrestor;

(ii) have an automatic backflow prevention device, or an equivalent device, between the principal flare and the landfill;

(iii) have an automatic isolation system that ensures that, if the flame is lost, no significant discharge of unburnt gas from the flare occurs;

(iv) have a continuous automatic ignition system;

(v) be designed to achieve a minimum flue gas retention time of 0.5 seconds;

(vi) be designed and operated so that gas is burned at a temperature of at least 750 degrees C;

(vii) have a permanent temperature indicator;

(viii) have a destruction and removal efficiency of at least 99%;

(ix) have appropriate sampling ports to enable verification of the requirements of (vi) and (viii) above; and

(x) provide for safe access to sampling ports while any emission tests are being undertaken.

For the purposes of this consent, the definition of an enclosed gas flare also includes any gas-to-energy gas engine which complies with specifications (i) to (iii) above.

The consent holder may operate a backup flare, when the principal flare is not operational due to malfunction or maintenance, and the backup flare must comply with specifications (i) to (iv) above.

18 The principal flare must be operated at all times unless it has malfunctioned or is shut down for maintenance. The backup flare must be operated if, and only if, the principal flare is not working.

19 Records shall be kept of the times of operation of the gas flares, time not operating, and the combustion temperature, and shall be forwarded to the Waikato Regional Council monthly.

20 Notwithstanding conditions 16, 17 and 18, where it is not practicable or safe to convey landfill gas to the main gas treatment facility it shall be conveyed to an open flare(s) and will be treated by burning. Open flares may also be used to burn landfill gas generated in individual stages during and for six months after filling of the individual stages.

Open landfill gas flares shall be designed, operated and monitored in accordance with the requirements of the United States EPA Code of Federal Regulations 40 CFR Part 60, Subpart A – General Provisions, Section 60.18 (1997) and shall have the following minimum specifications:

(i) flame arrestor and back flow prevention devices, or similar equivalent system, approved in writing by the Waikato Regional Council, to prevent flashback; and

(ii) automatic ignition to provide a minimum 99% reliability.

21 During times when the landfill gas extraction system installed under conditions 15, 16 and 17 is not operating for 24 hours or more, for any reason, the consent holder shall monitor for landfill gas migration in all the landfill gas monitoring probes for the following parameters every day, until the gas extraction system becomes operable:

(i) methane;

(ii) carbon dioxide;

(iii) oxygen; and

(iv) barometric pressure

The results of such monitoring shall be reported to the Waikato Regional Council within one week of sampling.

22 All flares used for gas control shall be shrouded, so that there is no visible flame at the point of discharge from the flare.

23 If directed in writing by the Waikato Regional Council following odour complaints that are validated as originating from the landfill and after consultation with the consent holder, the consent holder shall commission a report by an appropriately qualified independent person, which reviews the efficacy of odour management at the site, including the landfill gas extraction system, and shall provide that report to the Waikato Regional Council within three months of receipt of the notification.

The consent holder shall implement any recommendations contained within the report as soon as practicable and no later than six months of receiving the report to the satisfaction of the Waikato Regional Council.

24 Once the landfill contains not less than 200,000 tonnes of refuse, the concentration of methane at the surface of landfill areas with intermediate or final cover shall not exceed 5000 parts of methane per million parts of air (0.5% by volume).

25 To monitor landfill gas odour, and to demonstrate compliance with condition 24, the consent holder shall monitor surface gas emissions on areas of intermediate or final cover on at least a monthly frequency, and the results of each survey shall be reported monthly to Waikato Regional Council within four weeks of completion. If after 1 year of undertaking the monitoring required by this condition, or at any stage thereafter, the results indicate the effectiveness of management actions in minimising odour, and there has been a general absence of verified objectionable odour, the frequency of monitoring may be reduced to quarterly with the approval of the Waikato Regional Council.

The surface emissions survey shall be undertaken in accordance with the UK Environment Agency Guidance on monitoring landfill gas surface emissions, LFTGN07 v2 2010, or an alternative methodology approved in writing by the Waikato Regional Council. As guidance, the method requires the site to be surveyed on an approximately 25 m by 25 m grid, using a flame ionisation detector (FID) to measure the concentration of methane and a GPS to record the monitoring locations. At each 25 m transect the surveyor shall pause to take a concentration reading, the sampling probe is placed less than 5 cm above the ground surface and fitted with a cup attachment designed by the instrument manufacturer to minimise the influence of wind gusts.

Where methane is detected at more than 500 parts per million of air during any surface gas survey, the consent holder shall investigate the reasons why, and shall take remedial action to reduce the landfill gas emissions. The remedial actions taken by the consent holder shall be reported to the Waikato Regional Council monthly.

26 The consent holder shall undertake a walk-over survey of the landfill surface at no less than weekly intervals. The purpose of the walk-over survey is (but not limited to) to check for odours (particularly around penetrations), to monitor the effectiveness of the landfill gas management system, cracks in the landfill surface, gas bubbles, integrity of pipework, and areas of vegetation damage and the state of cover. The outcome of each walk-over survey shall be recorded. The consent holder shall investigate the cause of any significant odour detected during each survey, and shall remedy any faults located. A record of each walk-over survey and any remediation carried out shall be reported to the Waikato Regional Council monthly.

The weekly walk-over survey shall be undertaken in accordance with the UK Environment Agency Guidance LFTGN07 v2 2010 for visual landfill surface inspections, or alternative methodology approved in writing by the Waikato Regional Council.

27 The consent holder shall ensure that the maximum working area within the landfill is no larger than 900 square metres at any time, unless otherwise approved in writing by the Waikato Regional Council.

28 The consent holder shall carry out monthly odour surveys around the boundary of the site, particularly those sections of the boundary that are between the landfill and residential houses, including the communities at Pukemiro and Glen Afton, and shall record whether any landfill odour is discernible or not at each location. For the first three (3) years, these boundary surveys shall be undertaken by a person independent of the landfill, and who is familiar with the German VDI standard 3490 and the 0 to 6 intensity scale. The outcome of each monthly odour survey shall be recorded. The consent holder shall investigate the cause of any significant odour detected during each survey, and shall remedy any faults located. A record of each monthly odour survey and any remediation carried out shall be reported to the Waikato Regional Council monthly.

29 Notwithstanding the requirement under the Landfill Management Plan that, in general, malodorous wastes will not be accepted into the landfill, if malodorous wastes are accepted this shall be only by prior arrangement, and be placed in the landfill between the hours of 10am to 3pm only, Monday to Friday, and covered immediately upon placement.

Note: For the purposes of this condition malodorous wastes means wastes which, in the opinon of Council, have an odour that is significantly in excess of that associated with typical

MSW refuse.

30 Once filling reaches a height of RL 150m the consent holder shall commission a report by a person with recognised expertise in municipal solid waste landfill odour management, which assesses the extent of landfill odour and the effectiveness of site controls to minimise odour.

The review of odour performance and the adequacy of controls prior to the commencement of further cells should include:

(i) The adequacy of consent conditions;

(ii) The adequacy of management and operational procedures, as set out in the landfill management plan; and

(iii) The odour complaints history.

The consent holder shall not proceed to place waste in the landfill above RL 150m until any recommended improvements to management and operational procedures to avoid odour effects have been implemented to the satisfaction of the Waikato Regional Council.

Dated at Hamilton this ***20th*** *day of* ***November*** *2013*

For and on behalf of the
Waikato Regional Council

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Advice notes

1. *In accordance with section 125 RMA, this consent shall lapse five (5) years after the date on which it was granted unless it has been given effect to before the end of that period.*
2. *Where a resource consent has been issued in relation to any type of construction (e.g. dam, bridge, jetty) this consent does not constitute authority to build and it may be necessary to apply for a Building Consent from the relevant territorial authority.*
3. *This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.*
4. *This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).*
5. *The consent holder may apply to change the conditions of the resource consent under s.127 RMA.*
6. *The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.*
7. *Note that pursuant to s333 of the RMA 1991, enforcement officers may at all reasonable times go onto the property that is the subject of this consent, for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.*
8. *If you intend to replace this consent upon its expiry, please note that an application for a new consent made at least 6 months prior to this consent's expiry gives you the right to continue exercising this consent after it expires in the event that your application is not processed prior to this consent's expiry.*

Attachment (1) (c)

Resource Consent Certificate

Resource Consent: 125467

File Number: 60 52 63F

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Puke Coal Limited
Box C5
RD 1
Glen Afton
Huntly 3771

(hereinafter referred to as the Consent Holder)

Consent Type: Discharge permit

Consent Subtype: Discharge to air

Activity authorised: Discharge contaminants to air from a municipal solid waste landfill

Location: 1058 Rotowaro Rd - Glen Afton

Spatial Reference: NZTM 1780721 E 5835043 N

Consent Duration: This consent will commence on the date of decision notification, unless otherwise stated in the consent's conditions, and expire on 1/11/2048

Subject to the conditions overleaf:

1 This consent is subject to the general conditions listed in Schedule 4. Where there may be differences or apparent conflict between those general conditions and the conditions below, the conditions below shall prevail.

2 As a result of the activities authorised by this resource consent the discharge shall not result in odour or particulate matter that is objectionable or offensive to the extent that it causes an adverse effect at or beyond the boundary of the land owned by or under the control of the consent holder.

Advice Note. For the purposes of assessing compliance with this condition, the Waikato Regional Council shall consider whether the discharge of odour occurred as a result of the consent holder complying with the requirements of another condition of this consent.

3 If directed in writing by the Waikato Regional Council following odour complaints that are validated as originating from the landfill and after consultation with the consent holder, the consent holder shall undertake a community odour survey. The design of the odour survey questionnaire and methodology shall be approved in writing by the Waikato Regional Council prior to the survey being undertaken and any subsequent amendments to the survey questionnaire or methodology shall be approved by the Waikato Regional Council.

The results and interpretations of the odour survey shall be submitted to the Waikato Regional Council within two months of the survey being conducted.

4 The consent holder shall collect meteorological data from a location approved by the Waikato Regional Council either within the site, or at some other appropriate location which the Council considers is fairly representative of conditions at the landfill site. Data recorded shall be for no longer than 10 minute averages for wind direction, wind speed, air temperature, atmospheric pressure, rainfall, solar radiation and standard deviation of wind direction. The data shall be of an appropriate standard to enable its use for odour dispersion modelling.

The meteorological data shall be provided to the Waikato Regional Council upon request at any reasonable time.

5 If directed in writing by the Waikato Regional Council, following odour complaints that are validated as originating from the landfill, and after consultation with the consent holder, the consent holder shall develop an odour dispersion model using on-site odour emission rates and meteorological data, as required under condition 4 of this consent, to a standard satisfactory to the Waikato Regional Council.

6 The consent holder shall provide vehicle wheel wash facilities. The wheel washing facilities shall be well maintained and shall be used by all vehicles exiting the landill as required to minimise the tracking of particulate matter off-site. Unless recycled, the water draining from the wash facility shall be treated as contaminated stormwater.

7 The consent holder shall, during the month of the fifth anniversary of the first placement of refuse at the site, and every fifth year thereafter, submit a written report to the Waikato Regional Council that compares recorded landfill gas composition and volumes with those used for assessment in the document "*AEE, Appendix D, Assessment of Air Quality Effects associated with the Proposed Municipal Solid Waste Landfill at Pukemiro*", dated August 2012.

Upon receipt of each written report as referred to above, if, in the opinion of the Waikato Regional Council, there is a significant difference in the landfill gas composition and volumes recorded compared with those used in the original model, the Waikato Regional Council may require that the consent holder prepares a Health Risk Assessment using the collected on-site data.

Upon receipt of any Health Risk Assessment the Waikato Regional Council may initiate a review of the conditions of this consent for the purposes of dealing with any potential adverse effects as a result of landfill gas emissions from the landfill site.

Costs relating to the above review will be borne by the consent holder.

8 The consent holder shall monitor total suspended particulates (TSP) as follows:

(i) Prior to commencement of construction activities at the site the consent holder shall install a continuous total suspended particulate matter monitor. Results shall be reported to the Waikato Regional Council six monthly unless the trigger level defined in part (iv) of this clause is exceeded. If trigger levels are exceeded these shall be reported as provided for in (iv) below;

(ii) the TSP monitor shall be generally located to the east of the landfill footprint at a location to be agreed with the Waikato Regional Council;

(iii) the method of measurement shall be a USEPA equivalent method appropriate to the instrument used, or other method approved in writing by the Waikato Regional Council. The consent holder shall record hourly and 24 hour average concentrations; and

(iv) the concentration of TSP in ambient air at or beyond the eastern boundary of the site as a result of onsite activities shall not exceed 120 micrograms per cubic metres as a 24 hour average. In the event this trigger level is exceeded the consent holder shall report to the Waikato Regional Council within 7 days of receiving the result. The report shall include an explanation of any reasons for the exceedance and any remedial measures taken to prevent any further exceedances.

Landfill Gas

9 The consent holder shall provide the Waikato Regional Council with a Landfill Gas and Odour Management Plan, which details the design and construction, operation and maintenance, and monitoring of the landfill gas collection system. The Landfill Gas Management Plan shall be lodged with the Waikato Regional Council within three months following the first deposition of refuse at the site. In particular, the Landfill Gas Management Plan shall address, but does not need to be limited to, the following issues:

(i) the design and construction of the landfill gas system, including flares;

(ii) operation and maintenance of the landfill gas system;

(iii) specific procedures for monitoring the landfill gas collection system, subsurface migration and onsite buildings. This should include the types of equipment to be used and procedures for using the equipment, sampling, collecting data and recording data;

(iv) procedures for removing and disposing of condensate from condensate traps;

(v) contingency plan to address the protection of public health and safety and the environment in the event of emergency situations, including landfill fires;

(vi) procedures for the relocation of C&D material, in terms of managing odour;

(vii) procedures about stripping of intermediate cover from Cells, in terms of managing odour;

(viii) procedures for drilling for retrospective installation of gas extraction wells, in terms of managing odour;

(ix) procedures for utilisation of a sacrificial gas collection system around the working face in any area; and

(x) procedures for progressive installation of a gas collection system around the working face, including vertical extendable wells, retrofitting wells as the waste depth increases, and gas extraction where there is 10m or more of waste in situ.

The Landfill Gas Management Plan shall be approved in writing by the Waikato Regional Council, after review by the Peer Review Panel.

The consent holder shall undertake the operation of the landfill in accordance with the Landfill Gas Management Plan.

10 The consent holder shall not allow the deliberate burning of refuse on-site, and shall extinguish any fire which does occur as soon as possible.

11 Prior to construction of the landfill, the consent holder shall investigate the potential for landfill gas migration (including migration in mine adits and other manmade structures) and identify migration measures to be carried out during construction. The report shall be forwarded to the Independent Peer Review Panel for comment and to the Waikato Regional Council, prior to construction of the landfill.

12 Within six months of commencement of deposition of waste, the consent holder shall install landfill gas monitoring probes at 100 metre intervals along the western and southern boundaries ~~of~~ adjacent to the ~~site~~MSW landfill footprint as shown on drawing 42045680-C-001 Revision B. The consent holder shall use the landfill gas monitoring probes to monitor, to the satisfaction of the Waikato Regional Council, for landfill gas migration. The design and location of the landfill gas monitoring probes shall be approved in writing by the Waikato Regional Council prior to the probes being installed.

To this end the consent holder shall, unless otherwise directed in writing by the Waikato Regional Council, monitor any landfill gas monitoring probes for the following parameters every month, commencing one month after installation of the probes:

(i) methane;

(ii) carbon dioxide;

(iii) oxygen; and

(iv) barometric pressure the day before and the day of reading

The method and equipment used to monitor the probes and the detection limits to be adopted shall be approved by the Waikato Regional Council prior to monitoring commencing.

The results of such monitoring shall be reported to the Waikato Regional Council within one month of sampling.

The frequency of monitoring may be reviewed by the Waikato Regional Council following the results from twelve monitoring rounds with a view to reducing the frequency of monitoring.

13 If the concentration of methane in a monitoring probe exceeds 1.25% by volume as a result of landfill activities then the consent holder shall increase the frequency of monitoring from that required by condition 12 to fortnightly for all probes. Should the concentration of methane exceed 1.25% by volume as a result of landfill activities for three successive monitoring rounds the consent holder shall make adjustments to the landfill gas collection system, or undertake appropriate remedial actions to reduce the level caused by landfill activities to below 1.25% by volume.

14 The consent holder shall monitor landfill gas at the inlet and outlet of each ground gas flare and at the inlet of each open flare to the satisfaction of the Waikato Regional Council.

To this end the consent holder shall, unless otherwise directed in writing by the Waikato Regional Council, monitor for the following parameters every six months:

(a) gas flow rate;

(b) methane (percentage);

(c) carbon dioxide (percentage);

(d) oxygen (percentage);

(e) nitrogen (percentage);

(f) carbon monoxide (parts per million);

(g) hydrogen sulphide (parts per million);

(h) gas pressure (inlet only);

(i) total non methane organic compounds (NMOCs); and

(j) temperature.

The consent holder shall immediately notify Waikato Regional Council if at any time the monitoring of raw gas provides an indication that CO_2 is present at a level that clearly indicates that refuse within the landfill is subject to a process of combustion.

For each monitoring round the consent nolder shall record the barometric pressure.

The results of such monitoring shall be reported to the Waikato Regional Council within one month of sampling.

Note: *The purpose of the monitoring, in part, is to confirm compliance with condition 17(viii) in terms of combustion efficiency.*

15 The consent holder shall install a gas collection system for any waste that is more than 10 metres deep, or has been in place more than 6 months, and all practicable measures shall be taken to optimise the extraction of landfill gas. This may include, but not be restricted to, use of temporary or sacrificial horizontal gas collectors around the working face.

16 Once the landfill contains not less than 200,000 tonnes of waste, a gas collection system must be installed, and all collected landfill gas shall be conveyed to an enclosed flare(s) and treated by burning. The landfill gas collection system shall maximise the volume of landfill gas collected at all times.

17 The enclosed landfill gas flare(s) shall be designed and operated in full accordance with Regulation 27 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, and subsequent Amendments, and monitored in accordance with the following minimum specifications:

The principal flare must -

(i) have a flame arrestor;

(ii) have an automatic backflow prevention device, or an equivalent device, between the principal flare and the landfill;

(iii) have an automatic isolation system that ensures that, if the flame is lost, no significant discharge of unburnt gas from the flare occurs;

(iv) have a continuous automatic ignition system;

(v) be designed to achieve a minimum flue gas retention time of 0.5 seconds;

(vi) be designed and operated so that gas is burned at a temperature of at least 750 degrees C;

(vii) have a permanent temperature indicator;

(viii) have a destruction and removal efficiency of at least 99%;

(ix) have appropriate sampling ports to enable verification of the requirements of (vi) and (viii) above; and

(x) provide for safe access to sampling ports while any emission tests are being undertaken.

For the purposes of this consent, the definition of an enclosed gas flare also includes any gas-to-energy gas engine which complies with specifications (i) to (iii) above.

The consent holder may operate a backup flare, when the principal flare is not operational due to malfunction or maintenance, and the backup flare must comply with specifications (i) to (iv) above.

18 The principal flare must be operated at all times unless it has malfunctioned or is shut down for maintenance. The backup flare must be operated if, and only if, the principal flare is not working.

19 Records shall be kept of the times of operation of the gas flares, time not operating, and the combustion temperature, and shall be forwarded to the Waikato Regional Council monthly.

20 Notwithstanding conditions 16, 17 and 18, where it is not practicable or safe to convey landfill gas to the main gas treatment facility it shall be conveyed to an open flare(s) and will be treated by burning. Open flares may also be used to burn landfill gas generated in individual stages during and for six months after filling of the individual stages.

Open landfill gas flares shall be designed, operated and monitored in accordance with the requirements of the United States EPA Code of Federal Regulations 40 CFR Part 60, Subpart A – General Provisions, Section 60.18 (1997) and shall have the following minimum specifications:

(i) flame arrestor and back flow prevention devices, or similar equivalent system, approved in writing by the Waikato Regional Council, to prevent flashback; and

(ii) automatic ignition to provide a minimum 99% reliability.

21 During times when the landfill gas extraction system installed under conditions 15, 16 and 17 is not operating for 24 hours or more, for any reason, the consent holder shall monitor for landfill gas migration in all the landfill gas monitoring probes for the following parameters every day, until the gas extraction system becomes operable:

(i) methane;

(ii) carbon dioxide;

(iii) oxygen; and

(iv) barometric pressure

The results of such monitoring shall be reported to the Waikato Regional Council within one week of sampling.

22 All flares used for gas control shall be shrouded, so that there is no visible flame at the point of discharge from the flare.

23 If directed in writing by the Waikato Regional Council following odour complaints that are validated as originating from the landfill and after consultation with the consent holder, the consent holder shall commission a report by an appropriately qualified independent person, which reviews the efficacy of odour management at the site, including the landfill gas extraction system, and shall provide that report to the Waikato Regional Council within three months of receipt of the notification.

The consent holder shall implement any recommendations contained within the report as soon as practicable and no later than six months of receiving the report to the satisfaction of the Waikato Regional Council.

24 Once the landfill contains not less than 200,000 tonnes of refuse, the concentration of methane at the surface of landfill areas with intermediate or final cover shall not exceed 5000 parts of methane per million parts of air (0.5% by volume).

