

13 March 2019

**HOROWHENUA DISTRICT COUNCIL
HOKIO ENVIRONMENTAL KAITIAKI ALLIANCE INCORPORATED
HOROWHENUA DISTRICT RATEPAYERS AND RESIDENTS ASSOCIATION
INCORPORATED
s274 PARTIES**

AGREEMENT IN RELATION TO THE LEVIN LANDFILL

DATED 13 March 2019

1. PARTIES

- 1.1 **Horowhenua District Council ('HDC')** is a territorial authority constituted by Clause 61 of The Local Government (Manawatū-Wanganui Region) Reorganisation Order 1989 and listed in part 1 of schedule 2 of the Local Government Act 2002 and reference to 'HDC' in this agreement includes its successors.
- 1.2 **Hokio Environmental Kaitiaki Alliance ('HEKA')** for the purposes of this agreement HEKA is a subcommittee of the Horowhenua District Ratepayers and Residents Association Incorporated with full delegated authority to work in the best interests of the community and the environment in the matter of the Levin Landfill and includes its successors, signatories to this Agreement, and any person from time to time holding the role of president/chair, secretary and/or treasurer (or similar position).
- 1.3 Horowhenua District Ratepayers and Residents Association Incorporated (**'Ratepayers and Residents Association'**) (incorporation certificate number 2303869) and includes its successors, signatories to this Agreement and any person from time to time holding the role of president/chair, secretary and/or treasurer (or similar position).
- 1.4 **Section 274 parties** being s274 parties to Environment Court appeal ENV-2016-WLG-71(**'s274 Parties'**):
- (a) **Ngāti Pareraukawa** a hapū of Ngāti Raukawa ki te Au te Tonga;
 - (b) **Peter Everton** (also as a director of **Everton Farm Ltd** and **Lakeview Farm Ltd**), PO Box 1012, Levin;
 - (c) **David Stuart Andrew**, 6/185 Fitzherbert Av, Palmerston North;
 - (d) **Dean Murray**, P.D.C Manakau;
 - (e) **Leone Brown**, 5 Hillcrest Lane, Levin;
 - (f) **Palmerston North City Environmental Trust**, PO Box 1271, Palmerston North;
 - (g) **Charles Rudd**, c/- Postal Counter, Levin; and
 - (h) **Water and Environmental Care Association**, c/- 12 Grefor Land, RD4, Waitarere Beach, Palmerston North.

2. BACKGROUND

- 2.1 The original Landfill ("**Original Landfill**") was established in the 1950s. The Original Landfill was not lined but has been capped. By the 1970s Area 1 of the Original Landfill was filled and capped and Area 2 was established, which has also closed and been capped.

- 2.2 In 1997, Horowhenua District Council obtained resource consent to establish a new landfill at the same site (the "**Current Landfill**"). The consents were subsequently appealed, and a consent order issued in 2002 approved the current activity. The Current Landfill is lined with an impermeable liner.
- 2.3 Together the Original Landfill and the Current Landfill are called the **Levin Landfill**. The consents for the Levin Landfill expire in 2037.
- 2.4 HDC has statutory responsibility for the management of waste within its district.
- 2.5 HDC is the owner of, and resource consent holder for, the Levin Landfill. The following resource consents ("**Consents**") are held by HDC:
- (a) discharge of solid waste to land (discharge permit 6009);
 - (b) discharge of leachate to land (discharge permit 6010);
 - (c) discharge of contaminants to air (discharge permit 6011);
 - (d) divert stormwater runoff from land filling operations (water permit 6012);
 - (e) discharge liquid waste to land (discharge permit 7289); and
 - (f) discharge stormwater to land that may enter groundwater (discharge permit 102259).
- 2.6 HEKA Members, and the s274 parties have a strong relationship with the local area and have consistently been concerned about the potential effects of, and opposed to, the Levin Landfill.
- 2.7 The Parties recognise that this Agreement is a critical step in providing a long-term solution to resolving the effects and cultural issues arising from the Levin Landfill. The agreement resolves many but not all cultural issues and effects associated with the Levin Landfill, HDC is separately developing broader relationships with iwi and hapū which will, amongst other things, address cultural issues and effects relating to the Levin Landfill.
- 2.8 On 30 October 2015 the Manawatu-Wanganui Regional Council ("**Horizons**") issued a Notice of Review ("**Review**") of the Consents pursuant to section 128 of the Resource Management Act 1991 ("**RMA**"). In November 2015 the HDC responded to the Notice of Review under section 129, along with an application pursuant to section 127 of the RMA ("**Application**") to change the conditions of the Consents.
- 2.9 Following a hearing in September 2016, on 18 November 2016 the Commissioners released their decision on both the Review and the Application ("**Decision**") on behalf of Horizons.
- 2.10 The Decision was appealed by HEKA and is the subject of Environment Court appeal ENV-2016-WLG-71. The s274 Parties joined this appeal under section 274 of the RMA.
- 2.11 On 15 October 2018 HEKA applied to the Environment Court for declarations (ENV-2018-WLG-124) and enforcement orders (ENV -2018-WLG-125), with Ngāti Pareraukawa listed as a s274 party, in relation to the Levin Landfill.

