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# **LEVIN LANDFILL REVIEW OF CONDITIONS REPORT**

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31 May 2010

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## PREFACE

1. The Levin Landfill is located on Hokio Beach Road and has been operating from the site since the 1950's. In more recent times concerns were raised by a number of parties including local iwi, regarding the management and associated environmental effects of the Landfill. This concern culminated in August 2008 with the Parliamentary Commissioner for the Environment releasing a report reviewing the environmental impact of the Levin Landfill. The general conclusions reached by the Parliamentary Commissioner included that Horowhenua District Council give priority to compliance with consent conditions and other legal requirements and the Regional Council undertake a review of consent conditions as a matter of priority.
2. The Regional Council notified the review of consent conditions in September 2008. Nine parties submitted to the review. Given the complexity of the issues it could be expected that a formal Hearing would have been required taking time and costing the local community. All parties were determined to work together to get the best possible outcome. The tenacity and dedication of all the parties including both Councils and the submitters has resulted in a decision being released on the review of the conditions without the need to proceed to a Hearing. That decision is *attached*.
3. I would like to take the opportunity to thank all the parties to the Levin Landfill consent condition review process. I consider that this process has resulted in an outcome which directly addresses the concerns of the local community, particularly those who submitted, and provides a positive example of how the local community can effectively and directly participate in the decision making process.

Yours sincerely



Greg Carlyon

**GROUP MANAGER REGIONAL PLANNING AND REGULATORY**

## **BACKGROUND TO THE LEVIN LANDFILL REVIEW**

4. In 1992 the Horowhenua District Council prepared a Solid Waste Management Strategy which resulted in the closure of various small landfills in the District and consolidation of waste disposal to the Levin Landfill. As a result of the consolidation works the Council applied for resource consent in 1994 to open a new landfill site as the old landfill site would reach capacity in the late 1990's. The resource consent application was finally determined by the Environment Court with the new landfill opening in 2004 and the old landfill being closed and capped.
5. In 2004 the Parliamentary Commissioner for the Environment's Office received complaints about the operation and effects of the Levin Landfill. The investigations undertaken by the Commissioner resulted in a recommendation in April 2005 that the Regional Council review various conditions on the permits. Technical assessment work was undertaken by both the Regional Council and Horowhenua District Council over the following year to determine what changes would be required to permit conditions. In July 2007 the Commissioner advised that the Office would commence an investigation in to all matters at issue. The Commissioners Office initiated a further technical review which included five recommendations and resulted in the release of a final report from the Commissioner in August 2008. That report recommended, amongst other matters, that the Regional Council undertake a consent review as a matter of priority and without further delay. The Review process then gained momentum.

## **THE REVIEW PROCESS**

6. The Review was publicly notified in September 2008. At the close of the submission period nine submissions were received. The purpose of the Review was to assess the effectiveness of several specific conditions of consent in avoiding, remedying or mitigating adverse effects and to assess the adequacy of specific conditions of consent relating to the monitoring of environmental effects.
7. Rather than proceed straight to a formal Hearing all parties agreed to participate in a mediation type process through a series of pre-hearing meetings. This approach proved to be useful as it became evident early on that relationships between the submitters and both Councils were fuelled with suspicion. To proceed directly to a Hearing at that point would have prevented any form of reconciliation for two

reasons. Firstly, the Review was relatively narrow, leaving issues that were clearly causing frustration, unable to be considered by any Hearings Panel. Secondly, the adversarial and legalistic nature of the Hearings process simply could not accommodate the free and frank discussion that needed to take place.

8. A total of six pre-hearing meetings were held with increasing progress towards resolution of the issues being made at each meeting. A final set of consent conditions were agreed by all involved parties on 3 March 2010 and no Hearing was necessary.

## **PRE HEARINGS PROCESS**

9. That a final set of consent conditions were agreed by all parties is a minor miracle given the deep distrust that the submitters held at the outset. In the early pre hearing meetings the grievances were voiced with a measure of anger and despair because there appeared little to indicate a brighter future for the management of the landfill operation into the future. The overriding sentiment from the submitters was that the landfill was an abomination that should never be there in the first place.
10. It is from this position that a level of honesty entered the discussions – the pre hearing moved beyond the parameters of the Review discussing every aspect of the consent and what submitters were really concerned about. Three issues in particular repeatedly surfaced. Firstly, that the submitters and other interested parties were not treated as stakeholders. The Neighbourhood Liaison Group (NLG) was selective in who it included and was not performing in an open, inclusive and transparent manner. Secondly, the conditions of consent were not being implemented by the District Council in the spirit that was intended. Further they were not being monitored and enforced adequately by the Regional Council. Lastly there was concern about the unlined landfill affecting the local environment as it leached through over time. Monitoring results were unclear and it was difficult to understand when a moving leachate plume would trigger a problem, and what action would take place if a problem was detected.
11. These are clearly not minor issues. What is more, a key stakeholder (and submitter) in the process was Ngati Pareraukawa, who clearly considered that the landfill operation had adversely impacted on the natural state of balance in their rohe, affecting the mana of the marae. It was evident that the Review under the Resource

Management Act 1991 (RMA) was a clumsy fit for Ngati Pareraukawa to exercise their kaitiakitanga (stewardship). The review needed to acknowledge principles of tikanga Maori (correct practices and rules) but more importantly move from a legalistic framework to one based in principles – particularly those of Mana (authority), Tapu (rules) and Utu (reciprocal actions for settling disputes). The Review in its prescriptive form simply couldn't protect the integrity of Whanaungatanga (kinship) and redress the environmental balance.

