

Table of Contents

Broad issues before the Court	3
AFFIDAVITS	7
Relevant Law.	11
Resource Management Act 1991 (RMA) Part II & Section 5 - Analysis.	11
WAIKATO-TAINUI RAUPATU CLAIMS (WAIKATO RIVER) SETTLEMENT ACT 2010 (Settlement Act).....	11
Some Relevant Sections	12
Restoring and protecting the Waikato River.....	12
Waikato Tainui Environmental Plan (Waikato-Tainui Environmental Plan).....	15
Waikato-Tainui Environmental Plan - Overarching Purpose- Restoration and Protection of the Environment.....	15
Waikato-Tainui Environmental Plan - Environmental Enhancement.	15
Waikato-Tainui Environmental Plan - Managing Effects.....	16
Waikato-Tainui Environmental Plan - Precautionary Approach - Expiry of Consents.....	19
Waikato-Tainui Environmental Plan - Natural Heritage and Biodiversity.....	20
Waikato-Tainui Environmental Plan - Freshwater.....	21
APPLICANTS CONSENT CONDITIONS AND Waikato-Tainui Environmental Plan.	21
Protect and Restore the Waikato River.	22
PAR's Submissions on proposed conditions.....	22
Reliable and Comprehensive Objective conditions.....	22
The Consent Holder – imposition of duties on the Consent Holder	23
Municipal Solid Waste.	24
PROHIBITED WASTES.....	27
Requirement to have Appropriate Cover Material Available.	28
Malodorous Waste Reception Procedures and Placement Conditions.....	29
Minimising of Uncapped Areas.....	30
Best Practicable Option.....	30
Management Plans to be certified by Councils	31
Surface water improvement plan (SWiP)	32
Sustain Our Sounds Incorporated v The New Zealand King Salmon Company Limited & Ors [2014] NZSC 40 (17 April 2014).....	34
Expiry of Consents.....	34
Breach of fundamental (fiduciary) Duty – Condition.....	35
Electronic Sensors – Off site Computer Monitored.....	36
Remote Sensing - Satellite Monitoring.....	37
Condition – Remote Sensing.....	37
147.Aerial “Drone” Monitoring.....	37
ODOUR	38
FIDOL Trigger Point.	39
Odour Measurement Positions.....	41
Odour – Full Time Technician.....	41
500 Metres from the Boundary	43
Community Survey - Odour Re-mediation.....	43
Decontamination - Condition.....	43
Odour Re mediation Response Times	44
Drinking Water – Bore and Roof.....	44
Community Trust.....	45

Securing Payments to the Community Trust.	47
Basis for the Community Trust.....	47
Ecological Justice – Ecological debt.....	50
Community Liaison Group.....	50
Community web-page:	53
Consultation on the LMP	54
Glen Afton Swimming hole.	55
Dennis J Scott Alterations to “Generally in accordance” Conditions of Consents.....	55
Dennis J Scott PROPOSED CONSENT CONDITIONS to give effect to Annexure 16 of attachment b Evidence.	56
Fencing.....	59
Vesting land in Council and or Covenanting.....	59
Covenant under the Reserves Act 1999 with Waikato-Tainui.....	59
Covenant to the Consenting Authorities.....	60
Bond.....	61
Review of conditions of consents in relation to the DJ Scott Evidence	62
The purpose of the review with relation to to the DJ Scott Evidence and the vision and strategy:.....	62
Review Notice at Any Time.....	63
Consent Notices.....	63
Paramountcy of Conditions	64
Cumulative effects.....	64
Waikato- Tainui Approval of Mr Dennis Scott’s Approach.....	65
Format of Documents.....	66
Bundling of Documents.....	66
Conclusion	66
Restoration and Protection of Waikato River.....	67
Certainty, Enforceability and Implementation of Conditions	67
Monitoring of Odour.....	67
Community Collaboration.....	68
PART 11 and Section 5 RMA.....	68
FUNDING.....	69
Crown Acknowledgements.....	74
16 Status of vision and strategy for other enactments.....	75
6 Interpretation.....	76
A.Recognition of vision and strategy for Waikato River.....	77
B.Te Ture Whaimana.....	77
17 Duty to have particular regard to vision and strategy.....	78
Schedule 2	
Vision and strategy for Waikato River.....	80
Strategy.....	80

May it Please the Court.

1. This memorandum is once again substantially being re written. This time for the hearing to be held on the 5th and 6th October 2015. The memorandum relies upon the 5th version of conditions distributed by the applicant on the 31 August 2015.
2. PAR has and still is in the position of remaining substantially in opposition to the granting of consent, but mindful of the Courts indication and conduct that a consent may be granted, PAR has whilst retaining its opposition, made what it hopes are helpful submissions as to appropriate conditions. This is the typical “Horns of dilemma” situation.
3. I refer to the substantive hearing when this case began. You will recall I made a number of observations about the significant changes brought about by the Waikato Tainui Settlement Act 2010 (Settlement Act). In particular, whilst not challenging the Court I noted the scheme of the Act which had in every possible decision making role, save for this Court, the involvement of a Waikato-Tainui nominated person to guide the decision maker. You will recall our discussion in which I noted that such a provision was not provided for when the matter went to the hearing in front of Her Majesty's Judiciary. We discussed that.
4. I now reflect back on that conversation, because it brings to the fore the Treaty of Waitangi and the role of Her Majesty's Judges as ultimate decision makers, in what was at the time of the signing of the treaty a very unequal and unjust world.
5. Those judges in those earlier days were very familiar with the world of the Māori; the interconnectedness of man with Gods. Papatuanuku and Ranganui, mankind, the trees; wind; stars; taniwha; mountains; rivers; all interrelated and all one equal with the other, where harm to one could be harm to another, or to all. These were the belief structures that underlie the Maori world. Judges like Judge Manning, Fenton made informed decisions in the context of the Māori World. If those judges were not familiar with a particular tribal law, they engaged Maori advisers who were familiar with the various tribes to assist them. The interconnectedness of the spiritual and bio-physical world are the structures that underlies the Law of the Waikato River.
6. To illustrate the contemporary relevance of those beliefs, it was the high chief, Robert Mahuta, who shortly before he died stated that every bend in the Waikato River had a taniwha living thereabouts.
7. My challenge to you and your commissioners then is to apply the Waikato-Tainui Law of the Waikato River. I note it is a holistic law. It is better understood by Waikato-Tainui. There is, however, in the task left to Her Majesties

Courts a clear expectation that they would determine the law and apply that law as it is intended in the Settlement Act. That is in accordance with the Waikato-Tainui Law of the Waikato River.

8. In order to assist relevant affected parties in interpreting the Law of Waikato-Tainui; Waikato-Tainui have prepared the Waikato-Tainui Environmental Plan (Environmental Plan)¹. It is my client's submission that in the absence of that guiding person, a Maori advisor as many of those early Judges had, the environmental plan provides another pathway to understanding and applying the Law of the Waikato-Tainui.
9. It is clear to me from the feedback I have had from various members within Waikato-Tainui, that the Court has to a very high standard of elucidation and clarity laid down the law from the Act. The next challenge, is the application of the law to the facts of this application by this Court.
10. The Settlement Act has a long and elaborate preamble, noting the reasons for the settlement. The purpose of the Settlement Act being to restore a past state and protect into the future.
11. Before we apply the law to the facts of this case, it is incumbent upon me to remind the Court of the reason for the Settlement Act. Firstly, let me refer to the background of the settlement as in the Preamble. The settlement is a profound admission by Government of wrongdoing. I urge the Court to review the Preamble and note section 17, the Crown Acknowledgements:

Page 67 is a copy of the Preamble s17 - Crown Acknowledgements.

12. The Law of the Waikato-Tainui is a law totally different from any concept of the law that came to New Zealand from England, totally different from what is today known as common law. (Blackstone may have related to it). The Waikato Tainui Law of the Waikato River, is an all encompassing philosophy of the interconnectedness of mankind with the other beings and entities, living and non-living, which make up the biophysical world around us, where harm to one is harm to the other. A view of the world many in contemporary New Zealand society have lost sight of with our meritocracy based neo-liberal culture of market force regulating a mythical market world. A world that never trickles down – save for increased poverty. A world of personal accumulation and self aggrandisement.
13. Blank
14. In the various aspects of the evidence before this Court in these Conditions Hearings, we have had a number of experts for the applicant referring to

¹ The Waikato-Tainui Environmental Plan was developed by the various Marae that constitute the Waikato-Tainui family. *Takamore Trustees v Kapiti Coast District Council* [2003] NZRMA 433 (HC).

their holistic view, as if it is a jargon they have to use to achieve their client's outcome. In every case it has not been explained as the holistic view of Waikato-Tainui as reflected in the Waikato-Tainui Law of the Waikato River. It has been a narrow view relating to their discipline. Water, odour, landfill design etc. Mr. Barry Campbell, the expert from the Waikato Regional Council notes in his report² that there has been minimal consultation with Waikato-Tainui by the applicant in developing this application.

15. PAR urges the Court to apply the law of the Vision and Strategy – *Te Ture Whaimana o Te Awa of Waikato*.³
16. In order to ensure its position is in accordance with the Waikato-Tainui law of the Waikato River, PAR has from early in the appeal consulted extensively and maintained an ongoing dialogue with the Waikato-Tainui River Trust (River Trust). PAR has endeavoured to form its argument, and advance conditions that conform to the views of the vision and strategy. In doing so PAR has been guided by the River Trust. Mr Scott's evidence and associated conditions he advances, the Community Trust and expiry term of consents all reflect input from Waikato – Tainui River Trust.
17. The evidence PAR has put to the Court has the clear support from both the Waikato-Tainui River Trust and the Waikato River Authority as is evidenced in the 3rd affidavit of Ms Tumohe. When, in the week before Mr Scott's evidence was to be filed, PAR had a shortfall of approximately 20% of Mr Scott's fee, and was about to not engage Mr Scott, and on advising the Waikato-Tainui River Trust, the trust stepped forward with the shortfall.

BROAD ISSUES BEFORE THE COURT

18. In applying the law of the Waikato River, it is PAR's submission the Court should adopt a "Precautionary Approach".
19. The broad issues before the Court from PAR's position;
 - (a) Are the conditions proposed in the proposed consents in the version released for the hearing dated 31 August 2015, in regard to the WAIKATO-TAINUI RAUPATU CLAIMS (WAIKATO RIVER) SETTLEMENT ACT 2010 (Settlement Act) sufficient to restore and protect the Waikato River?
 - i. PAR submits they are not, Mr Dennis Scott, an acknowledged expert in restoration and protection of biophysical habitats and environments has

² I believe this was his section 42A report.

³ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Section 9(3).

offered his evidence to inform the Court of the restoration and protection necessary to give effect to the Settlement Act provisions. As mentioned above, this approach has the approval of Waikato-Tainui River Trust and Waikato-Tainui River Authority entities established under the Settlement Act 2010.

- ii. Mr Scott has prepared draft condition to achieve the outcome he proposes and PAR will also place before the Court matters in relation to the Settlement Act such as the precautionary approach to consent term; and a community trust.
- (b) **Odour.** Are the odour conditions robust enough to prevent or minimise objectionable and offensive odour beyond the boundary of the site?
- i. PAR submits they are not.
 - A. PAR notes there have been a number of iteration of the consent conditions (latest will be 5 and 6 by October 5th 2015). Each time they are skewed in favour of the applicant, and not skewed to addressing the fundamental issues of clarity certainty and conformity with what in other jurisdictions are best practice, or addressing the serious legal issues and Section 5 RMA issues that are looking us in the face.
 - ii. I will make submissions in regard to the odour conditions below.
- (c) Can the consent holder be trusted to comply with the consents as issued, and if not are the consents drafted in such a way that this lack of trust is taken into account?
- i. **Rule of Law – Fundamental Breach - Trust. Confidence. Good-faith.** PAR submits that when an applicant makes an application for a resource consent, and when a territorial authority acts on it the territorial authority in making that decision is acting in the interests of the public good as reflected in its planning instruments and under the law; and when the territorial authority decides to grant the consent there is, in the absence of extremely tight and constrained conditions a relationship of trust and confidence and absolute good faith established. A fiduciary like relationship. A relationship whereby both parties will act honestly, transparently, openly, and in accordance with the law to implement the conditions of consent. When they do not so act, in some circumstances the breach is so serious it amounts to a “Fundamental Breach”.
 - ii. The evidence of PAR before the Court is that in this application the Court cannot imply that fiduciary relationship into the consent. Duties of monitoring and verification, reporting, integrity of compliance, and

related matters. The evidence of Mr Dillon, Mr Brinkley, and Mr Scott indicate; and previous compliance history of the site demonstrate; a pattern of behaviour, that mindful of the conditions as drafted, does not give PAR full confidence in the consent conditions as of 31 August 2015 version.

- iii. The challenge then is to draft the consent conditions in such a way to enable verifiable, reliable, comprehensive, objective monitoring and reporting that does not require input or action from the consent holder directly? PAR submits an independent entity should be responsible for odour management, monitoring and reporting. In the conditions as proposed that is not the case.
 - iv. Mindful of the nature of the evidence before the Court of furtive concealment; blatant disregard of consent conditions in previous consents⁴; fraudulent and secretive conduct by the applicant in the guise of previous companies directed by that person on the same site); blatant dishonesty; and fundamental breaches of the fiduciary duty of trust confidence and good faith to the community via its regulatory body; AND,
 - v. Deliberate obstruction and removal⁵ from those community members, who have a lot to loose in this application, from carrying out their rights and duties to participate effectively in the Resource Management Act 1991⁶. PAR submits the conditions may be able to be drafted, but will be difficult, and no reliance should be placed on the applicant to report, monitor or comply. Further, external, tamper proof monitoring and reporting, and external corruption proof procedures, must form the basis of the conditions.
- (d) **OUT OF SCOPE - BOUNDARY OF SITE.** Is the application as it now is framed as in the draft 31 August 2015 conditions, out of scope because the boundaries of the site are substantially different from what was applied for on 29 October 2012 (AEE Page 6, titled "Site layout Plan").
- i. The site is defined in the 31 August 2015 draft consents WDC page 30, Definitions on page 31 "*Site means the land owned or controlled by the consent holder as shown by the black boundary on Appendix XX to this consent*". In the WDC Appendix 5 is a map showing in bold the boundary of the site. Included in that bold line is part of the lands purchased on or about the 25th June 2013 (25 June 2013 purchase).
 - ii. If the site was notified with the site boundaries that are now defined there would be substantially greater number of persons who would

⁴ C & D Waste Consents waste consent numbered 103079 and its schedule are one example.

⁵ Gates across View Road and the ever present Minder who accosts all who enter further along View Road. AND lobbying of the WDC for the closure and the subsequent closure of the historic Puke Coal Mine Road.

⁶ Resource Management Act 1991, Section 35(3)

oppose or take an interest in the application among the landowners and residents of the villages of Pukemiro, Glen Afton and Gully Road? PAR submits that for the newly defined boundaries it is out of scope, and should not proceed.

iii. The 25 June 2013 purchase affects the application as follows:

- A. The site is now extended right up to the edge of the villages of Pukemiro and Glen Afton.
 - B. A greater number of persons would have taken an active submitter and Section 274 party interest in the site if it had been applied for including the 25 June 2013 purchase.
 - C. The 25th June 2013 purchase being included in the site establishes an activity permitted baseline in RMA terms for further activities of a mining and landfill nature on the 25 June 2013 purchase area.
 - D. The 25th June 2013 purchase is in a different catchment than the site as in the AEE at page 6. The 25 June 2013 purchase, according to the Waikato District Plan maps on map A3 shows the lands of the original site drain towards the Waikato River and are in the Waikato River catchment; whereas, the 25 June 2013 purchase substantially drain towards Raglan. Before a baseline of activity of mining or of a landfill nature is established in this 25 June 2013 purchase catchment, there are planning and landscape issues that should be considered. An arbitrary change of the application could have profound adverse effects.
 - E. The 25 June 2013 purchase lands offer a significant landscape amenity for the villages of Glen Afton, Pukemiro, and the residents of Gully Road. If the permitted baseline arising from this extension is extended into this 25 June 2013 purchase catchment, there is the possibility of significant serious landscape adverse effect.
- iv. The PAR contends that as these more recent additions to the site boundary occurred after the date of the application (29 October 2012), and as they extend the land owned by Puke Coal into the catchment that is within the visual field and catchment of the villages of Pukemiro and Glen Afton, and as the lands extend right up to those villages, and more persons who live or own land in those villages would have responded to the application and may have appealed the decision.
- v. PAR contends the application with the 31 august 2015 boundary can not be granted. PAR relies upon Section 104(3)(d) of the RMA. The consent as drafted should be declined.

- (e) **CONDITION VARIATION SOUGHT.** That the site be defined as: “Site means the land owned or controlled by the consent holder as shown by the image [here identify in the conditions where the image is located], (in the AEE dated 19 October 2012 and headed “SITE LAYOUT PLAN at page 6.) That Site Layout Plan being transposed into the consent conditions so that it is clear to see in the conditions.”⁷

AFFIDAVITS

20. PAR has placed before the Court 4 affidavits.

- (a) **Mr Scott** addressing protection and restoration issues.
- i. Mr Scott's evidence identifies to the Court significant environmental harm caused directly by the conduct of the applicant Puke Coal Limited since the AEE was prepared.
 - ii. It puts before the Court the further steps needed to achieve the Vision and Strategy in a holistic manner for the whole site in conjunction with the Adaptive Management Plan (now SWIP).
- (b) **The evidence of Mr Brinkley and Mr Dillon.** In regard to the landfill fire and the closed road Mr Brinkley this reference to fire does not refer to the more recent fire on or about 26th September 2015. Mr Dillon in regard to his activities under the direction of the directing mind. These are not put before you to inform you of the facts they give rise to, but to make the point that the conditions in the consents must be of such a form that external monitoring and reporting on an ongoing basis in the consents will be necessary. That no conditions should reserve an obligation on the consent holder to perform report or delegate a duty. That the conditions of consent should be able to be given effect to notwithstanding the consent holder.
- (c) Mr Brinkley raising issues of landfill fire. Of relevance is the failure of the consent holder in conformity with the C & D Landfill Fire Management Plan to advise the WRC and WDC and to call the fire brigade, DOC, with concerns about leachate spill as a result of any fire.
- (d) In relation to the closure of the road. - It is a public road - Whilst it is accepted there are possibly other considerations about this closure, this closure took place at the instigation of the applicant and effectively removes

⁷ It is important that the wording defines the site, either by including in the wording the image with the site clearly shown, or by words that defy ambiguity and vagueness. Interpretation Act 1999, places words over diagrams in case of doubt.

in terms of RMA Section 35(3) the eyes of the community from applicant's land and makes difficult the ability of the community to carry out its duties under the RMA to observe, monitor, report and if necessary prosecute enforcement action.