- 2.12 The Parties acknowledge that there have been long held differences in views as to the operation and potential effects of the Levin Landfill. The Parties wish to work positively together to resolve and address these issues in the manner set out in this Agreement.
- 2.13 HDC acknowledges that an effective partnership model needs to involve the Parties, the community members of the Neighbourhood Liaison Group ('CNLG') in the appropriate governance, design, implementation and operational level for the Levin Landfill.
- 2.14 While Horizons is not a party to this Agreement, the Parties acknowledge that, as the regulator, Horizon's will be involved in discussions and implementation of a number of the matters set out in this Agreement.

3. AGREEMENT

- 3.1 This Agreement represents the full agreement between the Parties excluding potential agreements with Ngāti Pareraukawa and Muaūpoko addressing broader relationships. HDC will work with Ngāti Pareraukawa and Muaūpoko towards developing potential relationship agreements.
- 3.2 This Agreement commences when signed by HDC. However, the implementation of the obligations under this Agreement occur as follows:
- (a) within 15 working days of all Parties signing this Agreement:
 - (i) HDC shall pay costs in accordance with clause 14.2(a) and (b);
 - (ii) HEKA and the s274 Parties will:
 - (1) in accordance with clause 4.1(a) sign a joint memorandum in support of this Agreement and seek an adjournment of ENV-2015-WLG-124 and ENV-2018-WLG-125 to allow for the processes at clause 3.2 (c) to (e) to take place;
 - (2) withdraw their interests and evidence in Environment Court appeal ENV-2016-WLG-71 (with the intent that this is a final settlement of that appeal between the parties, on a no costs basis); and
 - (3) support HDC in opposing any late s274 application(s) in relation to the Environment Court Proceedings;
 - (b) where any remaining s274 parties to the Environment Court appeal ENV-2016-WLG-71 elect to maintain the proceeding;
 - (i) HEKA and the s274 Parties to this Agreement will file affidavits in support of this Agreement and will appear in any further proceeding in relation to Environment Court appeal ENV-2016-WLG-71 if required by the Court or by HDC;
 - (ii) all Parties to this Agreement accept any changes to this Agreement and conditions at Appendix 1 that are imposed by the Court as a result of clauses 3.2 (a)(ii)(1) and 3.2(b).

- (c) 15 working days after the signed consent order is filed with the Environment Court under (a)(ii):
- (i) the PMG will be established and clause 5.1 and all relevant provisions of clause 5 will apply as necessary to achieve (ii) and (iii) below, and clauses 5.10(a) and (b) unless (d) below is not completed;
 - (ii) once (i) has occurred the TAG experts will be appointed in accordance with clause 6.5;
 - (iii) the Levin Landfill closure review under clause 11.1 shall be initiated along with all related clauses as referred to in clause 11.1 or necessary for its implementation, to enable HDC councillors to decide the closure date for the Levin Landfill in accordance with clause 11.1(i);
 - (iv) the leachate BPO assessment under clause 8.2 shall be initiated along with all related clauses as referred to in clause 8, or necessary for the TAG Landfill experts to complete their assessment in accordance with clauses 8.3 and 8.7, but clauses 8.8 and 8.9 will not commence until (d) below is completed;
 - (v) clauses 4.1(f) to (k) apply; and
 - (vi) these obligations terminate if the closure date for the Levin Landfill decided by HDC councillors under (c)(iii) is after 31 December 2025;
- (d) if the closure date for the Levin Landfill decided by HDC councillors under (c)(iii) is 31 December 2025 or earlier then HEKA and the s274 Parties will, within 15 working days withdraw the Environment Court declaration and enforcement proceedings (ENV-2015-WLG-124 and ENV-2018-WLG-125) with no issue of costs among the Parties; and
- (e) on receipt of notice from the Environment Court of (d) being completed, all remaining obligations under this Agreement immediately commence.

3.3 The obligations under this Agreement, except as provided in clause 4.3 and for the confidentiality provisions under clauses 6.7, 8.12, 11.5 and 12.3, expire on the earlier of:

- (a) HDC Councillors deciding under clause 11.1(i) on a closure date for the Levin Landfill beyond 31 December 2025;
- (b) the commencement of closure and remediation resource consents obtained in compliance with clauses 12.4 or 12.6; or
- (c) a material breach of terms of this Agreement.

3.4 No obligation under this Agreement shall be interpreted, applied, or required in a manner that will likely cause a breach of the Consents.