25 To monitor landfill gas odour, and to demonstrate compliance with condition 24, the consent holder shall monitor surface gas emissions on areas of intermediate or final cover on at least a monthly frequency, and the results of each survey shall be reported monthly to Waikato Regional Council within four weeks of completion. If after 1 year of undertaking the monitoring required by this condition, or at any stage thereafter, the results indicate the effectiveness of management actions in minimising odour, and there has been a general absence of verified objectionable odour, the frequency of monitoring may be reduced to quarterly with the approval of the Waikato Regional Council.

The surface emissions survey shall be undertaken in accordance with the UK Environment Agency Guidance on monitoring landfill gas surface emissions, LFTGN07 v2 2010, or an alternative methodology approved in writing by the Waikato Regional Council. As guidance, the method requires the site to be surveyed on an approximately 25 m by 25 m grid, using a flame ionisation detector (FID) to measure the concentration of methane and a GPS to record the monitoring locations. At each 25 m transect the surveyor shall pause to take a concentration reading, the sampling probe is placed less than 5 cm above the ground surface and fitted with a cup attachment designed by the instrument manufacturer to minimise the influence of wind gusts.

Where methane is detected at more than 500 parts per million of air during any surface gas survey, the consent holder shall investigate the reasons why, and shall take remedial action to reduce the landfill gas emissions. The remedial actions taken by the consent holder shall be reported to the Waikato Regional Council monthly.

26 The consent holder shall undertake a walk-over survey of the landfill surface at no less than weekly intervals. The purpose of the walk-over survey is (but not limited to) to check for odours (particularly around penetrations), to monitor the effectiveness of the landfill gas management system, cracks in the landfill surface, gas bubbles, integrity of pipework, and areas of vegetation damage and the state of cover. The outcome of each walk-over survey shall be recorded. The consent holder shall investigate the cause of any significant odour detected during each survey, and shall remedy any faults located. A record of each walk-over survey and any remediation carried out shall be reported to the Waikato Regional Council monthly.

The weekly walk-over survey shall be undertaken in accordance with the UK Environment Agency Guidance LFTGN07 v2 2010 for visual landfill surface inspections, or alternative methodology approved in writing by the Waikato Regional Council.

27 The consent holder shall ensure that the maximum working area within the landfill is no larger than 900 square metres at any time, unless otherwise approved in writing by the Waikato Regional Council.

28 The consent holder shall carry out monthly odour surveys around the boundary of the site, particularly those sections of the boundary that are between the landfill and residential houses, including the communities at Pukemiro and Glen Afton, and shall record whether any landfill odour is discernible or not at each location. For the first three (3) years, these boundary surveys shall be undertaken by a person independent of the landfill, and who is familiar with the German VDI standard 3490 and the 0 to 6 intensity scale. The outcome of each monthly odour survey shall be recorded. The consent holder shall investigate the cause of any significant odour detected during each survey, and shall remedy any faults located. A record of each monthly odour survey and any remediation carried out shall be reported to the Waikato Regional Council monthly.

29 Notwithstanding the requirement under the Landfill Management Plan that, in general, malodorous wastes will not be accepted into the landfill, if malodorous wastes are accepted this shall be only by prior arrangement, and be placed in the landfill between the hours of 10am to 3pm only, Monday to Friday, and covered immediately upon placement.

Note: For the purposes of this condition malodorous wastes means wastes which, in the opinon of Council, have an odour that is significantly in excess of that associated with typical

MSW refuse.

30 Once filling reaches a height of RL 150m the consent holder shall commission a report by a person with recognised expertise in municipal solid waste landfill odour management, which assesses the extent of landfill odour and the effectiveness of site controls to minimise odour.

The review of odour performance and the adequacy of controls prior to the commencement of further cells should include:

(i) The adequacy of consent conditions;

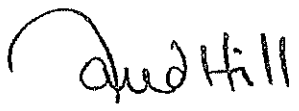
(ii) The adequacy of management and operational procedures, as set out in the landfill management plan; and

(iii) The odour complaints history.

The consent holder shall not proceed to place waste in the landfill above RL 150m until any recommended improvements to management and operational procedures to avoid odour effects have been implemented to the satisfaction of the Waikato Regional Council.

Dated at Hamilton this ***20th*** *day of* ***November*** *2013*

For and on behalf of the
Waikato Regional Council



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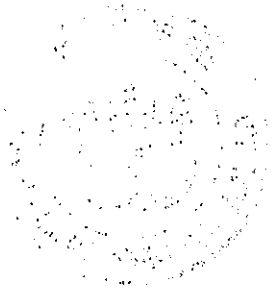

Advice notes

1. *In accordance with section 125 RMA, this consent shall lapse five (5) years after the date on which it was granted unless it has been given effect to before the end of that period.*
2. *Where a resource consent has been issued in relation to any type of construction (e.g. dam, bridge, jetty) this consent does not constitute authority to build and it may be necessary to apply for a Building Consent from the relevant territorial authority.*
3. *This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.*
4. *This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).*
5. *The consent holder may apply to change the conditions of the resource consent under s.127 RMA.*
6. *The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.*
7. *Note that pursuant to s333 of the RMA 1991, enforcement officers may at all reasonable times go onto the property that is the subject of this consent, for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.*
8. *If you intend to replace this consent upon its expiry, please note that an application for a new consent made at least 6 months prior to this consent's expiry gives you the right to continue exercising this consent after it expires in the event that your application is not processed prior to this consent's expiry.*

Attachment (1) (d)

Resource Consent Certificate

Resource Consent: 125469

File Number: 60 52 63F

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Puke Coal Limited
Box C5
RD 1
Glen Afton
Huntly 3771

(hereinafter referred to as the Consent Holder)

Consent Type: Discharge permit

Consent Subtype: Discharge to land

Activity authorised: Discharge leachate to ground from a municipal solid waste landfill

Location: 1058 Rotowaro Rd - Glen Afton

Spatial Reference: NZTM 1780721 E 5835043 N

Consent Duration: This consent will commence on the date of decision notification, unless otherwise stated in the consent's conditions, and expire on 1/11/48

Subject to the conditions overleaf:

1 This consent is subject to the general conditions listed in Schedule 4. Where there may be differences or apparent conflict between those general conditions and the conditions below, the conditions below shall prevail.

2 The discharge of leachate onto, or into land refers only to those areas of the site identified in the designs included in the document "Puke Coal Limited MSW Landfill Application: URS Response to Tonkin & Taylor Review Comments (2 August 2013), dated 22/8/13, WRCdoc#2819674.

Leachate Management and Monitoring

3 The consent holder shall monitor leachate levels above the liner within each stage on a monthly basis. The monitoring locations shall be selected to coincide, as far as practicable and as approved by the Waikato Regional Council, with areas of maximum predicted leachate level.

The consent holder shall submit details of the proposed means of monitoring leachate levels in each successive stage in accordance with this condition to the Waikato Regional Council for approval prior to any refuse being accepted in that stage. The recorded leachate levels shall be reported to the Waikato Regional Council by 1 September each year unless the leachate head on top of the liner at the required monitoring locations exceeds 300mm, in which event the Council shall be notified within 2 weeks of the levels being recorded.

4 Subject to condition 6, the landfill design and operation shall be such as to ensure, as far as practicable, that any leachate head on top of the liner does not exceed 300 mm. Where the landfill design includes a liner protection layer over the HDPE component of the landfill liner, the depth of leachate on top of the liner protection layer shall be no more than 300 mm.

5 The consent holder shall maintain the primary and secondary leachate collection pipes in a fully operable and free-flowing condition at all times. The locations and designs of the leachate level monitoring points shall be approved in writing by the Waikato Regional Council prior to the construction of each stage commencing.

6 In the event that the levels of leachate exceed the limits specified in condition 4, the consent holder shall monitor daily the level of leachate at the point of leachate abstraction at the low point of the base liner. The leachate level at this location shall not exceed 2.5 metres above the top of the HDPE liner at its lowest level, at any time, and the average leachate level shall not exceed 1.5 metres for more than four weeks at any one time or more than 10 percent of the time in any one year. For any other areas of the landfill liner, the leachate level shall not exceed 2 metres above the top of the HDPE component of the landfill liner at its lowest level in any location, at any time, and the average leachate level shall not exceed 0.5 metres for more than four weeks at any one time or more than 10 percent of the time in any one year.

Records of the daily leachate levels shall be recorded, and that information shall be reported to Waikato Regional Council on a monthly basis until such time as leachate levels have returned to the limits specified in Condition 4.

Note: *The intent of this condition is to ensure that the storage of leachate within the landfill is only a contingency event and not normal practice.*

7 The consent holder shall record daily the quantity of leachate collected, the amount remaining in storage in the leachate storage tanks, and the amount removed from the site. The leachate quantity and leachate level data shall be forwarded to the Waikato Regional Council monthly.

8 The consent holder shall place the leachate storage tanks within a bunded area specifically designed to hold and contain any leachate spillage or leaks. The type of storage tanks shall be reviewed by the Independent Peer Review Panel and approved in writing by the Waikato Regional Council before receiving any leachate.

9 The consent holder shall characterise the leachate within the landfill leachate storage tanks to the satisfaction of the Waikato Regional Council. To this end, the consent holder shall, unless otherwise directed in writing by the Waikato Regional Council, monitor the leachate three monthly for the following parameters:

pH (field and laboratory)
conductivity (field and laboratory)
alkalinity
ammoniacal nitrogen
BOD_5
COD
chloride
total zinc

and shall monitor the leachate six monthly for the following parameters:

sulphate
nitrate nitrogen
total kjeldahl nitrogen
calcium
magnesium
sodium
potassium
total iron
total lead
total copper
total boron
total aluminium
total cadmium
total chromium
total manganese
total nickel
total cobalt
total arsenic
unfiltered organochlorine pesticides

and shall monitor the leachate annually for the following parameters:

unfiltered volatile organic compounds
unfiltered semi-volatile organic compounds
unfiltered pentachlorophenol
unfiltered polychlorinated biphenyls

Sampling shall be undertaken using appropriate protocols.

The results of such characterisation shall be reported to the Waikato Regional Council within two months of sampling, unless otherwise agreed in writing by the Waikato Regional Council.

Groundwater quality monitoring

10 Following the installation of any monitoring bore the consent holder shall conduct tests to assess the hydraulic conductivity of the in-situ ground conditions. The results of these tests shall be forwarded to the Waikato Regional Council with the first set of monitoring results from the bore.

11 At least twelve months prior to refuse being accepted at the landfill, the consent holder shall install no less than 10 groundwater boreholes, the purpose of which is to monitor groundwater quality and the effect of any potential leachate loss. At least 2 of the monitoring bores shall be upgradient, at least 2 lateral to Stage 1, and at least 6 downgradient. Existing monitoring bores at the site may be included in the monitoring bore network.

The location, depth and design of these boreholes shall be approved in writing by the Waikato Regional Council prior to installation.

12 Prior to the commencement of the placement of refuse at the site, the consent holder shall establish the baseline water quality in all groundwater monitoring boreholes required under condition 11.

To this end, the consent holder shall, unless otherwise directed in writing by the Waikato Regional Council, monitor for water level every month, and as follows:

List A - shall be monitored every month until twelve sampling rounds have been achieved:

List A

pH (field and laboratory)
Conductivity (field and laboratory)
Ammoniacal nitrogen
Chloride.

List B - shall be monitored every three months until four (4) sampling rounds have been achieved:

List B

pH (field and laboratory)
conductivity (field and laboratory)
suspended solids
alkalinity
sulphate
bicarbonate
ammoniacal nitrogen
nitrate nitrogen
total kjeldahl nitrogen
dissolved reactive phosphorus
BOD_5
COD
calcium
magnesium
sodium
potassium
chloride
soluble iron
soluble boron
soluble zinc
soluble aluminium
soluble cadmium
soluble chromium
soluble lead
soluble manganese
soluble nickel
soluble cobalt
soluble copper
soluble arsenic

unfiltered volatile organic compounds
unfiltered semi-volatile organic compounds
unfiltered pentachlorophenol
unfiltered organochlorine pesticides
unfiltered polychlorinated biphenyls

Sampling shall be undertaken using appropriate groundwater bore sampling protocols.

The results of such characterisation shall be reported to the Waikato Regional Council within two months of sampling, unless otherwise agreed in writing by the Waikato Regional Council.

Note: *The purpose of the above monitoring is to establish the baseline water quality for individual parameters in the groundwater boreholes.*

13 Once refuse placement has started, the consent holder shall characterise the groundwater quality of the all monitoring bores required under conditions 11 and 14(ii), throughout the duration of the consent to the satisfaction of the Waikato Regional Council.

To this end the consent holder shall monitor the groundwater boreholes every three months, for the List A parameters, and annually (generally in April to coincide with the summer low water level) for the List B parameters.

Sampling shall be undertaken using appropriate groundwater bore sampling protocols.

The results of such characterisation shall be reported to the Waikato Regional Council within two months of sampling, unless otherwise agreed in writing by the Waikato Regional Council.

14 If the levels of any of the leachate parameters in the monitoring suite in condition 13 of this consent show an increased value (increase or decrease in the case of pH) in excess of three standard deviations from the mean for that parameter, using the mean established by the monitoring rounds described in condition 12 above (defined as a "statistically significant departure") then:

(i) any non-compliance shall be reported to the Waikato Regional Council within 48 hours, upon receipt of the results, and

(ii) that monitoring well shall be monitored for all List B parameters twice during the following two months. If after these two monitoring rounds any parameter is still showing a statistically significant departure from the baseline water quality mean, the following shall occur:

(a) The Waikato Regional Council may review whether the consent holder is required to install additional groundwater monitoring boreholes. The review shall consider both advective and density flow mechanisms. If these additional groundwater boreholes are required by the Waikato Regional Council, the design and location of these wells shall be forwarded to the Waikato Regional Council for acceptance in writing prior to construction commencing. Groundwater sampled from these additional boreholes shall be analysed for all the parameters listed in List B of this consent on a six monthly basis unless otherwise advised by the Waikato Regional Council.

(b) The consent holder shall report to the Waikato Regional Council on the environmental importance of the event. This reporting should include reference to any current water quality standards/guidelines accepted for use in New Zealand at that time. The consent holder shall also report on any remedial or contingency measures proposed. This report shall be forwarded to the Waikato

Regional Council within one month of the results being received from the additional monitoring referred to above in this condition.

(iii) If, after consultation with the consent holder, the Waikato Regional Council deems that remedial measures are required to be undertaken to address contamination of groundwater and surface water, the consent holder shall undertake the remedial works to the satisfaction of the Waikato Regional Council.

15 The consent holder shall provide a suitable monitoring point at each of the groundwater diversion sub-drain outlets. After the sub-drains are constructed and prior to placing any refuse in the landfill, the consent holder shall monitor the drain outlets for List A parameters on at least twelve occasions, and List B parameters on at least four occasions, at weekly intervals.

After commencement of landfilling the consent holder shall monitor continuously for conductivity, and monthly for list A parameters, boron, alkalinity and sulphate.

In the event that any monitoring demonstrates a variance in excess of 3 standard deviations from the mean for that parameter (defined as a statistically significant departure), then the following action shall be taken:

- The consent holder shall notify Waikato Regional Council within 48 hours and in writing within one week, and
- The drain shall be monitored for all List B parameters immediately and again after 1 month lapsed time
- The consent holder shall within one month, present a report to the Waikato Regional Council detailing:
- Reason(s) for the presence of leachate in the groundwater drain, and measures to be taken to prevent leachate from accessing those drains
- Estimated volumes of leachate discharging
- Proposed measures to minimise leachate discharges to the environment.

The mean and standard deviation for conductivity shall be calculated from the previous year's monitoring. For the balance of the List A parameters, the mean and standard deviation shall be calculated from at least twelve rounds of monitoring carried out prior to the placement of refuse.

16 In the event that any springs or seeps occur laterally or downgradient of the landfill, but upgradient of the Treatment Lake, the consent holder shall monitor on a 3 monthly basis for the following:

- conductivity
- alkalinity
- chloride
- flow rate

Monitoring results shall be reported to the Waikato Regional Council within one month of sampling, unless otherwise agreed in writing by the Waikato Regional Council.

A summary of the spring inspections over the year shall be incorporated in the Annual Report, required by condition31 of Schedule 4.

Note: *The purpose of this monitoring is to determine whether any of the springs or seeps are contaminated with landfill leachate.*

17 The consent holder shall prepare a Contingency Plan that outlines actions that will be undertaken by the consent holder in the event that any leachate contamination is detected in

the subdrain discharge monitored under condition 15 or any springs/seeps discharges monitored under condition 16.

The plan shall be submitted to the Waikato Regional Council for acceptance in writing at least three months prior to the deposition of refuse at the site.

18 In the event of any long term groundwater monitoring borehole being destroyed, the consent holder shall replace it with a new borehole in the same general location screened over a similar depth interval.

19 All water quality sample analyses required shall be undertaken in accordance with the methods detailed in the most recent edition of "*Standard Methods For The Examination Of Water And Waste Water*", by A.P.H.A. and A.W.W.A. and W.E.F. or any subsequent updated version of that document, or any other method approved in advance by the Waikato Regional Council.

20 Where any neighbouring property presents reasonable evidence that its bore or roof-sourced drinking water has been contaminated by MSW landfill activities to an extent that it is unpotable, then the consent holder shall provide potable water to that neighbour, or provide treatment to the water (for instance a filter to remove pathogens) to make the water potable.

Dated at Hamilton this ***20th*** *day of* ***November*** *2013*

For and on behalf of the
Waikato Regional Council

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Advice notes

1. *In accordance with section 125 RMA, this consent shall lapse five (5) years after the date on which it was granted unless it has been given effect to before the end of that period.*
2. *Where a resource consent has been issued in relation to any type of construction (e.g. dam, bridge, jetty) this consent does not constitute authority to build and it may be necessary to apply for a Building Consent from the relevant territorial authority.*
3. *This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.*
4. *This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).*
5. *The consent holder may apply to change the conditions of the resource consent under s.127 RMA.*
6. *The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.*
7. *Note that pursuant to s333 of the RMA 1991, enforcement officers may at all reasonable times go onto the property that is the subject of this consent, for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.*
8. *If you intend to replace this consent upon its expiry, please note that an application for a new consent made at least 6 months prior to this consent's expiry gives you the right to continue exercising this consent after it expires in the event that your application is not processed prior to this consent's expiry.*

Resource Consent

Certificate

Resource Consent Number: 102303

File Number: 60 52 63F

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

21/12/05

~~Enviro Landfill Trust~~
~~C/O P O Box 9137~~
~~HAMILTON~~

~~Tracker Demolition Landfill Ltd~~
~~Box C5~~
~~R D 1~~
~~HUNTLY~~

~~Box 5~~
~~RD 1~~
~~Glen Afton~~
~~Huntly 3771~~

Puke Coal Lir ~~The John Campbell Family Trust~~
~~C M Box C5~~
~~R D 1~~
~~HUNTLY 2191~~ ~~30/10/03~~

30/09/2011

(hereinafter referred to as the Consent Holder)

Consent type:	Water permit
Consent subtype:	Surface water take
Activity authorised:	To take up to 450 cubic metres per day of surface water for the purpose of dust control and for a truck wheel wash .
Location:	Rotowaro Rd – Pukemiro
Map Reference:	NZMS 260 S14:913-971
Consent duration:	Granted for a period expiring on 30 September 2017

Subject to the conditions overleaf: 4/2/11

CONDITIONS

1. The exercise of this consent shall be generally in accordance with the principles contained within the application for this resource consent and within the documents:

   (a) "Cleanfill and Construction and Demolition Landfill, Coal Mining, and Associated Activities Assessment of Environmental Effects", dated September 2000, prepared by Tonkin and Taylor Ltd (Waikato Regional Council document Number 717921, 703606 and 871624).

   (b) "Enviro Landfill Trust – Proposed Disposal of End of Life Tyres, Rotowaro Road, Glen Afton, Assessment of Environmental Effects (Revisions 1a)" dated February 2007 (Waikato Regional Council Document Number 1288755).

   (c) The additional information provided in support of the tyre disposal application which is contained in Waikato Regional Council Document Number 1288627

   And

   - "Assessment of Environmental Effects Extension of Coal Mining Enviro Landfill Trust Pukemiro, Glen Afton" dated July 2010, prepared by MWA solutions, (the **"AEE"**) with particular reference to Drawing Number 5 Revision B.
   - "Enviro Landfill Trust Site Management Plan Extension of Coal Mining", prepared by MWA solutions (the **"Appendices"**).
   - Section 92 response letters and attachments from MWA solutions as follows:
     a) Letter dated 7 September 2010 from MWA solutions to Bloxam Burnett & Olliver with attached letter from Mark T Mitchell dated 21 September plus appendices.
     b) Letter dated 11 October 2010 from MWA solutions to Bloxam Burnett & Olliver.
     c) Letter dated 18 October 2010 from Mark T Mitchell to Bloxam Burnett & Olliver (the **"section 92 responses");** and

   The s127 application to change consent 102303, received 29/5/13, doc#2702889

   For the avoidance of doubt and in relation to the extended coal mining authorisations sought in 2010, the 2010 AEE, Appendices and Section 92 responses shall take primacy for those activities over the original applications lodged for the pre-existing consented activities.

2. A pulsed water measuring device shall record the quantity of water taken on a cumulative basis. The device shall have a reliable calibration to water flow and shall be maintained to an accuracy of +/- 5%. Evidence of the water measuring device's calibration to an accuracy of +/- 5% and as built plans of the installed water measuring device shall be provided to the Waikato Regional Council prior to the exercise of this consent.