- (e) Similarly with the placing of a gate across Glen Road and then having a "minder"⁸ accost persons when they enter on the public road to the end. Again it affects the ability of the community to carry out the very clear duty of s 35(3). Mr Brinkley photographs at "B" illustrate the view that is lost from the closure of Pukemiro Mine Road.
- (f) The conduct of the applicant as above is conduct of furtive concealment and another instance of an inability to maintain the implied qualities of trust, honesty and good faith implicit in a consent when a duty is left to the applicant.
- (g) Mr Brinkley at attachment "D" does not direct this to the applicant consent holder, but to the limitations of access implicit in Section 35(3) of the RMA.
- (h) PAR in preparing for a response to the applicant's draft conditions of consent and mindful of the proposal in the AEE that the application was to be holistic of the whole site, PAR sought the full consent from the WDC. 6 weeks wait, and \$ 225.00 invoice, the consents arrived. (admittedly that was part-way through Christmas). It is suggested is not reasonable in any sense, and nor what the RMA envisages at Section 35(3).
- (i) After the hearing in Auckland on the 31 August 2015, PAR sought another copy of a consent from the Waikato District Council under the Local Government Official Information and Meetings Act. This was for a consent issued in late 2014. PAR received an initial response to the effect that the consent would have to be accessed from an "of site storage facility" - certainly not what the RMA envisages at Section 35(3). Then on receipt of the consent information a terse statement to the effect that future requests will incur a charge. PAR submits this is hardly the type of response that should be received from a Council that is fulfilling its duty under the RMA to have such material reasonably available at its office for members of the public to access and carry out their duty. RMA Section 35(3)
- (j) **CONDITION SOUGHT** If the Court is mindful to grant the consent then PAR seeks an order that the full consents for the Puke Coal site be collated into one file and made available as one. PAR further seeks that the files be digitised and searchable on a CD-ROM, and be made available at the WDC and the WRC offices. It would be helpful if the consents were bundled into documents similar to the Waterview consents.

8 I mention hereafter that Mr Dennis Scott was accosted by this minder when he first visited and was challenged vigorously to a stand up fist fight. He was on the Glen Road, the public road.

(k) **Mr Dillon.** An ex director; ex senior employee; business partner; and associate of Mr J Campbell the directing mind of the Puke Coal Limited the applicant.

i. Mr Dillon tells of deliberate environmental abuse; fraudulent non compliance with consent conditions; creating discharges to the Waitawhara directly from the site together with the furtive action⁹ of concealing the placement of materials specifically prohibited by the C & D resource consent¹⁰; harassment of compliance officers; destroying of consent required evidence of on site (dust) measuring evidence, discharging by truck quantities of leachate directly to the Waitawhara when it could not be managed on site; receiving every day for over a year, a truck of offal to be deposited in the landfill; the disposal of asbestos in significant quantities; installation of a concealed leachate drainage pipe from the leachate pond to the Waitawhara – the leachate pond will never overflow, Mr Dillon told the Court, because it had a non-consented and hidden drainage system that drained any surplus leachate to the unnamed tributary.

ii. This is the past pattern of conduct that the consents proposed in this application have to deal with. I empathise we are not here to condemn the conduct but to learn that if this suite of consents is to be granted they must cope with this approach by the applicant.

iii. These actions in themselves, with the exception of the asbestos, are not relevant to the Court for the facts they disclose, but for the Court to take into account, if it is of a mind to grant consent, with robust externally actuated, reported and monitored consent conditions that address fraudulent and blatant disregard and concealment. The challenge here is to draft the consent conditions in such a manner that monitoring is over all site, and external to the applicant.

iv. **CONDITION SOUGHT.** PAR seeks a condition that the with asbestos location, now known, the asbestos be retrieved from its illegally deposited site and placed in an appropriate place. Either on site or off site.

(l) **Ms Tumohe's** 2nd affidavit supports PAR's request to have the negotiating clause removed from the consent conditions. That has been removed from the version of the consent received on 31 August 2015. It is not expected those conditions will reappear.

(m) In her affidavit Ms Tumohe illustrates the conduct of the Tumohe neighbour Puke Coal Limited with regard to boundary fences. The photographs illus-

⁹ Evidence was heard that offal was delivered daily to the applicant's site for in excess of 12 months in a large truck in the livery of a driving school. Leaving Horotiu and travelling to the site.

¹⁰ Offal, Asbestos. Vehicle batteries. Street sweepings, etc.

trate the depositing of a large load of overburden type soil right over the fence that marks the boundary between the Tumohe and the Puke Coal properties, destroying part of the fence.

- (n) **CONDITION SOUGHT.** PAR seeks a consent condition that the applicant remove the overburden and repair the fence at the rear of the Tumohe property where it is contiguous with the Puke Coal Property.
21. **Ms Tumohe's Third Affidavit.** I have already above advised the Court of the approach by PAR of consulting with the Waikato Tainui River Trust with regard to the interpretation and application of the Waikato-Tainui Vision and Strategy in this matter. Ms Tumohe's third affidavit places before the Court evidence of that involvement, and of the Waikato-Tainui views on the PAR position, in particular Mr Dennis Scott's evidence; the precautionary approach necessary in relation to the consent terms; and the desirability of a Community Trust as outlined in the Waikato Tainui environmental Plan.
22. It evidences at: attachment **A** Waikato-Tainui response to the interim decision and the views with regard to plant types in restoration and protection projects, in particular an email dated 11th November 2014 from a Cherie Van Schravendijk. Attachment **B** is a copy of a letter from PAR to the Puke Coal Limited legal team (applicant) in response to a communication from the applicant seeking PAR's views on conditions. In that response the applicant is advised of interaction with the Rivers Trust (Mr. Manukau) and of the involvement of Mr Dennis Scott. It also advises the applicant that the approach of PAR is supported by the Rivers Trust. Attachment **C** is an email from Mr Tim Manukau of the Rivers Trust, to the applicant indicating that the Rivers Trust supports the approach by PAR, that is the Dennis Scott proposals. Attachment **D** is a letter addressed via PAR to the Court supporting the approach of PAR to the vision and strategy. In particular the conditions that address the restoration and protection of the River. The Community Trust and the Attachment 16 of Mr Scott's evidence, the Land – use Spatial Analysis Plan. Attachment **E**. is a letter of support from the Waikato River Authority addressed to me as representative, again supporting the Dennis Scott proposals.
23. The later two letters attached to Ms Tumohe's 3rd affidavit one from the Waikato River Trust and the other from Waikato River Authority (Both statutory bodies established under the Settlement Act) are a strong indication of Waikato-Tainui views on how the Vision and Strategy should be applied in this case. It is expected the Court will take particular regard to these views¹¹.
24. Consultation by the applicant with Waikato-Tainui has been minimal as evidenced by Mr Barry Campbell of the Waikato Regional Council in his Section 42A report and elsewhere. There is no evidence that Waikato-Tainui

¹¹ *Takamore Trustees v Kapiti Coast District Council [2003] NZRMA 433 (HC).*

views either arising from consultation or from the vision and strategy, or the Waikato-Tainui Environmental Plan have influenced any of the decision-making of the applicant that underlie the consents. The consents documents presented at the hearing on the 31 August 15 have made a belated attempt to re-label an experimental adaptive management plan as an “improvement type plan” now SWIP and to pay a paltry sum in 15 years and then cease any obligation. This is not what was envisaged in any of the legislation or subordinate legislation.

RELEVANT LAW.

RESOURCE MANAGEMENT ACT 1991 (RMA) PART II & SECTION 5 - ANALYSIS.

25. The relevant law in this case will depend on compliance with the requirements of the Settlement Act as it reflects in the vision and strategy.
26. An analysis of the proposed conditions of section 104 (1)(c) of the Resource Management Act. Of particular relevance will be The RMA Sections 5, 6(a), 6(c), 6(e), 7(a), 7(c), 7(d), 8. and Section 104(1)(c) the Waikato-Tainui Environmental Plan
27. An assessment under section 5 of the Resource Management Act.
28. Whilst analysis under Section 5 a “given” in all Waikato-Tainui catchment RMA consent determinations. The Settlement Act, the Vision and Strategy, and Waikato-Tainui Environmental Plan are relevant considerations as are Sections 6(a), 6(c), 6(e), 7(a), 7(c), 7(d), 8. of the RMA.
29. In addition to the paramount position of the Vision and Strategy in the RMA, Section 6(e) of the RMA is important, and applicable. The case of *Mahuta v Waikato Regional Council A091/98* at XXXX recognises the relationship of Waikato-Tainui and the Waikato River.
30. Similarly Section 7(a) is important in requiring a decision maker to have particular regard to Māori views regarding the way in which land is to be used. *Takamore Trustees v Kapiti Coast District Council [2003] NZRMA 433 (HC).*

WAIKATO-TAINUI RAUPATU CLAIMS (WAIKATO RIVER) SETTLEMENT ACT 2010 (SETTLEMENT ACT)

SOME RELEVANT SECTIONS

31. The sections of the Settlement Act that are relevant to this hearing are outlined below. I have attached copies of the relevant sections of the settlement act as attachments. I have emboldened the relevant sections of the attachments:

Page 69 contains Section 6 - Interpretation – Definition of Waikato River

Page 70 contains Section 9 - Scope of Vision and Strategy

Page 68 contains Section 16 – Status of Vision and Strategy, at 4, 9,15.

32. PAR submits, the Bush Tramway Reserve; a Recreation Reserve under s17 of the Reserves Act 1977 is a relevant consideration when the discharges into that reserve arising from the activity are considered. These discharges are outlined in Mr Scott's evidence. Admittedly the Glen – Afton Bush Tramway (Reserve) is outside the site, but the adverse effects on the Reserve by the applicants activities is an adverse effect arising from the activities of the applicant from a consent already granted, but the effects of which have been brought into this application by the comprehensive nature of the proposed conditions.
33. It is PAR's view the conditions of consent should be reviewed under s128 in accordance with Section 14(2) of the Settlement Act, FURTHER;
34. PAR submits a re-mediation condition be added to the conditions of consents; the reserve protected from that applicant's activities; and a condition requiring its re-mediation be included in the consents.

Page 71 contains Section 17 - Duty to have particular regard to Vision and Strategy at Ss. 1,2,3,4(c), (d) .

Page 73 contains Schedule 2 – Vision and Strategy for Waikato River.

RESTORING AND PROTECTING THE WAIKATO RIVER.

35. The Court in its Interim decisions dated 23 October 2014 stated:

B 1.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 storm water pond, and practical improvements beyond/downstream within at least the application site; and

36. PAR submits the proposed consent conditions by the applicant in its revised conditions before the Court, do not reflect the purposes of the Settlement Act, and under the Resource Management Act 1991, Section 104(1)(c) Tai Tumu, Tai Pari, Tai Ao; the Waikato-Tainui Environmental Plan. PAR submits, as the interim decision at [86] and [87] acknowledges; a stepwise change¹² in the approach to consents is required. The intention being to protect and restore the Waikato River. Further; following the Supreme Court decision in the King Salmon¹³ case, the Court in this case affirmed at [92], the implications of the status of the Vision and Strategy. This Court in its interim decision stated:

“We have concluded - protection and restoration includes preservation from future and restoration from past damage¹⁴.” “restoration can only involve re-creation of a past state. There is some element of betterment involved¹⁵”

37. The consent conditions proposed by the applicant do not provide in a meaningful way for Waikato-Tainui Environmental Plan or the preservation from future damage or restoration from past damage or any betterment. What the applicant proposes is continued “rape and pillage”¹⁶ on a grand scale. No change in the immediate environment. No change that recreates a past state, or which restores past damage, for the future. No betterment for the environment. No concept of a holistic integrated world view and the interdependence and interconnectedness of man on the environment. No economic betterment; a parsimonious mitigation trust. Just pure capitalistic greed with the externalisation of consequences. This is an exploitative application that takes all and gives nothing – nothing - nothing. A proposal that might have emanated in the dreams of a colonising power, Britain, Belgium, France.
38. The applicant, in the 31 August 2015 version of the consents at consent “General conditions at XX page 50, has at last realised the importance of the Settlement Act and the vision and strategy, and changed the name from “Adaptive Management Plan” to “Surface Water Improvement Program” (SWIP), added a non performance penalty at today’s value of \$1million, and a 15 year time to perform or payout, with the obligation to perform lapsing if the payout is made. The obligation to payout, or perform lapsing once performance is achieved or payout made. (This has now been weakened in the consents issued for 5th October 2015 conditions)

12 Puke Coal Limited & Ors v Waikato Regional Council & Anor. (Interim Decision) 23 October 2014, at 86

13 Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors [2014] NZSC 38

14 Puke Coal Limited & Ors v Waikato Regional Council & Anor. (Interim Decision) 23 October 2014, at 92

15 Puke Coal Limited & Ors v Waikato Regional Council & Anor. (Interim Decision) 23 October 2014, at 92

16 Rape and Pillage is a mining term used when a mine is near the end of its life and sacrificial means are used to get the most out to the economic benefit out the persons mining. Rape and Pillage also has an emotive meaning – very similar. It relates to greed and self serving conduct. Both meanings are relevant here. Rape and pillage also has a common usage among non mining persons. Both terms are appropriate with this application.

- (a) PAR has difficulty with this clause. First; it offers no ongoing protection after the performance is achieved, thus taking no account of ongoing contamination. Second; it only addresses surface water, not all water that appears in the test bores. Third; It does not address the total biophysical environment as is envisaged by the Settlement Act and the vision and strategy. This biophysical environment is further described in *Mahuta v Waikato Regional Council A091/98*, and reflected in the evidence of Mr Dennis Scott. Fourth; The present value further worth of \$1 million is a pittance for that value in 15 years, Fifth; the \$1 million should be increased so that there is a real incentive to perform, say at \$7million, and indexed at the rate of the consumer price index. Sixth; the obligation to perform should be ongoing to the end of the maintenance period. There is no recreation of a past state, nor is there a betterment.
- (b) **CONSENT SOUGHT.** PAR seeks that the SWIP conditions be amended to provide for ongoing SWIP until the end of the afterlife maintenance period, That all waters that are detected in the borehole tests are included in the plan; that the SWIP be recognised as making only a partial contribution, that the non – performance payment be increased to at today's value \$7million and increased from the date of consent signing at the rate of the consumer price index. That the obligation be ongoing after the first 15 year term at an increased penalty being the value paid out after the first 15year term as it is increased at the end of that term by the rate of the consumer price index, yearly. And similarly there-after, and that this obligation remain until the end of the maintenance period.
39. In order to better provide for the holistic provisions of the Settlement Act, the aspirations of all the parties of the settlement; and to better give effect to the Waikato Regional Plan and Waikato District Plan in this regard, PAR engaged the services of Mr DJ Scott. Mr Scott's experience is outlined to the Court at Attachment “A in his evidence. That record shows Mr Scott has extensive experience in re-vegetation and rehabilitation of minor and macro landscapes and habitats in the natural environment throughout New Zealand. Mr. Scott is recognised internationally for his work, and is an invited lecturer at international conferences within this discipline. Mr Scott has now visited the area of the application on 2 occasions. From his observations of the site, the surrounding landscape, and his experience in rehabilitation and re-vegetation, Mr Scott has determined how the application could be modified to address the restoration and protection of the Waikato River in conjunction with the SWIP, at the same time providing for the activities that are proposed.
40. In seeking to engage Mr Scott with the very limited brief as is outlined in his evidence, and as has been advised to the Court previous telephone conferences and memoranda; PAR was conscious of the exacerbating catchment issues within the site. Un-separated clay, overburden and coal scattered throughout the site, combined activities, and extremely large areas of earth exposed, water discharging from the site directly to the Waitawhara, and

various past consent compliance issues that contribute contrary to the restoration and protection of the Waikato River. The activities on the site that are taking place high in an upper part of a catchment that drains downwards through the Waitawhara tributary to the main Waikato River are a serious concern, notwithstanding the SWIP which may or may not work. The receiving environment downstream is very vulnerable to serious adverse actual and potential effects as a result of the activities at present and proposed on this site, in particular if the conditions proposed are insufficient or ineffective.

WAIKATO TAINUI ENVIRONMENTAL PLAN (WAIKATO-TAINUI ENVIRONMENTAL PLAN).

41. The Waikato Tainui Environmental Plan (Waikato-Tainui Environmental Plan) must be had regard to.

Page 75 contains sections 39 Preparation and Availability (of the Waikato-Tainui Environmental Plan); and,

Page 40 Effect (of the Settlement Act providing for The Waikato Tainui Environmental Plan)

The Resource Management Act 1991 Section 35A, 61(2)(A)(a), 66(2A)(a), 74(2A) of and The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 section 40)

Waikato-Tainui Environmental Plan - Overarching Purpose-Restoration and Protection of the Environment.

42. The Waikato-Tainui Environmental Plan is focused restoration and protection:

OVERARCHING PURPOSE OF Waikato-Tainui Environmental Plan

1.4.1 Waikato-Tainui Environmental Plan is to be interpreted in a manner that best furthers the overarching purpose of Waikato-Tainui Environmental Plan, in particular the restoration and protection of both the environment and the special relationship Waikato-Tainui has with the environment.

43. Restoration and protection is not provided for in the applicants draft consent conditions. PAR's suggested conditions with the Dennis Scott Attachment 16, Puke Coal Mine – Land Use Spatial Analysis and Management Plan in conjunction with the SWIP are designed to meet the overarching purpose of the vision and strategy and the Waikato-Tainui Environmental Plan - to restore and protect the Waikato River

WAIKATO-TAINUI ENVIRONMENTAL PLAN - ENVIRONMENTAL ENHANCEMENT.

