

IN THE MATTER OF

the Resource Management Act
1991 (the RMA)

AND

IN THE MATTER OF

applications by the Waikato Regional Council (River and Catchment Services Group) to the Waikato Regional Council (Resource Use Group) for erosion control/flood protection works: gravel extraction up to 150,000m³ per year, erosion control works and vegetation removal, temporary diversion bunds and culvert crossings; and, for the diversion of water and temporary damming and diversion of water within the Tongariro River.

REPORT OF THE WAIKATO REGIONAL COUNCIL HEARING COMMISSIONERS

1. THE HEARING

- .1 In terms of the Waikato Regional Council's (WRC) Hearings Appointment Subcommittee resolution of 31 March 2011, Dr JA (Jeff) Jones and Dayle Fenton were appointed as Commissioners to hear evidence and submissions on the above applications; Dr Jones was appointed Chairperson.
- .2 The hearing was held at the Bridge Fishing Lodge, Turangi and commenced at 10.00am and concluded at 5.00pm on 11 April 2011; the hearing resumed at 10.30am on 12 April 2011 and was adjourned at 12.10pm on 12 April 2011 to allow the Commissioners additional time to consider all information presented. Dr Jones closed the hearing on Monday 18 April 2011.
- .3 A site visit was undertaken by the Commissioners on the evening of 11 March 2011 and the morning of 12 March 2011 accompanied by Mr Steve Rice, Waikato Regional Council Hearing Administrator (Contractor).

2. THE APPLICATIONS

- 2.1 The Rivers and Catchment Services Group of the Waikato Regional Council lodged resource consent applications with the Resource Use Group of the Waikato Regional Council for consents as follows:

Consent No.	Type	Purpose
121305	Land use: Bed - disturbance	Tongariro River bed works from 100m above "Hydro Pool" to "Main Mouth" & "First Mouth" for erosion control/flood protection: gravel extraction up to 150,000m ³ /year, temporary diversion bunds & culvert crossings & erosion control structures.
121306	Water Permit: Diversion	Temporarily dam and divert water within the Tongariro River from 100m above the "Hydro Pool" downstream to the "Main Mouth" and "First Mouth" in association with gravel extraction.

3. SUBMISSIONS

- 3.1 The applications were publicly notified in the Turangi Chronicle on 18 November 2010 and the Taupo Times, the Waikato Times, the NZ Herald and the Dominion Post on 19 November 2010 with the closing date for receipt of submissions being 17 December 2010. Within the prescribed submission period 21 submissions were lodged with the WRC from:

- Leslie J Wilson; Garry Baker; NZ Federation of Freshwater Anglers (Inc); Tongariro and Lake Taupo Anglers Club Inc; T H Te Rangi; Tongariro Lodge & Body Corporate; NZ Transport Agency (NZTA); and, Advocates for the Tongariro River, who supported the applications, but five of whom had concerns they wish to see resolved.
- W R Dearlove; CB King; Ngati Turangikutua Maori Committee; Taupo Fishery Advisory Committee; Tuwharetoa Maori Trust Board; Eileen Duff; and, Genesis Energy who were neutral to the applications but had concerns they wished to see resolved.
- CJS Bean; CW Brown, CM Taylor and Professional Trustees; Department of Conservation; Rakato Te Rangiiita; Waipapa & Tokaanu Maori Lands Trust; and, Te Rangituamatotoru Tamaira who were opposed to the applications and had concerns they wished to see resolved.

4. APPEARANCES

.1 Applicant

The applicant's case was presented by Sherie McHardy, Consultant Planner (Taupo Planning Consultant and Design Services) and Lawrie Donald, Zone Manager, Rivers and Catchment Services Group.