3. Calibration of the water measuring device(s) shall be undertaken by the consent holder at the written request of the Waikato Regional Council. The calibration shall be undertaken by an independent qualified person and evidence documenting the calibration shall be forwarded to the Waikato Regional Council within one month of the calibration being completed.

4. The intakes shall be screened with a mesh aperture size not exceeding 1.5 millimetres by 1.5 millimetres (or 1.5 millimetre diameter holes).

5. The consent holder shall maintain records of the following:
   (1) the date on which water was taken;
   (2) the volume of water taken;
   (3) the number of hours over which water was taken;
   (4) the rate at which water was taken;

(5) on days when no water is taken, these records must specify the volume of water taken as zero cubic metres.

Within the first 10 working days of each month, these records for the preceding month shall be forwarded to the Waikato Regional Council via email in agreed electronic format.

6. The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulations made under section 360 of the Resource Management Act.

Tangata Whenua Consultation

7. No later than the 31st of March 2011 and every year thereafter the consent holder shall provide a written invitation to Waahi Whaanui Trust to attend a meeting to discuss matters relating to the implementation, monitoring and reporting of this consent. The invitation shall give not less than 4 weeks notice of the intended meeting date. All monitoring reports submitted by the consent holder pursuant to this consent in the twelve month period immediately preceding each meeting shall be made available at the meeting.

8. Unless Waahi Whaanui Trust advises otherwise to the Council, in writing, the consent holder shall keep minutes of all meetings held pursuant to condition 7 and provide them to Waahi Whaanui Trust and the Council no later than two weeks following that meeting.

4/2/11

Dated at Hamilton this 20th day of November 2013

For and on behalf of the
Waikato Regional Council

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Attachment (1) (e)

Resource Consent

Certificate

Resource Consent Number: 102303

File Number: 60 52 63F

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

21/12/05

~~Enviro Landfill Trust~~
~~C/O P O Box 9137~~
~~HAMILTON~~
~~Box 5~~
~~RD 1~~
~~Glen Afton~~
~~Huntly 3771~~

~~Tracker Demolition Landfill Ltd~~
~~Box C5~~
~~R D 1~~
~~HUNTLY~~

Puke Coal Lim ~~The John Campbell Family Trust~~
~~C M Box C5~~
~~R D 1~~
~~HUNTLY 2191~~ ~~30/10/03~~

30/09/2011

(hereinafter referred to as the Consent Holder)

Consent type:	Water permit
Consent subtype:	Surface water take
Activity authorised:	To take up to 450 cubic metres per day of surface water for the purpose of dust control and for a truck wheel wash .
Location:	Rotowaro Rd – Pukemiro
Map Reference:	NZMS 260 S14:913-971
Consent duration:	Granted for a period expiring on 30 September 2017

Subject to the conditions overleaf: 4/2/11

CONDITIONS

1. The exercise of this consent shall be generally in accordance with the principles contained within the application for this resource consent and within the documents:

   (a) "Cleanfill and Construction and Demolition Landfill, Coal Mining, and Associated Activities Assessment of Environmental Effects", dated September 2000, prepared by Tonkin and Taylor Ltd (Waikato Regional Council document Number 717921, 703606 and 871624).

   (b) "Enviro Landfill Trust – Proposed Disposal of End of Life Tyres, Rotowaro Road, Glen Afton, Assessment of Environmental Effects (Revisions 1a)" dated February 2007 (Waikato Regional Council Document Number 1288755).

   (c) The additional information provided in support of the tyre disposal application which is contained in Waikato Regional Council Document Number 1288627

   And

   - "Assessment of Environmental Effects Extension of Coal Mining Enviro Landfill Trust Pukemiro, Glen Afton" dated July 2010, prepared by MWA solutions, (the **"AEE"**) with particular reference to Drawing Number 5 Revision B.
   - "Enviro Landfill Trust Site Management Plan Extension of Coal Mining", prepared by MWA solutions (the **"Appendices"**).
   - Section 92 response letters and attachments from MWA solutions as follows:
     a) Letter dated 7 September 2010 from MWA solutions to Bloxam Burnett & Olliver with attached letter from Mark T Mitchell dated 21 September plus appendices.
     b) Letter dated 11 October 2010 from MWA solutions to Bloxam Burnett & Olliver.
     c) Letter dated 18 October 2010 from Mark T Mitchell to Bloxam Burnett & Olliver. (the **"section 92 responses"**); and

   The s127 application to change consent 102303, received 29/5/13, doc#2702889

   For the avoidance of doubt and in relation to the extended coal mining authorisations sought in 2010, the 2010 AEE, Appendices and Section 92 responses shall take primacy for those activities over the original applications lodged for the pre-existing consented activities.

2. A pulsed water measuring device shall record the quantity of water taken on a cumulative basis. The device shall have a reliable calibration to water flow and shall be maintained to an accuracy of +/- 5%. Evidence of the water measuring device's calibration to an accuracy of +/- 5% and as built plans of the installed water measuring device shall be provided to the Waikato Regional Council prior to the exercise of this consent.

3. Calibration of the water measuring device(s) shall be undertaken by the consent holder at the written request of the Waikato Regional Council. The calibration shall be undertaken by an independent qualified person and evidence documenting the calibration shall be forwarded to the Waikato Regional Council within one month of the calibration being completed.

4. The intakes shall be screened with a mesh aperture size not exceeding 1.5 millimetres by 1.5 millimetres (or 1.5 millimetre diameter holes).

5. The consent holder shall maintain records of the following:
   (1) the date on which water was taken;
   (2) the volume of water taken;
   (3) the number of hours over which water was taken;
   (4) the rate at which water was taken;

(5) on days when no water is taken, these records must specify the volume of water taken as zero cubic metres.

Within the first 10 working days of each month, these records for the preceding month shall be forwarded to the Waikato Regional Council via email in agreed electronic format.

6. The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulations made under section 360 of the Resource Management Act.

Tangata Whenua Consultation

7. No later than the 31st of March 2011 and every year thereafter the consent holder shall provide a written invitation to Waahi Whaanui Trust to attend a meeting to discuss matters relating to the implementation, monitoring and reporting of this consent. The invitation shall give not less than 4 weeks notice of the intended meeting date. All monitoring reports submitted by the consent holder pursuant to this consent in the twelve month period immediately preceding each meeting shall be made available at the meeting.

8. Unless Waahi Whaanui Trust advises otherwise to the Council, in writing, the consent holder shall keep minutes of all meetings held pursuant to condition 7 and provide them to Waahi Whaanui Trust and the Council no later than two weeks following that meeting.

JBF 4/2/11

Dated at Hamilton this **20th** *day of* **November** *2013*

For and on behalf of the
Waikato Regional Council

David Hill

.....

Attachment (1) (f)

Resource Consent Certificate

Resource Consent Number: 104244

File Number: 60 52 63E

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Puke Coal Limited, RD 1, Huntly 3771

(hereinafter referred to as the Consent Holder)

Consent type:	Discharge permit
Consent subtype:	Discharge to water
Activity authorised:	To discharge up to 3.1 cubic metres per second of stormwater and 70 cubic metres per day of treated wastewater to an unnamed tributary of the Waitawhara Stream.
Location:	Rotowaro Rd – Huntly
Map Reference:	NZMS 260 S14:913-971
Consent duration:	Granted for a period expiring on 30 September 2017

Subject to the conditions overleaf:
General Conditions

1. This consent is subject to the general conditions listed in Schedule 1.

2. No stormwater coming into contact with MSW landfill refuse, construction and demolition waste or end of life tyres shall be discharged as site stormwater, but shall be considered as leachate.

3. As far as practicable, the consent holder shall ensure that surface water from upstream of the MSW landfill and C&D landfill and tyre storage / disposal bunkers is diverted away from areas of the landfills and tyre storage / disposal bunkers that have not been rehabilitated in accordance with the general conditions listed in Schedule 1 and shall be discharged downstream of the site as clean stormwater.

4. Any earthworks or structures installed for the diversion and discharge of stormwater shall be designed to manage a 10% AEP (Annual Exceedence Probability) flood event and pass a 1% AEP flood event. Secondary flowpaths shall be away from areas of the landfills and tyre disposal bunkers where it may come into contact with construction and demolition waste or end of life tyres.

Compliance Point

5. The point of compliance for discharges authorised by this consent shall be surface water monitoring location TT8, as shown on Figure 13 of the Appendices (as defined in Schedule 1 of this consent).

Contingency Plan & Compliance Limits

6. All discharges authorised by this consent shall comply with the compliance limits specified in Schedule 3 at the compliance point referred to in condition 5.

7. Prior to the deposition of any waste materials in the MSW landfill or the tyre storage and disposal bunkers, the consent holder shall prepare and submit, to the Waikato Regional Council for written approval, a revised version of the Contingency Plan for the site which details the measures to be undertaken should the trigger levels or compliance limits specified in Schedule 3 of this consent be exceeded. The purpose of this review is to take account of any potential changes in the concentration of contaminants in the discharge as a result of the establishment of the tyre disposal operation or the MSW landfill. As a minimum, the revised Contingency Plan shall include actions to be undertaken to protect water quality;

   (i) In the event that a trigger level is exceeded,

   (ii) In the event that a compliance limit is exceeded, and

   (iii) In the event of a fire at the landfill.

8. Prior to the first exercise of consent 103079, the consent holder shall retain a suitably qualified independent expert approved by Waikato Regional Council to complete a site specified ecological (flora and fauna composition) and water quality assessment of the Waitawhara Stream and its tributary in the vicinity of the site, to the satisfaction of the Waikato Regional Council.

   The objectives of this assessment are to determine an appropriate environmental baseline against which any potential effects of the activity can be monitored and to determine a long term compliance limit for boron. The assessment shall consider the potential uses of the Waitawhara Stream and include both chemical and biological effects on flora and fauna.

Within 18 months of the commencement of this consent, the consent holder shall submit a report detailing the results of the site specific assessment and which also recommends a long-term compliance limit for boron. Should this report recommend that the interim compliance limit for boron be changed, the consent holder may apply to Waikato Regional Council to change that limit pursuant to section 127 of RMA.

9. The suspended solids concentration of the discharge shall at no time be greater than 100 grams per cubic metre and shall not cause the suspended solids concentration in the Waitawhara Stream to increase by more than 10 percent (between the upstream and downstream sampling sites).

10. The pH of the discharge shall be within the range 6.5 - 9.0 pH units.

11. There shall be no discharge of oil or grease or production of persistent foam as a result of the site stormwater discharge.

Sludge Removal

12. The consent holder shall remove settled sludges from all parts of the treatment system on a sufficiently regular basis to ensure the efficiency of stormwater and leachate treatment systems. Sludges shall be disposed of offsite to a suitably authorised landfill unless the consent holder provides a TCLP analysis of the sludge for metals that demonstrates that the sludge is suitable for disposal within the lined landfill area on the site and the Waikato Regional Council approves in writing such disposal.

Monitoring and Reporting

13. The consent holder shall, to the satisfaction of the Waikato Regional Council, monitor surface water quality at the sampling locations TT7, TT9, TT8, TT10, TT3, TT11, as shown in Figure 13 of the Appendices (as defined in Schedule 1 of this consent) and from TT11 as well as the three locations where surface water enters piped drainage systems at the north-eastern and south-eastern extents of the MSW Landfill as well as the temporary stormwater channel at the base of the MSW Landfill (with the final locations to be agreed in writing by the Waikato Regional Council).

    To this end, with the exception of dissolved oxygen, pH and conductivity which shall be monitored on the first working day of each week from the date of first exercise of consent 103079 at locations TT8 and TT3, the consent holder shall monitor surface water at locations TT8, TT3 and TT11 (until such time as the C&D waste is completely removed and placed in the MSW Landfill and the consent holder has advised the Waikato Regional Council in writing that this has taken place and locations TT10, TT7 and TT9, (to determine the effect on the Waitawhara Stream), on the 15th of January, April, July and October of each year following the date of first exercise of consent 103079 (or the next working day), for the following parameters:

    (i) estimate of flow
    (ii) pH (field and laboratory);
    (iii) electrical conductivity (field and laboratory);
    (iv) suspended solids;
    (v) sodium;
    (vi) potassium;
    (vii) calcium;
    (viii) magnesium;
    (ix) alkalinity;
    (x) chloride;
    (XI) sulphate;

(xii) ammoniacal nitrogen;
(xiii) nitrate nitrogen;
(xiv) total organic carbon;
(xv) total boron;
(xvi) total iron;
(xvii) total manganese;
(xviii) total aluminium;
(xix) total nickel;
(xx) total arsenic;
(xxi) total copper;
(xxii) total zinc;
(xxiii) total chromium;
(xxiv) total lead.

The consent holder shall also undertake a programme of sampling of aquatic ecology as approved by Waikato Regional Council, annually from the date of exercise of consent 103079.

The consent holder shall forward the results of the analyses to the Waikato Regional Council within one month of sampling. If any of the monitoring required by this condition produces results which exceed the limits in Schedule 3 the consent holder shall immediately notify the Regional Council in writing within 24 hours of receiving the result, and implement the contingency measures required by the approved Contingency Plan referred to in condition 7.

14. The consent holder shall install continuous (every sixty seconds) monitoring instruments for pH and conductivity at sampling location TT11 (until such time as the C&D waste is completely removed and placed in the MSW Landfill and the consent holder has advised the Waikato Regional Council in writing that this has taken place) the outlet of the leachate storage tank bunded area and the temporary stormwater channel at the base of the landfill.

The consent holder shall install automatic alarms that signal to the landfill manager and the landfill engineer if the continuous monitoring indicates the presence of MSW landfill leachate.

The consent holder shall forward the results of continuous monitoring to the Waikato Regional Council every month, or upon request at any reasonable time.

15. The consent holder shall monitor the quality of stormwater at location TFB, at the quarterly frequencies specified in condition 13, for the following parameters:

(i) estimate of flow;
(ii) pH;
(iii) electrical conductivity;
(iv) suspended solids;
(v) total boron;
(vi) total iron.

The consent holder shall forward the results of the analyses to the Waikato Regional Council within one month of sampling.

After a minimum of two years of sampling, the consent holder may apply to Waikato Regional Council to amend the above set of sampling parameters and the sampling frequency pursuant to section 127 of the RMA.

Reporting

16. Annually by 1 September each year the consent holder shall, submit a report to the Waikato Regional Council that details and analyses the results of all surface water and ecological monitoring undertaken at the site. The report shall be prepared by an appropriately qualified and independent expert approved by the Waikato Regional Council and shall propose additional and/or changes to remediation works or monitoring requirements that the independent expert considers necessary in light of the monitoring results.

Review

17. The Waikato Regional Council, within the three month period following receipt of any report submitted pursuant to condition 8 or condition 16 of this consent, serve notice on the consent holder under section 128 of the Resource Management Act 1991, of its intention to review the conditions of this resource consent to require additional works and/or monitoring to be undertaken to reduce and/or monitor the effect of discharges on surface water and aquatic ecology of the Waitawhara Stream and/or to amend Schedule 3 which specifies compliance limits and trigger levels for the wastewater discharge.

Costs relating to the above review shall be borne by the consent holder.

Dated at Hamilton this 20th day of November 2013

For and on behalf of the
Waikato Regional Council

.....

104244

Schedule 1

The granting of consents (103079, 102304, 101858, 104192, 104193, and 104244) is subject to the following conditions, which shall apply to each individual consent:

General

1. Except as otherwise provided for by subsequent conditions of this consent, all works and operations shall be undertaken generally in accordance with the principles contained within the following documents or any subsequent amendments to these documents that are agreed in writing by the Waikato Regional Council:

   - "Cleanfill and Construction and Demolition Landfill, Coal Mining, and Associated Activities Assessment of Environmental Effects", dated September 2000, prepared by Tonkin and Taylor Ltd, (the **"AEE"**).

   - Cleanfill and Construction and Demolition Landfill, Coal Mining, and Associated Activities Assessment of Environmental Effects, Appendices", dated September 2000, prepared by Tonkin and Taylor Ltd, (the **"Appendices"**).

   - Section 92 Request for Further Information – Environment Waikato, dated August 2001, prepared by Tonkin and Taylor Ltd, (the **"Section 92 Report"**).

   - Enviro Landfill Trust – Proposed Disposal of End of Life Tyres, Rotowaro Road, Glen Afton, Assessment of Environmental Effects (Revisions 1a)" dated February 2007 (Waikato Regional Council Document Number 1288755).

   - The additional information provided in support of the tyre disposal application which is contained in Waikato Regional Council Document Number 1288627.

Design Details

2. All earthworks and sediment control measures shall be constructed and carried out in accordance with Waikato Regional Council Technical Publication No. 1995/8 "Design Guidelines for Earthworks, Tracking and Crossings", or any subsequent update of, or replacement for, that document.

3. Detailed designs for the following works shall be forwarded to the Waikato Regional Council and approved in writing prior to these works commencing; in particular, detailed designs of the leachate collection and treatment system, the stormwater system, final landform and quality assurance procedures for the construction of the C&D landfill liner, C&D landfill cap, temporary tyre storage/processing area and tyre disposal bunkers are required. All works shall be carried out in accordance with the designs, as accepted by the Waikato Regional Council.

4. The consent holder shall provide an Engineers certificate to verify that the works have been undertaken in accordance with good engineering practice and as-built drawings for the designs prepared pursuant to condition 3 above shall be forwarded to the Waikato Regional Council within one month of the completion of the works.

5. All investigations, design, supervision of construction, monitoring and after-care shall be undertaken by suitably qualified personnel experienced in such works, or works of a similar nature, and approved by the Waikato Regional Council.

Management Plans

6. The consent holder shall prepare and submit to the Waikato Regional Council for approval, Site Management Plans that detail the procedures to be put into place to operate the C&D landfill, coal mine and tyre disposal operation.

   To this end, the following Site Management Plans shall be prepared:

   (i) C&D Landfill Operations Plan;
   (ii) Coal Mining Operations Plan;
   (iii) Stormwater Control and Leachate Treatment System Plan;
   (iv) Rehabilitation and Aftercare Planning and Operations Plan;
   (v) End of Life Tyre Receival, Storage and Disposal Operations Plan

   Each Plan shall address those matters outlined in the relevant AEE, the Appendices, the Section 92 Report, the Joint Staff Report for the C&D landfill and coal mine, the Supplementary Staff Report and the Second Supplementary Environment Waikato Staff Report for the C&D landfill and coal mine, and the Joint staff report for the end of Life Tyre Disposal operation, and shall set out the requirements to achieve compliance with the relevant conditions of this consent.

   The C&D Landfill Operations Plan and End of Life Tyre Receival, Storage and Disposal Operations Plan shall also include a specific section devoted to fire management issues. This section of the C&D Landfill Operations Plan shall, as a minimum, address those matters raised in the report entitled *"Supplementary Technical Report for Review of Consent Applications for a Cleanfill and Construction and Demolition Waste Landfill and Coal Mining Activities by Tracker Demolition Landfill Ltd"* dated 16 April 2002 and prepared by URS NZ Ltd, and shall detail measures that will be put in place to manage the discharge of wastewater in the event of a fire at the site or if off-site disposal of the wastewater is required.

   This consent may not be exercised until the consent holder has received written approval from the Waikato Regional Council of its acceptance of the C&D Landfill Operations Plan, the Coal Mining Operations Plan and the Stormwater Control and Leachate Treatment System Plan.

   The consent holder shall not operate the temporary tyre storage / disposal area and permanent disposal bunkers, until the consent holder has received written approval from the Waikato Regional Council of its acceptance of the End of Life Tyre Receival, Storage and Disposal Operations Plan.

   The Rehabilitation and Aftercare Planning and Operations Plan shall be submitted for approval within three months of commencement of this consent. The Plan shall not be inconsistent with the Rehabilitation Management Plan prepared in accordance with condition 28 of the land use consent granted by the Waikato District Council for this operation.

   The consent holder shall exercise this consent in accordance with the Site Management Plans accepted by the Waikato Regional Council and shall ensure that the Plans are consistent with any Plans required pursuant to the land use consents for the site.

7. All staff engaged in the operation of the C&D landfill shall receive training to ensure familiarity with the requirements of this resource consent and the Management Plans prepared pursuant to condition 6 above.

8. At least once in every two year period, the consent holder shall review, and update as necessary, the Management Plans prepared pursuant to condition 6 above, to ensure that management practices result in compliance with the conditions of these consents. Any amendments to the Plans shall only be made with the written approval of the Waikato Regional Council.

Peer Review

9. The consent holder shall engage, at its own cost, an Independent Peer Review Panel to review the design, construction, operation and maintenance of the C&D landfill and tyre disposal facility and to assess whether or not the work is undertaken by appropriately qualified personnel in accordance with good practice.

The Independent Peer Review Panel shall consist of more than one person and shall be:
(i) Independent of the planning design, construction, management and monitoring of the site;
(ii) Experienced in C&D landfill design, construction and management;
(iii) Experienced in C&D landfill geotechnical, groundwater and surface water aspects;
(iv) Recognised by their peers as having such experience, knowledge and skill;
(v) Approved in writing by the Waikato Regional Council.

The Independent Peer Review Panel shall, as a minimum, report to the Waikato Regional Council by 30 September each year on the following matters:

(i) Management and monitoring plans;
(ii) Site preparation, including hydrogeological and geotechnical issues;
(iii) C&D Landfill and tyre disposal bunker liner and leachate collection system design and construction (including quality assurance measures) and use of onsite materials;
(iv) Water control, including stormwater and leachate management and treatment;
(v) Waste acceptance;
(vi) Cover material used on both the C&D landfill and tyre disposal bunkers;
(vii) Monitoring, modelling and records;
(viii) Rehabilitation.