44. Waikato-Tainui Environmental Plan (the Plan) with regard to environmental enhancement states:

7 TE WHAKAPAKARI I TE TAI AO – 'TOWARDS ENVIRONMENTAL ENHANCEMENT'

7.1.1 The goal of Waikato-Tainui is to ensure that the needs of present and future generations are provided for in a manner that goes beyond sustainability towards an approach that enhances the environment. An 'enhancement' approach requires the consideration of, not only individual resource use, activities, buildings, or elements, but also an holistic approach to the whole environment. It aims for positive ecological and social outcomes where the resource use and activities effecting the environment becomes a conduit for producing resources and energy, improving physical and psychological health, remedying past pollution, and transforming and filtering waste into new resources.

7.1.2 Sustainability requires the resource to be maintained at a specified level so that future generations can enjoy the same quality use of the land, air, and water resources that we do currently. The 'enhancement' approach aims not to maintain but, through our actions, to improve the quality of the environment for future generations. PAR acknowledges the proposal by the Court in the hearing at the 31 August 2015, to ring-fence the remnant stands of native bush. PAR at the time of writing has not received conditions that propose that action. However, PAR

7.1.3 Therefore, Waikato-Tainui is in favour of an approach to resource use and activity operation that sees a net benefit back to the environment in such a way that the environment is actually enhanced from the resource use, activity, or development. The Table (1) demonstrates the difference between a conventional model, sustainability, and an enhancement approach. Waikato-Tainui accepts that the implementation of an enhancement approach is something that will take time and education to thoroughly implement

45. The Puke Coal application does not meet the expectation of the Vision and Strategy for the reasons outlined here-in. Further, the SWIP is speculative, its performance will be well removed from this consenting forum; and even the proposed penalty conditions foresee the possibility of the SWIP failing. Mr Dennis Scott's Attachment 16, Puke Coal Mine – Land Use Spatial Analysis and Management Plan added to the SWIP is a "stepwise" move to put in place those of the vision and strategy.
46. In the PAR overall proposal, that is, the Scott proposal and the PAR suggested conditions in regard to term of consent and community trust, positive ecological and social outcomes are provided for by the ecological planting and restoration, and the benefits from the use of the resource in the provision of a community trust with a regular payments to be used for charitable purposes in and about the communities of Pukemiro, Glen Afton, Tumohe and Gully Road.
47. By providing for the conventing of the re-vegetation and restorative planted areas into the future, and requiring the management, maintenance and monitoring, the PAR suggested conditions will improve the quality of the environment for future generations.

48. Waikato-Tainui Environmental Plan (the Plan) with regard to Managing Effects states:

8 MANAGING EFFECTS

8.1.3 As mentioned in the previous chapter, when there are benefits derived from resource use or activities there is an expectation that there will be a reciprocal responsibility to return something of benefit back to the environment, particularly when ongoing resource use depletes the supply of the resource (e.g. in mining activities) or has a negative effect on the environment.

8.2.1 In managing the effects of a resource use or activity, regardless of the magnitude, frequency, or duration of the effect, Waikato-Tainui considers that it is necessary to provide a net benefit when considering social, economic, environmental, spiritual and cultural impacts – to strive for environmental enhancement. Therefore it is necessary to suitably manage any effects so that the effects are avoided, minimised, mitigated, or balanced. For Waikato-Tainui, this is essentially a hierarchy where the first way to manage an effect is to avoid the effect, the second way is to remedy the effect, and so on through to suitably balancing the effect, what some may call offset mitigation. In managing effects consideration needs to be given to:

- (a) **Avoid:** is there any way to manage the effects to a point where they can be avoided (i.e. no effect occurs)?
- (b) **Remedy:** can the effect be managed to the point that it is eliminated (e.g. cleaning discharges to water so that the water discharge is of a suitable quality)?
- (c) **Minimise:** is there a way to minimise the effect so that the effect is no longer of sufficient frequency or magnitude to cause Waikato-Tainui any concern?
- (d) **Mitigate:** if the effects cannot be adequately avoided, remedied, or minimised, is there something that can be done to mitigate or offset the effect to create a benefit not directly linked to the proposed resource use or activity. (e.g. an effect of discharge to water being offset by additional riparian planting or wetland restoration).
- (e) **Balance:** when taking all the effects into consideration, and considering the relative weight of the effects to Waikato-Tainui, do the positive effects adequately balance out the negative effects, and provide environmental enhancement? Only Waikato-Tainui can determine whether effects are suitably balanced for Waikato-Tainui.

8.2.2 Generally, where mitigation is proposed, this should be closely linked to the site of the resource use or activity and relatively balance out the negative effect.

8.2.5 Resource users and activity operators are again reminded of a desire to see environmental enhancement from such use and activity at a scale commensurate to the effect of the use or activity. Ideally, effects should be managed so as to achieve environmental enhancement. The environment should start to benefit from human intervention rather than continually being expected to absorb further degradation.

49. **RECIPROCAL RETURN TO THE ENVIRONMENT.** In the applicants' proposal there is a minimalistic reciprocal return to the environment. The Puke Coal Mine – Land Use Spatial Analysis and Management Plan Attachment 16, in conjunction with the Community Trust will give a return to the environment. In so saying it is important to remember that ecosystems and their constituent parts and people and communities are part of the relevant environment¹⁷.

¹⁷ Resource Management Act 1991, Section 2, Definition of environment.

50. It is submitted that the Court in considering the purposes of any community trust encompass in its vision the community needs of the villages of Pukemiro, Glen Afton, the Tumhoe and Gully Road families. That vision, would be consistent with the expectation implicit in the Vision and Strategy and the Waikato-Tainui Environmental Plan.
51. **NET BENEFIT** It is expected in Waikato-Tainui Environmental Plan that there will be a net benefit in terms of social, cultural, environmental, spiritual outcomes giving rise to environmental enhancement. The applicant's proposal gives a limited benefit in terms of social, environmental, or spiritual contribution. The applicants' proposal does not in any way what so ever see in Waikato-Tainui terms, land and water as a holistic interconnected member of the Waikato-Tainui family. The application is exploitative and minimalistic in its return to the environment.
52. **OFFSET MITIGATION** Waikato-Tainui Environmental Plan expects offset mitigation. The applicant's proposal offers little by way of offset mitigation. That is achieved by co-modification of a fencing cost estimated by the applicant to be \$25,000.00 to be paid elsewhere on settlement, subsequently altered to a payment of \$1m in 15 years, now again altered in the conditions for the 5th October hearing to a lessor sum on weaker terms. (a further example of the consents being re written in the favour of the applicant) Minimal (less than directed in Court on 31 August 2015) riparian planting, no economic, social or spiritual contribution no benefit. There are in the application minimal positive effects that balance the negative effects, there is no environmental enhancement. Whilst some riparian protection of remnant stands of bush were discussed at the last hearing, more than that is envisaged in the plan to achieve a meaningful application of the facts of this case to the law. The underlying principle of the Vision and Strategy is "local effect and very local benefit"¹⁸
53. **MITIGATION CLOSELY LINKED TO SITE.** The applicants proposal is to make a SWIP failure payment for use elsewhere in the Waikato River, and then, in 15 years time. The negative effects of 8 million cubic metres of Municipal Solid Waste being transported and processed at the site and all the negative effects that emanate that activity are not balanced out by the mitigation proposed. Instead of re-mediation of coal workings, the communities of Pukemiro and Glen Afton have a 35 year life Municipal Solid Waste Land Fill, its associated costs and ongoing site after-care, discharges (Methane – and odour to name a few). As any Resource management practitioner knows, ongoing resource consents and expanded applications are foreseeable.
54. **MANAGING WATER EFFECTS** Waikato-Tainui Environmental Plan envisages under this heading that the effect of the activity in polluting water should be managed. The applicant's SWIP might contribute towards

¹⁸ Waikato-Tainui River Trust in discussion with Mr Tim Manukau.

managing any surface water adverse effects (if it is successful) but it alone does not meet this criteria of Waikato-Tainui Environmental Plan to restore and protect. Ground water is not being taken account of, further, by limiting the considerations to surface water, the mere presence of groundwater will be an excuse to abandon the exercise and stop the work.

55. SUMMARY The PAR proposal does return a benefit to the environment, it will restore and protect the biophysical environment, and by way of a suitably funded community trust return a net benefit to the communities of Pukemiro, Glen Afton the Tumohe, and Gully Road..

WAIKATO-TAINUI ENVIRONMENTAL PLAN - PRECAUTIONARY APPROACH - EXPIRY OF CONSENTS

56. Waikato-Tainui Environmental Plan (the Plan) with regard to expiry of consents states:

8.4 Consent Terms – Precautionary approach.

8.4.2 Waikato-Tainui understands that the biggest improvements in consent conditions are through consent renewals and not consent reviews. Waikato-Tainui also understands that less than 1% of consents are reviewed. A consent renewal also means that the existing resource use or activity is looked at afresh. This is understood to be different to a review which is undertaken based on the purpose specified within the review.

57. Mindful of the proximity of the application in an upper catchment of the Waikato river, PAR acknowledges the proposal by the Court in the hearing at the 31 August 2015, to ring-fence the remnant stands of native bush. PAR at the time of writing has now received conditions that do not propose that action. Mindful of the nature of the application to discharge Municipal Solid Waste; the potential effects of discharges to the environment such as methane, leachate, and odour. Mindful of the compliance history of the site; and further mindful of the requirements in Waikato-Tainui Environmental Plan; PAR strongly submits the consents in this application should have an expiry date of 5 years after the date of issue. This will give the applicant the opportunity to review its performance against its consent conditions in conjunction with the community and the regulatory authorities. The process would include consulting with the community to identify any adverse environmental effects arising from the activity, enabling the communities and Waikato-Tainui to review and amend any conditions, to review any performance objectives; to review of the re-vegetation and restoration activities. To assess other issues or concerns. The applicant's reluctance to accept a 5 year consent term or any reduction in the 35 year term, confirms to PAR the applicants lack of confidence in the quality of its own application. If the renewal application is required go through this notification process then that will be because there is a need to arising from adverse effects.

58. The 35 year consents proposed do not provide these opportunities, neither do the review conditions of the consent. A 5 year consent is sought by PAR.

WAIKATO-TAINUI ENVIRONMENTAL PLAN - NATURAL HERITAGE AND BIODIVERSITY

59. Waikato-Tainui Environmental Plan (the Plan) with regard to Natural Heritage and Biodiversity states:

15 NATURAL HERITAGE AND BIODIVERSITY

15.2.6 The indiscriminate use of indigenous plant material not sourced from local plant material (i.e. not eco-sourced) for restoration and development re-habilitation projects continues to alter the natural character of the region and the genetic composition of the remaining natural plant and animal populations. Such use needs to give consideration to strengthening the genetic pool of indigenous species.

15.3.OBJECTIVES AND METHODS

Objective Indigenous biodiversity.

(c) All permanent waterways within the rohe shall be fenced from livestock and planted, where appropriate, with indigenous vegetation to minimise the effects of land use practices, and enhance biodiversity.

(d) Locally sourced (eco-source) indigenous plant material shall be used for all plantings into or adjacent to areas of high ecological and conservation value in the region, and shall be encouraged for all landscape plantings in the tribal area. 'Eco-sourced' indigenous plant material may need to be sourced at some distance from the actual area to be planted to increase genetic resilience and diversity.

(e) Remnant stands of indigenous vegetation shall be retained, enhanced, and extended by fencing and planting and by the encouragement of landowners to take out protective covenants.

60. Waikato-Tainui Environmental Plan envisages the strengthening of the genetic pool of indigenous species by using eco-sourced plant material. There is no mention in any of the consent conditions in the draft conditions dated 31 August 2015 for the use of eco-sourced plant material there is no riparian planting proposed, nor in any consent is there any requirement for eco-sourced plant material within the site, either the landfill or the coal site.
61. The PAR proposed conditions require eco-sourced plant material that comply with these conditions to be planted as re vegetative and restorative plantings. Waikato-Tainui Environmental Plan envisaged they be fenced, managed, maintained, monitored, and covenanted into perpetuity. The PAR conditions do that.
62. PAR acknowledges the proposal by the Court in the hearing at the 31 August 2015, to ring-fence the remnant stands of native bush. PAR at the

time of writing has not received conditions that propose that action. However, PAR states, this remnant protection is not enough, whilst it gives protection to remnant stands, it does not restore past damage or achieve a substantial betterment. It is only a small contribution towards what is envisaged in this section of the Waikato-Tainui Environmental Plan.

WAIKATO-TAINUI ENVIRONMENTAL PLAN - FRESHWATER.

19 FRESHWATER

Objective Water Quality

19.4.2 Water quality is such that fresh waters within the rohe of Waikato-Tainui are drinkable, swimmable and fishable in all places (with water quality to the level that King Tawhiao could have expected in his time).

63. The Waikato-Tainui Environmental Plan envisages the freshwater that will result from an activity will be of a very high standard. The standard proposed in the application, does not specify the standard stated in Waikato-Tainui Environmental Plan – drinkable, swimmable and fishable.
64. The highly speculative SWIP, presuming it is successful, will only be effective for part of the problem, surface water, and then only for as long as the SWIP is monitored and operated. Mr Dennis Scott's proposal will complement the SWIP and provide restoration, and protection to the biophysical environment. The SWIP plan will not protect for future generations, unless it is to endure, being tinkered with and monitored into perpetuity; and as it is highly speculative, if it works at all.

APPLICANTS CONSENT CONDITIONS AND WAIKATO-TAINUI ENVIRONMENTAL PLAN.

65. The consent conditions proposed by the applicant do not adequately provide for Waikato-Tainui Environmental Plan or the preservation from future or restoration from past damage. It has to be noted that past damage to the site is extensive to land and water. Land based it encompasses vegetation stripping, soil and subsoil displacement and intermixing, potential silt and sedimentation discharges into the waterways, in summary, significant biophysical damage. What the applicant proposes is continued “rape and pillage”¹⁹ on a grand scale. No change in the immediate environment. No change that recreates a past state, or which restores past damage and protects

¹⁹ Rape and Pillage is a mining term used when a mine is near the end of its life and sacrificial means are used to get the most out to the economic benefit out the persons mining. Rape and Pillage also has an emotive meaning – very similar. It relates to greed and self serving conduct. Both meanings re relevant here. Rape and pillage also has a common usage among non mining persons. Bother terms are appropriate with this application.

it into the future, no substantial betterment. Just minimal betterment for the environment; no concept of a Waikato- Tainui holistic world view and the interdependence and interconnectedness of man on the environment. Very minimal economic betterment to the communities by way of a parsimonious mitigation trust. Just pure capitalistic greed with the externalisation of consequences. This is an exploitative application that takes all and gives nothing, nothing, nothing. A proposal that might have emanated in the dreams of an exploitive colonising power, or a multinational corporate entity proposing an activity in a third world country.

66. PAR submits that the Waikato-Tainui Environmental Plan has played a very minimal part in the development of the draft conditions.

PROTECT AND RESTORE THE WAIKATO RIVER.

67. The principle process for addressing the protection and restoration of the Waikato River in accordance with the vision and strategy in these conditions is substantially addressed by Mr Scott in his evidence, the expiry date, and the community trust.
68. The aspects of the Vision and Strategy such as a Community Trust and the precautionary approach to expiry date which are a component of the Vision and Strategy, and the Waikato -Tainui Environmental Plan will form part of the following submission.

PAR'S SUBMISSIONS ON PROPOSED CONDITIONS

69. PAR hereafter submits on the balance of the conditions that should be included in the draft consent conditions dated 31 August 2015. Including a Community Trust and Expiry Date for the consents.

RELIABLE AND COMPREHENSIVE OBJECTIVE CONDITIONS.

70. In considering the final days in Court in August 2014; and, the interim decision with its attached annexes, and the many rewrites of the conditions from the beginning of this Court hearing process to date 2nd October 2015;

and when what is proposed in the 31 August 2015 version of conditions, it remains manifestly clear the applicant has adapted the consent conditions to give the “best possible option” to enable it to get away with whatever it wants. The applicant's team, which in both law and engineering are held in some standing, clearly acting on instructions from the applicant, have pushed the limits well beyond what was discussed in Court, to a *Laissez-faire* set of consent conditions. Nothing like what the Court had in its interim judgement and the attached annexes suggested. These remain a third world set of conditions.

71. It is a fallacy to believe the WDC and WRC will effectively monitor this site. Historically they have not. Refer to Mr Dillon's affidavit, and the discharges from the Anita block to the reserve as outlined in the evidence of Mr Scott and Mr Peter Boyd at the substantive hearing. Refer also to a similar belief of Mr Davie in his letter to the Court and parties in the last week. It is apparent as the WDC has demonstrated in the manner it has addressed the road management issues, it is substantially compliant to the wishes of the applicant. Compliance, amounting to institutional bias²⁰. At the last hearing Hamilton the applicant's water aspect told the court of the applicants ongoing failure to comply with water quality conditions in consents.

THE CONSENT HOLDER - IMPOSITION OF DUTIES ON THE CONSENT HOLDER

72. PAR submits that minimal duties to monitor, report should be left solely to the consent holder.
- (a) The “**consent holder**”; type conditions. This type of condition leaves too much to the consent holder. There has been such a breakdown in the trust confidence and good faith implicit in past consents it is simply dreaming to think “*the leopard will change its spots*” these conditions are just not certain because they retain to the applicant responsibilities which it has historically and currently (for example, fires and water quality) demonstrated it cannot comply with. Quite simply, if the consents are granted with conditions leaving to the consent holder duties to monitor or report review to the Council/s, it will be a mockery of the evidence given to this Court of the propensity of the consent holder to just do what it likes.
 - (b) It is quite clear from the evidence of Mr Brinkley, and Mr Dillon that the conditions will be ignored. It is not appropriate later to wring hands and expect the Territorial Local Authorities (TLA) remedy what should be ad-

²⁰ **Institutional bias:** A tendency for the procedures and practices of particular institutions to operate in ways which result in certain social groups being advantaged or favoured and others being disadvantaged or devalued. This need not be the result of any conscious prejudice or discrimination but rather of the majority simply following existing rules or norms.

dressed up front in these conditions. Monitoring this site must be and will be a nightmare for the TLA's. There is evidence in Mr Dillon's affidavit of TLA staff being intimidated and bullied when coming on site. I submit the staff are scared, and I don't blame them²¹.