.2 Submitters

- Stuart Crosby, Mark Cosgrove and Eric Wilson; Advocates for the Tongariro River
- Gary Baker
- Graham Shirley, Tongariro and Lake Taupo Anglers Club

- Jeffrey Bennett, Ngati Turangitukua Maori Committee
- Jeffrey Bennett on behalf of Eileen Duff
- Leslie Wilson
- Topia Rameka on behalf of Tuwharetoa Maori Trust Board
- Christopher Brown
- David Lumley, Department of Conservation
- Eva Moke, Waipapa & Tokaanu Maori Lands Trust
- Joe Malcolm, Waipapa & Tokaanu Maori Lands Trust
- Te Rangituamatotoru Tamaira, Ngarunuku Hapu

.3 Waikato Regional Council

- Graeme Cooper, Resource Officer, Resource Use Group who prepared the Resource Management Act (“RMA”) Section 42A report for the Waikato Regional Council.
- Grant Blackie, Manager Land and Soil Programme, Resource Use Group.

5. APPLICANT’S PROPOSAL

The Rivers and Catchment Services Group (RCS) of the Waikato Regional Council (WRC) is responsible for managing the rivers and catchments within the Region including mitigating the effects of flooding and erosion through river management, erosion control and flood protection works.

The Tongariro River flows in a northerly direction discharging into the southern end of Lake Taupo near Turangi. The river is a dynamic waterway transporting substantial quantities of gravel and sediment during major storm events. Vast amounts of bed load can be deposited during such floods, causing sudden, significant loss of channel capacity. The Tongariro River Flood Control Scheme (“Scheme”) protects Turangi township from potentially large floods up to the 1% Annual Exceedance Probability (AEP) or the 1 in 100 year event. The Scheme is managed by WRC. Hydrological and hydraulic analysis indicates that the stopbanks and channel cannot contain the 1% AEP event unless the river bed has the requisite hydraulic capacity.

Waikato Regional Council commissioned a river cross section survey during 2009 to provide comprehensive and accurate data to update an existing MIKE-11 computational hydraulic model. Tonkin & Taylor (T&T) were then appointed by WRC during February 2010 to undertake the hydraulic modelling using that MIKE-11 computational model and to investigate the requirements for ongoing gravel extraction and vegetation management to maintain the designed flood protection for the Lower Tongariro River. T&T ran the 1% AEP (1,500m³/s) design flood through the 2010 MIKE-11 computational model with an allowance for 20% blockage at the SH 1 Bridge to calculate the design flood level. The design flood level derived was compared to existing stopbank levels to assess available freeboard.

T&T subsequently derived trigger levels for deciding when gravel extraction is necessary, and how urgently such work is required, based on the remaining freeboard levels as follows:

Gravel Extraction Trigger Levels

Reach	Freeboard Operational Range – no action required	Freeboard range where gravel extraction required in next non spawning season	Freeboard range where gravel extraction required immediately
Upstream of SH1 Bridge	450-300mm	300-150mm	Less than 150mm
Downstream of SH1 Bridge	900-500mm	600-400mm	Less than 400mm

T&T also recommended that in circumstances where it is obvious that there has been significant aggradation to the extent that there has been a major loss in freeboard then it may be necessary to immediately initiate extraction if a survey of cross sections reveals that there is a reduction in a cross sectional area which is more than the product of 0.30 times the design width at the design flood level.

RCS have lodged applications to provide for the extraction of gravel from Tongariro River to ensure that the river bed can accommodate the 1% AEP flood event; and to undertake works necessary to control erosion of the river banks. It is expected that to provide Turangi with protection from flood events up to the 1% AEP event, up to 150,000 cubic metres of gravel may need to be extracted per year. Erosion protection works would be undertaken to control erosion of the river banks, particularly where the integrity of stopbanks may be threatened.

A detailed description of T&T's investigation and can be found in attachment F to the Assessment of Environmental Effects (AEE).

6. EVIDENCE PRESENTED

Material was received from the various parties and in particular from the applicant, via documents filed in support of the applications. The evidence of the applicant was pre-circulated. We have read and considered the information relevant to these applications and evidence of the applicant, the submissions and evidence of the submitters, and the section 42A Report that was pre-circulated to all parties. A summary of the evidence from submitters follows.

For the sake of brevity, under section 113 (3) of the RM Act we adopt the information provided in the AEE provided by the applicant and that presented in the section 42A report. All of this material is held on the files of WRC and can be sourced if necessary. We do not repeat that material in this decision, but do however refer to relevant matters in section 7 of this decision.