In addition the Peer Review Panel shall assess and report on all final and detailed designs and Management Plans prepared pursuant to condition 6 above, prior to these being forwarded to the Waikato Regional Council for acceptance in writing and prior to works commencing.

Copies of all reports shall be sent to the consent holder and the Waikato Regional Council.

Bond

10.1 Prior to the exercise of this consent, the consent holder shall provide and maintain in favour of the Waikato Regional Council and the Waikato District Council (the "Councils") a bond to:

(i) Secure compliance with all the conditions of this consent and to enable any adverse effects on the environment resulting from the consent holder's activities, and not authorised by a resource consent, to be avoided, remedied or mitigated;
(ii) Secure the completion of rehabilitation and closure in accordance with the Rehabilitation and Aftercare Plan required pursuant to condition 6 of this consent;
(iii) Ensure the performance of any monitoring obligations of the consent holder under this consent;
(iv) Enable the Councils to undertake monitoring and management of the site until completion of closure of the site.

("*Completion of closure*" means when the Councils deem that resource consents for the site are no longer required, and that there is no reasonable risk of the site causing further adverse impacts on the environment).

This bond shall apply only to the C&D landfill, coal mining and end-of-life tyre landfill.

10.1A Prior to the construction and operation of the temporary tyre storage / disposal area and permanent disposal bunkers, the consent holder shall provide and maintain in favour of the Waikato Regional Council and the Waikato District Council (the "Councils") a bond to:

(i) Secure compliance with all the conditions of this consent and to enable any adverse effects on the environment resulting from the consent holder's activities, and not authorised by a resource consent, to be avoided, remedied or mitigated;
(ii) Secure the completion of rehabilitation and closure in accordance with the Rehabilitation and Aftercare Plan required pursuant to condition 6 of this consent;
(iii) Secure the completion of the tyre bunkering operation proposed, management of any tyre fires that need to be controlled by external agencies, and rehabilitation of the site on completion of the tyre disposal operation;
(iv) Ensure the performance of any monitoring obligations of the consent holder under this consent;
(v) Enable the Councils to undertake monitoring and management of the site until completion of closure of the site.

("*Completion of closure*" means when the Councils deem that resource consents for the site are no longer required, and that there is no reasonable risk of the site causing further adverse impacts on the environment).

10.2 The quantum of the bond shall be sufficient to cover the general items listed in condition 10.1, and in particular:

(i) the estimated costs (including any contingency necessary) of rehabilitation and closure of the landfill, coal mine and tyre disposal operation in accordance with the conditions of the Councils' consents;
(ii) the estimated costs (including any contingency necessary) of monitoring and management of the site and its effects following closure or abandonment, for as long as may be required to comply with conditions of Councils' consents. This shall include the ongoing operation and maintenance of stormwater and leachate management systems;
(iii) the estimated costs of prevention and/or remediation of any adverse effect on the environment that may arise from the landfill, coal mine and tyre disposal bunkers; and

(iv) any further sum which the Councils consider necessary for monitoring any adverse effect on the environment that may arise from the landfill, coal mine and tyre disposal bunkers including monitoring anything which is done to avoid, remedy, or mitigate an adverse effect.

10.3 The bond shall be in a form approved by the Councils and shall, subject to these conditions, be on the terms and conditions required by the Councils.

10.4 Unless the bond is a cash bond, the performance of all the conditions of the bond shall be guaranteed by a guarantor acceptable to the Councils. The guarantor shall bind itself to pay for the carrying out and completion of any condition of the bond in the event of any default of the consent holder, or any occurrence of any adverse environmental effect requiring remedy.

10.5 Prior to the first exercise of this consent, the consent holder shall provide a report to the Councils that proposes a bond quantum, calculated in accordance with the criteria specified in conditions 10.1 and 10.2. The consent holder shall annually review this report, amend as necessary, and forward the revised report to the Councils at least two months prior to the anniversary date of the bond.

10.5A Prior to the commencement of the tyre disposal operation, the consent holder shall provide a report to the Councils that proposes a bond quantum, calculated in accordance with the criteria specified in conditions 10.1A and 10.2. The consent holder shall annually review this report, amend as necessary, and forward the revised report to the Councils at least two months prior to the anniversary date of the bond

10.6 The amount of the bond shall be fixed by the Councils prior to the exercise of this consent, and every anniversary thereafter. The consent holder shall be advised in writing at least one month prior to the review date of the amount of the rehabilitation bond.

10.6A The amount of the bond referred to in condition 10.5A of this consent shall be fixed by the Councils prior to the commencement of the tyre disposal operation, and the full bond covering all activities on site shall be fixed by the Councils every anniversary thereafter. The consent holder shall be advised in writing at least one month prior to the review date of the amount of the rehabilitation bond

10.7 Should the consent holder not agree with the amount of the bond fixed by the Councils then the matter shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996. Arbitration shall be commenced by written notice by the consent holder to the Councils advising that the amount of the rehabilitation bond is disputed, such notice to be given by the consent holder within two weeks of notification of the amount of the rehabilitation bond. If the parties cannot agree upon an arbitrator within a week of receiving the notice from the consent holder, then an arbitrator shall be appointed by the President of the Institution of Professional Engineers of New Zealand. Such arbitrator shall give an award in writing within 30 days after his or her appointment, unless the consent holder and the Councils agree that time shall be extended. The parties shall bear their own costs in connection with the arbitration. In all other respects, the provisions of the Arbitration Act 1996 shall apply. Pending the outcome of that arbitration, and subject to condition 10.7, the existing bond shall continue in force. That sum shall be adjusted in accordance with the arbitration determination.

10 If the decision of the arbitrator is not made available by the 30th day referred to above, then the amount of the bond shall be the sum fixed by the Councils, until such time as the arbitrator does make his/her decision. At that stage the new amount shall apply. The consent holder shall not place further refuse at the site if the variation of the existing bond or new bond is not provided in accordance with this condition.

10.9 If, on annual review, the amount of the bond to be provided by the consent holder is greater than the sum secured by the current bond, then within one month of the consent holder being given written notice of the new amount to be secured by the bond, the consent holder and the guarantor shall execute and lodge with the Councils a variation of the existing bond or a new bond for the amount fixed on review by the Councils. No further waste shall be placed at the site if the variation of the existing bond or new bond is not provided in accordance with this condition.

10.10 The bond may be varied, cancelled, or renewed at any time by agreement between the consent holder and the Councils.

10.11 The bond shall be released on completion of closure of the site, as defined above.

10.12 All costs relating to the bond shall be paid by the consent holder.

Site Access

11. The consent holder shall, at all reasonable times, provide access to the site for officers or agents of the Councils and its equipment for the purposes of monitoring compliance with the conditions of this consent. The consent holder shall allow these people to undertake excavations, surveys, sampling and other activities necessary to determine compliance and to assess the effects of the activities.

Sampling

12. All sample analyses shall be undertaken in accordance with the methods detailed in the latest edition of "Standard Methods For The Examination Of Water And Waste Water", by A.P.H.A. and A.W.W.A. and W.E.F. and any subsequent updates; or any other method approved in advance by the Waikato Regional Council.

    Sampling shall be undertaken under appropriate protocols, including on-site filtration and preservation of samples for soluble metals analysis, to the satisfaction of the Waikato Regional Council.

    Sampling shall be undertaken by individuals who are suitably experienced and trained and who are approved by the Waikato Regional Council.

Reviews

13. The Waikato Regional Council may, within six months of the implementation of any relevant new government regulations, policies, standards or guidelines with respect to air or water quality, construction and demolition waste landfills or cleanfills, and end of life tyre disposal facilities, serve notice on the consent holder under section 128 of the Resource Management Act, of its intention to review the conditions of this consent, for the purpose of identifying if any changes are required to this consent to take account of these new matters.

    Costs relating to the above review shall be borne by the consent holder.

14. The Waikato Regional Council may, within the three month period beginning 30 September 2004 and every third year thereafter, serve notice on the consent holder under section 128 of the Resource Management Act 1991, of its intention to review the conditions of this resource consent for the following purposes:

    (i) to review the effectiveness of the conditions of this resource consent in avoiding, or mitigating, any adverse effects on the environment from the operation and, if considered appropriate by the Waikato Regional Council, to avoid, remedy or mitigate such effects by way of further or amended conditions; and/or
    (ii) if necessary and appropriate, to require the holder of this resource consent to adopt the best practicable option to remove, or reduce, adverse effects on the environment resulting from the exercise of this consent; and/or
    (iii) review the monitoring requirements in light of the results obtained from monitoring in preceding years, and/or
    (iv) if necessary and appropriate, to review the appropriateness of conditions, in the event that new national regulations, standards, policies, or guidelines are developed that are relevant to this consent, and/or
    (v) if necessary and appropriate, to review the appropriateness of conditions, in the event of new policies, objectives or rules in a Waikato Regional Council Plan or Policy Statement.

    Costs associated with any review shall be borne by the consent holder.

Administration

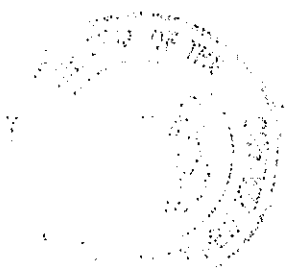
15. The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulations made under section 360 of the Resource Management Act.

Schedule 3 – Compliance Limits and Trigger Levels

Analyte	Units	Trigger Level	Compliance Level
pH		6.5 > x > 9.0	6.5 > x > 9.0
Dissolved Oxygen		98< x <105%	98< x <105%
Electrical Conductivity (lake inlet)	mS/m	200	
Electrical Conductivity	mS/m	63	02/05/08 70
Total Alkalinity	mg $CaCo_3$/l		200
Total Suspended Solids	mg/l	70	100[1]
Ammoniacal Nitrogen	mg N/l	0.63	0.9
Nitrate Nitrogen	mg/l	0.49	0.7
Chloride	mg/l	50	230
Sulphate	mg/l	210	300
Total Sulphide	mg/l	0.0014	0.002
Calcium	mg/l	105	150
Magnesium	mg/l	17.5	25
Potassium	mg/l	10.5	15
Sodium	mg/l	35	50
Total Dissolved Solids	mg/l	315	450
Total Aluminium	mg/l	0.0385	0.055
Total Arsenic	mg/l	0.0168	0.024
Total Boron	mg/l	1.75	2.5
Hexavalent Chromium[2]	mg/l	0.00805	0.0115
Chromium III	mg/l	0.0826	0.118
Total Copper[2]	mg/l	0.00378	0.0054
Total Iron[2]	mg/l	0.7	1
Total Lead[2]	mg/l	0.0175	0.025
Total Manganese	mg/l	1.33	1.9
Total Nickel[2]	mg/l	0.0294	0.042
Total Zinc[2]	mg/l	0.02142	0.0306

Notes:

1. 100 mg/l or <10% change in suspended solids concentration in receiving water
2. Copper, Chromium, Lead, Nickel and Zinc to be corrected for Hardness. Figures shown are at hardness of 146.6 mg/l. Limits to be corrected for hardness and compared to ANZECC (2000) guidelines based on 95% protection level
3. All concentrations expressed as totals.



Attachment (1) (g)

Waikato District Council Resource Consent

Pursuant to sections 104, 104B and 108 of the Resource Management Act 1991 the Waikato District Council grants land use consent to establish and operate a municipal solid waste landfill at 1158 Rotowaro Road, Glen Afton, on Lot 6 DP 427961 compromised in Certificate of Title 510520, as a Discretionary Activity, subject to the following conditions:

General

1. The municipal solid waste landfill construction and operation shall be carried out in general accordance with the following information provided for the resource consent application (LUC 0238/12), received by Waikato District Council on 29 October 2012, and further information, except as amended at the hearing in October 2013, or by the conditions of this consent.

   a) the application document titled "Assessment of Environmental Effects – Puke Coal Limited Proposed Municipal Solid Waste Landfill", prepared by URS New Zealand Ltd, dated 19 October 2012;

   b) further information to Waikato District Council – letter and attachments from URS New Zealand Ltd, dated 15 February 2013 and Hegley Acoustics Consultants letter dated 5 September 2013 titled Puke Coal Compliance Monitoring;

   c) further information to Waikato Regional Council – letter and attachments from URS New Zealand Ltd, dated 21 February 2013 and 22 August 2013; and

   d) the following concept drawings:

DRAWING NO.	DRAWING TITLE	REVISION
42045680-C-000	Cover Sheet	-
42045680-C-001	Site Plan	B
42045680-C-002	General Arrangement and Surface Water Controls	C
42045680-C-003	Leachate Drainage	B
42045680-C-004	Groundwater Management	B
42045680-C-005	Finished Surface Plan	B
42045680-C-006	Finished Surface and Gas Collection	B
42045680-C-007	Landfill Long Section	C
42045680-C-008	Landfill Eastern Cross Section	B
42045680-C-009	Landfill Western Cross Section	B
42045680-C-010	Leachate Sump and Toe Bund Detail Prior to Closure of Last Cell	B
42045680-C-011	Leachate Sump and Toe Bund Detail at Closure	B
42045680-C-012	Northern and Southern Highwall Liner Detail	C
42045680-C-013	Treatment of Existing Mine Adits on Southern Highwall	C
42045680-C-014	Connection of Upper Liner Bench to Lower Liner Bench	C
42045680-C-015	Inferred Fault Treatment Detail	D
42045680-C-016	Typical Details	C

DRAWING NO.	DRAWING TITLE	REVISION
42045680-C-017	Gas Well Detail	C
42045680-C-018	Longsection (West-East) Site Geology Proposed landfill	C
42045680-C-019	Treatment of Mine Workings Under Landfill Footprint	C
42045680-C-020	Borehole Location Plan	A
42045680-C-021	Hydrogeology	A
42045680-C-022	Engineering Geology Site Observation Map	B
42045680-C-023	Existing Site Geology Plan	C
Figure 8	Landscape Mitigation Plan prepared by Boffa Miskell	A

The municipal solid waste landfill development includes all activities proposed under the application including vegetation removal, overburden removal, construction of ancillary buildings and site rehabilitation.

2. The consent holder shall notify the Waikato District Council's Team Leader Monitoring in writing a minimum of ten working days prior to its intention to commence the following:

   a) the lodgement of any initial management plans required to be submitted to Council under the conditions of this consent;

   b) the commencement of activities associated with site preparations for the construction of the landfill liner; and

   c) the commencement of the receipt of municipal solid waste.

3. The placement of municipal solid waste material authorised by this consent shall not occur outside of the area demonstrated in Drawing 42045680-C-002, Revision C, titled General Arrangement and Surface Water Controls.

4. As a result of the placement of refuse and cover material at this site the final contours of the filled area, following settlement, shall not exceed those shown in Drawings 42045680-C-007, Revision C titled Landfill Long Section, 42045680-C-008 Revision B titled Landfill Eastern Cross Section, and 42045680-C-009 Revision B titled Landfill Western Cross Section.

5. The volume of refuse authorised by this consent is that volume contained within the design void of up to 8 million cubic metres, including the HDPE liner and the final cap, within the contours shown on Plan 42045680-C-005, Revision B, titled Finished Surface Plan, and as measured at the time of completion of the cap.

Site Management

6. The consent holder shall retain an appropriately experienced Landfill Manager to supervise the operation of the landfill operations on the site. The consent holder must inform the Team Leader Monitoring of the Landfill Manager's name, experience and how they can be contacted. Should that person(s) change during the term of this resource consent, the consent holder must immediately inform the Waikato District Council's Team Leader Monitoring and shall also give written notice to the Waikato District Council's Team Leader Monitoring of the new Landfill Manager's name, experience and how they can be contacted.

For the purpose of this condition an appropriately experienced Landfill Manager means a person who holds at minimum NZCE (or equivalent qualification) and has prior work experience which includes:

- Heavy earthworks construction
- Solid waste handling
- Environmental/consent compliance experience

7. The consent holder shall ensure all key staff and contractors are made aware of the conditions of this consent and the detail of the approved Landfill Management and Operations Plan.

8. The site shall not be open to the general public for the receipt of municipal solid waste (i.e. no private vehicles). All deliveries shall be via approved contractors.

9. The total load of municipal solid waste transported to the site (including construction and demolition waste) shall be no more than 250,000 cubic metres of municipal solid waste per annum (compacted volume). The consent holder shall demonstrate compliance with this condition in the Annual Performance Report.

10. The consent holder shall erect and maintain 20 kph maximum speed signs along the site access road and internal roads and ensure that these vehicle speed restrictions are complied with at all times.

11. Prior to commencement of any works associated with the municipal solid waste landfill, the consent holder must install a weather monitoring station. The weather monitoring station shall be positioned as far away from existing buildings and trees as possible, with the final location confirmed in the Landfill Management and Operations Plan. The weather monitoring station shall be retained throughout the duration of the operational phase of the landfill.

12. No signs are permitted as part of this proposal unless provided for as a permitted activity within the District Plan or a separate resource consent application with all necessary information is submitted and approved.

13. The consent holder shall provide Waikato District Council's Team Leader Monitoring with a site plan showing the location, dimensions and elevations of the gas treatment station prior to the lodgement of a building consent application for that building.

Landfill Management and Operations Plan

14. Three months prior to the commencement of any works associated with this consent (including site preparation works), and following the steps outlined in conditions 17-19, the consent holder shall prepare and submit to the Waikato District Council's Team Leader Monitoring a Landfill Management and Operations Plan.

The objective of the Landfill Management and Operations Plan is to combine and collate all management practices and procedures to be implemented on the site to achieve compliance

with the conditions of this consent, and to minimise the potential for nuisances and adverse effects from the operation of the landfill.

15. The Landfill Management and Operations Plan must be approved in writing by the Waikato District Council's General Manager Customer Support, acting in a technical certification capacity, prior to the commencement of any works associated with this consent (including site preparation works). For the avoidance of doubt, the Waikato District Council is only required to review and approve those matters in the Landfill Management and Operations Plan which are within their jurisdiction, which shall exclude those matters specified in condition 16(g), 16(h), 16(i), 16(k), 16(u) and 16(w).

16. To achieve the objective specified in condition 14, the Landfill Management and Operations Plan shall include details on management, operations and monitoring procedures, and methodologies and contingency plans necessary to comply with the conditions of this consent. It shall include, but not be limited to, the following matters:
    a) the Landfill Works Design and Management Plan required by condition 25;
    b) procedures associated with the acceptance of municipal solid waste and prohibited wastes;
    c) landfill design parameters;
    d) details of landfill operations (i.e. earthworks, site preparation, landfill liner and side wall construction, procedures for the control of the site and tipping face, the placement of waste, waste compaction, and daily cover (including procedures for the selection of cover materials or alternatively a prescriptive list of materials that will be used, and the thickness of daily cover material), water control, landfill gas control and leachate control);
    e) the sequential staging of the landfill and closure of the landfill;
    f) procedures for mapping the location of special waste burials
    g) management procedures to identify the presence (or otherwise) of flooded mine workings that may be exposed as well as assessment and implementation of appropriate dewatering and disposal procedures if required
    h) management procedures for the control of perched leachate layers
    i) routine maintenance procedures to be undertaken on the leachate and gas collection systems, including procedures for cleaning the leachate collection pipes
    j) an erosion and sediment control plan
    k) management and monitoring practices for the collection and disposal of leachate and landfill gas;
    l) management and monitoring procedures for the control of odour;
    m) management and mitigation practices, including monitoring, to control nuisance effects from noise, birds, vermin and litter;
    n) management and monitoring procedures for the control of dust;
    o) the specific location of the continuous dust monitor for measuring dust emissions and the specific location of the weather monitoring station.
    p) procedures for the management of traffic volumes in accordance with the conditions of this consent including methods of monitoring and reporting compliance with the conditions of this consent;
    q) parking, manoeuvring and loading arrangements to ensure queuing and loading space is available and to avoid any effects from parking or queuing at the entrance;
    r) procedures and methods to control the speed limit on the site;
    s) driver behaviour guidelines to be included in contracts involving regular hauliers over one month duration to cover debris, covered loads and safety briefing.

t) procedures to manage any debris spillage onto Rotowaro Road caused by trucks exiting or entering the site;
u) spill prevention and response protocols;
v) an accidental discovery protocol;
w) specific management procedures for the control and management of any landfill fires, including details of the firefighting equipment to be kept on site to extinguish fire of a general or chemical nature; ~~and~~
x) at a minimum, requirements for installation of primary litter fences for each stage of the landfill to a minimum height of 6m on the predominant downwind side as fixed location fences. The LMP shall also include requirement for the use of secondary litter fences to a minimum height of 2m, being mobile fences and able to be relocated as required to provide a litter barrier as close as practicable downwind of the active working face.
y) other actions necessary to comply with the requirements of this resource consent.

17. Prior to the Landfill Management and Operations Plan being submitted to Waikato District Council for its certification, the Landfill Management and Operations Plan and subsequent reviews of the Landfill Management and Operations Plan (pursuant to condition 22), shall be certified by a suitably experienced and qualified expert to confirm that activities undertaken in accordance with the Landfill Management and Operations Plan will achieve compliance with the relevant consent conditions.

18. Prior to the certification by the suitably experienced and qualified expert under condition 17 the consent holder shall provide to the expert a record of input and feedback from the Community Liaison Group, established in condition 71 for the expert to consider.