- (c) As a simple example, if the site was being monitored, how did a landfill fire that started in November 2014, and was finally put out in April 2015 – 5 months later, fail to be noticed by the WRC or WDC? The answer is simple, no responsible monitoring or enforcement officer visited the site. A fire would be hard to miss. I believe Counsel or Ms Drew for the WDC, told the court, “No complaints had been received”. The duty on the council/s was to monitor. The consent holder had a duty to report and it failed to do so. In the case of the fire on the Saturday 26th September 2015, the WRC compliance officer stated he had no idea there was a fire until Monday. (advised to a member of the community)
- (d) There is a history of police escorts accompanying monitoring and enforcement officers, night time visits to the homes of those who cause difficulties in order to achieve compliance with eh consent holder's wishes, stalking of women, interference in the family lives of residents of Pukemiro, harassment, taunting and intimidation. An terrifying culture causing stress and anxiety among the residents. That is the reality of this application.

MUNICIPAL SOLID WASTE.

- 73. It is submitted that the definition of Municipal Solid Waste varies from the definition of solid waste in the Waikato Regional Plan (Regional Plan).
- 74. The Waikato Regional Plan defines Municipal Solid Waste as:

Municipal Solid Waste: Any non-hazardous solid degradable waste from a combination of domestic, commercial and industrial sources. It includes putrescible waste, garden waste, uncontaminated biosolids and clinical waste.
- 75. The regional plan has a separate section for liquid wastes. However, In the proposed conditions dated 31 August 2015 – General Conditions at 13A page 39 under waste acceptance criteria, at the first heading 9a) (i) Liquid wastes could be accepted with a solid content of at least 20% (solids). PAR submits that a liquid that contains 20% solids is hardly a solid. PAR finds this a vague definition. Similarly the definition of sludge.

21 I was confronted and intimidated by the applicant's “directing mind” when I made my first visit to the end of Glen Road accompanied by members of PAR and first starting this task. Mr Dennis Scott in the same position on Glen Road, when he made his first visit, was confronted by one of the directing mind's “minders” a solidly built professional bully, and challenged vigorously to a fist fight. We were both officers of the Court carrying out our duties. What chance has an enforcement officer of the TLA.

76. It is noted the Waikato Regional Policy Statement at 3.9.2 Solid wastes, and 3.9.3 liquid wastes has further comment on both liquid and solid waste. From the footnotes at that section, the Waikato Regional Council has a number of Technical Documents that address both liquid and solid waste. It is hoped the criteria conform to the requirements of those documents.
- (a) PAR is sceptical of the conditions proposed. Whilst it commends the inclusion of a list of waste acceptance criteria, it appears from the definition of acceptability of liquid wastes with a 20% solids content that a liberalisation of the waste acceptance criteria has occurred. Similar comment applies to the receipt of sludge as outlined at “c.” under 13A, page 39.
77. Par further notes in the proposed waste acceptance criteria in the 31 August 2015 conditions at 13A page 39, “Waste Acceptance Criteria” the reference to standards such as NZS 4304: 2002, and to US EPA Method 9095A standards leave an element of uncertainty in the conditions and these documents should be attached to these conditions. In saying this PAR submits the consents should be clear in themselves and not require a person visiting the Council to go off elsewhere and carry out further research to determine just what is acceptable.
78. Similar applies to those at the site overseeing the receipt of waste. It is reasonable to expect the persons at the gateway to the site may not be people skilled in research and reading, but hard working labourers or similar. Furthermore keen to have a job and keep it. A more driving factor than going off to research acceptance criteria.
79. CONDITION VARIATION SOUGHT. That the reference to other documents in the list of acceptable waste spell out for each class of waste, rather than make reference to other documents. Making reference introduces a lack of certainty, compliance ability, and enforceability.
80. SPECIAL WASTES. Special wastes are not defined. PAR seeks that “Special Wastes” be defined.
81. CONDITION SOUGHT. Definition of Special Waste.
82. There is no condition that specified what is to happen when waste that does not fit any category is proffered.
83. CONDITION SOUGHT. That when waste that is unclassified in either the permitted, prohibited or special waste category is received the consent holder shall consult the waste management technical department of the WRC and accurately describing the waste seek the WRC advice.

84. CONDITION VARIATION SOUGHT – REMOVAL OF TERM. “AS FAR AS PRACTICABLE.” PAR seeks the removal of the term “As far as practicable” from the clause addressing receipt of tyres. It introduces an uncertainty in the consent conditions.
85. Within one of the conditions, there is a requirement that 1 in 5 loads will be inspected for hazardous wastes. This requirement should be a stand alone condition, rather than immersed within another condition.
86. CONDITIONS SOUGHT establish the requirement of 1 in 5 inspections for hazardous wastes as stand alone condition.
87. It is unclear how these inspections will be carried out. Mindful that asking the driver, or peeping in the cracks in the truck, or looking on the top will not necessarily enable one to see the load, PAR requests that 1 in 5 loads be tipped onto a platform dedicated for this purpose and the load inspected.
88. CONDITION SOUGHT. That 1 in 5 loads being inspected for hazardous substances will be tipped out onto a dedicated platform and inspected for hazardous waste by a responsible officer of the consent holder, and accepted or rejected. Nearby the dedicated platform will be posted a list of hazardous waste.
89. RANDOM INSPECTIONS. PAR seeks that on page 40 the last clause labelled (ii) and the first clause labelled (iii) on page 41, after “hazardous waste”, the words “and tyres” be added.
90. PAR further seeks that the clause be clear that every 5th load received at the landfill gate will be examined. This is clear as it is written in the draft conditions, but making it a stand alone condition removes any doubt or chance for a different interpretation.
91. METHOD OF RANDOM INSPECTIONS - PAR seeks a clause that clearly lays down the procedure for checking the 1 in 5 loads for hazardous waste. It would expect that clause to require the discharge of the load onto a dedicated area and for the load to be examined by a person cognisant of the criteria.
92. 1% OF WHAT? In regard to the clause on the receipt of tyres at page 40 the top, an acceptance criteria is stated as being 1%. It is unclear whether it is 1% by weight, or 1% by volume. PAR submits it should be 1% by volume.
93. CONDITION SOUGHT. PAR seeks that all vehicles leaving and entering the site be photographed, and the archive of photographs be stored on a publicly available web server under the control of the WDC or WRC. PAR understands this provision applies to Solid Energy Sites.

PROHIBITED WASTES

94. **PROHIBITED WASTES.** The list of prohibited wastes in the 31 August 2015 draft conditions makes considerable reference to other documents. This is unclear. I leave this list of specific prohibited substances from the 2002 Environmental Protection England and Wales Landfill (England and Wales) Regulation 2002, in this submission to illustrate how the list should look. The list should be specific on the face of it, and not depend on a person having to refer elsewhere to documents standards or other acts.

Prohibition of acceptance of certain wastes at landfills

9.—(1) *The operator of a landfill shall not accept any of the following types of waste at the landfill—*

- (a) any waste in liquid form (including waste waters but excluding sludge);*
- (b) waste which, in the conditions of landfill, is explosive, corrosive, oxidising, flammable or highly flammable;*
- (c) hospital and other clinical wastes which arise from medical or veterinary establishments and which are infectious;*
- (d) chemical substances arising from research and development or teaching activities, such as laboratory residues, which are not identified or which are new, and whose effects on man or on the environment are not known;*
- (e) as from 16th July 2003, whole used tyres other than—*
 - (i) tyres used as engineering material;*
 - (ii) bicycle tyres; and*
 - (iii) tyres with an outside diameter above 1400mm;*
- (f) as from 16th July 2006, shredded used tyres other than—*
 - (i) bicycle tyres; and*
 - (ii) tyres with an outside diameter above 1400mm; and*
- (g) any waste which does not fulfil the relevant waste acceptance criteria.*

(2) The operator of a landfill shall ensure that the landfill is not used for land-filling waste which has been diluted or mixed solely to meet the relevant waste acceptance criteria.

(3) For the purposes of this regulation, waste is—

“corrosive” if it consists of substances and preparations which may destroy living tissue on contact;

“explosive” if it consists of substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene;

“flammable” if it consists of liquid substances and preparations having a flash point equal to or greater than 21°C and less than or equal to 55°C;

“highly flammable” if it consists of—

- (a) liquid substances and preparations having a flash point below 21°C (including extremely flammable liquids);*
- (b) substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy;*
- (c) solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or to be consumed after removal*

of the source of ignition;

(d) gaseous substances and preparations which are flammable in air at normal pressure;

(e) substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities;

“infectious” if it consists of substances containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms; or

“oxidising” if it consists of substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances

95. It is not argued that the above prohibited wastes should specifically form part of these consents. Clearly from an examination of the 2002 Environmental Protection England and Wales Landfill (England and Wales) Regulation 2002 above there are many materials that should not go into a solid waste landfill.
96. A person carrying out their duties under the RMA would be left in pure wonderment from the conditions as proposed in the 31 August 2015 consents what is to go into the landfill and what is prohibited, and how to address the uncertain category.
 - (a) CONDITION CLARIFICATION SOUGHT. This uncertainty of waste acceptability streams would be clarified by clear definitions listing what is acceptable and what is prohibited and a method for addressing the uncertain category of waste not provided for as either acceptable or prohibited. It should also be clear just where the “Special” category fits. PAR submits it should be a subset of the acceptable waste.

REQUIREMENT TO HAVE APPROPRIATE COVER MATERIAL AVAILABLE.

97. In the 31 August 2015 Conditions at page 36 landfill cover material is addressed.
98. CONDITION SOUGHT. In covering the municipal solid waste, the consent holder will at all times use the “Best Practicable Option” in determining what is the most appropriate cover material.
99. CONDITION SOUGHT. There is not a condition to the effect that: prior notice of the arrival of waste is to be given to the consent holder and the consent holder is required to ensure there is appropriate cover available to cover the waste, and to then authorise its receipt. PAR seeks a condition to that effect.

100. CONDITION SOUGHT. WRC Gen conditions Page 36 bottom of page testing of engineered fill. The applicant has suggested testing on in every 1000 cubic metres. PAR suggests it amounts approximately to one in every 200 truck loads, and is not a satisfactory test in that it is too coarse grained in will not achieve the purpose for testing for coal, which is to prevent spontaneous fire and ongoing fire material.
101. CONDITION VARIATION SOUGHT. PAR submits, all engineered fill should be tested and calibrated, or material from a non coal source be used. (PAR notes that in Europe, the Best Available Technique for daily cover is a mixture of soil and wood chips).
102. CONDITION SOUGHT. A method be clearly laid out in the consents as to how the testing is to take place.
103. LANDFILL FIRE. PAR notes there has been a further landfill fire since the 31 August 2015 hearings.

MALODOROUS WASTE RECEPTION PROCEDURES AND PLACEMENT CONDITIONS.

104. PAR submits there is a further condition necessary for the protocol and practice for receiving malodorous waste. PAR submits the conditions proposed at the consents dated 31 August 2015 in WRC 125467 at 29A are insufficient for the prevention of odour discharge from malodorous waste.
105. PAR seeks conditions providing as follows:
 - (a) Provisions for prior warning of pending malodorous waste reception authorisation.
 - (b) Requirement to consider placement of such waste well removed from receptors.
 - (c) Requirement to have adequate and appropriate cover material available and nearby to immediately cover the waste.
 - (d) Requirement to immediately cover such waste.
 - (e) Requirement for the process of malodorous waste immediately on arrival of the waste so as to minimise transfer and truck odour.

- (f) Requirement to monitor wind direction and refuse to accept waste if the wind is blowing in the direction of a sensitive receptor.
 - (g) Requirement for the consent holder to cease taking highly odorous wastes.
 - (h) Requirement for the consent holder to place wastes that react to form odorous discharges with other waste, to place them separately in the landfill.
- I understand that gypsum will react and give rise to odorous discharges with some other wastes.
106. CONDITION SOUGHT. PAR seeks a condition that embodies the concepts as outlined in the previous paragraph between (a) to (h).

MINIMISING OF UNCAPPED AREAS

107. In the consent conditions received on 31 August 2015 at page 37 at the top; there is provision for placing a daily cover over the non working face of 10,000 square metres. PAR submits this should be substantially reduced in area.
108. CONDITION SOUGHT. PAR seeks that the area of uncapped landfill be 1000 square metres at any one time.
109. PAR notes the difference between uncapped area and working face.

BEST PRACTICABLE OPTION.

110. There is no requirement for the consent holder to adopt as a matter of course in the operation of the landfill, the “Best Practicable Option” in mitigating odour.
111. The Section 42A report of Mr Barry Campbell noted a serious residual concern about odour. Mr Barry Campbell has resiled from that position, however the Court itself in the interim judgement has concerns about odour, and we have had a number of rewrites of the conditions since then with some very fundamental RMA errors being addressed in those rewrites.
112. If the objective in this consenting process for this application is to operate a highly efficient in all respects landfill, and if the WRC and WDC are keen to achieve that outcome, then a condition mandating the Best Practicable Option in all of the consents addressing odour is one of the “musts” as a matter of first principle of good design. It is the most efficient and effective

means of preventing or minimising any actual or likely adverse effects on the environment from odour²².

113. CONDITION SOUGHT. With regard to odour, in the Landfill General Conditions (of consent) at page 27 of the consents of 31 August 2015, and in the Waikato District Council consent there be a requirement that in operating the landfill the consent holder adopt with regard to odour, the “Best Practicable Option” of landfill management at all times.

MANAGEMENT PLANS TO BE CERTIFIED BY COUNCILS

114. The consents rely heavily on management plans being certified by the relevant territorial authority. PAR could accept this.
115. PAR seeks that those persons preparing management plans for certification be:
- (a) acknowledged experts in their field for which they prepare the management plans²³;
 - (b) be a member of a professional body;
 - (c) hold a current practising certificate from their professional body;
 - (d) have their “in course” learning up to date; AND
 - (e) Certify to the territorial authority to the above matters in 115 a to e when the management plans are lodge for certification, including a copy of their current practising certificate. No management plan should be accepted without such a certification.
116. Then those “experts” who prepared the plans have a practising certificate to lose. That is the very fundamental consumer protection that underlies the professional membership philosophy. It is one of the best protections against graft and corruption, and holds the professions to account.
117. The management plans should be certified by a qualified officer of the TLA as being in accordance (for clarity “giving effect to”) the XXXX consent dated XXXX and revision numbered XXXX, condition numbered XXXX, complying with the standards in the consent, and the relevant conditions, or such similar certification, and signed and dated.

²² Section 15 and Section 108(2)(e).

²³ Experts should have a specialist post graduate qualification or many years of experience in the discipline they purport to practice.

118. A copy of the certificate of compliance shall be submitted to the Chief Executive Officer of the Waikato Regional Council or the Waikato District Council jointly or severally, for reference to the appropriate officer of council, and held on the relevant consent file, or be included in the text of the plan.
119. The management plans should be accompanied when submitted for certification by a certificate of professional body membership and current competence as outlined above, and a copy of the current practising certificate. These documents should form part of the management plan.
120. CONSENT CONDITION. PAR seeks a condition of consent that embodies the provisions of qualification and the certificate of compliance above in conditions 115 to 119.

SURFACE WATER IMPROVEMENT PLAN (SWIP)

121. It is PAR's position that the SWAP will not alone, and may not ever fulfil the requirement of restoration and protection. More is needed.
122. The Adaptive Management has been defined²⁴ in the New Zealand Biodiversity Strategy Glossary as:

Adaptive management: *An experimental approach to management, or "structured learning by doing". It is based on developing dynamic models that attempt to make predictions or hypotheses about the impacts of alternative management policies. Management learning then proceeds by systematic testing of these models, rather than by random trial and error. Adaptive management is most useful when large complex ecological systems are being managed and management decisions cannot wait for final research results.*

123. In *Crest Energy*²⁵, the Court summarised the characteristics of an adaptive management plan.

"[8] and EMP (Adaptive Management Plan) should provide for:

- (a) the collection of baseline knowledge upon which the proposal could build in an ongoing process, set objectives, design and plan for the management of the resource, monitoring, evaluation of monitoring results, reviewing and refining hypothesis, all in the interests of better meeting the objectives. After each stage, the process should often start again at the design and planning level. (For completeness as to that, I record the Court further stated "the applicant should not be in a position to have carried out all necessary research before making the application"). We held that the applicant should nevertheless persuade the Court to grant the consent on the basis of adaptive man-*

²⁴ <https://www.biodiversity.govt.nz/picture/doing/nzbs/glossary.html>

²⁵ *Crest Energy Kaipara Limited v Northland Regional Council* [NZEnvC] 26 at [8]

agement process put forward such that the purpose of the (RMA) Act would be served.”

124. PAR submits that for the reasons above, in particular Mr Dennis Scott, Mr Montomerie and Mr Jenkins evidence, the adaptive management plan alone will not fulfil the purpose of the (RMA) Act and the Waikato-Tainui Environmental Plan. It will prevent any harm to the river from surface water as long as it is operated if the experimental process works. It will not restore to past state or protect from future harm, it takes no account of biophysical requirements or contribution to the restoration and protection of the Waikato River as defined in the Settlement Act, and the vision and strategy, it makes no betterment.
125. The SWIP will not address issues that arise from subsurface water, in fact, the presence of subsurface water in the test bores will be an excuse for non performance. The proposal is not all encompassing of surface and subsurface waters. (there may well be subsurface waters, leachate, mine waters, leaking from the landfill and the past mining operations. The SWIP should be inclusive of all waters, not just surface waters.
126. In considering the proposed SWIP in the context of the Vision and Strategy, it is noted that the Vision and Strategy is a high level RMA document. In the hierarchy of documents in conflict, it sits above the New Zealand Coastal Policy Statement, all National Policy Statements, all Regional and District Plan provisions, and overrides by-laws of Territorial Authorities. PAR submits the applicant has made a fundamental error in Resource Management Law as regards the Waikato River, by taking scant regard to the Vision and Strategy, and focusing alone on an adaptive management plan – albeit now re-branded as a SWIP. A plan tarted up with a minimalistic payment of \$1milion in 15 years for non performance, and a cop out thereafter.
127. Waikato Tainui Environmental Plan has identified applications such as this as requiring a precautionary approach. Certainly the potential and cumulative adverse effects on the environment of this activity, mindful of the evidence before the Court and the liberality of the proposed conditions of consent bring to the fore the need to adopt a precautionary approach; Whilst we are looking at a promise of a SWIP, we are faced with the promises of fire controls and promises of no landfill fires, yet, on Saturday 26th September 2015, there were further landfill fires. (Video on you tube²⁶).
128. The *Sustain our Sounds*²⁷ case is relevant in regard to taking a precautionary approach. A case in which the Supreme Court considered the Department of Conservations guidance note, and IUCN guidelines on the precautionary

²⁶ 26th September 2015 Video of landfill fire at Puke Coal Site. <https://www.youtube.com/watch?v=WCvPsuc7vmU&feature=youtu.be>

approach, but those guidelines are relevant here as pointed out by myself in my first submission to the substantive hearing.