4. OBLIGATIONS ON HEKA, RATEPAYERS AND RESIDENTS ASSOCIATION AND THE S274 PARTIES

4.1 HEKA, Ratepayers and Residents Association, and the s274 Parties will:

- (a) in accordance with clause 3.2(a)(ii):
 - (i) sign consent orders, or other documentation requested by HDC, in accordance with the conditions in **Appendix 1** of this Agreement and otherwise withdraw their appeal (and all evidence) and section 274 notices filed in relation to the Environment Court appeal ENV-2016-WLG-71 with no issue of costs among the Parties;
 - (ii) at the same time as (i) above, provide a signed memorandum to the Environment Court in respect of the Environment Court appeal (ENV-2016-WLG-71) supporting the consent orders or other documentation sought in (i) and stating that they have entered into an agreement with HDC that responds to the concerns raised in the appeal and section 274 notices, and maps a pathway for developing a positive future relationship among the Parties;
- (b) support HDC in obtaining the variation of any Consent conditions sought by HDC in accordance with this Agreement, or agreed to by all members of the Project Management Group ("PMG");
- (c) support HDC in obtaining any resource consents required to enable the leachate cessation or BPO under clause 8.8, and any variation under clause 8.13;
- (d) support HDC in obtaining any resource consents required to implement the closure remediation plan under clause 12.4;
- (e) support HDC, as reasonably required and requested, to obtain the withdrawal of abatement notice 887 (dated 27 June 2017) by Horizons;
- (f) so long as HDC is abiding by:
 - (i) the conditions of the Consents; and
 - (ii) the terms of this Agreement,not take, or be associated with supporting in any capacity, enforcement actions, legal proceedings, claims or, inquiries whatsoever against HDC in relation to the Levin Landfill;
- (g) clause (f) does not exclude parties from making complaints about the Levin Landfill to the relevant TAG experts, the CNLG, and/or the PMG but the Parties agree that before any formal complaints are made to the Regional Council or HDC they will be supported by the PMG (with HDC's agreement not unreasonably withheld);
- (h) a non-formal odour complaints registrar will be maintained by HDC and reported to the PMG and odour expert quarterly;

- (i) support HDC as reasonably requested in any legal proceedings relating to environmental effects associated with the Levin Landfill and/or the Consent;
 - (j) support HDC as reasonably requested in relation to the ongoing implementation of this Agreement including any actions contrary to its intent or obligations (including HEKA Members and members of the Ratepayers and Residents Association) and obtaining additional funding for HDC consistent with this Agreement (including from central government); and
 - (k) support HDC as set out in clauses 3.2(a) and (b).
- 4.2 HEKA and the Ratepayers and Residents Association will use reasonable endeavours to encourage their members (including HEKA Members) to follow the provisions of this Agreement and not to take any actions contrary to it.
- 4.3 In the event of a material breach by HEKA, Ratepayers and Residents Association and/or the s274 Parties, then HEKA, Ratepayers and Residents Association and the s274 Parties remain, bound by their obligations under clauses 4.1 and 4.2. This requirement persists as long as HDC is complying with its obligations under this Agreement and expires upon 3.3(a) or (b) applying (whichever is the earliest).

5. LEVIN LANDFILL GOVERNANCE (PROJECT MANAGEMENT GROUP)

- 5.1 A Project Management Group ("PMG") will be established to build relationships and have oversight of processes established under, and for the term of, this Agreement. This role is different to that of the NLG which is set out in condition 34 of discharge permit 6009 being to "create a forum in which the consent holder, consent authority and interested parties can engage for the purpose of reviewing and sharing perspectives on monitoring results and where appropriate discuss strategies for maintaining or improving the landfill operation, consistent with the consent conditions".
- 5.2 The PMG members are:
- (a) 2 representatives selected by the CNLG;
 - (b) an independent PMG manager agreed under clause 5.7; and
 - (c) 2 representatives selected by HDC.
- 5.3 A representative of Horizons shall be invited to all PMG meetings to observe and assist the PMG. That representative shall be provided with all information provided to the PMG.
- 5.4 Within 20 working days of this Agreement, the Parties will inform each other as to their initial nominated representatives for the PMG.
- 5.5 The PMG shall meet within 20 working days of clause 5.4 (including at that time initiating clause 5.7) and at least twice a year.

5.6 All PMG decisions, appointments, comments and recommendations shall be by unanimous agreement of all PMG representatives. If unanimous agreement is not reached, the independent facilitator will assist the PMG representatives to attempt to reach consensus within 10 working days. If unanimous agreement is still not reached, the PMG shall set out in writing the differing position of its members, to HDC and HDC shall make the final decision. When making its final decision HDC will:

- (a) comply with all legal requirements, the conditions of the Consents and the terms of this Agreement;
- (b) take into account any expert advice that has been provided to the PMG on the topic and the differing positions of the PMG members on the topic; and
- (c) take into account all council policies.

HDC will make the final decision within 10 working days of receiving the written differing position of the PMG members, unless such a timeframe is not reasonably achievable in which case a later timeframe will be notified by HDC to the PMG.

5.7 The PMG members (excluding the PMG manager) shall decide on the appointment of the PMG manager. If the person to be the PMG manager cannot be agreed the CNLG representatives on the PMG shall nominate three independent suitably qualified people to fill the role of the PMG manager. On provision of the names, their CVs, and their rate, HDC shall select one of the three people to be the PMG manager.

5.8 On receipt of an itemised invoice, HDC will pay the following reasonable costs:

- (a) the attendance of the 2 CNLG selected representatives, and the independent PMG manager, at PMG meetings as set out in clause 14.3; and
- (b) the PMG manager undertaking work decided by the PMG in accordance with clause 5.6, as set out in clause 14.3.

5.9 The Parties shall use reasonable endeavours to ensure consistency of the nominated representatives, and their attendance at PMG meetings.