19. Prior to submitting the Landfill Management and Operations Plan in accordance with condition 14, and prior to the review, and any amendments to the Landfill Management and Operations Plan in accordance with condition 22, the consent holder shall provide an opportunity for the Community Liaison Group to:

a) provide written input and feedback into the initial preparation or any subsequent review of the Plan. In the event that no written input and feedback is received from the Community Liaison Group within 15 working days of their receipt of the initial draft of the Landfill Management and Operations Plan or within 10 working days in relation to any subsequent review of the Landfill Management and Operations Plan then the consent holder shall be deemed to have complied with this condition; and

b) review and discuss the results of all monitoring and reports as required by the conditions of this consent.

20. In the event that no Community Liaison Group is formed pursuant to conditions 71 and 72 or that group is disestablished as provided for in condition 79 then the obligations of condition 19 shall not apply.

21. Subject to any other conditions of this consent, the consent holder must exercise this consent in accordance with the approved Landfill Management and Operations Plan. Any subsequent changes to the Landfill Management and Operations Plan must only be made with the written approval of the Waikato District Council's Team Leader Monitoring. In the event of conflict or inconsistency between the conditions of this consent and the provisions of the Landfill Management and Operations Plan, then the conditions of this consent shall prevail.

22. The Landfill Management and Operations Plan shall be reviewed and updated at least once every two (2) years by the consent holder and may be amended accordingly to take into account any changes required. The review of the Landfill Management and Operations Plan shall assess whether management practices are resulting in compliance with the conditions of this consent, and whether the objective of the Landfill Management and Operations Plan is being met through the actions and methods undertaken. The review shall result in amendments that are necessary to better achieve the objective of the Landfill Management and Operations Plan.

Advisory Note: *Where changes are made to the Landfill Management and Operations Plan Council's preference is that these are done as track changes or highlighted and version control is added to the document. An electronic version of the amended Landfill Management and Operations Plan shall also be provided to Council's Team Leader Monitoring.*

23. A copy of the latest version of the Landfill Management and Operations Plan shall be kept on site at all times and all key personnel shall be made aware of the Landfill Management and Operations Plan's contents.

24. Where changes to the Landfill Management and Operations Plan are made the copy held on site shall be updated within five (5) working days of any amendments being accepted by the Waikato District Council. The Landfill Management and Operations Plan shall be produced (electronic or paper form) without unreasonable delay upon request by an authorised officer of the Waikato District Council.

Landfill Works Design and Management Plan

25. The consent holder shall prepare a Landfill Works Design and Management Plan, that shall include, but not be limited to:

    a) the staging of works planned and the description of works in each stage including site plans;

    b) an outline of the engineering controls, supervision and certification that will be applied to each stage;

    c) an outline of the methods of determining site specific design parameters and stability analysis design procedures that will be used for each stage;

    d) details of silt control, methods of controlling surface erosion and stormwater management; and

    e) details of the certification that will be adopted for design, design review, construction and construction review; and

    f) details of any consent conditions from the Regional Council consents that relate to the overall design, design certification and management of the landfill.

26. The consent holder shall engage chartered professional engineers with geotechnical and civil engineering experience to direct and supervise any additional investigations, undertake design, design peer review, construction supervision and to certify the construction of all works in accordance with the procedures set out in the Landfill Works Design and Management Plan. The design peer review resources engaged by the consent holder shall be agreed in writing by the Waikato District Council's General Manager Customer Support.

27. The consent holder shall provide the Waikato District Council's General Manager Customer Support with a copy of the Erosion and Sediment Control Plan approved by the Waikato Regional Council within one (1) week of this approval being provided by the Waikato Regional Council.

Stages

28. (a) Prior to the commencement of each stage development, the consent holder shall submit a concept Rehabilitation and Aftercare Plan to the Waikato District Council for acceptance in writing. That Plan shall describe the key aspects of closure and rehabilitation that will be implemented should the site close permanently at the completion of the proposed stage.

(b) At least twelve months prior to landfill operations ceasing on this site, the consent holder shall provide to Waikato District Council a detailed Rehabilitation and Aftercare Plan, for acceptance in writing. This plan shall be prepared after consultation with the owners of the site, the owners of adjacent properties and the Waikato Regional Council. The plan shall address at least the following issues:

(i) land ownership and liability for contamination
(ii) responsibilities for aftercare
(iii) final contours
(iv) capping and re-vegetation
(v) maintenance of the landfill cap to prevent cracking and ponding of stormwater
(vi) management of land uses to prevent contamination of surface water runoff by sediment or nutrients
(vii) operation and maintenance of leachate management systems
(viii) operation and maintenance of landfill gas management systems
(ix) ongoing monitoring, including groundwater, surface water, landfill gas and site capping; and
(x) funding of aftercare.

Following acceptance of the proposal, the consent holder shall implement the Plan to the satisfaction of the Waikato District Council. For the avoidance of doubt, the WDC is only required to approve those matters in the concept and detailed Rehabilitation and Aftercare Plans which are within its jurisdiction, which shall exclude those matters specified in Condition 28(b)(v), (vi), (vii), (viii) and (ix)) for both the concept and detailed plan.

29. Unless written approval is obtained from all property owners and occupiers between 164-238 Hangapipi Road, ~~Prior to the use of Cell A and Cell F as shown on Drawing 42045680-C-002 Rev:C,~~ the consent holder shall first complete Cells B and C (or Cells G and H if an initial counter-clockwise rotation is commenced) prior to the use of Cell A and Cell F as shown on Drawing 42045680-C-002 Rev:C. If during the 24 months prior to completion of ~~filling and capping of those cells~~ Cells B and Cell C (or Cells G and H if an initial counter-clockwise rotation is commenced) ~~monitoring of~~ odour monitoring at the boundary with properties ~~on~~

between 164-238 Hangapipi Road (whose written approval has not been given) validates incidents of objectionable or offensive odour arising directly ~~from or~~ from activities in association with Cells B and C (or Cells G and H if an initial counter-clockwise rotation is commenced) ~~those cells in the 24 months prior to completing the last of the two respective cells (ie either C or H)~~, then Cells A and F shall not be used for MSW landfilling unless or until written approval is obtained for so doing from all ~~affected~~ property owners and occupiers between 164-238 ~~on~~ Hangapipi Road and is provided to Waikato District Council. For the avoidance of doubt nothing in this condition shall prevent the consent holder from using Cells A and F:

(i) for the placement of construction and demolition waste; and

(ii) for the placement of MSW waste if the written approval of all property owners and occupiers between 164-238 Hangapipi Road is provided to the Waikato District Council; or

(iii) for the placement of MSW waste once Cells B and C (or Cells G and H) have been completed without any validated odour incidents at the boundary with properties between 164-238 on Hangapipi Road (whose written approval has not been given) during the 24 months prior to completion of Cell C (or Cell H if an initial counter-clockwise rotation is commenced).

Advice Notes

1. For the purposes of assessing compliance with this condition, the Waikato District Council shall take advice from Waikato Regional Council as to whether there has been any validated odour incidents during the 24 months prior to completion of Cell C (or Cell H if an initial counter-clockwise rotation is commenced) at the boundary with properties between 164-238 Hangapipi Road (whose written approval has not been given).

2. For the purposes of this condition "completion of a Cell" or to "complete a Cell" means that it has been filled to such an extent that no further MSW can be placed in the Cell but may not include final cover.

~~30. Prior to commencing Cell D (or Cell I if an initial counter-clockwise rotation is commenced) Council may review this consent under section 128 of the RMA for the purpose of setting additional conditions if validated odour complaints have occurred as indicated under condition 29.~~

Hours of Operation

31. The hours of operation for the municipal solid waste landfill shall be as follows:

    a) Access to the landfill shall be permitted only between the hours of 7.00am and 4.00pm Monday to Saturday inclusive.

    b) On site works at the landfill shall be permitted only between the hours of 7.00am and 6.00pm Monday to Saturday inclusive.

32. No activities associated with the municipal solid waste landfill shall be undertaken outside of these hours, or on Sundays or Public Holidays.

Noise

33. All activities which are the subject of this consent, including transport of refuse on the site, placement of refuse on the site, covering of refuse and stripping or placement of top soil, in combination with other authorised activities on the site, shall be conducted to ensure that noise levels at or within the notional boundary of any dwelling (not owned by the Applicant) does not exceed the following limits:

    - Monday – Friday, 7.00am to 7.00pm and Saturday's 7.00am to 6.00pm 50dBA L_{10}; and
    - At all other times, including Public Holidays, 40dBA L_{10}

    Advisory Note: *The notional boundary is defined as a line 20m from the facade of any rural dwelling or the legal boundary where this is closer to the dwelling.*

    Noise levels must be measured and assessed in accordance with the requirements of New Zealand Standards NZS 6801: 1991 Measurement of Sound and NZS 6802: 1991 Assessment of Environmental Sound

34. The consent holder shall at twelve monthly intervals during the first two years of municipal solid waste landfill operation and thereafter when directed in writing by the Council:

    a) undertake noise measurements to demonstrate compliance with condition 33 in accordance with New Zealand Standards 6801: 1991 Measurement of Sound and NZS 6802: 1991 Assessment of Environmental Sound;

    b) all work shall be carried out by a suitable approved acoustician agreed between Council and the consent holder; and

    c) all noise measurements shall be provided to Council within one month of its collection.

35. Where the monitoring of noise levels under condition 34 demonstrates a non-compliance with condition 33, the consent holder shall take action within five (5) working days to ensure that compliance is achieved and shall report to the Waikato District Council's Enforcement Officer for the site, the mitigation actions implemented. Following implementation of such mitigation measures a further noise level survey shall be undertaken confirming that compliance with the relevant criteria has been achieved, and those results forwarded to the Waikato District Council's Enforcement Officer for the site.

36. All equipment used on site for landfill operations shall be well maintained and fitted with effective mufflers at all times.

37. The consent holder shall adopt the best practicable option to ensure that the emission of noise does not exceed a reasonable level.

Roading and Transport

38. The consent holder shall ensure that heavy vehicle movements associated with all consented activities on the site shall not use Hangapipi Road or Glen Road. All access to the site is restricted to the existing single access of Rotowaro Road.

39. The consent holder shall ensure that heavy vehicle movements to and from the site in association with all consented activities on the site shall not exceed 164 heavy vehicles per

day (i.e. 82 heavy vehicles entering and 82 leaving per day) averaged over a month but excluding Sundays and public holidays.

A heavy vehicle is a vehicle with a gross vehicle mass of more than 3500 kg (Land Transport Rule: Heavy Vehicles 2004, Published: 01 Apr 2005).

This condition supersedes any previous limits on combined total vehicle movements set out in any previous resource consents for the site provided that the daily maximum and maximum quantities for each consented activity, as set out in the following table, shall not be exceeded and provided that the combined total of movements from all activities on the site does not exceed 164 heavy vehicles per day.

Consent Number	Activity	Maximum Heavy Vehicles	Maximum Quantities
690004	Original coal mining area, cleanfill, C&D landfill and importation of soil	62 vehicles movements per day averaged over a month	1850 tonnes coal per year and 130,000 cubic metres cleanfill per year
LUC046/05	End of life tyre disposal	6 vehicle movements per day	43,632 cubic metres in total
LUC0087/10.01	Coal mine expansion	60 movement per day	600 tonnes per day, or 180,000 tonnes per calendar year with an overall total extraction volume of 70,000 tonnes
LUC0238/12	MSW landfill	84 movements per day	8 million cubic metres

40. Prior to the commencement of this consent the consent holder shall **either**:

a) undertake localised pavement widening at two bends east of the site along Rotowaro Road as set out in Section 5.2 of the Traffic Impact Review prepared by Gray Matter Ltd;

or

b) pay the Waikato District Council $10,000, being a contribution to such works.

41. If the consent holder proposes to undertake the works set out in condition 40(a) then the design details of these works shall be submitted to Waikato District Council's Roading Planning Manager for approval prior to any works taking place. The works shall also be completed to the satisfaction of the Waikato District Council's Roading Planning Manager.

42. Prior to the commencement of this consent, the consent holder shall undertake vegetation control (i.e. trim/cut back the existing grass/vegetation) to the south-western side of Rotowaro Road affecting visibility from the site's entrances, to ensure an unimpeded sight distance is achieved. This works shall be completed to the satisfaction of the Waikato District Council's General Team Leader Monitoring.

43. The consent holder shall undertake regular vegetation control (i.e. trim/cut back the existing vegetation) to the south-western side of Rotowaro Road to ensure an unimpeded sight distance is achieved. This works shall be completed to the satisfaction of the Waikato District Council's General Team Leader Monitoring.

44. The consent holder shall ensure that a minimum of 25 spaces and sufficient onsite parking areas are provided for all vehicles associated the overall operation of the whole site. The parking and circulation areas shall be well maintained to an all-weather surface, which is not required to be a sealed surface, to the satisfaction of the Waikato District Council's General Team Leader Monitoring.

45. The consent holder shall maintain the site access roading in a sound condition to the satisfaction of the Waikato District Council's General Roading Planning Manager.

46. The consent holder shall ensure that any debris spillage onto Rotowaro Road or the right of way as a result of all consented activities on the site shall be removed as soon as practical to the satisfaction of Waikato District Council's Team Leader Monitoring.

47. The consent holder shall maintain records of all heavy vehicle movements transporting material to and from the site and associated quantities (in cubic metres and tonnes) and submit those records on a twelve monthly basis. The report format shall be approved by the Waikato District Council's Team Leader Monitoring prior to the first report being submitted.

48. The consent holder shall pay the Waikato District Council a heavy vehicle impact fee of $0.08~~11~~ per tonne of municipal solid waste transported to the landfill site. The following additional provisions shall apply:

    a) the heavy vehicle impact fee shall be paid annually in arrears commencing one year from the commencement of this consent; and

    b) the cost per tonne may be reviewed annually and updated for cost increases against the Construction Cost Index or similar to allow for inflation.

Dust and Odour

49. The consent holder shall ensure that no particulate matter or odour resulting from activities authorised by this resource consent causes an objectionable or offensive effect beyond the boundary of the site (Lot 6 DP 427961) and other sites owned by the consent holder.

    Advisory Note: *For the purpose of this condition, the Waikato District Council will consider an effect that is objectionable or offensive to have occurred if any appropriately experienced officer of the Waikato District Council deems so after having regard to:*

    i. The frequency, intensity, duration, amount, effect and location of the suspended or deposited particulate matter or odour; and/or

    ii. Receipt of complaints from neighbours or the public; and/or

    iii. Relevant written advice or a report from an Environmental Health Officer of a territorial authority or health authority.

50. Should an emission of particulate matter or odour occur that has an objectionable or offensive effect, the consent holder shall inform the Waikato District Council within 48 hours

of the incident and provide a written report to the Waikato District Council within five days of being notified of the incident. The report shall specify:

a) the cause or likely cause of the event and any factors that influenced its severity;

b) the nature and timing of any measures implemented by the consent holder to avoid, remedy or mitigate any adverse effects; and

c) the steps to be taken in the future to prevent recurrence of similar events.

51. The consent holder shall ensure that refuse is covered at the end of each working day with a minimum 150mm of soil or other material approved in the Landfill Management and Operations Plan.

Landscaping

52. The consent holder shall maintain the existing vegetation along the site's boundary with 204 Hangapipi Road (Lot 1 DP 16173) and 214 Hangapipi Road (Lot 2 DP 16173) until such time as the landfill is remediated and is closed. Any gaps in this existing planting that occur over the life of the landfill shall be filled and any dead, diseased or damaged planting is to be replaced as soon as practicable with appropriate screening plants.

53. Prior to earthworks on the municipal solid waste landfill site exceeding RL170m, the consent holder shall submit a detailed Landscape Rehabilitation Plan for the site to Waikato District Council's Team Leader Monitoring. The plan/s shall detail how the potential landscape effects of the landfill will be successfully mitigated and shall incorporate the following:

a) Contours for the completed landform that reflect the natural topographical features existing in the surrounding landscape and respond to the wider landscape context. The contours shall have a naturalised variation to avoid any perceived engineering linearity of the slope faces. Contours shall be shown at no greater than 1 metre intervals.

b) Landscape planting that responds to the proposed landform shape and consists of small native or exotic woodlots, shelterbelts, and amenity/shelter trees consisting of either native or exotic species.

c) Appropriate linkages between the landscape rehabilitation works and/or plans for other consented activities across the wider site.

d) An implementation schedule detailing the anticipated timing of operations, which shall be updated and approved by Council prior to the undertaking of any planting on the site.

54. The consent holder shall plant visual mitigation planting in accordance with the landscape mitigation planting plan (Boffa Miskell, Figure 8: Landscape Mitigation Plan, Revision A, dated 18 October 2013), prior to the landfill reaching a height of RL150m, to allow for this planting to become established before the landfill becomes visible from the residence at 130 Rotowaro Road.

Litter Control

55. All vehicles delivering refuse to the site are to be fully enclosed or covered to prevent the escape of litter.

56. The consent holder shall undertake weekly monitoring ~~and cleanup~~ of Rotowaro Road between the intersection with Hangapipi Road and the site access and, should a litter problem arise en route to the site due to litter falling or being blown from vehicles delivering refuse to the site, the consent holder shall be responsible for the immediate clean up of this litter.

57. If wind blown litter from the landfill finds its way onto adjacent land, the consent holder shall be responsible at the request of the landowner for the removal of this litter.

58. Daily patrols of the site shall be carried out by the consent holder to identify and collect litter outside of the landfill footprint. This shall include the site area immediately inside the boundary with [legal description of the Howlett farm] ("the Howlett Farm").

58A. The consent holder shall also conduct daily patrols of that part of the Howlett Farm located within 300m of the boundary of the site to identify and collect wind blown litter from the landfill. Unless otherwise advised by the owner of the Howlett Farm, this requirement for removal of litter can be conducted by the consent holder without the need to obtain the prior approval of the owner of the Howlett Farm except during the months of June, July and August when the prior approval of the owner shall be obtained prior to entry on the Howlett farm. If prior approval for entry on the Howlett Farm for litter inspection and removal cannot be reasonably obtained by the consent holder, then the consent holder shall not be obliged to comply with the litter inspection and removal requirements of this condition.

58B. Any gate in the boundary fence between the site and the Howlett Farm that may be required to enable convenient access to the Howlett Farm for litter removal shall be installed by the consent holder.

59. The consent holder shall control wind blown litter by the erection of litter control fences around the operational portion of the landfill as provided for in the Landfill Management and Operations Plan.

Vermin and Birds

60. The consent holder shall engage a suitably qualified independent expert to undertake a vermin and bird survey of the site at intervals of not more than six (6) months for the period of the landfill operation following the commencement of this consent. The results of this survey shall be provided to the Waikato District Council, within two weeks of its completion in the form of a report that identifies the results and includes any recommendations for management improvements and/or contingency strategies for the management and control of vermin and birds. The report will be made available to the Community Liaison Group on request.

61. If the reporting required by condition 60 identifies that management improvements and/or contingency strategies are required, over and above those contained in the Landfill Management and Operations Plan, then the consent holder in consultation with the Waikato District Council, shall implement those recommendations to the satisfaction of the Waikato District Council's Environmental Health Officer.

62. After a minimum of four years of monitoring, the consent holder may apply to Waikato District Council to amend the frequency of the vermin and bird surveys required under condition 60 pursuant to section 127 of the RMA.

Hazardous Substances

63. Refuelling, lubrication and mechanical repairs of equipment and storage of hazardous substances and dangerous goods shall be undertaken in such a manner so as to ensure that spillages of hazardous substances or dangerous goods onto the land surface or into a waterbody do not occur. Any accidental discharge of greater than 20 litres shall be reported immediately to the consent authority along with details of the steps taken to remedy and/or mitigate the adverse effects of the discharge.

Archaeological and Cultural

64. The consent holder shall engage the services of a suitably qualified and experienced archaeologist to oversee the works along the southern highwall. The archaeologist will be required to provided written confirmation to Waikato District Council's General Manager Customer Support that works along the southern highwall have not adversely impacted the Colliery Houses archaeological site (SA14/133).

65. The consent holder shall ensure that, should any human remains or archaeological items be exposed while undertaking works on site, the works in that area will cease immediately. The New Zealand Historic Places Trust, Kaumatua representing the local Tangata Whenua, Waikato District Council, and in the case of human remains, the New Zealand Police, shall be informed of the discovery as soon as possible. Work shall not recommence in the affected area until any necessary statutory authorisations or consents have been obtained.

Advisory Note: The consent holder should note that all sites associated with human activity prior to 1900 are protected under the Historic Places Act 1993 regardless of whether or not the sites are recorded or registered, or whether resource or building consent has been granted, or whether the activity is permitted in a Regional or District Plan, or whether the land is designated. An authority must be obtained from the Historic Places Trust in accordance with the Historic Places Act 1993 prior to any work being carried out. This is a legal requirement.

66. An Accidental Discovery Protocol shall be prepared and included in the Landfill Management and Operations Plan. It shall include procedures to ensure that if wooden, or other artefacts are found during work that they are recognised and identified as such and that appropriate steps are immediately undertaken to secure and conserve them. It shall also include matters to ensure that personnel working on the project are briefed on what to look for and who to contact should possible artefacts be found, and the consent holder's obligations under the Historic Places Act 1993.

Complaints Process

67. The consent holder shall establish and publicise a local telephone number so that members of the public have a specified and known point of contact to raise any matters that may arise during operation of the landfill.