129. PAR submits that for the reasons in its evidence and as argued above, the adaptive management approach now known as SWIP, and the highly permissive conditions as they are drafted cannot remedy effects before they become irreversible;
130. PAR submits the essential test of section 5 cannot be met by adaptive management plans alone it is an experimental process and if the Court is mindful of granting the consent it should do so for 5 years only, as a precautionary approach.
131. There are adequate safeguards in the RMA for the applicant to address ongoing re-consenting on consent expiry after a shortened term. Such re-consented consents are granted by the Court if appropriate.
132. Par Submits the consent as drafted and to hand on 31 August 2015 must fail the test of Part 11, Sections 5, 6(a), 6(c), 6(e), 7(a), 7(c), 7(d), 8. of the RMA. and the Waikato-Tainui Environmental Plan.
133. CONDITIONS SOUGHT. Inclusion of Dennis Scott Attachment 16, Puke Coal Mine – Land Use Spatial Analysis and Management Plan as a requirement of these consents. That is inclusion beyond providing for the remnant vegetation as was discussed in Court on 31 August 2015. Plus, adoption of a precautionary approach in regard to consent term, and require a meaningful Community Trust. (What is offered is simply minimalistic and parsimonious)

EXPIRY OF CONSENTS

134. PAR refers to the above and says further. The adaptive management plans – now SWIP; and mindful of the evidence of very loose conditions in the proposed consents of 31 august 2015, which based on the past history of the applicant have little prospect of being complied with, and mindful of the proclivity of the consent holder to disregard consent conditions, and further mindful there are adequate safeguards in the RMA for the applicant to address ongoing management whilst new consents are applied for, a substantially shorter term than the 35 years applied for is appropriate. PAR seeks a 5 year term

135. In so much as the S128 review provisions do not²⁸ allow for a review to terminate the consent. PAR seeks a condition of the consent be that all consents will expire 5 years after they are issued.
136. In furtherance of the argument for a 5 year expiry condition, PAR notes the judgement in *PVL Proteins Ltd v Auckland Regional Council*²⁹ in which it was held that a decision on what is to be the appropriate term for a resource consent is to be made for the purpose of the Act, and the relevant factors in making the decision on term would include that: conditions may be imposed requiring adoption of the best practicable option (absent in this application as a mandatory odour focused condition of consent); requiring supply of information relating to the exercise of the consent. (most unlikely to occur in this application mindful of the extensive amount of information to be provided by the consent holder, and the evidence of PAR's witnesses as to the propensity towards non compliance); requiring the observance of the minimum standards of quality in the receiving Waikato River (in this case the need to restore the environment and the uncertainty of that with the highly speculative SWIP Adaptive Management Approach); and the reserving of power to review the conditions. (in regard to the later, PAR refers to the finding of the High Court in *Minister of Conservation v Tasman District Council* and the section 8.4.2 of the *Waikato-Tainui Environmental Plan*.
137. PAR submits that its argument for a 5 year term of consent is appropriate.
138. CONDITION SOUGHT – the consents be limited to 5 years duration.

BREACH OF FUNDAMENTAL (FIDUCIARY) DUTY - CONDITION.

139. CONDITION SOUGHT Where a breach of the duties embodied in the consents, either singly or severally have occurred, the WDC and / or the WRC may suspend the operation of the land fill; and,

28 Minister of Conservation v Tasman District Council CIV 2003 – 485 – 1072, High Court, Nelson, Ronald Young J.

29 PVL Proteins Ltd v Auckland Regional Council, AO61- 200

If it is a fundamental breach³⁰ the WDC and / or the WRC may cancel the resource consent, by letter, forthwith.

COMMENT - There may be a necessity for an advice note explaining a Fundamental Breach. - "a fundamental breach may be a breach that goes to the root of a consent/s. It may be an omission or an action. It will typically have a deliberateness about it".

ELECTRONIC SENSORS - OFF SITE COMPUTER MONITORED

140. In Court; discussions and undertakings were given that early warning systems - electronic noses - could be installed. This expectation is also reflected in the Interim Decision at B5.
141. In the proposed conditions received on 31 August 2015, there is no provision requiring early warning sensors of gaseous discharges – generally methane – a significant by product from a landfill and a gas that reputedly has a serious adverse effect on the ozone layer. Instead, the residents in the surrounding communities are responsible for the monitoring of the landfill by their complaints, taking part in odour surveys, and community liaison committees. Electronic sensors that detect gaseous discharges and report to an off-site data base will contribute to the location of fugitive discharges.
142. PAR accepts that the detection of odorous releases may be difficult to detect with electronic sensors. PAR however submits that where odorous release will occur there most frequently is methane released, and methane is readily detected by electronic sensors (noses).
143. CONDITION SOUGHT PAR submits that a condition requiring a pattern of electronic sensors – remote reporting to an off site database, and placed in a pattern around the edge of the landfill and more of them towards the sensitive receiving environment, towards the Tumohe property and towards the villages of Pukemiro and Glen Afton. These sensors will aid in the detection of fugitive releases by detecting the fugitive methane release.

30 <http://www.duhaime.org/LegalDictionary/F/FundamentalBreach.aspx> "This doctrine (of **fundamental breach**) was largely the creation of Lord Denning in the 1950s (see, e.g., *Karsales (Harrow) Ltd. v. Wallis*. It was said to be a rule of law that operated independently of the intention of the parties in circumstances where the defendant had so egregiously breached the contract as to deny the plaintiff substantially the whole of its benefit. In such a case, according to the doctrine, the innocent party was excused from further performance but the defendant could still be held liable for the consequences of its "fundamental" breach even if the parties had excluded liability by clear and express language. "

"A **fundamental breach** of a contract occurs where the failure of one of the contracting parties to perform a primary obligation under the contract has the effect of depriving the other party of substantially the whole benefit which the parties intended that party to receive..."

REMOTE SENSING - SATELLITE MONITORING.

144. PAR submits that a condition providing for the full reimbursement of the costs of broad spectrum remote sensing monitoring^{31 32 33 34 35} of activities on the site of the application, whereby real-time satellite photography and high definition video type images are recorded from space and archived, such sensing to be available and under the control of the WDC and WRC at the applicant's expense. This would allow a 24 hour remote monitoring and detection of activities on the site without the need to make a visit. In effect to a great extent, desktop monitoring.
145. An appropriate monitoring package will enable from a remote location vehicle identification by number plate, person identification, and real – time monitoring of activities.
146. It may also allow gas escape detection, and materials and earth penetration material identification.

CONDITION – REMOTE SENSING.

- (a) CONDITION SOUGHT. The WDC and / or the WRC may at any time it determines necessary, or at all times, use satellite monitoring and archiving both still and high definition video type images across the whole of the electromagnetic spectrum to monitor and archive the activities on the site to the extent necessary to achieve the purposes of monitoring and ensuring compliance with this consent;
- (b) The imaging may be to a resolution sufficient to identify number plates and identify persons. (This amounts to a waiver of privacy);
- (c) The full costs of the satellite monitoring and image archiving may be recovered from the applicant; and,
- (d) The bond may be used to recover those costs.

147. AERIAL “DRONE” MONITORING

31 <https://www.digitalglobe.com/>

32 <http://www.blacksky.com/>

33 <http://www.skyboximaging.com/>

34 <https://www.urthecast.com/>

35 <https://www.planet.com/solutions/>

- (a) CONDITION SOUGHT. The WDC and / or the WRC may at any time it determines necessary, or at all times, use aerial drones to monitor activities on the site, utilising high definition photography and high definition video to record those activities to the extent necessary to achieve the purposes of monitoring and ensure compliance with the consents;
- (b) The imaging may be to a resolution sufficient to identify number plates and identify persons. (This amounts to a waiver of privacy);
- (c) The full costs of the monitoring and archiving of the resultant images may be recovered from the applicant; and,
- (d) The bond may be used to recover those costs.

ODOUR

- 148. It is noted the the Tumohe property boundary is approximately 240m from the nearest cell, and it is feasible the Tumohe family could construct papakainga in that area.
- 149. The Interim Judgement dated 23 October 2014 records - commencing [110] as regards odour.

[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 use of the FIDOL factors and in particular the 0 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.

150. The Court struggled with this odour aspect of the case. It was encouraged by the 500 metres distance from the landfill nearest working face to the nearest property boundary.
151. CONDITION SOUGHT. That there be no cell receiving waste in any form what so ever or at all closer than 500m from the Tumohe rear boundary.

FIDOL TRIGGER POINT.

152. In regard to FIDOL measurements. PAR is of the view that there should be a compliance point in the odour assessment process that gives a clear indication of the trigger at which an odour level is objectionable and offensive.
153. WRC measurement data should by a consent condition be required to be thorough in its examination of complaints and odour measurements, and all data and reports should be made available to the public in the event of a private prosecution by way of enforcement order or common law action.
154. CONDITION SOUGHT. PAR seeks to either one or the other conditions in the appropriate place in the consents.
 - (a) **EITHER:** - An odour pollution, measurement by an authorised officer during a monitoring assessment, that detects odour at 3 or above on the odour intensity scale FIDOL, if that odour pollution to that intensity has occurred then this will be treated as a permit breach and will be scored using the WRC compliance classification system.
 - i. An odour nuisance that may be objectionable and offensive includes acute effects caused by a single odour emission event and chronic effects caused by a series of odour emission events.
 - ii. The WRC will then determine, based on the above assessment and the circumstances whether the nuisance as likely to be offensive or objectionable³⁶.
 - iii. The WRC or WDC may suspend the consent if the site operation involves serious risk of pollution or breaches of the fiduciary duties of the consent holder.

³⁶ Whether it is offensive or objectionable is a matter for the Court.

- (b) **OR:** - Where as a result of an odour complaint, or as a result of a monitoring survey, it shall be deemed to be an offensive and objectionable effect where a FIDOL intensity level of 3 or more on the odour intensity scale FIDOL is detected by the Waikato Regional Council.
 - i. An odour nuisance that may be objectionable and offensive includes acute effects caused by a single odour emission event and chronic effects caused by a series of odour emission events.
 - A. It shall be a defence to this charge if the applicant can show the FIDOL level is not offensive or objectionable.
 - B. It shall be a defence to this charge if the applicant can show the odour did not emanate from its activities.”
 - C. It shall be a partial defence to this charge if the landowner can show it has used the Best Possible Option to manage its site.
 - (c) The WRC or WDC may suspend the consent if the site operation involves serious risk of pollution, or breaches of the fiduciary duties of the consent holder.
 - (d) **CONDITION SOUGHT.** Add a definition in regard to odour that: “An odour nuisance that may be objectionable and offensive includes acute effects caused by a single odour emission event and chronic effects caused by a series of odour emission events”.
155. **CONDITION SOUGHT.** That the persons who are making the odour assessments on behalf of the Councils:
- (a) complete the Waikato Regional Council assessment recording document; “Data Record Sheet for Odour Measurement”; and,
 - (b) complete the Waikato Regional Council “Classification Guideline to Assess Compliance Status” sheet labelled “Compliance Status for Individual Conditions”; and,
 - (c) complete the Waikato Regional Council “Classification Guideline to Assess Compliance Status” sheet labelled “Compliance Status for Individual Consents and the Entire Site”.
 - (d) Note on the “Data Record Sheet for Odour Measurement”, the intensity level when measured on the FIDOL scale.

156. **CONDITION SOUGHT.** The data recorded in the Waikato Regional Council documents: “Data Record Sheet for Odour Measurement”; and, “Compliance Status for Individual Conditions”; and, “Compliance Status for Individual Consents and the Entire Site”, be displayed on the council web site, and or on any community website to communicate the matters in relation to these applications.

ODOUR MEASUREMENT POSITIONS

157. **CONSENT CONDITION.** I understand this aspect is developing, and that the measurement positions on or about the boundary of the site will be the rear of the Tumohe property where it joins the Puke Coal land; and the end of Glen Road and of Puke Coal Mine Road. (this later position is unclear as I understand part of the end of Puke Coal Mine Road is fenced into the Puke Coal Lands. That Puke Coal Mine Road position has yet to be clarified. If is the case that part of Puke Coal Mine Road is fenced into the Puke Coal lands then it should be at the position on Puke Mine Road that is nearest to the site of the proposed landfill.

ODOUR - FULL TIME TECHNICIAN

158. PAR would prefer a condition providing for totally independent full time monitoring condition.
159. PAR has concerns arising from an examination of the 31 August 2015 conditions that there is a great reliance on the applicant to develop reports and on monitoring of odour.
160. PAR notes the proposed appointment in the developing Redvale consents at s66A of a dedicated person responsible solely for monitoring and odour. PAR suggest that a similar appointment in these suit of consents may resolve their concerns. The Redvale consent with modifications by PAR where marked at 66A reads:

66A. The consent holder (under the direction of the WDC and or the WRC)³⁷, shall engage a (suitably qualified³⁸) full time equivalent odour technician on site.

The full time equivalent odour technician shall be engaged under the direction of the WDC and or the WRC for the duration of the consent.³⁹

The odour technician’s role description shall include:

³⁷ I on behalf of PAR have inserted this term.

³⁸ I on behalf of PAR have inserted this term.

³⁹ I on behalf of PAR have inserted this term.

- * Employing best practice odour management techniques
- * Managing odour sources from the site in accordance with the conditions of this consent and the LMP (including the Odour Management Plan section of the LMP);
- * Monitoring odour management devices on-site and ensuring that they are appropriately maintained and operated;
- * The specific frequency, duration and locations of monitoring shall be sufficient to enable the WDC and WRC and their officers and consultants to determine the degree of compliance with the conditions⁴⁰.
- * Ensuring that all odour complaints are responded to within half an hour where complaints are made during landfill operating hours, and as soon as reasonably possible where complaints are made outside such hours;
- * Assisting the Landfill Manager to ensure that the odour complaint response procedures outlined in the LMP are adhered to;
- * Undertaking a daily odour patrol, with the patrol locations based on:
 - meteorological conditions
 - location of the tip face or working area
 - the complaints record and any consultation with the CLG ⁴¹
- * Ensuring the odour field inspections required by conditions are carried out; and
- * Ensuring odour reports to the WRC and WDC are prepared accurately and forwarded to the WRC and WDC in a timely manner.⁴²
- * Making recommendations to the Landfill Manager, when necessary, to pro-actively address any actual or potential odour effects or complaints about odour effects.
- * Reporting on odour issues⁴³.
- * Liaising with independent monitors⁴⁴.
- * The person appointed is to be tested from time to time for desensitisation⁴⁵.

161. **CONDITION SOUGHT.** The consent holder will engage a full time equivalent odour technician on site in accordance with the conditions in the Redvale Consent, as above at 160 and as modified by PAR, The odour technician will be suitably qualified and those qualifications and that person is to be approved by the Waikato Regional Council at the time of employment and from time to time thereafter; and the job description for the odour technician shall be for a full time equivalent, and no other duties shall be required of that person.

⁴⁰ I on behalf of PAR have inserted this term.

⁴¹ I on behalf of PAR have inserted this term.

⁴² I on behalf of PAR have inserted this term.

⁴³ I on behalf of PAR have inserted this term.

⁴⁴ I on behalf of PAR have inserted this term.

⁴⁵ I on behalf of PAR have inserted this term.

500 METRES FROM THE BOUNDARY

- (a) The undertaking given by Counsel for the applicant in Court of a minimum distance of 500m from the boundary is now heavily qualified with a conditionality that reads:
 - i. At Consent 125467 at XXXX- *“for the avoidance of doubt this separation distance shall not apply to any cell that contains only C & D waste.”*
 - (b) The Court was told the at the substantive hearing that the C & D waste would be put aside a liner installed and C & D waste and placed in the landfill once there was Municipal Solid Waste was placed on the liner. What is now proposed is totally different.
162. CONDITION SOUGHT. PAR seeks the removal of these conditions and no fill at all to be placed within 500m of the boundary.

COMMUNITY SURVEY - ODOUR RE-MEDIATION.

163. CONDITION CHANGE SOUGHT In the draft consents conditions dated 31 August 2015 in WRC 125467 at page 9 under community odour Survey, at paragraph 2 starting “the results and finding...” PAR seeks that the time to involve the WRC should be reduced to 24 hours from two months. AND within 24 hours of being advised to prepare an odour management plan, have on prepared rather than the one month proposed.

DECONTAMINATION - CONDITION

164. PAR seeks a condition in relation to decontamination.
165. CONDITIONS SOUGHT. Where hazardous materials such as Asbestos, and other materials not consented by this or previous consents, has been deposited on the Puke Coal site and is known to be located, or discovered in the course of operations, then the existence of the material will be notified forthwith the WDC and WRC, and under the supervision of the WDC or the WRC, and at the expense of the applicant, the material and the contaminated surrounding land will be uplifted and removed from the Puke Coal site to an appropriate site elsewhere. PAR notes the comments in Court on this matter and says that if uplifting is not appropriate then recording and precautionary actions identify and secure the deposits should be required.

ODOUR RE MEDIATION RESPONSE TIMES

166. None of the conditions in the consents gives PAR any confidence of a prompt odour re-mediation in the event of odour escaping from the site.
- (a) No indication of a prompt response mechanism.
 - (b) No forward contingency planning.
 - (c) Long times for a reaction by the applicant to occur.
 - (d) What happens on the weekend?, what happens over a longer break?
167. CONDITIONS VARIATION SOUGHT. That odour complaint response times be reduced to the minimum, and to be stated in hours rather than days weeks or months.

DRINKING WATER – BORE AND ROOF.

168. PAR does not accept the provision at WRC Consent 125469 at 20 as they are written.
- (a) PAR seeks the definition of neighbouring property to be any property within a 3 kilometre range of the MSW site.
 - (b) PAR rejects the requirement for proof of unpotable water., or contaminated water. The test for unpotable or contaminated water is expensive, and time consuming, taking possibly a number of days, meanwhile leaving the affected household without potable water. It is also a high possibility that the household concerned may not have the economic means to test for the potability of the water.
169. CONDITION SOUGHT. The Waikato Regional Council, on receipt of a complaint in regard to water quality from a property within 3km from Puke Coal Site, and without any further testing required, should, by the quickest means possible (e.g. telephone call to the consent holder) to forthwith provide potable water, or treatment of that water to make the water potable. In the case of water contamination, there is only a volume exchange. Replace only the volume in the tank measured with a dip stick. (There is a serious aversion to chlorinated water amongst the rainwater drinking populace)

- (a) PAR submits that should the consent holder not responded promptly, then the WRC be authorised by a condition of consent to provide that water and draw on the bond it holds.