5.10 The functions of the PMG are to:

- (a) build and develop relationships between the Parties;
- (b) determine the role and functions of the PMG manager;
- (c) appoint the TAG experts in accordance with clauses 6.4 and 6.5;
- (d) determine the scope of the TAG experts in accordance with clause 6.6;
- (e) determine the scope for the leachate BPO assessment under clause 8.6, the landfill closure review under clause 11.1(c), and the closure and remediation plan under clause 12.1;

- (f) to provide comments on the draft leachate BPO report under clause 8.7;
- (g) if there is no recommended leachate BPO option under clause 8.3(g), to consider outcomes as to a preferred approach under clause 8.8(b);
- (h) review leachate tender documents under clause 8.9;
- (i) consider options to remediate the land adjacent to the Tatana Drain in accordance with clause 9.1;
- (j) provide comments on the draft closure and remediation plan in accordance with clause 12.4;
- (k) if closure and remediation consents are not granted, or granted on materially different conditions, to consider options in accordance with clause 12.6;
- (l) work in good faith in developing and implementing the Reconciliation Process under clause 13; and
- (m) work with, and/or make recommendations to, HDC on:
 - (i) closure date for the Levin Landfill in accordance with clause 11.1;
 - (ii) community, regional and central government funding and support for remediation and site closure and environmental avoidance, mitigation, offset or compensation costs relating to the Levin landfill and for waste management and minimisation in the district;
 - (iii) waste minimisation opportunities;
 - (iv) potential changes in operation/management of the Levin Landfill; and
 - (v) the broader policy and planning concerns relating to the Levin Landfill including but not limited to remediation and site closure.

5.11 Subject to compliance with all statutory requirements, HDC will implement PMG decisions, appointments and recommendations made in accordance with clause 5.6.

5.12 The PMG shall receive:

- (a) all monitoring and reports required under the Consents;
- (b) all reports prepared in accordance with this Agreement, including draft reports under clauses 8.7 and 12.4;
- (c) information in relation to the broader policy and planning concerns relating to the Levin Landfill including, but not limited to, remediation and site closure;
- (d) the draft and final closure remediation plan and resource consent applications for Levin Landfill closure;
- (e) information on, and development of, HDC waste minimisation policies; and

- (f) information on the management and operations of the Levin Landfill and options that may reduce effects.

5.13 The nominated CNLG representatives on the PMG, and the PMG manager may request access to visit the Levin Landfill. Subject to compliance by the nominated CNLG representatives on the PMG and the PMG manager with all legal requirements, including health and safety, HDC will as soon as reasonably practicable, provide for such access.

6. TECHNICAL ADVISORY GROUP

6.1 A Technical Advisory Group ("**TAG**") of experts shall be established.

6.2 The purpose of the TAG is to assist the PMG and HDC in accordance with the provisions of this Agreement nor as otherwise agreed by the PMG representatives in writing.

6.3 The TAG consists of, and the functions of each expert are:

- (a) an expert, or experts, in landfill management and closure who shall:

- (i) undertake the leachate BPO assessment accordance with clause 8.3;
- (ii) review and consider the closure date of the Levin Landfill in accordance with clause 11.1; and
- (iii) prepare a closure and remediation plan in accordance with clause 12.1,

the first appointed experts shall be Simone Eldridge and Chris Purchas from Tonkin & Taylor;

- (b) a suitably qualified expert who shall undertake an annual audit of the monitoring and reporting required under the Consents and provide that audit to the PMG by 30 November each year following commencement of clause 3.2(e);
- (c) an odour expert who shall undertake an annual review in accordance with clause 10.1 and assist as set out in clause 12.2, with the first review commencing within 4 weeks of clause 3.2(e) commencing unless agreed otherwise by the PMG;
- (d) a water quality expert to assist as set out in clauses 8.11 and 12.2 or as agreed by the PMG; and
- (e) a groundwater expert to assist as set out in clauses 8.11 and 12.2 or as agreed by the PMG.

6.4 Should either named expert in clause 6.3(a) be unavailable then the PMG shall agree the appointment of an alternative suitably qualified independent expert. If no agreement is reached, HDC shall select a suitably qualified independent expert.

6.5 The PMG shall agree as to the TAG experts in clause 6.3(b) to (e). If the expert cannot be agreed, the CNLG representatives shall nominate three independent suitably qualified experts to perform the role. On provision of the names, their CVs, and their rate, HDC shall select one of the three

people to be the relevant TAG expert. Such experts shall be appointed within 3 months of the PMG being established under clause 3.2(c)(i).

- 6.6 The scope and function of the TAG experts in clause 6.3 shall be agreed by the PMG in accordance with clause 5.6.
- 6.7 All reports prepared by the TAG experts will be public. However, any confidential information provided to the experts in clause 6.3 by HDC to assist in their functions under this Agreement shall remain confidential and not disclosed by them unless otherwise agreed by HDC.
- 6.8 The reasonable costs of the TAG experts in clause 6.3 will be met by HDC in accordance with clauses 14.2 and 14.3.

7. INDEPENDENT FACILITATOR

- 7.1 The independent facilitator, who, unless otherwise agreed by the PMG representatives in writing shall be the same person appointed under condition 32 of discharge permit 6009, shall:
 - (a) attend PMG meetings by agreement of the PMG or as required under clauses 8.8(b) or 12.6;
 - (b) assist the PMG in agreeing scopes under clauses 5.10(d), 6.6, 8.6, 11.1 and 12.1;
 - (c) assist in the Reconciliation Process under clause 13 by agreement of the PMG;
 - (d) assist in resolving disputes in accordance with clause 17.1; and
 - (e) other matters as agreed by the PMG.
- 7.2 HDC will pay the reasonable costs of the independent facilitator under clause 7.1 in accordance with clause 14.3.