68. The consent holder shall keep and maintain a complaints' register for any complaints about any activities associated with the exercise of this consent received by the consent holder in relation to traffic, noise, odour, dust, litter or other environmental effects of the activity. The register shall record, where this information is available, the following:

a) the date, time and duration of the event/incident that has resulted in a complaint;

b) the location of the complainant when the event/incident was detected;

c) the nature of the event/incident (e.g. dust nuisance);

d) the possible cause of the event/incident;

e) the weather conditions and wind direction at the site when the event/incident allegedly occurred;

f) any corrective action undertaken by the consent holder in response to the complaint, including timing of that corrective action; and

g) any other relevant information.

69. The complaints register shall be available to the Waikato District Council and the Community Liaison Group at all reasonable times upon request. Complaint's received by the consent holder that may imply non-compliance with the conditions of this consent shall be forwarded to the Waikato District Council General Manager Customer Support within 48 hours of the complaint being received.

Community Liaison Group

70. The consent holder shall undertake ongoing liaison and consultation with local residents within a radius of 3.0 km of the landfill footprint during the establishment and operation of the landfill.

71. To facilitate this, and prior to the lodgement of the Landfill Management and Operations Plan, the consent holder shall undertake an open, public process to offer local residents and interested people the opportunity to be part of a Community Liaison Group. The consent holder shall offer this opportunity to the following parties:

a) Waikato District Council;
b) Waikato Regional Council;
c) Waahi Whanui Trust;
d) Pukemiro School;
e) Bush Tramway Club Inc;
f) Adjoining landowners; and
g) Residents of the Pukemiro and Glen Afton settlements (to be represented by two people from each settlement).

72. The Community Liaison Group shall be comprised of representatives of those parties referred to in Condition 71 who elect to take up the opportunity.

73. The main purpose of the meetings of the Community Liaison Group is to:

a) enable the consent holder to explain the progress of the various activities associated with the landfill;

b) enable the consent holder to facilitate site inspections;

c) provide input and feedback into the preparation, implementation, review and adaption of the Landfill Management and Operations Plan;

d) receive and discuss the results of monitoring and reporting as required by the conditions of this consent;

e) discuss and make recommendations to the consent holder regarding any community concerns regarding the effects of the exercise of this consent, including social impacts;

f) identify and discuss appropriate measures to address issues raised, including provisions of further information; and

g) receive reports on actions taken by the consent holder on any concerns raised.

74. The consent holder shall provide reasonable administrative and logistical support to facilitate the functions of the Community Liaison Group including provision of an independent facilitator to chair the Community Liaison Group meetings if necessary. The extent of the support to be provided is to be determined in consultation with the Waikato District Council and Waikato Regional Council.

75. The consent holder shall use its best endeavours to ensure that meetings of the Community Liaison Group are held for the duration of the consent from the commencement of the consent:

a) at least once every three (3) months during the establishment of the landfill; and

b) at least once every six (6) months once municipal solid waste is being deposited at the landfill (unless the Community Liaison Group determines that meetings should be held less frequently or are no longer required and advises the consent holder, Waikato District Council and Waikato Regional Council accordingly).

76. The consent holder shall inform the Waikato Regional Council and the Waikato District Council's General Manager Customer Support of any meeting of the Community Liaison Group a minimum of ten (10) working days in advance of that meeting.

77. The consent holder shall ensure that the minutes of the Community Liaison Group meetings are forwarded to the Community Liaison Group, the Waikato Regional Council and the Waikato District Council's General Manager Customer Support within ten (10) working days of any meeting being held.

78. The consent holder shall assist the Community Liaison Group to fulfil its purpose by, among other things:

a) arranging an appropriate venue in the local area for meetings of the Community Liaison Group;

b) appointing one of the consent holder's senior representatives to represent it on the Community Liaison Group and ensuring at least one of its representatives attends all of the formal meetings of the Community Liaison Group (unless the Community Liaison Group determines that the consent holder should not be represented on the Group or does not need to attend a specific meeting and advises the consent holder and Waikato District Council and Waikato Regional Council accordingly);

c) providing information to the Community Liaison Group about progress in relation to the project, including the environmental effects of the project and compliance with consent conditions;

d) being prepared to discuss the environmental effects of the landfill, any concerns in relation to human health and safety, and any complaints from the local community, including provision of further information and identification of appropriate measures to address issues raised; and

e) timely provision of all monitoring data collected by the consent holder during the period between meetings of the Community Liaison Group.

79. In the event that a Community Liaison Group fails to establish as provided for in condition 71 above or is disestablished at any time, then provided that the consent holder has complied with conditions 71, 74, 75 and 78 as may apply, then the relevant requirements of this consent shall be deemed to be met.

For the avoidance of doubt, the Community Liaison Group will be disestablished when 3 successive meetings attract fewer than 3 of the parties specified in condition 71, in addition to the Waikato Regional Council and Waikato District Council.

Review

80. Pursuant to section 128 to 131 of the Resource Management Act 1991 the Waikato District Council may during the month of the second anniversary of the granting of these consents, and every fifth year thereafter, or upon cessation of landfilling operations at the site serve notice on the consent holder of its intention to review any or all of the conditions of this consent for the following purposes:

a) Avoiding, remedying or mitigating any adverse effects on the environment that may arise from the exercise of the resource consent, in particular the potential adverse environmental effects in relation to:

(i) Site suitability and stability issues;

(ii) Noise and dust from the landfill activity;

(iii) Nuisance issues arising from odour, vermin and birds

(iv) Amenity issues arising from the operating hours associated with the landfill activity;

(v) Traffic safety and/or efficiency on Rotowaro Road; and

(vi) Pavement effects on Rotowaro Road and other roads affected by the regular haulage route;

and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions.

b) To address any adverse effect on the environment that has arisen as a result of the exercise of this consent that was not anticipated at the time of granting this consent, including addressing any issues arising out of complaints;

c) To review the adequacy of, and necessity for, any of the monitoring programmes or content of the Landfill Management and Operations Plan that are part of the conditions of this consent; and

d) To require the consent holder, if necessary and appropriate, to adopt the best practicable option(s) to avoid, remedy or mitigate any adverse effects on the surrounding environment from activities directly associated with the municipal solid waste landfilling operations.

The Waikato District Council will undertake the review in consultation with the consent holder and the consent holder shall pay the actual and reasonable costs of the review pursuant to section 36 of the Resource Management Act 1991.

Monitoring and Reporting

81. The consent holder shall pay to the Waikato District Council all actual and reasonable costs and additional charges in respect of monitoring the conditions of this consent in accordance with section 36 of the Resource Management Act 1991 in relation to:

a) administration, monitoring and inspection relation to this consent; and

b) charges authorised by regulation.

82. If any breach of the conditions of this consent occurs, the consent holder must notify the Waikato District Council's Team Leader Monitoring within 48 hours of the breach being discovered. Within seven days of any breach being discovered, the consent holder must provide written notification and report to the Council with an explanation of the cause of the breach, the steps which were taken to remedy the breach, and the steps which will be taken to prevent any further occurrence of the breach.

83. The consent holder shall submit to the Waikato District Council's Team Leader Monitoring an Annual Performance Report on the operation of the landfill including:

i) the status of landfilling operations on the site and work completed during the preceding year;

ii) any difficulties which have arisen in the preceding year and measures taken to address those difficulties; and

iii) activities proposed for the next year of the landfill operation; and

iv) its record of compliance with the relevant consents.

The first report shall be submitted by the anniversary of the day on which the consent holder gives effect to this consent, and annually thereafter unless otherwise agreed in writing with Waikato District Council.

Advice Notes:

A. *In accordance with section 125 of the Resource Management Act 1991, the consent shall lapse five (5) years after the date on which it was granted, unless it has been given effect to before the end of that period.*

Dated at Ngaruawahia the 20th Day of November 2013

For and on behalf of
Waikato District Council

SCHEDULE 1

4/8

Annexure B

Puke Coal Limited – Proposed Municipal Solid Waste (MSW) Landfill

Schedule of Proposed Condition Amendments

Management Plan Approach

(i) The conditions will be amended to require the preparation of management plans which contain more specific objectives and performance standards so that the management plans can themselves be enforced as if they were conditions. In the event of differences or conflict between a management plan and other consent conditions, the latter shall prevail.

(ii) Management plans will be submitted to the relevant consent authority, following input from the Community Liaison Group and review by the Peer Review Panel, for review and certification that the plan complies with and meets the requirements of relevant conditions. The consent authorities will not be acting in an "approval" capacity. The conditions will specify timeframes for submitting management plans and receiving a response from the consent authority.

(iii) The following management plans will be prepared in relation to the MSW landfill:

(a) Landfill Management and Operations Plan (LMOP);

(b) Landfill Works Design and Management Plan (LWDMP);

(c) Erosion and Sediment Control Plan (ESCP);

(d) Landfill Gas and Odour Management Plan (LGOMP);

(e) Rehabilitation and Aftercare Plan (RAP); and

(f) Landscape Rehabilitation Plan (LRP).

Conditions relating to the content of these management plans (particularly the LMOP) will be amended and expanded to provide express recognition that the plans address all relevant matters set out in the Centre for Advanced Engineering (CAE) Landfill Guidelines (including any matters that have not already been specified in the joint council conditions of consent). In relation to the LMOP, for example, additional matters will include:

- Health and Safety;
- Site Access / Waste Acceptance Criteria; and
- Fire Prevention.

(iv) New conditions will be inserted requiring the preparation of an overall site management plan encompassing all consented activities undertaken on the Puke Coal site. The purpose of this management plan will be to:

(a) Identify and manage any cumulative adverse environmental effects and risks arising from all activities concurrently being undertaken on the site (e.g. coal mining and MSW landfill operations).

(b) Ensure the integrated management of activities, particularly where there is the potential for coal mining and landfill activities to interact with each other.

Waikato Regional Council – Resource Consent 125466 – Discharge up to 8,000,000 cubic metres of solid municipal waste to land

Amendments to existing conditions as follows:

Condition 13 Amend as follows: "Refuse shall be covered at the end of each working day with a minimum of 150mm of soil or other material approved by the Waikato Regional Council. Cover soil shall contain less than 10% coal by volume, any coal shall be interspersed (i.e. there shall be no 'pockets' containing many pieces of coal), and no coal shall be in excess of 50mm in its largest dimension."

Propose new conditions as follows:

(i) To provide further specificity around reducing construction methodology risk associated with stability:

(a) Current landfill cell construction will include preliminary works to prepare the subgrade for adjacent cells for a distance of not less than 50 metres from the edge of the current cell.

(b) The landfill operator shall take appropriate steps to stabilise the western high wall prior to construction of landfill Cells E and J, and stabilise the southern high wall for a distance of 100m in advance of adjoining landfill cells under construction.

Waikato Regional Council – Resource Consent 125467 – Discharge contaminants to air from a municipal solid waste landfill

Amendments to existing conditions as follows:

Condition 2 Include an additional advice note which indicates that in determining whether an odour is offensive or not, the Waikato Regional Council (WRC) will undertake a FIDOL assessment and the intensity of odours deemed to be from the landfill should not be greater than 2. Further if WRC indicates that offensive and objectionable odour effects have occurred, then the landfill manager (or his designate) will immediately investigate the potential source and provide a report (within 24 hours) of what caused the odour and what remedial action has been undertaken to stop the odour. WRC will reassess the odour within 24 hours and if unacceptable odour effects are found to persist then refuse placement will cease. Refuse placement will not resume until the odour has ceased and WRC is satisfied that remedial action measures have been effective.

Condition 3 Amend to say that if the survey results indicate there are wide spread odour issues, an Odour Remediation Plan is required to be developed and implemented within 1 month. WRC will reassess at that time and refuse placement will cease if the situation remains unacceptable.

Condition 5 Same as Condition 3, except that predicted off-site odour concentrations shall be less than two odour units for 99.5 percent of the time.

Condition 9 Expand so that the Landfill Gas and Odour Management Plan (LGOMP) is required to address additional matters set out in the CAE Landfill Guidelines. This would include:

- Surface emission monitoring procedures;
- Odour monitoring procedures;
- Specification of the assessment points for the monthly odour surveys;
- Operation of odour control equipment for the leachate storage tanks;
- A requirement for random inspections of incoming waste, for the purpose of identifying malodorous or undeclared waste.
- Contingency measures for odour such as tankering leachate in the emergency leachate storage contingency pond off-site as an immediate priority (refer new condition (iii) under "Waikato Regional Council – Resource Consent 125469 – Discharge leachate to ground from a municipal solid waste landfill").

Condition 12 Amend such that the installation of landfill gas monitoring probes is required to be undertaken prior to the commencement of deposition of waste.

Condition 13 Amend to specify a timeframe for implementing contingency measures (within 1 month), and specify the types of contingency measures - e.g. installation of a 'cut-off trench' (which is capped and from which gas is then extracted) or additional gas extraction wells adjacent to the monitoring well.

Condition 14 To correct a typographical error the reference to carbon dioxide (CO_2) in the third paragraph of the condition should be amended to refer to carbon monoxide (CO). This is because CO is a better indicator of the incomplete combustion likely to occur during a landfill fire. A timeframe for intervention will be specified in the event that monitoring indicates high concentrations of CO, and contingency measures for responding to a landfill fire will be required to be implemented.

Condition 21 Amend to require instantaneous surface monitoring (ISM) during periods when the landfill gas extraction system is not operating. Also amend the condition to the effect that the landfill gas extraction system shall not be inoperable for more than 48 hours. In circumstances where the system remains inoperable for more than 48 hours (including for reasons beyond the control of

the consent holder such as a power outage), the consent holder shall be required to demonstrate that refuse placement can continue without contributing to offensive or objectionable odour. If this cannot be demonstrated to the satisfaction of WRC then refuse placement will cease.

Condition 23 Amend to specify a course of action in the event that any recommendations contained within the report are not subsequently implemented, for example, refuse placement will cease if this is identified as the source of the odour. Amend to reduce the specified timeframes for reporting and implementation – four week time limit for provision of the report (instead of three months) and three month time limit for implementation (instead of six months). Some flexibility is required because particular intervention/remedial measures, such as the purchase and installation of a new flare, have lead times.

Condition 25 Amend to require that remedial action is undertaken within 48 hours in the event that the specified methane detection threshold is exceeded. If the remedial action proves ineffective refuse placement will cease. The results of the ISM survey are to be provided to the landfill manager on the day the monitoring is undertaken.

Condition 26 Amend to specify that any issues identified during the walk-over survey shall be remedied within 48 hours. The results of the walk-over survey shall be provided to the landfill manager on the day the survey is undertaken.

Condition 28 Define "significant odour" as an odour intensity greater than 2 on the FIDOL scale. Amend to specify that the timeframe for implementation of any remedial action is 24 hours, and that if remedial action is not undertaken or proves ineffective then refuse placement will cease. The condition will also be amended to expressly include Hangapipi Road residents in addition to the Pukemiro and Glen Afton communities.

Condition 29 Amend to include a provision that malodorous wastes will not be accepted or activities such as remedial works involving excavation into closed portions of the landfill (which could give rise to malodorous odours) shall not take place in meteorological conditions that could give rise to off-site odours, for example wind conditions that may affect Hangapipi Road.

Propose new conditions as follows:

(i) Insert a condition requiring the monitoring of any installed gas extraction wells, similar to existing Condition 12.

(ii) Insert a condition addressing odour effects associated with the storage or transfer of leachate. Odour control (biofilter) to be fitted to the leachate storage tanks and utilised in the transfer of leachate to tanker trucks. The biofilter shall be designed, operated and maintained so as to avoid off-site odour effects associated with the storage and transfer of leachate.

(iii) Insert a condition which states

- That if a particular aspect of refuse placement is identified (by way of internal odour monitoring) as giving rise to odour more than three times in a six month period and any mitigation implemented has not proved successful, refuse placement will cease until an effective solution can be implemented.
- During filling of the first landfill cell a comprehensive review of odour management will be undertaken every six months and submitted to WRC. Any recommendations identified in the review shall be implemented within a one month period. After 18 months there will be a review of this requirement.
- Prior to landfilling occurring in subsequent cells, an independent review of odour practice and management will be undertaken. A review report will be submitted to WRC and filling in a particular cell will not commence until any odour management recommendations have been implemented.

Waikato Regional Council – Resource Consent 125469 – Discharge leachate to ground from a municipal solid waste landfill

The current consent describes comprehensive monitoring of groundwater and leachate, including installation of a series of up-gradient and down-gradient compliance monitoring wells to monitor groundwater.

Groundwater quality triggers, intended to be protective of groundwater quality, will be determined following a period of monitoring prior to placement of waste. The methodology for deriving the trigger levels is statistical, in that exceedance of trigger levels will indicate a statistically defensible change in groundwater conditions. As groundwater conditions will vary across the site, and particularly down-gradient of the existing activities in the footprint, it is important that these trigger levels are developed for each well independently; thus the need for baseline monitoring.

Monitoring of groundwater wells down-gradient of the landfill will provide the information relating to discharges from the landfill footprint. However, to supplement this information and provide greater surety that the water quality of the tributary will be protected, the following amendments/additions to the consent, in principal, are proposed:

- Clearer requirement for approval of peer reviewed contingency plan prior to placement of any waste;
- Clearer description of what is required within the contingency plan;
- Provision for more robust monitoring of groundwater quality and it's spatial variability;
- Inclusion of additional monitoring wells at the stream edge and within potential preferential flow paths (i.e. fault shear zones);
- Decreased response time to any changes in groundwater chemistry;
- Introduction of a second tier of action levels, inferred to be protective of the environment and with expedited action in the event of an exceedance and
- Requirement for riparian planting where practicable.

Amendments to existing conditions as follows:

Condition 3 Amend to require weekly monitoring of leachate levels above the liner (instead of monthly). In addition, WRC shall be notified within 1 week (instead of 2 weeks) if monitoring indicates that the leachate head on top of the liner is exceeding 300mm.

Condition 6 Amend the first sentence to read "the consent holder shall monitor hourly, levels at the point of leachate abstraction at the low point of the base liner".

Condition 10 Amend to include "any bore e.g. monitoring or recovery bore".

Condition 11 At each of the 10 groundwater monitoring locations required by the condition, both 'shallow' and 'deep' wells will be installed to better assess the potential effects of landfill leachate. This provides a total of 20 wells in the immediate vicinity of the landfill. Down gradient wells are to be installed as dual purpose monitoring/interception wells, having larger diameter construction.

(a) In addition to the monitoring wells required under Condition 11, another series of groundwater wells will be required to be installed immediately adjacent to the unnamed tributary of the Waitawhara Stream to allow assessment of groundwater quality reporting to the stream. This will allow the migration of contaminants and potential impacts to stream water quality from groundwater to be better assessed, as well as allowing the source of potential changes in stream water quality to be more readily identified (e.g. allows differentiation between stormwater impacts and groundwater impacts).

Such additional wells would also allow determination of travel times for groundwater from the landfill to the stream and provide information that would be required for robust contingency actions to be identified (e.g. hydrogeological conditions in the vicinity of the stream).

(b) The location of the faults beneath the landfill footprint will be confirmed and the potential for these to act as preferential pathways for groundwater flow determined. In the event that they may constitute a preferential pathway for groundwater flow, as

agreed by the Peer Review Panel, an additional two monitoring wells will be required to be installed in the shear zone of the fault; one immediately adjacent to the landfill and a second installed further down gradient, in the vicinity of the unnamed tributary or the property boundary (whichever is closer). This well pair will be installed for each fault shear zone identified as constituting a potential preferential pathway for groundwater flow, as agreed with the Peer Review Panel.

Condition 13 Amend to confirm that groundwater monitoring for the List B parameters shall take place in April each year.

Condition 14 To refine the identification of risk to the receiving environment and timeliness of response include a second tier of trigger levels (risk based) for groundwater quality, equivalent to 5 times the consented surface water quality criteria, provided in schedule 3 of Resource Consent 104244. Note that minimum dilution is predicted to be 10 fold on discharge to stream under base flow conditions. Exceedance of these trigger levels in wells adjacent to the unnamed tributary or in the downgradient fault (at the point of discharge from the faults or at the site boundary, whichever is first) once verified, would trigger expedited implementation of remedial measures to mitigate effects on the environment as described in the Contingency Plan. This would effectively reduce the time for implementation of remedial measures that may occur as a result of exceedance of the primary trigger levels. Note that the primary trigger levels indicate a change in conditions, whereas these secondary compliance levels indicative a potential risk to the receiving environment.

Amend 14(ii), first sentence, to read "twice during the following two <u>weeks</u> ~~months~~".

Amend 14(ii)(a) to include notification of WRC within a timeframe of 1 week, and implementation of contingency measures as described in Contingency Plan.

Amend 14(ii)(b) to include Peer Review Panel review and reference to the consented surface water quality compliance levels, as a reference for assessment of environmental importance of groundwater trigger level exceedance. These measures to be described in more detail in the Contingency Plan. Amend the timeframe for reporting any proposed remedial or contingency measures to WRC to three weeks (instead of within one month).

Amend 14(iii) to state that any remedial works are to be undertaken in accordance with the contingency measures reported in Condition 14(ii) (Contingency Plan).

Condition 15 Amend to add action for the diversion of groundwater from the sub-drains in the event that it exceeds schedule 3 of Resource Consent 104244.

Condition 17 Insert a new second paragraph to the effect that "The Contingency Plan will provide for the capture and diversion of the subdrain discharge monitored under condition 15 or any springs/seeps discharges monitored under condition 16, such that these flows would be pumped to the leachate storage facility for removal off-site until such time as the discharge returns to within 3 standard deviations of the mean for a period of 3 months.