COMMUNITY TRUST.

170. PAR notes the proposed trust in the conditions of the 31 August 2015. Par comments as follows:

171. **CONDITION SOUGHT.** The applicant will establish a Community Offset Mitigation Trust on the following terms.

- (a) The charitable purposes whilst charitable should reflect the requirements of the Waikato-Tainui Environmental Plan, to return back to the communities positive ecological and social outcomes, in which social, educational, physical and psychological health are also provided for.
- (b) In the draft deed under the heading in the preamble, ADD after A the last word Schedule: “and to fulfil the purposes of the Waikato – Tainui Environmental Plan, by returning to the communities of Pukemiro and Glen Afton a benefit a social, cultural, environmental, spiritual outcomes giving rise to environmental enhancement”.
- (c) In the draft trust deed at 1.1(a) delete the words domains and parks.
- (d) In the draft deed at 1.1(b) delete the words “within schools”
- (e) In the draft deed at 1.1(e) delete “parks, reserves and conservation areas including”
- (f) In the draft deed at 1.1, Add. “the requirements of the Waikato-Tainui Environmental Plan, to return back to the communities positive ecological and social outcomes, in which social, educational, physical and psychological health are also provided for.”
- (g) In the draft trust deed at 6.1at 6.1(a) change the one person to 2 persons.
- (h) In the draft trust deed at 6.1(b) after the word person, add “not an elected member”; after the words Waikato Regional Council delete the words in brackets (“the independent trustee”); after the word incumbent substitute the words “Council”;
- (i) In the draft trust deed at 6.1(c) substitute the words in clause (c) with “one person from the Waikato-Tainui River Trust”;

- (j) In the draft trust deed at 6.1(c) add 6.1(e) add one person from the Tumohe Whānau in Hangapi Road.
- (k) In the draft trust deed at 6.5 (b) (i) after “resident” add “or property owner”
- (l) In the draft trust deed at 6.5 (c) delete that clause in its entirety.
- (m) In the draft trust deed at 7.4, change the provision for the alteration of “all other aspects of the trust deed” in the third sentence providing that notice of change to the non charitable purposes of the trust deed is made at an election of a trustee, if an election is pending, and if not, by a poll held among the persons able to vote for the community trustees (including the Hangapi Road residents) in an election.
- (n) Alter the disbursement of funds clause to provide also that: The Trustees of their own initiative, without the receipt of applications may disburse funds for any charitable purpose, though generally they may receive applications or recommendations.
- (o) The registered office of the Trust should be one of the councils if that council is prepared.
- (p) Generally the draft trust deed will be amended as in clause 170 (a) to (f) inclusive above.
- (q) The trust will have general charitable purposes including but not limited to the implementation of the Vision and Strategy of the Settlement Act; of providing a net social, educational, economic and spiritual benefit to the communities of Pukemiro, Glen Afton, Tumohe, and Gully Road; and,
- (r) The trust will be funded by the applicant in the order of \$150,000.00 per year; and,
- (s) The funding will be paid in advance at 3 monthly periods the first payment being on the first day of the third calendar month after the granting of consent; and,
- (t) Failure to make a payment will give rise to remedies under the consent, including it being a ground for stopping the receipt of waste at the landfill, and / or utilisation of the bond to make the payment; and,
- (u) A seed fund or \$75,000.00 will be established on commencement of the consent; and,

- (v) The funding will be Consumer Price Index, indexed, on a yearly basis on or about the anniversary of the settlement date. Provided however; that failure to index will not void any retrospective indexing, or prevent any “catch up” indexing; and,
 - (w) The trust will continue for the life of the landfill and its post closure maintenance and re-mediation period; and,
 - (x) The funds are not intended to be used to maintain the riparian planting required as part of this consent, or any other fencing or planting, or to remedy any effects of the landfill which are water filters, fly screens, or air filters and similar adverse effects arising from these consents.
 - (y) The Trustees may be: one of officers (not an elected representative) of the Waikato District Council, and/or the Waikato Regional Council; one of the Waikato Raupatu River Trust; and a minimum of 3 members elected from the residential communities of the sub-urban village settlement of Pukemiro and Glen Afton including the settlement of Gully Road; a further one from the residents of the Tumohe property in Hangapi Road. The settler may appoint one trustee. Being a total of 7 trustees.
 - (z) The trustees may co-opt a member of an educational or social work institution if the trustees see the need.
172. The trust may be administered by one of the Councils, and the applicant will pay the further costs of administration of the trust.
173. FURTHER WORK. Par submits that further work in the area of the trust is required. Especially in regard to decision-making.

SECURING PAYMENTS TO THE COMMUNITY TRUST.

174. CONDITION SOUGHT. Payments to the community trust are to be secured under the general bond held by the councils, and that bond may be used to make the regular payments in the event of a default.

BASIS FOR THE COMMUNITY TRUST.

175. It is a fundamental tenant of environmental justice that burdens are prevented from falling disproportionately on particularly vulnerable communities and sectors of society when carrying out activities that have the potential to adversely affect those communities. That is so in this application. That is also the principle that appears to underlie the Waikato_Tainui Community Plan.

176. The requirement for an activity to make a return to the environment is provided for in the Waikato- Tainui Environmental Plan.
177. The Community Trust is not a gift to the community, but a recognition of a benefit gained from the use of a resource, as well as reparation and compensation for the burdens that will be placed on the community of the whanau of Waikato-Tainui and the communities of Glen Afton, Pukemiro, Hangapipi and Gully Road and thereafter on the environment
178. The communities of the whanau of Waikato-Tainui and the communities of Glen Afton, Pukemiro, Hangapipi and Gully Road will also be the receiving environment of adverse odour effects, and will have significant involvement in odour issues over time. The landfill will also be responsible for methane discharges and adverse events.
179. It is recognised that offensive odours can have impacts on the health and well being of humans, especially if one is subjected to the odour for extended periods of time. At sufficiently high concentrations odorous compounds may have a direct effect on human health. Also, an individual's health may suffer indirectly due to stress associated with odour impact.
180. It is recorded in the literature that complainants in relation to landfills have described the following scenarios that have occurred entirely due to nuisance odours:
 - Vomiting,
 - Headaches,
 - Nausea,
 - Stress, anxiety, frustration,
 - Having to leave home and stay with family/friends or incur the expense of a hotel,
 - Unable to open windows during summer time,
 - Unwilling to host guests due to embarrassment,
 - Keeping children indoors during summer holidays,
 - Unable to enjoy the garden for occasions, (such as barbecues or birthday parties)
 - Unable to hang laundry out to dry,

Children unable to sleep due to odour in bedrooms,

An additional discomfort for infirm elderly people.

Unable to sustain a home-stay business because of the actual or potential effect of nuisance odours.

Diminution in the value of property as a result of actual and potential odour effects.

181. For many complainants it is not only when they are subjected to odour that they are affected. Complainants can experience ongoing anxiety and stress due to the potential for re-occurrence of odour at any time. This can happen to people when they are frequently subjected to nuisance odours.
182. Odours can have a very strong effect on persons and can give rise to serious psychological harm on those exposed to them⁴⁶.
183. The Court heard of a tendency to categorise some people who have a greater sensitivity to odours or who have become hyper-sensitive to odour in a derogatory way – such as “serial complainants”. This in many cases could well be hypersensitivity brought about by persistent odours.
 - (a) Hypersensitivity is a recognised reaction to unwanted persistent odours
 - (b) Repeat exposure to odour may mean what used to be a faint odour can become a signal for annoyance or complaint.
184. The members of PAR and the communities of Pukemiro, Glen Afton, Tumohe, and Gully Road can expect to experience some or all of these effects and responses. (refer Mr Curtis' evidence to the substantive hearing.)
185. Further, the MSW landfill will discharge significant quantities of methane to the atmosphere, and whilst that is not a direct effect on the of the whanau of Waikato-Tainui and the communities of Glen Afton, Pukemiro, Hangapipi and Gully Road, it is an indirect effect on New Zealanders at large, and sufficient justification PAR submits for a return to by way of the Community Trust.
186. Other adverse effects not pursued by PAR in this appeal, but never the less effects, are increased traffic and the hazards that brings, dust, birds, litter, noise, community Stigma, loss of amenity and loss of value.
187. In determining quantum, I have been mindful of the above pending effects, and also of the value to the consent holder of the consents. Landfills are re-

⁴⁶ Smith J, presenter at 2014 Environmental Conference on Enforcement.

putedly good lucrative businesses, the consents will be ongoing. I am told, more profitable than Coal Mining.

188. I have first been guided by my clients. Conscious of the socio-economic position of the communities in the receiving environment. Conscious of the costs of education in particular at post graduate level where it is no longer funded by Student loan. Conscious there are no community health facilities in the area, no doctor, nurse etc.
189. For all of the above reasons a community trust is sought.

ECOLOGICAL JUSTICE – ECOLOGICAL DEBT.

190. In furtherance of a Community Trust, it is submitted that there is a overwhelming case here for some repayment of the ecological debt this applicant and its predecessors have had on the Waikato toanga, the Waikato River. A river so highly recognised as a toanga and protected in the Settlement Act, and so seriously abused by the applicant and its predecessors.
191. There is in the evidence before the Court of Mr Brinkley, Mr. Dillon and Mr. Scott and in the July 2014 hearings the evidence of Mr Lewis Boyd and Mr Peter Boyd serious examples of abrogation of duties within resource consents, externalising of effects of activities, and a profound ecological injustice wreaked upon the Waikato River and the Communities of Glen Afton, Pukemiro, Tumohe and Gully Road. An example is the pollution of the Waitawhara, and the destruction of an historic swimming hole and community resource – a recreation facility potentially polluted with asbestos from the non-complying filled material, and substantially now filled in.
192. PAR submits a community trust is an appropriate vehicle to address in part some of the above effects.

COMMUNITY LIAISON GROUP.

193. PAR retains concerns about the community liaison group. It seeks the following additions to the draft conditions received on 31 August 2015.
194. In WRC consent of 31 August 2015, at paragraph 22, page 33
 - (a) PAR has concerns about the proposed role of the Waikato Regional Council in authorising matters in relation to the community liaison group. Words such as “if in consultation with the Council a”, and “unless agreed in writing with the Waikato District Council”. PAR says this authorisation with the Council is an opportunity for the consent holder to liaise with what

appears to be a subservient culture towards the consent holder's wishes in the Waikato District Council (as manifest in the road closure débâcle). Grown people in the community do not need their interactions overseen by an authority figure such as a Council. Simply if the CLG does not work the consent holder has more to loose than the community.

- (b) CONDITION VARIATION SOUGHT. Remove from the condition words such as ““if in consultation with the Council a”, and “unless agreed in writing with the Waikato District Council”.
- (c) In the first sentence, after the word “Community Liaison Group”, add “and take all reasonable steps to maintain and provide support and resources, including”.
- (d) At the list of members of the Community Liaison Group, ADD: A member from the Waikato District Council Local Board, or its substitute committee.
- (e) Under the heading “The function of the Community Liaison Group is to:”
 - i. at (a) substitute the words at (a) with: “establish and maintain a forum for communication between the consent holder and the communities of Pukemiro and Glen Afton”
 - ii. After (g) add:
 - A. (h) disseminate information about the Puke Coal landfill and coal mining operations to the communities of Pukemiro and Glen Afton
- (f) Under the heading “The consent holder shall fund the reasonable costs...”,
 - i. Add: the consent holder will ensure the CLG has adequate secretarial support from the consent holder. The secretary’s responsibilities shall include. Preparation and circulation of the agendas, with a draft agenda being circulated and to any member of the public who indicates they wish a copy. Keeping records of information provided by the consent holder. Facilitating the exchange of information between the CLG and the Consent holder including; details of any complaints; reviewing and summarising any changes to the management plans. Taking and maintaining minutes of meetings. Ensuring the minutes are circulated and posted on web-pages. And, any other tasks required to ensure the efficient and effective functioning of the CLG.
 - ii. Add: Notice shall be provided by mail to all the residents and or property owners of Pukemiro, Glean Afton, Hangapipi, and Gully Road and the others on the list.

- (g) Under the heading the “CLG meetings shall...”
 - i. Add: the agenda shall include a log of any complaints received since the last agenda was issued, with notes on the time and time/s for remedial action to ameliorate the adverse effect, if those complaints were found to be valid.
 - ii. Minutes taken shall include clear action points outlined with appropriate time-frames for performance. The minutes shall be available within 10 working days of the relevant meeting.
 - iii. The minutes are to be circulated to the members of the CLG within 10 working days of the meeting being held, and a copy placed on the Puke Coal Landfill Community Web page (In the expectation the applicant will take up the suggestion of the Court in the 31 August 2015 meeting) and on the Waikato District Council and Waikato Regional Council web pages.
 - iv. PAR does not see the need for an independent chairperson.
195. CONDITION SOUGHT. Materials to be supplied by the consent holder to the CLG:
- (a) To support the role of the CLG the consent holder shall provide the CLG with:
 - i. The landfill reports provided to the Council/s
 - ii. Details of any more than minor modifications to the design or methodology chosen for operation and construction of the landfill.
 - iii. Proposed changes to the LMP, where such are to be submitted to the Council for approval or to be reviewed.
 - iv. Access to a hard copy of the LM Plans will be available at the Landfill during office hours, and a copy will be held by the CLG. Full copies will also be available at the WDC and WRC offices as required by law.
 - v. Notification in circumstances where the Council/s have advised:
 - A. that it intends to waive the requirement for annual or any review of the LMP .
 - B. Details of any monitoring frequency reduction in accordance with conditions of the consent or other wise.

- C. Details of any equivalent alternative daily cover for which Council/s approval is required
- D. Copies of all reports provided to the Council/s relating to odour field inspections.
- E. A copy of the recommendations of the independent or full time equivalent expert odour consultant following their review, as provided to the Council/s.
- F. An annual update on the airspace remaining at the landfill.
- G. Degrees of settlement of landfill material;
- H. Water monitoring records;
- I. Weather station data;
- J. The consent holder shall advise the CLG of any resource consents being sought or submissions made by the consent holder in relation to the Landfill and Coal Mining, and other activities, prior to the application or submission being lodged with the Council/s. A copy of the application or submission shall be provided to the CLG no later than 5 working days following lodgement of the application or submission with the Council.
- K. The provision of the above information to the CLG from the consent holder shall be made without delay, along with other information, to allow for consultation on parts of the LMP.

COMMUNITY WEB-PAGE:

- 196. PAR's submission on this matter are directly taken from the Redvale Draft consent conditions. The prospect of a community web page was mentioned in court by His honour, and PAR supports that proposal
- 197. **CONDITION SOUGHT.** Within three months of the commencement of this consent, the consent holder must establish, maintain and regularly update, at its own cost, a community web-page dedicated to communicating information relating to the landfill and Coal Mining and other activities (without limitation) including:
 - (a) Information about the CLG, including the role of the CLG and current membership (unless privacy is required by any member);

- (b) Date, time and venue for the next CLG meeting;
- (c) Minutes of CLG meetings (from the date of grant of this consent).
- (d) Minutes shall be posted no later than 10 working days following the relevant meeting;
- (e) Information about the complaints procedure operated by the consent holder company with and the Council, including business hours and out of hours contact details
- (f) Online form for logging complaints is to be available at all times on the website. The form shall include fields for complainants to complete, if they wish: the address, time and date of complaint lodged, nature of complaint (e.g. odour, noise, etc.) and additional information about the particular incident. In the case of odour complaints, the online form shall provide an opportunity for the complainant to record the frequency, intensity (using the 0-6 scale set out in Condition 67c)), duration and a description of the offensiveness of the odour. Once completed a copy of the complaint shall be automatically forwarded to the consent holder, the complainant and within 24 hours to the Waikato Regional Council and the Waikato District Council. The consent holder shall also maintain a complaints hotline in the event that the website is not operational.
- (g) The Form should advise the complainant in a prominent position to advise the Council/s directly in writing if they want the Council/s to investigate. The form should provide a mechanism for this advice to the Council/s to occur from the website.
- (h) Access to weather station data.
- (i) The consent holder will consider including any other information that the CLG requests be available on the web-page, and will endeavour to include such information where appropriate to do so.

CONSULTATION ON THE LMP

- 198. PAR's submission on this matter is directly taken from the Redvale Draft consent conditions.
- 199. **CONDITION SOUGHT.** The consent holder shall consult with the CLG on any changes to the following sections of the LMP:
 - i. Nuisance control measures;

- ii. Community liaison;
 - iii. Complaints response procedure for odour effects on or beyond the odour boundary;
 - iv. Odour management; and Landscape amelioration, maintenance and restoration work.
 - v. Waikato River Restoration and Protection progress, monitoring and activities as provided for in the consent conditions.
200. CONDITION SOUGHT. PAR further seeks that a condition be added that requires the meetings of the community liaison group to meet in a venue that does not sell alcohol. (To make this clear, PAR does not see the Blue-Rooms as an appropriate venue.) PAR expects a school classroom, or other non alcoholic community venue in one of the villages, or a venue in Huntly or Hamilton.
201. PAR notes the draft consent conditions dated 31 August 2015 have deleted the lapsing clause, and the expectation is that the Community Liaison Group will continue to function.

GLEN AFTON SWIMMING HOLE.

202. CONDITION SOUGHT. The consent holder will forthwith upon the commencement of these consents remove the overburden and restore the swimming hole in the Glen Afton Recreation Reserve.

DENNIS J SCOTT ALTERATIONS TO “GENERALLY IN ACCORDANCE” CONDITIONS OF CONSENTS

203. In the Waikato District Council Consent after General Paragraph 5, and before the heading “Site Management”, ADD a heading “Waikato-Tainui Vision and Strategy”. Under that heading add the conditions that follow below under the heading “Proposed Consent Conditions” as below.
204. In the Waikato Regional Council Consent 104244 Discharge to Water, under the heading General add a further bullet point: - “The Waikato District Council Consent paragraphs add the conditions that follow below under the heading “Proposed Consent Conditions” as those conditions will appear numbered under this Waikato Regional Council Consent.