8. LEACHATE

- 8.1 In principle, the Parties agree to the outcome of cessation of leachate from the Original Landfill to Tatana Drain and Hokio Stream.
- 8.2 Within 11 months from clause 3.2(c) commencing, the TAG landfill experts under clause 6.3 will advise on the BPO assessment in accordance with clause 8.3 and 8.4 and produce a final report under clause 8.7(c).
- 8.3 In undertaking the leachate BPO assessment the TAG landfill experts shall:
 - (a) undertake an assessment of both options for cessation of the leachate from the Original Landfill and options to materially reduce, in terms of volumes and/or effects of the leachate from the Original Landfill;
 - (b) consider the potential for leachate discharge from the Current Landfill and advise on whether any of the options in (e) will materially reduce the volume or effects of such leachate (if any);

- (c) if the costs of leachate cessation options are not in accordance with clause 8.4, or are not technically or environmentally feasible under (f), then:
 - (i) undertake an assessment of alternative options to maximise the reduction of leachate that are environmentally feasible under (f)(ii);
 - (ii) favour options that maximise the reduction of leachate entering Hokio stream;
 - (iii) favour options based on Tatana Drain being a waterbody rather than an artificial farm drain; and
 - (iv) favour options that capture the maximum amount of leachate, within the requirements of (f);
- (d) identify whether options comply with the existing Consents and/or require additional resource consents (and what consents are likely to be required);
- (e) provide a written report as to all the options considered, their benefits and costs, the cost to design, approve, implement and/or install them and the costs of annual monitoring, maintenance and operation;
- (f) only consider and recommend options under (c) and (e):
 - (i) that have been proven to be effective (technically feasible); and
 - (ii) that will provide a material reduction in the volume of the leachate or a more than minor reduction in environmental effects (environmentally feasible); and
- (g) the report in (e) shall identify a recommended option that achieves the requirements of clause 8.3, but if no option achieves the requirements of (f), then no recommended option shall be provided.

8.4 HDC has no obligation to implement any option under clauses 8.1 to 8.3 if the estimated cost will be more than \$350,000 to design, consent/approve, implement, and/or install, and \$25,000 per year to monitor, maintain or operate, and HDC has complied with clause 8.5.

8.5 If the estimated cost for any option under clause 8.3(f) and (g) will be more than \$350,000 to design, consent/approve, implement, and/or install, and \$25,000 per year to monitor, maintain or operate then HDC will use reasonable endeavours to seek funding from an alternative funding source (such as central government).

8.6 The scope for the expert BPO assessment under clause 8.3 shall be agreed by the PMG in accordance with clause 5.6. The scope shall be finalised within 2 months of clause 3.2(c) commencing.

8.7 The report under clause 8.3(e) shall:

- (a) within 6 months of commissioning be provided in draft to the PMG for comment and:
 - (i) the PMG shall meet to discuss the report within reasonable time of receipt of the draft;
 - (ii) all comments are to be provided to the expert within 2 months of receipt of the draft;
- (b) at the same time as (a)(i) above, HDC will provide the draft report to, and consult with, the Neighbourhood Liaison Group and Horizons in accordance with condition 2A of permit 6010 and provide the outcomes of that process to the expert; and
- (c) within 3 months of the provision of the draft report to the PMG, the final report shall be provided to the PMG and be made public.

8.8 Subject to clause 8.4, HDC shall, in order of preference:

- (a) subject to compliance with condition 2A of permit 6010 and obtaining any necessary resource consents or approvals, design, tender and install the recommended option in clause 8.3(g) within 24 months from the date of the report, unless such a timeframe is not reasonably achievable or funding is being sought under clause 8.5, in which case a later timeframe will be notified by HDC to the PMG; or
- (b) if there is no recommended option under clause 8.3(g), or any consents/approvals required for the preferred option under clause 8.3(g) are not obtained, then:
 - (i) a meeting of the PMG will be convened, including the independent facilitator, to consider the BPO report in clause 8.3(e) and agree an outcome as to a preferred approach; or
 - (ii) if no preferred approach can be agreed under (i) then:
 - (1) HDC shall:
 - A. appoint a suitably qualified expert to:
 - within 3 months of appointment to develop and report (which shall include costings) in accordance with a provided scope, which recommends a package (including offsetting and/or compensation options) to respond to the leachate effects on the Hokio stream, with a focus on options within the Hokio Stream catchment and which HDC can deliver without additional statutory or land owner approvals;
 - in preparing the report, work with the PMG representatives;
 - B. provide that report to the PMG manager within 5 working days of receipt;

C. convene a meeting of the PMG to discuss the report and its recommendations;

(2) The PMG shall either:

A. agree to the implementing the recommendations contained in the report in (1), or as amended by agreement, or

B. if no agreement is reached under A, then HDC shall implement the report recommendations in (1) to a minimum of, but no more than (unless HDC otherwise agrees), \$150,000.

(3) If the recommendations in (1) costs more than \$150,000 to implement then HDC will use reasonable endeavours to seek funding from an alternative funding source (such as central government).

(4) To avoid doubt, HDC is responsible for delivering, and holding control of the budget of, and payment for, any implementation under (2) above.

8.9 If the process under clause 8.8(a) is implemented, HDC shall provide the draft tender documents to the PMG for any feedback which is to be provided within 15 working days and keep the PMG informed of progress on a bi-monthly basis. HDC shall immediately inform the PMG on the commencement and completion of works for the chosen option.