Contingency Plan to be prepared and provided to both the Peer Review Panel and WRC. Written approval required prior to placement of refuse. As a minimum the Contingency Plan shall include:

- Ammoniacal-nitrogen in the analyte suite for springs or seeps. Reference Contingency Plan for measures relating to verification of leachate influence on seeps/springs.
- A process to verify that trigger level exceedance in groundwater, from monitoring wells or sub-liner drain, is actually a result of leachate discharge from the landfill.
- Actions to be undertaken to protect surface water quality in the event that a trigger level is exceeded.
- A description of required infrastructure to carry out groundwater remediation.
- A verification process for determining leachate influence on seeps/springs.
- Actions to be undertaken in the event that a spring/seep is verified as being impacted by landfill leachate.
- Actions to be undertaken in the event that groundwater recovered from the sub-liner drain is verified as being impacted by landfill leachate.

Propose new conditions as follows:

(i) To rectify the omission by the commissioner's in their decision and reinsert the requirement for riparian planting, to a minimum of 5 m from stream edge along open sections up-gradient of existing treatment pond (approximately 100m), and any other exposed sections of the unnamed tributary between the treatment pond and the property boundary.

(ii) Lower the perched culvert at the discharge point of the un-named tributary to the Waitawhara Stream to allow fish passage subject to access arrangements with Waikato District Council.

(iii) The leachate containment and storage system is considered to be sufficiently robust, however a further contingency storage pond is offered to provide additional capacity to temporarily store leachate in the event of an emergency. To this end, in addition to the above ground leachate storage tanks, the consent holder shall install and maintain a contingency pond to act as an emergency leachate storage facility. The contingency pond shall have capacity to accommodate 100% of the critical 1% AEP rainfall event flow generated from the area of the current cell and be lined to the same standard as the consented landfill base grade. This contingency pond shall be connected to the primary leachate storage tank pipework system to transfer pumped flows directly to the contingency pond should the above ground leachate storage tanks approach capacity.

Discharge from the contingency pond will be by pumps. Accumulated rainfall will be pumped to the stormwater system following analysis of the water and confirmation that it is not contaminated; otherwise it will be treated as leachate for treatment or off-site disposal. The contingency pond will be emptied prior to reaching 20% of its design capacity.

The contingency pond will only be used in the event of an emergency and any leachate captured within it will be removed off site by tanker trucks in priority to leachate stored in the enclosed above ground storage tanks.

The consent holder shall install and maintain emergency power generation equipment to supply sufficient power to operate the leachate pumps in the landfill and all operating and monitoring equipment used in the management of leachate, plus the landfill gas systems, should the primary grid supply fail.

(iii) Clean stormwater diverted around the active landfill footprint shall be continuously monitored for ammoniacal nitrogen prior to discharge to the receiving watercourse.

In the event that verified analysis of surface water flows shows ammoniacal nitrogen exceeding the limit stated in Schedule 3 of consent 104244, the source of the exceedance will be located through targeted analysis and actions will be implemented in accordance with the Contingency Plan provided for in Condition 17 of consent 125469.

<u>Waikato Regional Council – Schedule 4 – General Conditions</u>

Amendments to existing conditions as follows:

Condition 7 Retain the ability to allow for alternative liner designs provided equivalent performance is demonstrated by the consent holder. Amend to clarify WRC's role – not operating in an "approval" capacity. Where GCL is proposed as part of the alternative liner design, the consent holder will prepare a management plan to control, manage and monitor the confinement and hydration of the GCL so as to maintain it within the design standard for that product. In addition, a suitably qualified geotechnical engineer shall inspect the installation of the GCL and any unconfined and exposed extents of the GCL to confirm that the GCL meets the requirements set out in the management plan.

Condition 12(b) To provide additional surety that mine workings are not present beneath the MSW Landfill footprint amend condition to: The south eastern corner of the landfill will be excavated to virgin ground below the Kupakupa seam so as to expose any historical mine workings (underground or opencast) that may exist for inspection by the Waikato Regional Council to confirm all the underground coal mine workings are removed from beneath the footprint of

the landfill. The void created by the excavation will be backfilled with engineered fill to the design profile of the landfill base grade.

Condition 12(c) To provide further clarification of the separation distances between coal workings that may exist and the landfill liner: The horizontal and vertical position of any historical underground mine workings that may exist on the southern and western high walls will be located through geotechnical investigations prior to submission of detailed design to the Peer Review Panel and the Waikato Regional Council for approval. Detailed design shall provide for the separation of the landfill liner from the underground mine workings by an Angle of Draw of 26.5° from the vertical (Angle of Draw is defined as the angle at which underground mine subsidence spreads out towards the limit of subsidence, at the surface). This condition recognises that safe removal by excavation of the historical mine workings as far as practical away from the landfill footprint will reduce encroachment of the angle of draw into the landfill and therefore reduce the loss of landfill void. The separation between the landfill liner and the underground mine workings will be backfilled with engineered fill that contains less than 1% coal by volume.

Condition 13 Amend sequencing condition so that there is a 500 metre buffer at all times between the working face and the Tumohe property boundary.

Condition 22 Amend f) as follows: "Adjoining landowners, including Hangapipi Road residents".

Propose new conditions as follows:

(i) To rectify the omission by the commissioner's in their decision and reinsert: The consent holder shall provide access to a 24hour/7 day a week contact service to receive and respond to complaints regarding operation of the site, including odour. The finalised wording of this condition shall be consistent with the equivalent set of conditions in the WDC Land Use Consent LUC0238/12.

Waikato District Council – Land Use Consent LUC0238/12 – To establish and operate a municipal solid waste landfill at 1158 Rotowaro Road, Glen Afton

Amendments to existing conditions as follows:

Condition 29 Amend sequencing condition so that there is a 500 metre buffer at all times between the working face and the Tumohe property boundary.

Condition 39 This condition will be re-drafted for clarity so it is clear the maximum number of heavy vehicle movements for the site will be 164 movements per day (i.e. 82 heavy vehicles entering and 82 leaving per day), and of these the maximum number of heavy vehicle movements for MSW activities will be 84 movements per day. The maximum number of heavy vehicle movements for previous resource consents will also be provided.Conditions 67 – 68 Amend to be consistent with new complaints condition proposed for WRC Schedule 4 – general Conditions ((i) above).

Condition 71 Amend f) as follows: "Adjoining landowners, including Hangapipi Road residents".

Propose new conditions as follows:

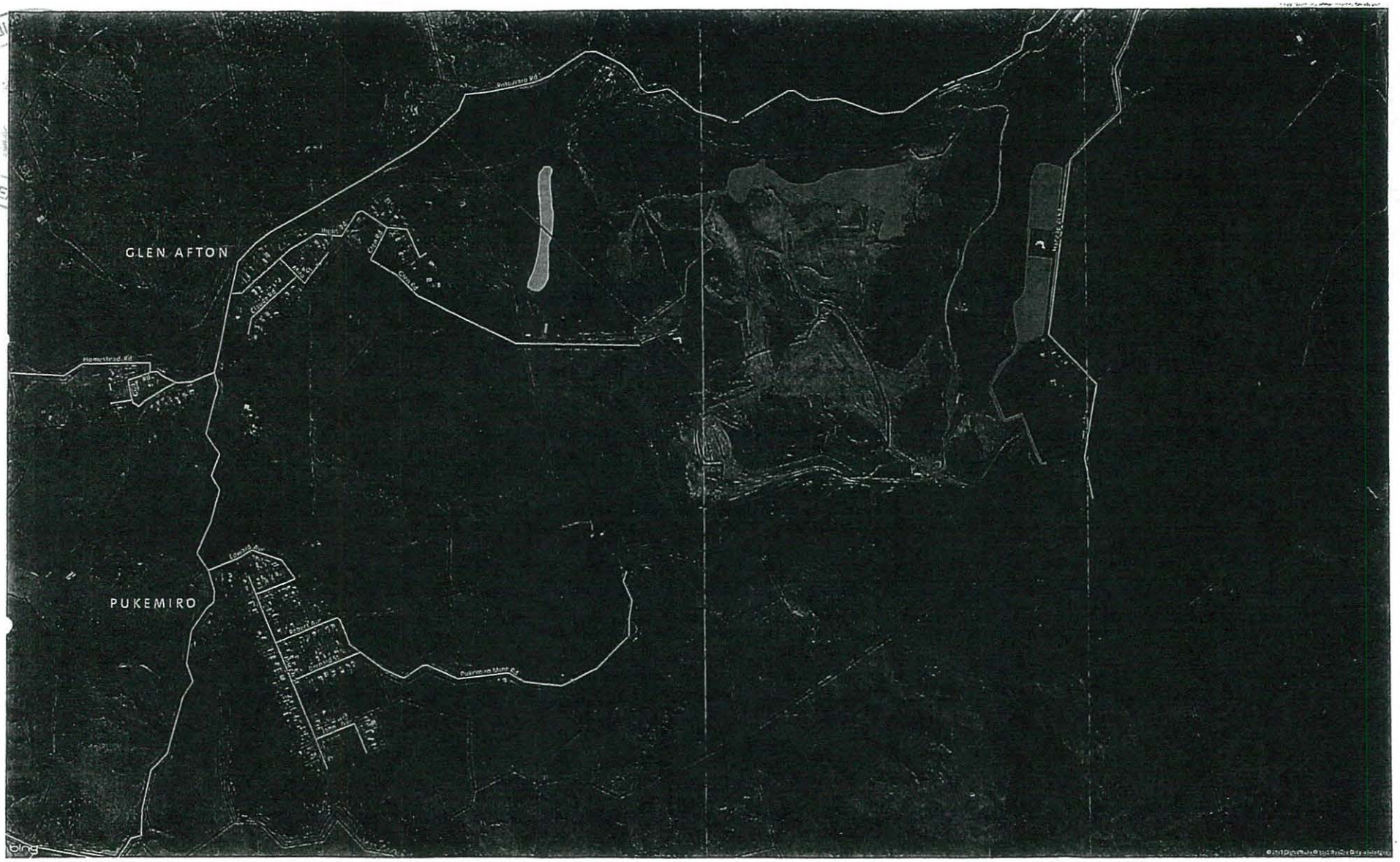
(i) Offer an 'Augier' type condition - Puke Coal to surrender the existing End of Life Tyre land use consent.

Annexure C

Proposed Consent Conditions and Management Plans

(as attached to Mr T Matthew's evidence)

- Schedule 4 General Conditions
- Resource Consent 125466: Discharge of up to 8,000,000 cubic metres of solid municipal waste to land (WRC)
- Resource Consent 125467: Discharge Contaminants to air from a municipal solid waste landfill (WRC)
    - Landfill Gas and Odour Management Plan
- Resource Consent 125469: Discharge leachate to ground from a municipal solid waste landfill (WRC)
- Resource Consent 102303: Surface Water Take: To take up to 450 cubic metres per day of surface water for the purpose of dust control and for a truck wheel wash WRC) (Applies to MSL, coal-mining, C & D)
- Resource Consent 104244: To discharge up to 3.1 cubic metres per second of stormwater and 70 cubic metres per day of treated wastewater to an unnamed tributary of the Waitawhara Stream (WRC) (Applies to MSL, C & D and Tyres. Coal Mining not mentioned)
- Schedule 1 which appears to be attached to Consent 104244 which refers to Consents 103079, 102304, 101858, 104192, 104193, (whatever these are for) and 104244
    - Site Management Plans for C& D Operations
    - Coal Mining Operations
    - Stormwater Control and Leachate Treatment System
    - Rehabilitation and Aftercare Planning Operations Plan
    - End of Life Tyre Receival, Storage and Disposal Operations Plan
- Schedule3 Compliance Limits and Trigger Levels
- Waikato District Council Resource Consent
    - Landfill Works Design and Management Plan
    - Erosion and Sediment Control Plan
- Outline Landfill Management and Operations Plan
    - Reference to other management plans such as a Health and Safety Plan



Boffa Miskell
www.boffamiskell.co.nz

0 200 m

1:5,000 @ A1 / 1:10,000 @ A3

Data Sources: LINZ, BML, BING Imagery, Puke Coal

Projection: NZGD 2000 New Zealand Transverse Mercator

Legend

- Puke Coal Site Boundary
- Landfill Extent
- Proposed Visual Screen Planting
- Parcel Boundary
- State Highway
- Road
- Existing Mitigation Planting and Proposed Mitigation Planting for EOLT Fill Sites
- Line of Inter-visibility

PUKE COAL LANDFILL

Figure 8: Landscape Mitigation Plan

Date: 18 October 2013 | Revision: A

Plan Prepared for Puke Coal by Boffa Miskell Limited

Author: nicole.sutton@boffamiskell.co.nz | *Checked:* JIe

Annexure D

Annexure E

Hampton Downs landfill, list of all odour complaints, up to 1/9/13

CallTracker

User
GuideLogout

Call Number	Date Received	Call Details
102729	19-OCT-2007	Caller considered that the landfill releases methane gas which smells and may be harmful to her, specifically that the landfill releases gas out of a pipe. Z phoned back 10.30am to get more information, spoke to relative of X. That person said that the landfill smells bad now, has smelled for the last 12 months or so, particularly noticeable early morning and late evening, when the weather is calm, cold. She asked for information about the "regulations" which landfills had to follow regarding gas and methane discharges.
102805	30-OCT-2007	Extremely Angry Caller re Smell – Level 7/10 – from land Fill at Hampton Downs, clear day, not wind, low cloud in valleys. Has had letter from Z (???) saying Gas collection wells are not in place as yet and until they are this will be a problem. Caller says she pays her rates and feels that this is not good enough. She requested and received a copy of the compliance stating that no odours should emit beyond the boundaries of the landfill. She could smell it last Saturday 27/10/07. Also she rang EW the Friday before that 19/1/0/07. The bottom line she said is that she is going to Waikato Times to tell all. She is dissatisfied with EWs actions.
103447	19-FEB-2008	At 3am horrific stench from envirowaste dump 2-3 k away. she believes they open valves on omission pipes in the early hrs so that residents will not notice while asleep. but it made x feel quite ill. 8 out of 10, still & calm, no wind. usually clears in about an hour. has a copy of envirowaste compliancy orders, which says there should be no odour outside the boundary, so they are definitely not complying. she has rung ew before, she says. she wants a call today on her mob please as she feels nothing is being done.
103561	07-MAR-2008	Description of Fault: 7/10 methane smell from hampton downs landfill since 7am. wind=none. also said that construction workers on hampton downs official raceway have been complaining of the stench. can't imagine why anyone would want to live there.
103728	02-APR-2008	Gassy smell 6-7/10 at envirowaste landfill= light wind. has smelled it before & has rung but she feels nothing is being done as it continues. wants it reported that it has happened at midnight & at 3am, although she did not call at those times. I assured her that she can call us at any time & that ew's instructions are to call an rro at any time, straight after her call. she would like a ring back now to see what's being done. she will be home till 7.40am.
103758	06-APR-2008	Landfull located on hampton down rd enviro wast very strong odour coming from there scale 6 or 7 at often no wind action taken: she only wanted it noted for now however can ew staff please ring her on monday morning please as she says this is an ongoing issue
104360	20-AUG-2008	Stench from hampton downs rd landfill 6 ot of 10 no wind. smells of methane & bitumen. has noticed it before & not always rung ew, but she says she has called 10 times now. their resource consent says there should be no odour.
104723	11-NOV-2008	Horrendous odour from landfill 7-8 out of 10 slight breeze. caller wants a letter regularly to update her on what ew does with her complaints. she said she "had a go" at the man she talked to last time. but she is frustrated at calling all the time. she wanted a visit this morning but i said she may get a call as i will call

		the rro immediately.
105001	09-JAN-2009	bad odour currently (and at times ongoing) at the Hampton Downs landfill site. Call is a neighbour. Level of 4/6, light easterly winds.
105080	22-JAN-2009	Big stink this morning from the Hampton Downs landfill.... Getting worse by the hour she says. At least a level of 5/6 with light winds and a sunny day. Says that she had completed a survey thinking that the survey was managed by EW.
105086	23-JAN-2009	Caller is determined to blame EW for the (methane gas) odour from the Envirowaste site at Hampton Downs so in the end we had to agree to disagree. Saying that at 5:30 am today the odour was really bad, and is now demanding... quote: "what is Environment Waikato going to do about the odour from this site?" "I pay my rates to EW to stop this sort of thing so what are you going to do here?" (I put her right on that one). "I have had enough" she says. Several times she made statement blaming EW because we issued the consent. Strange, but never did she hold Environwaste accountable. She says that the level of the odour was 8/10 at 5:30am. Further, she has been in touch with Springhill Prison staff as well and was told the they also small the odour very strong at times.
105264	26-FEB-2009	Caller says the when and easterly wind blows or no wind at all they get a really bad stink from the Hampton Downs landfill. He says that he is in consultation with other neighbors who support him in this issue. Today (this morning) the odour is at a level of 8/10 he says.... very offensive...!
105294	05-MAR-2009	Lately the caller has been able to smell the odour most of the time and at a level from 3/10 to 8/10, especially when the wind is from a southeasterly direction. He is looking forward to an update as a result of this call, since he asked "what are they going to do about the high level of odous at the site?"
105318	12-MAR-2009	Odours lingering today at a level around 8/10. Weather - little or no wind and sunny.
105320	12-MAR-2009	He reckons that odours today are at a level around 9/10. Weather - little or no wind and sunny. Not only today but earlier in the week as well.
105395	27-MAR-2009	Call regarding smell at Hampton Downs Landfill rated 8/10 slight eastery breeze worst he has ever smelt it, makes him sick/ill. burns back of throught. just logging the call - but i think X would like a call back, he had a few questions regarding logging calls, response, who owns the landfill etc...
105471	16-APR-2009	Caller says since it was his intention to call after hours and he didn't think that he could, he has said that "there are three complaints here". Bad odour for Envirowaste today. Overcaste with light breeze.
105475	17-APR-2009	Z, EW RIG staff member was driving on SH1 past the Hampton Downs Landfill at about 8am this morning and there was a strong stench of rubbish noticeab for a quite distance from the landfill. Z didn't want to be contacted regarding follow up, just wanted the complaint recorded.
105477	18-APR-2009	Hampton downs land fill refuse rubbish smell 3 out of 6 friday & today.
105562	18-MAY-2009	Odour is at a high level this morning = 4/6 with foggy weather and still conditions.
105569	20-MAY-2009	Note on invoice slip saying ""Please note the odour from the tip is getting worst" - Call you please follow this up, thanks"
105580	22-MAY-2009	Unpleasant odour currently occuring from Hampton Downs Landfill. Weather conditions calm but foggy, odour is "tip" smell, rated 3/6.
105583	25-MAY-2009	This complaint refers to document number 1483128, allocated to Z.
105617	05-JUN-2009	Odour from Hampton Downs Landfill is awful. Caller says it stinks, has just noticed the odour now. Rates it 4 out of 6.
105647	17-JUN-2009	Odour was at a level of 3/6 at 6am though to 10am today. Weather cold, sunny but frosty, little if any breeze.
105658	19-JUN-2009	Smell coming from Tip rating 4 (med-high) for the last half hr
105671	24-JUN-2009	Ongoing odour making life uncomfortable for X. Still lingering at 11:40am. Calm

		day with fog. Level 0f 4/6 at time of call. When called back at 11:40 the level was 2/6.
105673	25-JUN-2009	Caller says that the odour is at a level of 6/6 this morning. Cold & foggy weather - still.
105686	30-JUN-2009	Odour from the Hampton Downs landfill has been very bad this year. On Saturday 27/6/09 morning 6am the odour was the worst he has ever experienced it, but it was also bad the previous weekend and the weekend before that. He also thought that he could detect it last week in Browns Road, Tuakau as a faint smell. He is very annoyed about the ongoing smell, wants to know what Envirowaste are going to do about it. He said he might ring ESL and/or EW at 4am in the morning next time it happens, and to publicise the smell problem. While he lives in Pukekohe, he owns the land just across the river from the landfill, said he was the closest neighbour on that side, and lives on the farm at weekends mostly. He has not had any invitations to open days or community meetings, and wants to attend the next one.
105696	02-JUL-2009	Called to report bad odour at times throught this morning. Light breeze and fine weather. No level of odour given.
105717	09-JUL-2009	Phoned about 1pm, 9/7/09. He is concerned about the frequent smells from the Hampton Downs landfill, and wanted to know what EW & Envirowaste were doing about it. I explained that the odour was primarily landfill gas, not rubbish smells. ESL covers the rubbish very well. A new flare to be commissioned August 09 may resolve the offsite odours.
105722	10-JUL-2009	Odour from Hampton Downs Landfill is bad. Caller was in Mercer yesterday and noticed the odour around 10.30am. Odour is still present today, although caller says it not as bad as it was yesterday. Detecting odour from Pukekawa today. First noticed it around 11.30am today. Rates it 6/6 as he is getting sick of the smell. Ed- could you please respond to this, if it needs an EW response today, thanks.
105731	14-JUL-2009	He says that odour from the Hampton Downs site is bad right now (9:55am - 14/07/09). At a level of 8/10 he thinks. Weather is a little foggy and calm, cool.
105761	26-JUL-2009	Description of Fault: METHANE SMELL FROM HAMPTON DOWNS LANDFILL 10/10
105798	06-AUG-2009	Odour from Hampton Downs Landfill is really bad. Caller has just arrived at his farm on Otuiti Road about 1km away from the landfill and noticed the odour. He rates it 6/10. Still conditions.
105813	11-AUG-2009	Bad odour just started about 40 minutes ago and was also smelly over the weekend. Currently at 4/6. A little breezy.
105818	11-AUG-2009	Bad odour both this morning and this afternoon form the Hampton Downs site, at a level of 4/6 he thinks. Light breeze.
105828	13-AUG-2009	Odour this afternoon at 6/6. Calm weather - no wind.
105855	24-AUG-2009	More bad odour both today and last Friday. 6/6 caller says. Overcast at times.
105857	24-AUG-2009	Odour complaint from this caller regarding 4/6 odour level today at 3pm and over the weekend from time to time.
105901	07-SEP-2009	Phoned EW 9am, to report that there was a landfill smell this morning. He first noticed it about 6am when he got up. It seemed worst about 6.30am, but by 9am it was weaker. He is getting annoyed by the continued landfill smells, he wanted to know when Envirowaste and EW were going to fix up the problem. I advised him about the transfer of the landfill flares to the GTE plant, and that there was just one flare working in the landfill now, and that once all the flares had been closed down at the landfill ESR was hoping that the landfill gas smells would diminish, He agreed that landfill gas smells had improved in recent weeks.