205. In the Waikato Regional Council Consent 125466 – Schedule 4 General conditions under 1. after the bullet points listing management plans add a further major bullet point the conditions in the Waikato District Council Consent paragraphs add the conditions that follow below under the heading “Proposed Consent Conditions” as those conditions will appear numbered under this Waikato Regional Council Consent.
206. In Waikato Regional Council Consent 125466 – Schedule 4 General under 1, after the list of management plans already presented and mentioned; ADD: Management Plans prepared to address the management maintenance and monitoring of the re-vegetation and rehabilitation of the set aside areas.

***DENNIS J SCOTT PROPOSED CONSENT
CONDITIONS TO GIVE EFFECT TO ANNEXURE 16
OF ATTACHMENT B EVIDENCE.***

207. Insert as 1 e, in the Waikato District Council Consent, after 1. d) ADD; The Waikato Raupatu Claims (Waikato River) Settlement Act 2010.
208. After the above addition of 1.e) ADD 1.f) TAI TUMU, TAI PARI, TAI AO. The Waikato Tainui Environmental Plan.
209. In order to meet the requirement of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (Settlement Act), the Vision and Strategy and in order to meet the requirements of the Waikato-Tainui Environmental Plan, the applicant will:
- (a) Establish in all areas identified on Attachment 16, Puke Coal Mine – Land use Spatial Analysis and management Plan – Annexure B – Attachments to the affidavit of D. J. Scott, Puke Mine, Rotowaro Road, Pukemiro, 31 July 2015, a re-vegetative restorative ecological sequence management plan that sets aside land and carry out plantings, fencing, bridge over tributaries, establish access points for servicing ponds (infrastructure) and carry out the consented re-vegetative and restorative activities on and around the applicants Puke Coal site that achieve the purposes of the vision and strategy of the Settlement Act, and implements the Waikato-Tainui Environmental Plan. The management plan will establish a management, maintenance monitoring plan of re-vegetative and restorative flora health, and infrastructure, and a monitoring of re-vegetative and restorative flora and the associated infrastructure in terms of the conditions hereafter.
 - (b) The re-vegetative restorative area is to include all areas identified on Attachment 16, Puke Coal Mine – Land use Spatial Analysis and Management

Plan – Annexure B – Attachments to the affidavit of D. J. Scott, Puke Mine, Rotowaro Road, Pukemiro, 31 July 2015. (DJS attachment 16 plan).; and

- (c) The re-vegetative restorative area is to include those areas identified as “Critical Discharge Zones 1 and 2,” and their associated margins. It is note that the extent of these areas will need to be identified as a specific and detailed management plan and program, as part of the recommended “whole of site” Re vegetative and Restorative Management Plan.
- (d) In so doing the applicant must:
 - i. Save for any vehicle crossings that may cross the tributary, and save for any access point to a settlement pond to enable the draining of that pond, and save for any monitoring point adjacent to a tributary; the applicant must set aside land (set aside land) and establish and maintain re-vegetative and restorative plantings of eco-sourced native species as a biodiversity sustainable sequence of native plants (ecological sequence) of varieties recommended in the first instance by Waikato-Tainui ecologist, and which may be supplemented by an expert ecologist within that set aside land. The plants are to be eco-sourced from within the Waikato-Tainui territory. The set aside land is to be in accordance with the DJS Attachment 16 plan including on either side of every present, and future⁴⁷ tributary as it is developed in rehabilitation; and every present and future sub tributaries that drain into the Waitawhata within, through and from the Puke Coal site; the set aside land in accordance with the DJS Attachment 16 plan is to be densely planted throughout leaving no area without the potential for final full canopy;
 - ii. where it is necessary to place any culverts, or where there is a drop in the level of the tributary of a overhanging nature the applicant will put in place a fish ladder. The design of the fish ladder to be to the satisfaction of an ecologist holding qualification in freshwater fish ecology;
 - iii. where there are settlement ponds, or other water catchment ponds established; the applicant must set aside land that, save for access and monitoring points; surrounds those ponds. The applicant must fence the set aside surrounding land and establish and maintain within the fence a biodiversity sustainable ecological sequence of re-vegetative and restorative plants of varieties recommended in the first instance by the Waikato Tainui ecologist, such advice may be supplemented by advice from re-vegetative and restorative ecologist;
 - iv. in establishing the ecological sequences of eco-sourced native plants in the areas identified on DJS Attachment 16, the applicant will set aside in accordance with that DJS Attachment 16 plan either side of the edge

⁴⁷ Re-mediation plans are not available in full detail, but it is clear that the final land-form of the Puke Coal site will be of hills and valleys and watercourses.

of the tributaries and the ponds land to accommodate this re-vegetative and restorative ecological sequence. The objective being to provide a wide enough body of plant material to sustain the fauna and flora necessary for the natural protection and restoration of the Waikato River;

- v. the set aside, fenced and planted area will be for the full length of the streams on either side where they pass through the Applicant's Puke Coal site;
- vi. the applicant will plant-out the set aside DJS Attachment 16 plan lands with the required plants with a spacing and density to achieve a sustainable biodiversity sequence. The applicant will weed and maintain those plants so that they become self sustaining and achieve dominance. The objective being to achieve the restoration and protection of the Waikato river.

A. The person/s carrying out the planting and maintenance will have a horticultural qualification.

- (e) As rehabilitation occurs in the area of the landfill, and the coal workings, the watercourses formed by water shedding from the surface of the closed cells and rehabilitated workings forming ponds and watercourses, will also be covered by this condition, and the principles re-vegetative restorative riparian planting, setting aside, fencing and covenanting must apply;
 - i. as rehabilitation plans for the activities on the applicants coal site are developed; then those plans will be developed so as to to accommodate the principles of re-vegetative and restorative riparian planting⁴⁸.
- (f) The applicant will establish and maintain sediment/ siltation protection fences to achieve the objective of preventing sediment from the applicants activities on the Puke Coal site from entering into the ecological sequence and the tributaries;
- (g) The applicant will minimise the contamination of surface water by ensuring that soil, overburden, debris and detritus is not place in a position where it may enter any water body.
- (h) Where it is necessary for vehicles to cross a tributary, then the tributary shall be engineered with a bridge or culvert. The objective being to prevent vehicles disturbing the bed of the tributary and wheel contamination from the Municipal Solid Waste from entering and disturbing the tributary.
- (i) The applicant will operate an effective rabbit, rat, possum, pigs and mustelids control program within the re-vegetation and restoration areas in

⁴⁸ It may be necessary to change the coal mining consents to similarly reflect these conditions.

order to minimise damage to re-vegetation and restoration areas. The program will be operated to the satisfaction of the regulatory manager of the Waikato District Council and Waikato Regional Council. In December each year the applicant will report to the Chief Executive and the regulatory managers of the Waikato District Council and Waikato Regional Council on the rabbit, rat, possum, pigs and mustelids eradication program.

FENCING

210. Save for any vehicle crossings, access points for maintenance of ponds, or access points for monitoring water quality, the applicant will permanently secure the areas of the DJS Attachment 16 plan lands with a permanent 7 wire agricultural type fence. The outer boundaries of the areas set aside to contain the ecological sequence of plantings. The effect being to ensure the re-vegetative restorative plantings referred to in this consent are protected from site working activities, and completely surrounded with a protective permanent fence.
211. *Where there are access points established to permit the passage of vehicles, carry out maintenance on ponds or to access a monitoring point, these shall be fenced so as to enclose the DJS Attachment 16 plan lands. Representatively, bridge access over a tributary, shall be only single vehicle width of maximum 4 metres; and for access for maintenance and monitoring of water quality, shall be no wider than 2.5 metres. These access points will not be planted, they will be permanently fenced to protect the re-vegetative restorative plantings.*

VESTING LAND IN COUNCIL AND OR COVENANTING

212. In order to provide the long term longevity of the re-vegetative restorative plantings some legal protection is proposed. This may be either by vesting the land within the re-vegetative restorative areas in Waikato District Council as a Nature Reserve under the Reserves Act Section 20, or; covenanting the reserve as below.

COVENANT UNDER THE RESERVES ACT 1999 WITH WAIKATO-TAINUI

213. The applicant must covenant the re-vegetative and restorative plantings and the set aside land with a conservation covenant into perpetuity in terms of Section 77 of the Reserves Act 1999. The objective being to ensure the provisions of the Settlement Act and its subordinate documents endure into perpetuity.
214. Should Waikato-Tainui so desire then one of the corporate entities of Waikato-Tainui may be a joint party with the Crown in the covenant.

215. The covenant will be registered under the Land Transfer Act 1952, and the provisions of section 109(b) will apply.
216. A letter of undertaking from a Barrister and Solicitor holding a current practising certificate that the private land covenants will be registered against the title of the applicants lands to which these consents apply will be sufficient. The terms of the covenant shall be derived to ensure the consent conditions developed by Mr Dennis Scott in his evidence and the details of the proposed covenants are to be to the satisfaction of the Waikato District Council and or the Waikato Regional Council.
217. As further land is set aside and re-vegetative restorative riparian plantings and fencing take place, that land will be covenanted with a conservation covenant.
218. Before a further stage of the Municipal Solid Waste Landfill and or Coal mining stage may take place, the further re-vegetative restorative planting opportunities that arise from the previous stages must be in place and covenanted.
219. A letter of undertaking from a Barrister and Solicitor holding a current practising certificate that the private land covenants of over the further areas re-vegetated will be registered against the title of the applicants lands to which these consents apply will be sufficient. The terms of the covenant shall be derived to ensure the consent conditions developed by Mr Dennis Scott in his evidence and the details of the proposed covenants are to be to the satisfaction of the Waikato District Council and or the Waikato Regional Council.
220. Should conservation covenants as to ensure the consent conditions developed by Mr Dennis Scott in his evidence, with the Crown into perpetuity not be possible then the covenant parties shall be the applicant and its successors in title on the one part and Waikato – Tainui on the other.

COVENANT TO THE CONSENTING AUTHORITIES.

221. The applicant, and its successors in title must enter into an encumbrance on the title to give notice of restrictions and to bind future purchasers of the land.
222. In effect to covenant with the Waikato District Council and or the Waikato Regional Council in terms of section 108(2)(d) in respect of the performance of the conditions developed by Mr Dennis Scott in his evidence in relation to the application. The provisions of RMA section 109(1)(a) apply.

223. The covenant will be registered under the Land Transfer Act 1952, and S109(b) will apply to this covenant.
224. A letter of undertaking from a Barrister and Solicitor holding a current practising certificate that the private land covenants in favour of the Waikato District Council and or the Waikato Regional Council will be registered against the title of the applicants lands to which these consents apply will be sufficient. The terms of the covenant shall be the consent conditions the consent conditions developed by Mr Dennis Scott in his evidence and the details of the proposed covenants are to be to the satisfaction of the Waikato District Council and or the Waikato Regional Council.

BOND

225. Section 108 of the Resource Management Act 1991 enables a Settlement Act bond in relation to the re-vegetative and restorative planting to be held by the Councils. A bond valued at 1 ½ times the contract price for the restoration and protective works (at today's rate 2015 estimated to be 5 million dollars) gives a bond of \$7.5million dollars as of August 2015. The bond to be held by the Councils and will be used to secure the performance of the conditions of these Settlement Act re-vegetation and rehabilitation conditions developed by Mr Dennis Scott The bond at any review period may be reviewed upwards.
226. For clarity, this bond is over and above any bond held in relation to other aspects of the application. The bond values for works elsewhere in this application could be consolidated into one bond, with this re-vegetative restoration bond to be 1 ½ times the value of the work which at 2015 is estimated to be a bond of **\$7.5million**. This will mean **\$7.5 million** dollars of the overall bond will be allocated towards securing the restoration and protective and associated works.
- (a) The quantity under the bond will be indexed annually to the consumer price index.
 - (b) The bond shall be given before any of the other terms of the consents are exercised.
 - (c) The terms of Resource Management Act 1991 Section 109(1) shall apply to the bond.
 - (d) The liability of the applicant is not limited by the amount of the bond.
227. The bond may be used to secure performance of the conditions of the resource consents developed by Mr Dennis Scott, including conditions relating

to remedying adverse effects on the environment caused as a result of carrying out the activities on the site.

228. This bond will continue after the expiry of the resource consents to ensure the ongoing performance of the conditions of the consent in relation to the matters of the consent conditions developed by Mr Dennis Scott
229. In terms of Section 109 of the Resource Management Act 1991, the Waikato District Council and or the Waikato Regional Council may jointly or severally exercise their powers under Section 109(3) for the purposes of ascertaining whether the work has been completed to the satisfaction of the consent authority.
230. In terms of Section 109 of the Resource Management Act 1991, the Waikato District Council and or the Waikato Regional Council may jointly or severally exercise their powers under Section 109(4) to enter onto the land and complete the work and recover the costs thereof from the consent holder out of any bond given, or money or securities deposited with the consent authorities.
231. In terms of Section 109 of the Resource Management Act 1991, the Waikato District Council and or the Waikato Regional Council may jointly or severally exercise their powers under Section 109(5) where any work done by Waikato District Council and or the Waikato Regional Council under section 109(4) exceeds the amount recovered by the Waikato District Council and or the Waikato Regional Council under that sub section, the amount of that excess shall be a debt due by the consent holder to the consent authority/s which carried out the work, and shall be a charge upon the land.

REVIEW OF CONDITIONS OF CONSENTS IN RELATION TO THE DJ SCOTT EVIDENCE

232. The Waikato District Council and the Waikato Regional Council may, in accordance with Section 128 of the Resource Management Act 1991, serve notice on the applicant of its intention to review the conditions of the consents within one month of every 6 months period, beginning 6 months after the date of the consents taking effect.

THE PURPOSE OF THE REVIEW WITH RELATION TO TO THE DJ SCOTT EVIDENCE AND THE VISION AND STRATEGY:

- (a) To deal with any adverse effects on the environment that may arise from the exercise of the consents and which it is appropriate to deal with at a later stage, or to deal with such effects following assessment of the results of the monitoring of the consents and/or as a result of the Waikato District

Council and the Waikato Regional Council's monitoring of the state of the environment in the area.

- (b) To require the adoption of the best practicable option to remove or reduce any adverse effect on the environment.
- (c) To provide for compliance with rules in any Regional Plan or District Plan that has been made operative since the commencement of the consents.
- (d) To provide for compliance with changes in the Vision and Strategy of the Settlement Act.
- (e) To examine the monitoring documents of the re-vegetation and rehabilitation components of the consent and to address any issues of compliance that may arise. No review of the re-vegetation and rehabilitation consents may diminish the effect of any condition.
- (f) To enable the consent holder to prepare a landfill management plan/s that details the procedures to be put in place to operate the landfill in compliance with conditions of these consents and minimise the adverse effects due to the operation of the landfill⁴⁹.
- (g) To deal with any inadequacies or inconsistencies that the Waikato District Council and or the Waikato Regional Council considers there to be in the conditions of consent following the establishment of the activity.
- (h) No review⁵⁰ may diminish these consent conditions as developed by Mr Dennis Scott.

REVIEW NOTICE AT ANY TIME.

233. A review notice may be issued at any time for any inaccuracies that may in the future be found in the information made available with the application.

CONSENT NOTICES

234. If in the future, the land is subdivided, then the consent conditions developed by Mr Scott and subsequently altered, but not diminished, on review, must be complied with on a continuing basis by the consent holder and its successors in title, and a Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be entered into by the consent holder, and any successors in title in the case of further subdivision (consent

⁴⁹ Guide to Landfill Consent Conditions MFE NZ 2001, page 52c

⁵⁰ This is trite, but it is inserted for clarity.

holder/s). Such Consent Notices shall be prepared at the consent holder/s expense and be to the satisfaction of the Waikato District council and or the Waikato Regional Council's solicitor.

235. Before a certificate is issued under Section 224(c) of the Resource Management Act 1991, the consent holder shall provide the Council evidence that the above conditions of consent developed by Mr Dennis Scott and subsequently altered, but not diminished, will be registered against the titles of the appropriate lots by providing a letter of undertaking from a Solicitor of the High Court on New Zealand, who holds a current practising certificate as a Barrister and Solicitor.
236. The Consent notice must specify the matters in in the consent conditions as developed by Mr Dennis Scott including conditions subsequently amended, but not diminished

PARAMOUNTCY OF CONDITIONS

237. In the event of a conflict of consent conditions of any of the conditions in relation to the vision and Strategy these conditions will prevail.

CUMULATIVE EFFECTS.

238. The Interim Decision dated 23 October 2014 stated:

2. How cumulative effects will be dealt with (this may require changing other consents) including storm-water, 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%);
239. PAR says the cumulative effects have not been assessed by PAR.
240. PAR is not in a position to address them further, but suggests they are an effect of high probability, mindful of the need for ongoing human involvement in the adaptive management plan. And the proclivity of the consent holder to disregard consent conditions.
241. PAR reminds the Court of the Vision and Strategy, and the very high values held for the Waikato River by Waikato - Tainui .

WAIKATO- TAINUI APPROVAL OF MR DENNIS SCOTT'S APPROACH.

242. PAR has maintained a working relationship with the Waikato-Tainui Rivers Trust. This relationship is expected in the Waikato-Tainui Environmental Plan, and mindful of the special nature of the Law of the Waikato River, being the Law of Waikato-Tainui, that relationship is appropriate. PAR believes that relationship has also been maintained by the Waikato Regional Council.
243. On 24 February 2015 PAR wrote to the applicant via the applicant's Counsel outlining its preliminary position in regard to the proposed consent conditions being developed.. At the same time it forwarded a copy to Mr Tim Manukau of the Waikato-Tainui Rivers Trust the administering body.
244. Mr Manukau responded by email supporting PAR's approach. That is the approach put forward to the Court by Mr Scott; the precautionary approach to the term of the consent, and the Community Trust.
245. As part of that ongoing relationship, PAR again met with the Waikato-Tainui Rivers Trust on the 13th August 2015. At that meeting a copy of the work of Mr Scott and a draft copy of this memorandum was handed to the trust for comment. The trust replied later that day.
246. In discussing this involvement with the Waikato-Tainui River Authority PAR was assured it was part of the Waikato-Tainui program of community support where "good works" are taking place. In this case the Dennis Scott works.
247. PAR has never met with the Waikato River Authority or had any communication with that body what so ever. It appears there is a close relationship between the Waikato-Tainui Rivers Trust and the Waikato River Authority, and Mr Scott's works and this (previous) draft memorandum was apparently handed to the Waikato River Authority.
248. The Waikato-Tainui Rivers Trust has written approving the approach taken by PAR in developing this submission, and in particular the approach of Mr Dennis Scott⁵¹.
249. This matter has been further supported in writing by the Waikato River Authority.⁵²
250. Those letters are in 3rd affidavit of Ms Tumohe.