8.10 The reasonable costs of the BPO assessment and report, prepared in accordance with clause 8.3, and the reasonable costs of the expert to report under clause 8.8(b)(ii)(1), will be met by HDC in accordance with clause 14.2.

8.11 If the TAG landfill experts require expert water quality or groundwater assistance in undertaking the BPO assessment under clause 8.3 and 8.6, then:

(a) the expert shall provide a scope of works to the PMG to agree, or if there is no agreement, for HDC to confirm;

(b) the water quality or groundwater experts from the TAG in clause 6.3 shall be appointed;

(c) the experts shall address the matters in the scope provided; and

(d) HDC will pay the reasonable costs of the experts in accordance with clause 14.3.

8.12 HDC will provide all relevant information to the TAG landfill experts for the BPO assessment in accordance with clauses 8.3 and 8.6, and provide access to relevant staff, to assist him/her with their assessment. Any confidential or commercial sensitive information provided to the independent expert will be to inform the BPO assessment only and the independent expert will not disclose that information.

8.13 If the TAG landfill experts recommend a reduction in monitoring following implementation of the BPO, from that required in the Consents, the Parties will, as set out in clause 4.1 support HDC in varying the conditions to reflect the independent expert's recommendation.

9. TATANA DRAIN

9.1 The PMG will explore options to remediate the land on which the Tatana Drain is located, including, but not limited to, exploring the following options:

- (a) HDC purchasing the land; and
- (b) encouraging Horizons to ensure use of the land is compliant with the Regional Plan and any resource consents.

10. ODOUR

10.1 There will be an annual review and report, in accordance with clause 6.3(c), by the TAG air quality expert:

- (a) of the annual odour reporting and of the implementation of the odour management plan and other management and operational methods as required by the Consent conditions to control odours at the Levin Landfill; and
- (b) that best practice odour management and mitigation methods appropriate for the scale and type of landfill, its surrounding land uses, and affordability to the community, are being implemented at the Levin Landfill.

10.2 HDC will pay the reasonable costs of the audit or review in clause 10.1 in accordance with clause 14.3.

10.3 HDC will initiate direct discussions with Catherine Sullivan and Jacinta Liddell about potential Levin Landfill odour effects and options to mitigate potential effects at their properties.

11. LEVIN LANDFILL CLOSURE

11.1 The process to determine the closure date for the Levin Landfill is:

- (a) HDC's chief executive will recommend to the council a closure date for the Levin Landfill of, at the latest, 31 December 2025;
- (b) the TAG landfill experts in clause 6.3 shall, within 3 months of the scope being set in accordance with (c), complete a review as to potential closure dates date of the Levin Landfill and whether an earlier closure date than in (a) is feasible given the performance of the landfill, the availability of alternative options and the affordability to the community;
- (c) the scope of the review shall be determined by the PMG in discussions with the experts, in accordance with clause 5.6. If agreement is not reached within 2 weeks, the scope will be set by HDC, in line with (b) and in discussions with the TAG landfill experts;

- (d) the TAG landfill experts shall produce a report of their review under, and within the timeframes of (b), including a clear recommendation as to the recommended closure date with reasons why, and provide it to the PMG;
- (e) HDC shall:
 - (i) commission a social assessment on the social effects of the closure date for the Levin Landfill from an independent suitably qualified expert; and
 - (ii) request a cultural assessment from each of Ngāti Pareraukawa and Muaūpoko as to the cultural effects of the closure date for the Levin Landfill.
- (f) the assessment(s) in (e) shall be provided to HDC within 3 months of being commissioned or requested. If no assessment(s) is provided under (e)(ii) within that time then the process under (g) to (i) shall continue.
- (g) within 1 month of receipt of the reports by HDC in accordance with (d), (e) and (f) the PMG shall meet to consider them and the two CNLG representatives shall provide a CNLG recommendation in writing to HDC within 5 working days of that meeting;
- (h) the recommendation under (a) (or an earlier date), the report under (d), the assessments under (e), the recommendation under (g), and an officer's report and recommendation (which will comply with all statutory requirements) will be provided to HDC councillors at the next council meeting after these requirements have been completed; and
- (i) having complied with all statutory requirements, HDC councillors will decide, at the council meeting in (h), on the final closure date for the Levin Landfill.

11.2 HDC agrees that the date agreed by the councillors in clause 11.1(i), is the latest date that the Levin Landfill will be Closed.

11.3 The Parties acknowledge that the final closure date is for the councillors to determine in accordance with all statutory requirements, including the Local Government Act 2002.

11.4 HDC will pay the reasonable costs of the review in clause 11.1(b) and report in 11.1(d) and the assessments in clause 11.1(e) in accordance with clause 14.2.

11.5 HDC will provide to the TAG landfill experts undertaking the review in clause 11.1, access to staff, information and confidential information to assist in that review on the basis that they will not disclose the details of confidential information to any party.

11.6 The PMG will continue to monitor potential closure of the Levin Landfill and HDC will consider earlier closure dates raised during PMG meetings and provide responses at the next PMG meeting, if not before.