6.1 Submitters' Evidence

Stuart Crosby, Mark Cosgrove and Eric Wilson presented evidence on behalf of the **Advocates for the Tongariro River Inc.** (AFTR). The Advocates for the Tongariro River Inc has approximately 230 members and considers that an Integrated Catchment Management Plan (ICMP) must be developed and implemented to provide ongoing effective management of the river and its environment; RCS's proposed activities would form a part of an ICMP. An ICMP would require consideration of various matters including lake

levels, river flow rates, deposition of gravel and other material including ash and silt, the effects of maintenance works on trout, access to the river for recreation and restoration of the river environment. They asserted that WRC's maintenance works are currently adhoc, piecemeal and ineffective. They noted that since the 1995 eruption millions of tonnes of ash has deposited in the river. They considered that the "Hook" should be re-opened to allow fine material to be transported into the lake. They drew our attention to the fact that previous consents had included the requirement for development of an ICMP. They noted that ICMP development was commenced but not completed. Their view was that granting the consents sought for a 35 year term would prevent re-examination of the issues and the development of an effective ICMP.

Gary Baker read a statement of evidence. He indicated that ripping of shoals or beaches and removal of vegetation would keep the shoals loose for movement during flood events and minimise establishment of instream vegetation. He cautioned that burning of excess vegetation on shoals or beaches could cause smoke nuisance and fire risk from air-borne hot sparks during a closed fire season. He asserted that if the consent term of 35 years sought is reduced, a more appropriate timeframe would be 20-25 years.

Graham Shirley, Tongariro and Lake Taupo Anglers Club spoke to the Club's submission. Mr Shirley stated that the Club considered that 10 years was an appropriate term for the consents. The proposed hours of operation of 6 days per week and 10 hours per day should be regarded as a maximum, as vibration/noise may affect trout movement. The works should only be undertaken during the period January to 1st April.

Jeffrey Bennett, Ngati Turangitukua Maori Committee spoke to the Maori Committee's submission. He advised that Ngati Turangitukua comprises a number of whanau groups each of whom exercise kaitiakitanga over the parts of the river that would be affected by the applications. He asserted that these whanau groups must be consulted from start to finish of the works, and that the applicant must demonstrate that the works will enhance the life of the river.

Jeffrey Bennett spoke on behalf of Eileen Duff. He noted that Mrs Duff would have opposed the application had public notice stated that the material to be removed from the river bed comprised 90% silt. The notice advised that the material to be extracted from the river bed was "gravel".

Leslie Wilson spoke to his submission adding that the Waikato Regional Council should be allowed to "get on with the job". He said that the resource consent applications should be granted.

Topia Rameka, Taupo Waters Trust read a statement of evidence **on behalf of Tuwharetoa Maori Trust Board (TMTB)**. He advised that Taupo Waters Trust holds title to that part of the Tongariro River affected by the applications. He said that a Vision and Strategy must be collaboratively developed to ensure effective future management of the river. He noted that TMTB approval is required before works can commence and that the TMTB supports the submissions of the Ngati Tuwharetoa hapu.

Christopher Brown read a statement of evidence. Mr Brown expressed a number of concerns, his primary one being that trucks and machinery operated on the riverbed and access roads would increase the amount of dust deposited on his vineyard at 137 Grace Road. He considered that the

potential effects of noise from trucks and machinery had not been adequately addressed and asserted that adjoining landowners must be consulted regarding timing and extent of works. He also said that gravel extraction should be limited to 50,000m³ per year and the term of consent to 3 years.

David Lumley, for Department of Conservation expressed concern at the lack of information on potential ecological impacts included within the application. He also dealt with WRC staff recommended conditions, noting those which DoC supported and suggesting proposed changes to those conditions DoC considered inadequate.

In addressing the first point, he submitted that DoC required that the consultation process represented by the proposed Annual Programme of Works (APW) be modified to one of "approval" by the stakeholders concerned.

He said that DoC supported a reduction in term from 35 to 20 years for reasons that are discussed further below, and also supported the submissions of the Advocates for the Tongariro River and Genesis, both of which sought a requirement that a condition be imposed on the consents to the effect that an Integrated Catchment Management Plan (ICMP) be prepared for the Tongariro River catchment.