⁵¹ Evidence in 3rd affidavit of Jezamaine Tumohe.

⁵² Evidence in 3rd affidavit of Jezamaine Tumohe.

FORMAT OF DOCUMENTS.

251. PAR has concerns about the structure and format of the documents. The Court has made some comments. PAR's concerns aside from the Courts is about the layout.
252. PAR has examined the Waterview Consent referred to in the court. PAR notes the following in regard to the consent.
 - (a) Maximum number of characters in each line is between 75 and 80. this makes for easy and faster reading.
 - (b) The consent should be searchable.
 - (c) In the consents before the Court, PAR submits that for computer and lap top reading, they should be labelled at the top and bottom of each page in minimum 14point type with data to identify the Council, consent, purpose of the consent and date. For example with: Council | Consent Number | Short description | Date of Issue. For example - "WRC 125467 Dis to Air | Dated 31 August 2015". This labelling will enable easy use on computers.
 - (d) The consent should be in a searchable form.

BUNDLING OF DOCUMENTS

253. PAR has concerns about access to documents regarding the Puke Coal site in the WDC offices. PAR submits that the applications and consents relating to the Puke Coal site should be bundled together and bound and a full copy of both council's consents should be held in both the WDC and WRC offices and available for inspection in that form at each council office. The bundle should be scanned and made searchable as one consolidated document, and be available on Cd-ROM.

CONCLUSION

254. For the reasons in this submission, PAR seeks that the application be declined. In the event that the Court remains mindful to grant the consents PAR has engaged in the process of trying to achieve the best consent conditions possible. Notwithstanding that involvement, PAR remains of the belief that the consents must be declined. In support of those reasons PAR says:

RESTORATION AND PROTECTION OF WAIKATO RIVER.

255. The application does not meet the requirements of the Vision and Strategy of the Settlement Act, the Regional Plan, and the Waikato-Tainui Environmental Plan, in that the application does not fully provide for the restoration and the protection of the Waikato River, and the Court cannot depend upon the proposals in the consents.
256. The application as proposed does not involve “a *stepwise approach*” and will not preserve the Waikato River from future (harm) and restore from past damage. In the application there is a minimal element of betterment.
257. The application is inconsistent with the RMA in particular Part 11 section 5, 6e(e), section 7(a), section 8 (Settlement Act and the Vision and strategy.)
258. The proposal is inconsistent with the Waikato-Tainui Environmental Plan, in particular chapter 7, 8, 19, 21 and 25.
259. PAR further submits that the addition of Appendix 16 of Dennis Scott's evidence with the associated conditions will be a stepwise approach and will definitely go towards protecting the Waikato River from future harm and restore from past damage.

CERTAINTY, ENFORCEABILITY AND IMPLEMENTATION OF CONDITIONS

260. It is submitted the Court in making a decision on the consents, needs to consider again the law, especially the Law of the Waikato-River, the application, the evidence and the existing environment, and the likelihood of the consent conditions being implemented given the knowledge of the Court of the contents proposed in the conditions before it. The evidence of PAR shows a contumacious disregard towards the environment and related RMA processes by the applicant, with an ongoing furtive pattern of concealment, and propensity to externalise effects and ignore consent conditions. This shall allow the Court to assess the proposed conditions of the application and whether they are sufficiently robust to enable the application to proceed.
261. It is PAR's submission that the conditions are not sufficiently robust. Furthermore, based on the various arguments outlined in this memorandum PAR seeks the application be denied.

MONITORING OF ODOUR

262. PAR retains serious concerns about odour. PAR does not have confidence the consent conditions will adequately address odour.

COMMUNITY COLLABORATION

263. It is good practice, - not apparent to date in this application - for a landfill type activity which can have a significant off site impact, for an applicant to promote positive interactions with the associated communities in an effort to have a positive and collaborative involvement with those communities. That has not happened here. Nor is there a history of such a happening occurring with this applicant. Further, it cannot be provided for in any conditions of consent – aside for a community liaison committee – where such a collaboration might occur.
264. The answer then must come own to one of the factors that are addressed in the final consideration under section 5 of the RMA. Will the activity provide for *“the sustainable management of natural and physical resource, mindful that it is a clear component of sustainable management is to manage the use, development, and protection of natural and physical resources in a way, ...which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety ...”*. PAR submits that the application fails this fundamental test, and must be declined.

PART 11 AND SECTION 5 RMA

265. In terms of Section 5, it is submitted that overall, the purposes of section 5 will not be met by the granting of the permits and consents sought.

RMA S5 Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

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

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

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

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

266. This application and the consent conditions as presented to the Court by the applicant on 31 August 2015, will further wreak a disproportionate ecological injustice to the Waikato River, Waikato -Tainui, the Settlement Act, and the communities of Glen Afton and Pukemiro. They represent the pursuit of a godlike dominion over nature and man with reckless disregard towards the environment and the principles of sustainable management. The form of the conditions provides for a *laissez faire* approach to the pure manifestation of greed and the pursuit of wealth. They reflect a disregard to the

social, economic, spiritual and cultural well-being of the communities of Waikato-Tainui and the communities of Pukemiro and Glen Afton. The proposed conditions give rise to a further ecological debt.

267. PAR robustly submits this consent should be declined for the above reasons. PAR says further, it is concerned that at each rewrite of consents there are alterations made weakening the developing conditions of consent in favour of the applicant. For example:
- (a) In the versions for the 5th October 2015 hearing where objectionable and offensive are mentioned. They are changed to be in the conjunctive form rather than in the disjunctive as in s17⁵³ of the RMA.
 - (b) The inclusion of “Refuse” in a previous version of consent documents. Since changed because PAR raised the issue.
 - (c) The site boundary issue raised in this consent.
 - (d) The SWIP, now only for surface water with the very clear excuse possible if mine water or other contaminated ground water is detected, not to comply, or abandon the project.
 - (e) The change by way of reduction in values to be paid in 15 years in case of failure.
 - (f) The many contingencies where a decision is reserved to a Council to allow an action not to occur or a tougher action to occur or similar. such as “unless the XXXX council in writing” or “ If the XXXX Council so requires”.

FUNDING

268. PAR advises it is substantially funded by Environment Legal Aid with a small contribution from Waikato-Tainui.

Dated Sunday, 4 October 2015

⁵³ RMA S17 (3)(a) require a person to cease, or prohibit a person from commencing, anything that, in the opinion of the Environment Court or an enforcement officer, is or is likely to be noxious, dangerous, offensive, **or** objectionable to such an extent that it has or is likely to have an adverse effect on the environment; or

A handwritten signature in blue ink, appearing to read "Ronald A. Walden". The signature is fluid and cursive, with a prominent initial "R" and "W".

Ronald A. Walden
Representative RMA S 275

BLANK

WAIKATO-TAINUI RAUPATU CLAIMS (WAIKATO RIVER)
SETTLEMENT ACT 2010

<i>Public Act</i>	- 2010 – No 24.
<i>Date of ascent</i>	- 7 May 2010 (See Section 2)
<i>Commencement</i>	- (25 November 2010)

Crown Acknowledgements

(17) In summary, the Crown acknowledges:

- (a) that the historical Waikato River claims by Waikato-Tainui arise from the 1860s raupatu and its consequences; and*
- (b) that the Crown's 1863 invasion by both land and the Waikato River was a double blow to Waikato-Tainui; and*
- (c) that the Crown's breach of the Treaty of Waitangi denied Waikato-Tainui their rights and interests in, and mana whakahaere over, the Waikato River; and*
- (d) that Waikato-Tainui never willingly or knowingly relinquished their rights and interests in, or authority over, the Waikato River; and*
- (e) the importance to Waikato-Tainui of the principle of te mana o te Awa; and*
- (f) to Waikato-Tainui the Waikato River is a tupuna which has mana and in turn represents the mana and mauri of Waikato-Tainui; and*
- (g) that to Waikato-Tainui, the Waikato River is a single indivisible being; and*
- (h) that for Waikato-Tainui, their relationship with, and respect for, the Waikato River gives rise to their responsibilities to protect the mana and mauri of the River and exercise their mana whakahaere in accordance with their long established tikanga; and*
- (i) that for Waikato-Tainui, their relationship with, and respect for, the Waikato River lies at the heart of their spiritual and physical well-being, and their tribal identity and culture; and*
- (j) that the Crown has failed to respect, provide for and protect the special relationship of Waikato-Tainui with the Waikato River; and*
- (k) that the deterioration of the health of the Waikato River, while under the authority of the Crown, has been a source of distress for the people of Waikato-Tainui; and*
- (l) that the pollution, degradation and development of the Waikato River, its lakes, streams and wetlands have caused the decline of once rich fisheries that, for generations, had sustained the people's way of life and their ability to meet obligations of manaakitanga, and this is a further source of distress; and*
- (m) that the Crown respects the deeply felt obligation of Waikato-Tainui to protect te mana o te awa; and*
- (n) that the Crown seeks a settlement that will recognise and sustain the special relationship of Waikato-Tainui with the Waikato River; and*
- (o) that the Crown undertakes to assist and work with Waikato-Tainui to restore their mana whakahaere; and*
- (p) that Waikato-Tainui wish to promote the concept of a korowai to bring the River tribes together as an affirmation of their common purpose to protect te mana o te awa.*

16 Status of vision and strategy for other enactments

(1) Subsections (2) to (6) have effect to the extent to which the content of the vision and strategy relates to the carrying out of functions or the exercise of powers for the Waikato River and activities in its catchment that affect the Waikato River under the Acts referred to in subsections (2) to (6).

(2) For the purposes of the [Conservation Act 1987](#), the vision and strategy is a statement of general policy approved under [section 17B](#) of the Act.

(3) For the purposes of the [National Parks Act 1980](#), the vision and strategy is a statement of general policy adopted under [section 44](#) of the Act.

(4) For the purposes of the [Reserves Act 1977](#), the vision and strategy is a statement of general policy approved under [section 15A](#) of the Act.

(5) For the purposes of the [Wild Animal Control Act 1977](#), the vision and strategy is a statement of general policy approved under [section 5\(1\)\(ca\)](#) of the Act.

(6) For the purposes of the [Wildlife Act 1953](#), the vision and strategy is a statement of general policy approved under [section 14C](#) of the Act.

(7) A conservation management strategy or a conservation management plan made under an Act referred to in any of subsections (2) to (6) must not derogate from a statement of general policy created by any of subsections (2) to (6) for any longer than is necessary to amend the strategy or plan to make it consistent with the vision and strategy.

(8) The process for reviewing and, if necessary, amending the strategy or plan must begin—

(a) no later than 6 months after the completion of the review under [section 18](#);

(b) no later than 12 months after the completion of each review under [section 19](#).

(9) The vision and strategy prevails over the strategy or plan during any period of inconsistency described in subsection (7).

(10) A freshwater fisheries management plan approved under [section 17K](#) of the Conservation Act 1987 and a sports fish management plan approved under [section 17M](#) of the Conservation Act 1987 must not derogate from the vision and strategy.

(11) Subsections (7) to (10) apply to a freshwater fisheries management plan approved under [section 17K](#) of the Conservation Act 1987 and a sports fish management plan approved under [section 17M](#) of the Conservation Act 1987 as if the plans were conservation management plans.

(12) To the extent to which it affects the Waikato River, a national energy efficiency and conservation strategy prepared and published under [section 18](#) of the Energy Efficiency and Conservation Act 2000 must be consistent with the vision and strategy.

(13) To the extent to which it affects the Waikato River, a management plan for a foreshore and seabed reserve prepared under [section 44](#) of the Foreshore and Seabed Act 2004 must not be inconsistent with the vision and strategy.

(14) [Repealed]

(15) The vision and strategy prevails over any inconsistent provision in a by-law made by a local authority, if it is more stringent than the by-law

Section 16(14): repealed, on 13 June 2013, by [section 72](#) of the Land Transport Management Amendment Act 2013 (2013 No 35).

6 Interpretation

Waikato River,—

- (a) in [sections 3, 4, 8, and 88](#), means the Waikato River and its catchment;
- (b) in [sections 9, 16, 17, 20, 22, 23, 26, 32, and 44](#) and [Schedules 1 to 6](#), means—
- (i) *the body of water known as the Waikato River flowing continuously or intermittently from the Huka Falls to the mouth of the Waikato River shown as located within the areas marked “A” and “B” on SO plan 409144; and*
 - (ii) *all tributaries, streams, and watercourses flowing into the part of the Waikato River described in sub paragraph (i), to the extent to which they are within the areas marked “A” and “B” on SO plan 409144; and*
 - (iii) *lakes and wetlands within the areas marked “A” and “B” on SO plan 409144; and*
 - (iv) *the beds and banks of the water bodies described in sub paragraphs (i) to (iii);*
- (c) in [sections 35 to 38, 40, 42, 45, 47, 56 to 64, 66, 69, 72, 80, and 93](#) and [Schedule 7](#), means—
- (i) *the body of water known as the Waikato River flowing continuously or intermittently from Karapiro to the mouth of the Waikato River shown as located within the area marked “A” on SO plan 409144; and*
 - (ii) *all tributaries, streams, and watercourses flowing into the part of the Waikato River described in sub paragraph (i), to the extent to which they are within the area marked “A” on SO plan 409144; and*
 - (iii) *lakes and wetlands within the area marked “A” on SO plan 409144; and*
 - (iv) *the beds and banks of the water bodies described in sub paragraphs (i) to (iii)*

A. Recognition of vision and strategy for Waikato River

B. 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 well-being 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.

1.

• **17 Duty to have particular regard to vision and strategy**

(1) Subsections (3) and (5) have effect to the extent to which the content of the vision and strategy relates to the carrying out of functions or the exercise of powers under the Acts referred to in subsections (4) and (7).

(2) Subsection (3) applies to a person carrying out functions or exercising powers under an enactment specified in subsection (4) if the functions or powers—

(a) relate to—

(i) the Waikato River; or

(ii) activities in the catchment that affect the Waikato River; and

(b) are not covered by [sections 11 to 16](#).

(3) The person must have particular regard to the vision and strategy in addition to any requirement specified in the enactment for the carrying out of the functions or the exercise of the powers.

(4) The enactments are the—

(a) [Conservation Act 1987](#);

(b) [National Parks Act 1980](#);

(c) [Reserves Act 1977](#);

(d) [Resource Management Act 1991](#);

(e) [Wild Animal Control Act 1977](#);

(f) [Wildlife Act 1953](#).

(5) Subsection (6) applies to a person carrying out functions or exercising powers under an enactment specified in subsection (7) if the functions or powers relate to—

(a) the Waikato River; or

(b) activities in the catchment that affect the Waikato River.

(6) The person must have particular regard to the vision and strategy in addition to any requirement specified in the enactment for the carrying out of the functions or the exercise of the powers.

(7) The enactments are the—

(a) [Biosecurity Act 1993](#);

(b) [Fisheries Act 1996](#);

(c) [Forests Act 1949](#);

(d) [Health Act 1956](#);

(e) [Heritage New Zealand Pouhere Taonga Act 2014](#);

(f) [Land Drainage Act 1908](#);

(g) [Local Government Act 1974](#);

(h) [Local Government Act 2002](#);

(i) [Native Plants Protection Act 1934](#);

(j) [New Zealand Geographic Board \(Ngā Pou Taunaha o Aotearoa\) Act 2008](#);

(k) [Queen Elizabeth the Second National Trust Act 1977](#);

(l) [River Boards Act 1908](#);

(m) [Soil Conservation and Rivers Control Act 1941](#);

(n) [Walking Access Act 2008](#).

Section 17(7)(e): replaced, on 20 May 2014, by [section 107](#) of the Heritage New Zealand Pouhere Taonga

Act 2014 (2014 No 26).

SCHEDULE 2

VISION AND STRATEGY FOR WAIKATO RIVER

2

.

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 well-being 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 well-being 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 well-being 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 well-being requires the restoration and protection of the health and well-being 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.*

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 well-being of the Waikato River by utilising maatauranga*

anga Maaori and the latest available scientific methods:

(d) develop and implement a programme of action to achieve the targets for improving the health and well-being 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 well-being 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 well-being 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 well-being 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 well-being 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 well-being of the Waikato River.

3. Waikato-Tainui environmental plan

39 Preparation and availability

(1) The Trust may prepare a Waikato-Tainui environmental plan.

(2) If the Trust decides to prepare a plan, the plan—

(a) must be prepared by the Trust in consultation with Waikato-Tainui marae:

(b) must be served on the Director-General of Conservation, the chief executive of the Ministry of Fisheries, relevant local authorities, and any other relevant agency:

(c) must be available to the public for inspection at the offices of the Trust, the relevant local authorities, and any other relevant agency:

(d) may be reviewed and amended from time to time by the Trust.

40 Effect

(1) A local authority served under [section 39\(2\)\(b\)](#) preparing, reviewing, or changing a [Resource Management Act 1991](#) planning document must recognise the Waikato-Tainui environmental plan in the same manner as would be required under the Resource Management Act 1991 for any planning document recognised by an iwi authority.

(2) A consent authority considering an application for a resource consent under [section 104](#) of the Resource Management Act 1991 must have regard to the Waikato-Tainui environmental plan, if it considers that section 104(1)(c) applies to the plan.

(3) A person carrying out functions or exercising powers under [sections 12 to 14](#) of the Fisheries Act 1996 must recognise and provide for the Waikato-Tainui environmental plan to the extent to which its contents relate to the functions or powers.

(4) A person carrying out functions or exercising powers under the conservation legislation in relation to the Waikato River and its catchment must have particular regard to the Waikato-Tainui environmental plan to the extent to which its contents relate to the functions or powers.

BLANK

RELEVANT DOCUMENTS

List of Authorities

Mahuta v Waikato Regional Council A091/98

Takamore Trustees v Kapiti Coast District Council [2003] NZRMA 433 (HC).

Minister of Conservation v Tasman District Council CIV 2003 – 485 – 1072, High Court, Nelson, Ronald Young J.