12. CLOSURE AND REMEDIATION PLAN

- 12.1 2 years prior to the closure date determined under clause 11.1(i), the TAG landfill experts in clause 6.3 shall commence preparing a closure and remediation plan for the Levin Landfill. That plan shall recognise and apply, and provide for the continuance of, any outcomes under clause 8.8 in relation to leachate capture, mitigation offset and/or compensation. The plan shall ensure compliance with Conditions 14 and 25 of permit 6010. The scope of the closure and remediation plan shall be agreed by the PMG in accordance with clause 5.6. The TAG expert shall work with HDC staff in preparing the landfill closure plan.
- 12.2 If the TAG landfill experts require specialist water quality, groundwater or air quality assistance in preparing the closure and remediation plan, then the relevant TAG experts under clause 6.3 shall be utilised and:
- (a) the TAG landfill experts shall provide a scope of works to the PMG to agree in accordance with clause 5.6;
 - (b) the experts shall address the matters in the scope provided; and
 - (c) HDC will pay the reasonable costs of the experts in accordance with clause 14.3.
- 12.3 HDC will provide all relevant information to the TAG landfill experts for the preparation of the closure and remediation plan, and provide access to relevant staff to assist them with their assessment. Any confidential or commercial sensitive information provided to the TAG landfill experts will be to inform development of the closure and remediation plan only and the TAG landfill experts will not disclose that information.
- 12.4 The process for finalising closure and remediation plan is:
- (a) the TAG landfill experts shall provide a draft closure and remediation plan in accordance with the scope under clause 12.1 to the PMG within 6 months of commissioning;
 - (b) the PMG shall meet to discuss the draft closure and remediation plan within 20 working days of receipt of the draft;
 - (c) the PMG will provide agreed comments (if no agreement is reached HDC will decide), within the boundaries of the scope set under clause 12.1, on the draft closure and remediation plan to the TAG landfill experts;
 - (d) the comments under subclause (c) are to be provided to the TAG landfill expert within 3 months of receipt of the draft plan by the PMG;
 - (e) within 2 months of the provision of the comments under subclause (c) the TAG landfill experts shall provide a final plan in accordance with the scope in clause 12.1;
 - (f) HDC will seek resource consents in accordance with the final plan which the Parties and the TAG experts will support; and

- (g) subject to those consents being granted, with conditions not materially different to those sought by HDC, HDC will implement the closure and remediation resource consents.

12.5 HDC will pay the reasonable costs of the TAG landfill experts in clause 12.4 in accordance with clause 14.2.

12.6 If under clause 12.4(f) consents are not granted, or the conditions are materially different under clause 12.4(g), HDC will:

- (a) arrange a meeting of the PMG, including the independent facilitator, to discuss the issues, and options to resolve them, with the PMG; and
- (b) implement a closure and remediation process, including obtaining necessary consents (keeping the PMG representatives informed and providing draft consent applications to the PMG representatives for comment), in a manner that addresses earlier issues and is sustainable and affordable to the local community.

13. RECONCILIATION PROCESS

13.1 Reconciliation among the Parties will occur through:

- (a) the provision of an apology by HDC in accordance with clause 13.2;
- (b) the provisions of this Agreement;
- (c) the role and functioning of the PMG; and
- (d) the commitment of the Parties to work together in good faith to build positive relationships going forward on all matters associated with HDC's functions and duties.

13.2 HDC will work with the PMG to agree an apology to be delivered by HDC's CEO in person at a location agreed by the PMG within 3 months of the commencement of clause 3.2(e).

14. COSTS OF PROFESSIONAL SERVICES

14.1 All payments by HDC under this Agreement exclude GST (if any).

14.2 HDC will, on receipt of itemised invoices, unless it agrees otherwise:

- (a) pay the fair and reasonable net costs of HEKA's professional consultants incurred to 6 December 2018, and in preparing this agreement, up to \$85,000;
- (b) pay the costs of the TAG landfill experts in relation to:
 - (i) the leachate BPO assessment under clause 8.10 up to a maximum of \$30,000;
 - (ii) the Levin Landfill closure review under clause 11.4 up to a maximum of \$30,000; and
 - (iii) the closure and remediation plan under clause 12.5 up to a maximum of \$40,000;

- (c) pay the fair and reasonable costs of the expert report under clause 8.8(b)(ii)(1) up to a maximum of \$25,000;
- (d) pay the fair and reasonable costs of the social assessment under clause 11.1(e)(i) up to a maximum of \$10,000; and
- (e) on receipt of the assessment(s) under clause 11.1(e)(ii), pay the fair and reasonable costs up to maximum of \$10,000 each for two assessments (\$20,000 in total).

14.3 In addition, under this Agreement, HDC agrees to, on receipt of itemised invoices:

- (a) pay the reasonable costs of attendance of the 2 CNLG representatives, and the PMG manager, at PMG meetings as required by clause 5.8;
- (b) pay the reasonable costs of the PMG manager in undertaking work decided by the PMG in accordance with clause 5.6, in accordance with clause 5.8;
- (c) pay the reasonable costs of the annual audit of the annual report under clause 6.3(b);
- (d) except as provided in clause 14.2(c), pay the reasonable costs of the TAG experts in accordance with clauses 6.8, 8.11 and 12.5;
- (e) pay the reasonable costs of the independent facilitator in accordance with clause 7.2; and
- (f) pay the reasonable costs of the annual report of the odour expert under clause 10.2;

15. PUBLIC COMMUNICATION OF AGREEMENT

15.1 This Agreement is public. **Appendix 2** attaches a press release to be issued on behalf of the Parties following execution of this Agreement.

15.2 The Parties will not discuss this Agreement publicly until the press release has been released. HEKA and the Ratepayers and Residents Association will use best endeavours to ensure that their members do not discuss this agreement publicly until the press release is released.