12. Ngati Pareraukawa, through David Moore extended an invitation to hold sessions of the pre hearings on the Marae, which was accepted by the District Council and other submitters. This was a critical step in the pre hearing process. Before this point the pre hearings were held at the Horowhenua District Council offices, and therefore in the shadow of a legalistic and at times defensive and accusatory atmosphere, dividing the parties rather than opening doors of reconciliation.
13. Having the pre hearing on the marae had a dramatic influence on proceedings, providing an environment where mana could be acknowledged, and begin to be restored. David's invitation extended beyond the physical presence of the marae and all involved received aroha (empathy and kindness), atawhai (protection of our well being) and manaaki (care). The marae then, provided an excellent atmosphere to redirect the debate towards principle based discussion and even reconciliation.
14. This meant that all the parties were moving beyond positional, accusatory and defensive posturing to a place where the issues and solutions were being explored far beyond the legal boundaries of the Review. While there was still frank and heated debate, discussion had moved to a place where options for satisfying all the issues and problems were being collaboratively investigated.
15. The marae meeting was instrumental in moving the review process from one of adversity to one where all the participants were in control of the outcome. Slowly it became evident that if good science could answer some of the pressing issues around monitoring of the effects of the landfill, the Review may not need to progress to a Hearing.
16. This was because non technical issues of community involvement, transparency of information, and compliance, had been dealt with and agreed by all. Horowhenua District Council, in the spirit of trust and inclusion, had magnanimously agreed to

change a number of the consent conditions which were technically beyond the scope of the Review.

17. An interesting development occurred late in the proceedings where the submitters essentially signed off their rights to be heard, provided that Ngati Pareraukawa were satisfied that their concerns were met. From the mediators position it seemed that that despite the apparent disconnect between the legalistic framework of the RMA and tikanga Maori, this gesture of trust by the submitters in Ngati Pareraukawa, signalled that some measure of balance had now been restored.
18. That is not to say that the agreement between the parties over this issue represents anything more than a step along the way. It should not be seen as final. Rather there is an agreed way forward which now requires the continued good faith and action of all parties into the future.

#### **NEIGHBOURHOOD LIAISON GROUP**

19. Conditions on the consent had required Horowhenua District Council to consult with a "Neighbourhood Liaison Group". For the first few years of the consent term meetings were held with the Group but in later years the frequency of those meetings fell away. A criticism of the NLG process was that it operated exclusively rather than inclusively. As this issue was debated and the words of the condition for NLG membership analysed, it became evident that the intention was one of inclusion – not exclusion. This is a key aspect of the Review. The Horowhenua District Council have unqualifiedly opened the NLG meetings to anyone in their community who is interested, and will provide all the monitoring data, and any new landfill initiatives to those meetings. Horizons Regional Council will be present to give an overview of compliance. NLG members can also raise matters for discussion.
20. The importance of the NLG cannot be underestimated. It will be the conduit for all parties to keep abreast of any developments at the landfill into the future. The NLG will enable the relationship between the Horowhenua District Council and members of the Group to go forward from the springboard of the pre hearing meetings into the future.



## **KEY CHANGES TO THE CONSENT**

21. The reviewed conditions specifically address the potential adverse effects associated with contaminants entering land, groundwater and surface water. These conditions have been painstakingly reviewed through the pre hearings by all. Whilst the Review has found that there is no evidence of significant adverse effects arising from the Landfill operation, the changes provide for specific monitoring requirements that will enable accurate identification of significant adverse effects on water quality. In particular, it will clearly establish whether an effect is from the old landfill, or whether an effect is from the new, lined landfill.
22. Specifically the monitoring requires three new monitoring locations on the Hokio Stream, upstream, downstream and alongside the landfill site. There are also requirements for new monitoring locations for shallow and deep groundwater. Other conditions looked at the capping of the landfill. Overall the Review has resulted in more stringent mitigation measures (including compliance) to ensure the Landfill operates in a manner that avoids adverse environmental effects.

## **CONCLUSION**

23. The involvement of the Parliamentary Commissioners Office in the process has been a useful catalyst to spur the Regional Council to re-think its approach to the Review. That rethink led to a unique pre hearing process that had the participants of that pre hearing able to direct the destiny of the Review. Within that process Ngati Pareraukawa were able provide a unique environment and atmosphere to restore the ailing relationships. Ultimately a participatory approach has resulted in an outcome that all parties have accepted as workable, appropriate, and targeting the adverse effects of issue. The problems have not gone away, but a process of inclusion is in place that unites rather than divides the stakeholders.