105902	07-SEP-2009	Odour at a level of 5/6 this morning at around 10 am. Sunny & calm weather. Wants to talk to Z about the on going odour problems.
105919	10-SEP-2009	X said that the landfill odour was present this morning, also yesterday, and a lot recently. He is sick of the smell. He rated it as 6/6 for intensity, because he was sick of the smell. He asked what was being done to stop the odour. He said that he smelled the landfill near Mercer recently; I commented that this was unlikely.
105925	11-SEP-2009	Caller phoned as she had received a letter advising her to phone 0800 800 402 if odour from the landfill was a problem. The odour isn't a problem at the moment. Caller advised that she does notice the odour sometimes. She says it smells like fertiliser has just been applied. She doesn't notice the odour all the time, just when the wind is blowing towards her property.
105938	15-SEP-2009	This is a general complaint about odour from the site. It comes and goes the caller says and was really bad over the wekend just gone, at a level around 4/6 and usually lasts for 2 hours or so and mostly in the morning.
105939	14-SEP-2009	The rubbish smell is back again this morning. It was very calm first thing in the morning, misty. May be a slight westerly at present, but was more easterly until recently. He considered the smell was of rubbish not landfill gas. Said it smells like shit, worse than usual rubbish smell.
105979	24-SEP-2009	X, Otuiti Rd, phoned 11.20am to advise that he had smelled the landfill for the last 30 mins, having returned home. There was almost no wind, maybe easterly, it was a rubbish smell not a landfill gas smell. About 10 minutes later Complainant 2 phoned, also resident on Otuiti Road, and said the same thing, that there was a landfill rubbish smell present. He had just gone outside, being a night worker and just woken up. At 11.50am I contacted BES Ltd to see if they could carry out an odour survey. BES available, but would not be at the Otuiti Rd site for about an hour. I agreed to this.
106055	14-OCT-2009	Smell from tip at hampton downs=he couldn't rate it, but is sick of smelling it. no wind, pretty still. would like a call from someone today regarding this please.
106311	22-DEC-2009	Big stink currently from Hampton Downs landfill this morning. Weather is relatively calm (slight easterly) and sunny... level is 10/10 caller says.
106366	09-JAN-2010	Hampton downs tip odour smell 7 - 8/10 easterly wind
106413	19-JAN-2010	X left a phone message 8am, 19/1/10 statting that the nearby landfill smelled bad this morning, for at least the last 30 minutes. There was a light easterly wind this morning.
106414	19-JAN-2010	Xl left a phone message about 8.30am 19/1/10 stating that the Hampton Downs landfill smelled bad again this morning, also at times over the weekend. The odour was 10/10 mostly because he was sick of it.
106461	02-FEB-2010	Xl phoned Z 11.15am to complain about the landfill odour, he said it was 10/10, just because he was sick of it . He said that the odour had been around since about 6.30 am today. He asked what Envirowaste were doing to stop the odour. X said that there should be NO odour at all from the landfill. I advised that the consents allowed some odour, but not objectionable or offensive odour. I advised X that Envirowaste were going to hold another open day soon, he would be invited. Also, Envirowaste were using odour neutralising sprays, and had good cover at the landfill.
106555	17-FEB-2010	Caller says that the odour level flowing across the Waikato River from the Envirowaste site is very high today. Level of around 7/10, light breeze and warm. Call received at 10am - 17/02/10.
106592	22-FEB-2010	X phoned 9.15am to advise that the landfill odour had been offensive since about 9am. No wind. He considered the smell to be of rubbish, not landfill gas.
106662	08-MAR-2010	Complainant phoned Z directly 10.45am Monday 8/3/10, to complain about the landfill odour. He said that he had smelled the landfill for about an hour this morning before phoning, also Friday morning 5/3/10, and another time last week but he couldnt recall the day/time. He said there was almost no wind at present, calm, sunny. He described the odour at present as 10/10 for intensity, but only because he is sick of the smell, he considers that there shouldnt be any smell at

		all. I commented that the landfill was consented to have some odour, but not offensive odour. Complainant wanted to know what Envirowaste was doing to stop the odour, I provided information on daily cover, landfill gas extraction, flaring, odour neutralisation sprays. I commented that there had been an open day on Saturday to which he had been invited. - complainant was working at the time, unable to attend.
106957	06-MAY-2010	Complainant phoned at 10.10am, stated that he had smelled the landfill this morning since about 9.30am. He considered the smell objectionable. He described the weather as calm. He said the smell was of rubbish, not landfill gas.
107111	17-JUN-2010	Complainant phoned EW at 10am, stated that the landfill odour was very noticeable this morning. He has noticed the smell the last 30 minutes, from when he woke up, but a neighbour further up the hill (Otuiti Rd) visiting told him that the smell had been present all morning. Its foggy, calm, cold, maybe a very slight easterly. He considers the odour to be landfill gas not rubbish..
107358	06-AUG-2010	Arrived home this morning from work (shift worker) at 7.45am, no odour,, but then about 8.20am he noticed the landfill smell, about 4/10 intensity, off and on for about an hour, then at 9.30am the smell was quite distinct. Calm weather, not foggy at present.
107497	30-AUG-2010	Short phone message left on Z phone Friday 27/8/10 at 9am - the landfill smelling again, and also smelled yesterday (Thursday).
107900	18-NOV-2010	Big stink from the Envirowaste site at Hampton Downs. Level of 7/10 this morning (and yesterday) Weather: Still, coolish.
107993	08-DEC-2010	Very strong smell this morning, first noticed when she got up about 7am, 6/6 intensity, worst ever landfill smell experienced. She considers the odour to be landfill smell, rotten, similar to chicken manure but worse.
107995	08-DEC-2010	Stench from hampton downs landfill 6/6 no wind. caller even lives over a hill from there but smell is awful.
108042	16-DEC-2010	Bad odour from the landfill site currently. Overcast and warm light breeze. Level at 6/10 approx.
108168	21-JAN-2011	The caller called regarding a bad odour that he can detect at his property which is coming from the Hampton Downs Landfill site. The caller noted that the odour smells like a rubbish dump (pungent odour). The caller noted that on a scale from 1 to 6 the intensity is a 4-5. The caller noted that the temperature at his property is hot but not muggy. The caller noted that there is a slight south easterly breeze (maybe 10 knots). The caller noted that he first noticed the smell at about 1pm today and stated that it is still evident at his property. The caller noted that he has spoken to Z (the monitoring officer for the site - site file 61 11 12A) on a number of occasions in the past regarding similar smells from the rubbish dump.
108205	28-JAN-2011	Hampton downs tip pungent smell, slight easterly wind also foggy. consent 102263 -
108291	12-FEB-2011	Odour complaint from hampton downs tip 6/10 slight southerly. noticed smell since 4pm & gradually got worse.
108347	20-FEB-2011	Odour complaint at hampton downs landfill
108436	10-MAR-2011	X phoned 9.48am Thursday 10/3/11 to complain that the landfill odour was present this morning, started about 9am, but gone when I phoned back 10.20am. When asked whether the odour was rubbish or landfill gas, he was certain it was the rubbish smell. He confirmed that he wanted his complaints confidential still. No wind at present, calm. Sunny.
108449	12-MAR-2011	Smell from hampton dump - rfs no # 424461
108478	18-MAR-2011	"Blimmin' potent" offensive odour today from Hampton Downs Landfill - rated 8/10. Caller says that normally there is a slight odour approx 4/10 detectable from where he lives, but over the past week the intensity has increased

		dramatically and has been evident pretty much every morning. Weather is calm, no wind, slight fog this morning. I did tell him that often as we headed into this autumn morning weather we had an increase in odour rated complaints. Caller initially transferred through to Z for discussion about recent site operation.
108516	24-MAR-2011	Caller says that the Hampton Downs land fill is currently very stinky. He say it was yesterdat and later last week as well - level 8/10 or thereabouts light winds and sunny conditions.
108519	25-MAR-2011	The caller called regarding a bad odour from the Hampton Downs Landfill that is noticeable from his property. The caller noted that the odour intensity is a 6 on a scale from 1 to 6. The caller noted that weather conditions are overcast and there is a slight wind. The caller first noticed the odour at 8.30am this morning and it is not as strong now - but its still noticeable.
108522	25-MAR-2011	The caller called regarding an odour noticeable at her property from the Hampton Downs Landfill. The caller noted that the intensity of the odour is a 2 or a 3 on a scale from 1 to 6. The caller noted that the weather conditions are overcast and there is a very slight breeze. The caller first noticed the smell three days ago and noted the odour has been continuous.
108523	25-MAR-2011	X called to say the Hampton Downs Landfill is causing odour problems at their place. He said there is a very slight easterly wind and rates the smell as a 6/
108549	31-MAR-2011	X called to say they live over 5kms away from the dump and can smell it this morning. She ranks it 5/10 and said there is a light breeze. She said it is usually bad after it has been raining but there has been no rain and it is bad.
108550	31-MAR-2011	Xl phoned 10.27am Thursday 31/3/11 to complain about the landfill smell. He first noticed it about 10am, the smell was not present before then this morning. The smell is rubbish, rather than landfill gas.
108672	05-MAY-2011	Hampton downs landfill odour complaint. scale 7/7 no wind and foggy.
108673	05-MAY-2011	Hampton downs landfill odour complaint. scale 6/7 no wind and foggy .
108680	06-MAY-2011	Complainant phoned about 10am, left a phone message at WRC, stating that the landfill was smelling this morning. No further details.
108681	06-MAY-2011	Complainant phoned to say that the landfill has smelled pretty bad the last couple of months, including during the Easter weekend when it was particularly bad. The smell is worst early morning, and when its foggy. He does not know whether the smell is refuse or landfill gas. He has not been to the landfill during any open days.
108699	12-MAY-2011	The caller called regarding an odour from the Hampton Downs landfill. The caller noted that on a scale from 1 to 6 the odour intensity is a 5. The caller noted that weather conditions are fine with a bit of fog down in the gully. The caller noted there is no wind. The caller noted that he first noticed the odour this morning at 6.50am. The caller described the smell as pungent rubbishy smell.
108705	14-MAY-2011	Odour complaint- hampton downs landfill- rubbish smells. still with a slight easterly 8/10.
108805	04-JUN-2011	Methane smell from hampston downs dump chris called 3 years ago and got no follow up on this.
108806	31-MAY-2011	Complainant reported odour from the landfill was "7 out of 7" this morning. He considered the smell was from rubbish, not landfill gas. The weather is calm at present.
108807	03-JUN-2011	Caller phoned to report landfill odour 8.20am, it had been present since about 8am. Calm conditions.
108814	08-JUN-2011	The caller emailed Z regarding an odour noticeable along State Highway 1 near Paddy Road being discharged from the Hampton Downs Landfill site. I have attached the email to this Call Tracker.
108882	27-JUN-2011	The caller called regarding an odour from the Hampton Downs Landfill noticeable at his property. The caller noted that on a scale from 1 to 6 the odour

		intensity is a 4. The caller noted that the weather conditions are fine with no wind. Tier 2/3.
109056	10-AUG-2011	Odour from Hampton Downs landfill gas type swamp smell from landfill all day
109117	30-AUG-2011	X called to complain about an odour coming from the Hampton Downs Landfill. He could smell it last night at about 7pm and he can smell it right now. He gave it a rating of 4/6 for the odour that he can smell right now. Weather conditions are misty & still.
109240	27-SEP-2011	Bad odour coming from Hampton Downs. Light winds. 3/6
109293	10-OCT-2011	X called to say smell has been bad from Hampton Downs over last 2 weeks off and on. Said last week the smell would have been a 5/6. Currently estimates it as a 3/6
109294	10-OCT-2011	X called to say the odour is very bad again . His wife has just rung him at work and said they are leaving the house as the smell is too bad. Rating it a 6/6. He said at least a dozen times over the last month it has been putrid. He said he and others have called EW so many times over this and nothing gets done.
109361	28-OCT-2011	Odour 5/6 at hampton downs tip no wind
109530	30-NOV-2011	Odour coming from hampton downs land fill, 6-10. 5-10 knot eastery breeze.
109532	01-DEC-2011	X said bad smell coming from the dump abit yesterday and all day today constantly. 3/6 Its bad enough to make it annoying. he lives 5kms away. Easterly Wind. he wants to be called back
109538	02-DEC-2011	Hampton Downs ref, smell 8-10, gentle east breeze this smell has been bad all week especially tuesday evening this would have been the worst night ever & rated it an 11.
109577	13-DEC-2011	Caller says there is a landfill odour today which is intolerable. He said the landfill smelled much worse for 2-3 days last week but could not remeber which days. He is frustrated that the odour continues year after year and WRC is doing nothing about it. He said it hasnt improved in recent years, as bad as ever.
109578	13-DEC-2011	X got home 1/2 an hour ago and says the landfill smells the worst it has ever smelled - she rates it 6/6, overcast, wind is blowing towards them from the landfill. Seems to have got worse in last 15 minutes.
109581	14-DEC-2011	Been very bad off and on all week. Jeremey has had family over from England and it was so bad earlier in the week that they rented a bach at the beach to get away from smell. 25 Knot easterly at the moment and rates it a 3/6 but has been much worse other days
109584	14-DEC-2011	X alleges the guy that leases the land to the landfill is spreading chicken manure on the surrounding land. The smell is so bad it is making them retch. It is an acidic horrible smell that X says definitely isn't a landfill smell. The odour is worse than yesterday and has been slowly getting worse throughout the day. He didn't want to give the odour a rating just said he can't believe how bad it smells.
109602	19-DEC-2011	Odour complaint x called to lodge complaint re foul odour from "chicken shit" that was off loaded adjacent to the hampton downs dump. x says he has been reluctant to make a complaint but says that the smell has not dissipated over the last fortnight and he is very concerned that the smell will still be around throughout christmas. x is concerned also about the implications to health & well being as he describes the odour as extremely noxious and acrid
109615	21-DEC-2011	Odour from hampton downs landfill 3 or 4 out of 6 no wind. smells like usual tip smell.
109635	28-DEC-2011	Bad odour coming from hampden downs landfill te kauwhata 7/10, easterly breeze, 5 or 10 knots
109636	28-DEC-2011	Odour complaint : hampton downs dump , smells of feces, 8/10 . been going on for last 1.5 weeks. strong wind coming towards them.
109638	29-DEC-2011	Smell coming from hampton down dump,9/10 slight southerly breeze.

109645	31-DEC-2011	Bad odour coming from hampden downs landfill te kauwhata 5/10, easterly breeze, 5 or 10 knots
109701	18-JAN-2012	X called. The odour from the landfill is disgusting this morning. 6/6. no wind - odour is just sitting in the air. X can taste it in her mouth. Says it should be illegal. Wants to know if anything is ever going to be done about this. Suggests WRC staff need to come and live in the area for a couple of weeks and experience the foul smell. Sarah is heading out. Please call her on her mobile
109703	18-JAN-2012	Brief telephone message left at 8.40am, 18/1/12: "Tip smelling again".
109764	02-FEB-2012	Odour from hampton downs landfill easterly breeze mayb 6/10 action taken:
109766	18-JAN-2012	Caller left brief message on answer phone at 8am. "Tip smelling again today". No further details.
109818	20-FEB-2012	Bad smell from Hampton Downs landfill this morning. Rates it a 3/6 - gentle winds
109970	24-MAR-2012	Odour from hampton downs land fill about a 5 on scale of 1-10 easterly wind light
110017	10-APR-2012	Confidential caller. Hampton Downs 'reeks' this morning. Foggy. No wind. 6/6 right now.
110018	10-APR-2012	Odour started about 1/2 an hour ago. 4/6 right now. Foggy. No wind. If shuts door to house can't smell odour but as soon as he opens the door he can smell it.
110019	10-APR-2012	X phoned. 6/6 right now. Foggy. No wind. The smell hit her when she opened the door this morning. It is disgusting. She can't believe they are being made to live in a cesspit just so that those people can make money. She can't let her kids go outside and play. All they get is a smack on the hand and a fine. X was quite upset. Tier 3
110020	10-APR-2012	This is the first time X has called us. The smell is 10/6 right now. Foggy. No wind. His two year old twin daughters went outside to play this morning and came running back inside saying it is stinky. He has friends that he knows have been phoning in and making complaints for a couple of years and nothing has changed. When is something going to happen? He wants to hear back from someone senior from WRC by this afternoon otherwise he is going to the minister.
110031	11-APR-2012	X phoned yesterday morning about the odour from the Hampton Downs landfill. it still stinks this morning. 3/6 right now. very still. no fog.
110032	11-APR-2012	6/6 right now. no wind. no fog. Wants to know what was done about it yesterr' and what is being done about it today.
110034	11-APR-2012	3/6 this morning. little breeze. now that breeze is picking up the odour is slowly dispersing. X hasn't complained before about this site because he didn't know what number to call but now he has the number he intends to phone each time.
110051	14-APR-2012	Odour complaint for hampton downs tip, refuse smell 9.9/10.
110052	14-APR-2012	Odour complaint for hampton downs tip 10/10
110313	22-JUN-2012	Phoned WRC 9.34am 22/6/12 to complain about the "rubbish smell" from the NWRL. Complainant was annoyed by the smell, which he thought was refuse rather than landfill gas.
110476	11-AUG-2012	Odour from hampton downs land fill smell rated 8/10. still breeze. Its the 2nd morning in a row that this smell has been there.
110477	11-AUG-2012	Odour complaint for hampton downs tip 10/10 bad for 2 mornings in a row now still breeze
110575	31-AUG-2012	Odour from Hampton Downs Landfill - refuse smell 6/10. still wind
110917	04-DEC-2012	X originally called at 8:38 to complain about strong offensive odour from landfill. Called back just after 9.30 (in meeting) and left message. x called back again at 10:55 to advise odour was objectionable this morning, unable to go outside

		smell went through house. Smell at 10:55 still objectionable but not as bad as this morning. rating 5/6 - no wind, quite humid and foggy this morning. They are sick & tired of the smell from the landfill, said it can get quite bad in the evenings as well but they never know who to contact. Advised the 0800 runs 24/7, afterhours goes through to HCC. She would like to be contacted back regarding this.
110921	04-DEC-2012	Phoned this moring re; odour from landfill at hampton downs - he was told someone would call him back with the outcome but no one has and this has happened before - he was quite annoyed
110949	14-DEC-2012	Caller rung to advise strong odour from Hampton Downs Landfill. Offensive when outside. He would rate a 3/4 out of 6 and a north easterly wind. Caller is happy to be contacted.
111108	24-JAN-2013	Caller advised odour from Hampton Downs is very strong today. rating 5/6, slight easterly wind
111109	24-JAN-2013	Odour complaint about Hampton Downs. Rates the smell 3/6. Slight easterly breeze. Has been smelling today and yesterday as well
111120	23-JAN-2013	received a complaint regarding the smell being generated from the Hampton Downs Land Fill Otuiti Road RD 1 complaint regarding the smell of the horsham Downs dumping station, X lives downhill from the dump and has to put up with the smell, at the moment it is quite bad. He has mentioned he usually calls up every now and then to report
111238	19-FEB-2013	Caller said that the landfill odour was bad this morning. Also 3-4 times last week, did not specify the days or times. He said the smell was putrid rubbish, not landfill gas. The weather at present is very calm. He said the odour would probably lift once the wind started.
111395	23-MAR-2013	Odour from Hampton Downs landfill . refuse smell scale 5/6. wind slight easterly
111460	11-APR-2013	5/6 - slight easterly (norwester) caller advised started just before 9am
111625	03-JUN-2013	Odour from Hampton Downs landfill . refuse smell scale 9/10. wind slight easterly
111837	16-AUG-2013	Bad odour this morning 5/6. Slight easterly wind. Was a bit of odour last night and the day before too but nothing like this morning.
111840	19-AUG-2013	Odour 6/6 - very little wind - caller only noticed smell now.
111849	21-AUG-2013	Odour 6/6, little wind, caller phoned last night as well. Odour has been bad for last few days. Caller sounded very fed up with it all.
111850	20-AUG-2013	Odour from hampton downs landfill . refuse smell scale 8/10. wind slight easterly
111854	21-AUG-2013	Phoned WRC 8.30am regarding the continued odour from Hampton Downs landfill. He thought it was strong and offensive. He added that he has flown over the landfill a few times later afternoon, after landfill closure, and seen the refuse was not covered. Caller thought the smell was refuse not LFG.
111855	21-AUG-2013	Phoned WRC 2pm to complain about the odour from Hampton Downs landfill. Getting the smell a lot recently, it's very annoying. What is WRC doing about it? The smell is there at present.

Appendix F

Hampton Downs landfill odour complaints