16. DEFINITIONS AND INTERPRETATION

16.1 In this Agreement the following terms shall have the meaning ascribed to them unless the context requires otherwise:

Agreement means the main body of this agreement and schedules.

Application means HDC's application pursuant to section 127 of the RMA to change the conditions of the existing Levin Landfill consents.

Best Practicable Option is as defined in section 2 of the RMA.

Closed means, in relation to the Levin Landfill, the date from which the landfill will not receive any further waste and the landfill closure and remediation plan shall commence.

Community Neighbour Liaison Group ('CNLG') means a community member of the neighbourhood liaison group established under condition 32 of discharge permit 6009. To avoid doubt, CNLG excludes HDC's and the regional Councils membership of the NLG.

Consents means the resource consents for the Landfill being 6009, 6010, 6011, 7289 and 102259.

Environment Court Proceedings means ENV-2016-WLG-71 (appeal) and/or ENV-2018-WLG-124 (declarations) and/or ENV-2018-WLG-125 (enforcement orders) brought by HEKA.

HEKA Members means:

- (a) Residents of Hokio Beach Community, Hokio Beach Road and the area surrounding the Levin Landfill, including those who provided submissions on the Review and Application and those who provided affidavits and evidence in support of HEKA in the Environment Court Proceedings.

Horizons means the Manawatu-Wanganui Regional Council.

Landfill means the Levin Landfill located on Hokio Beach Road.

Parties are those parties as defined in Clause 1.

Review means Notice of Review of the Consents issued by Horizons pursuant to section 128 of the RMA and HDC's requested amendments in response to it.

RMA means the Resource Management Act 1991.

Working Day means as defined in section 2 of the RMA.

17. DISPUTE RESOLUTION

17.1 If a dispute arises under this Agreement, the Parties agree to comply with the following provisions of this clause before commencing any other form of dispute resolution (including court proceedings):

- (a) **Initial Resolution:** the Parties will use reasonable endeavours to work together in good faith through the PMG and with each other to resolve any dispute at the immediate time such issues arise in accordance with the principles set out in this Agreement.
- (b) **Escalation:** If the dispute is not resolved by (a) then the Parties will refer the dispute to the independent facilitator and attend in good faith a meeting with the facilitator in clause 8 to see if the issues can be resolved.
- (c) **Arbitration:** In the unlikely event that agreement is not reached after three months of having the dispute escalated, the Parties shall agree to arbitration on the following basis:
 - (i) the arbitration shall be conducted by a sole arbitrator in New Zealand pursuant to the Arbitration Act 1996;

- (ii) the Parties must appoint an independent sole arbitrator for the purpose of resolving the dispute. The arbitrator is to be appointed on the agreement of both Parties;
- (iii) the Parties' respective responsibilities for the costs of the arbitration shall be determined by the arbitrator; and
- (iv) the Parties shall be bound by the decision of the arbitrator.

18. AMENDMENTS

18.1 No amendment to this Agreement will be effective unless it is in writing and signed by all the Parties.

19. SIGNED

19.1 This Agreement may be executed in any number of counterparts. Once a party has executed a counterpart, and the other party has received a copy of the signed counterpart, that counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the Parties.

19.2 HDC shall sign this Agreement last.

SIGNED BY THE PARTIES

SIGNED for and on behalf of
HEKA by its authorised signatory Geoff
Keith

)
)
)



Signature

F. G. Keith

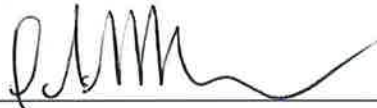
Name

Chairperson

Position

SIGNED for and on behalf of the
Horowhenua District Ratepayers and
Residents Association Incorporated by
its authorised signatory Christine Moriarty

)
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)
)



Signature

CA Moriarty

Name

Chair

Position

SIGNED for and on behalf of
Ngāti Pareraukawa by its authorised
signatory

)
)
)



Signature

Rachael A. SELBY

Name

CHAIR

Position

Ngāti Pareraukawa.
Ngātokarua Tarae.

SIGNED for and on behalf of
Everton Farm Ltd by its authorised
signatory

)
)
)

P Everton

Signature

PETER EVERTON

Name

DIRECTOR

Position

SIGNED for and on behalf of
Lakeview Farm Ltd by its authorised
signatory

)
)
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P Everton

Signature

PETER EVERTON

Name

DIRECTOR

Position

SIGNED by **Peter Everton**

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P Everton

Signature

PETER EVERTON

Name

Position

SIGNED by **David Andrew**

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Signature

Name

Position

SIGNED by Dean Murray

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Signature

Name

Position

SIGNED by Leone Brown

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Signature

Name

Position

**SIGNED for and on behalf of
Palmerston North City Environmental
Trust by its authorised signatory**

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Signature

Name

Position

SIGNED by Charles Rudd

)
)

Signature

Name

Position

SIGNED for and on behalf of)
Water and Environmental Care)
Association by its authorised signatory)
)

Signature

Name

Position

SIGNED for and on behalf of)
Horowhenua District Council by its)
authorised signatory acting under)
delegated authority)



Signature

David Clapperton

Name

Chief Executive.

Position

13 March 2019

Appendix 1 – Agreed conditions for consent order

Appendix 2 – Agreed Press Release