Mr Lumley advised that DoC supported the applications in principle and submitted suggested improvements to some of the recommended conditions to better address its concerns in relation to matters such as access, timing of works on an annual basis with respect to the trout spawning season, flow diversions, hazardous substance spills, and the consultation process relating to the proposed APW.

Eva Moke read a statement of evidence. Ms Moke indicated that she is opposed to the applications on the grounds that WRC has applied to LINZ for an easement that if granted would give WRC access to the Awamate stopbank located on land administered by the Waipapa & Tokaanu Maori Lands Trust. The easement would deprive future generations of the control over and the use of their land. No commitment has been provided by WRC to notify Tangata Whenua or Maori landowners of the archaeological disturbance of sites of cultural significance. The consents terms should be reduced from 35 years to 5 years.

Joe Malcolm read a statement of evidence. Mr Malcolm expressed the following concerns: Waipapa & Tokaanu Maori Lands Trust has not been included in the list of parties to be distributed the Proposed Annual Works Programmes. WRC did not lodge a resource consent application to provide for control of Lake Taupo water levels in conjunction with the proposed flood protection and erosion control works.

Te Rangitūamatotoru Tamaira expressed concern at the lack of consultation with Ngarunuku hapu. He submitted that there should be provision within the consents for monitoring of activities by Tangata Whenua.

7. EVALUATION OF THE APPLICATION

7.1 Activity Status

The two activities for which consent is applied are all necessary to undertake the proposed flood protection and erosion control works. The activities are discretionary under the Waikato Regional Plan (WRP) which became operative in part on 28 September 2007.

The applicant is proposing to lodge land use consent application with the Taupo District Council when the WRC applications 121305 and 121306 have been decided and if they are granted. The operative District Plan deems works within flood hazard areas to be a controlled activity.

7.2 Principal Issues in Contention and Main Findings

Section 113 of the Act directs us to consider the principal issues of contention. Based on the application documents, the submissions, the evidence presented at the hearing and our consideration of them, we address the following principal issues of contention and outline the findings.

The key matters in contention are:

1. Nature of material proposed to be extracted
2. River ecology effects
 - a) Timing of activities (works) – annual and diurnal
 - b) Storage of “gravel” on and offsite
 - c) Areal extent of activities (works)
 - d) Works in dry or wet
 - e) Fishery impacts including relocations
 - f) Sediment control downstream of works
 - g) Machinery in water – operationally and maintenance activities
 - h) Notification of spills
3. Access to river
 - a) Contractors and works staff
 - b) Recreational users
4. Dust Control – extraction sites and access roads
5. Notification of archaeological sites
6. Replanting – eco-sourced vegetation
7. Duration of consents
8. Tangata Whenua monitoring
9. Permitted baseline issues
10. Proposed Annual Works Plan
 - a) Notification of parties
 - b) Consultation with all parties especially iwi
 - c) Timing of annual works programme consultation
11. Other issues
 - a) Burning of removed vegetation and timber debris
 - b) The need for an ICMP and the role of WRC.
 - c) Land ownership – access, Treaty of Waitangi Settlements and Claims
 - d) Te Kapua Island Urupa

7.2.1 Material Proposed to be Extracted

The application refers to the extraction of “gravel” from the river bed. Documents submitted by the applicant, in support of the applications, however clearly indicated that, in fact, a range of other materials would be removed along with gravel, for example: boulders, sand, silt, ash and woody debris. When this matter was put to the applicant at the hearing, it was readily conceded that “gravel” was not an appropriate description of the material which would be extracted. WRC staff proposed that the term “gravel” in the resource consents be amended to “river bed material, including debris”. This was accepted by the applicant. We are satisfied that this amendment provides a satisfactory definition of the material proposed to be extracted.

7.2.2 River Ecology Effects

7.2.2.1 Timing of Activities (works)

The Department of Conservation representative highlighted the need to ensure that the proposed activities are not undertaken during the months May to October inclusive as this is the critical period for trout spawning activities. WRC recommended conditions incorporate this requirement with the provisos that should specified “trigger levels” be met or exceeded then river bed material, including debris can be removed from the river bed “immediately” to restore an adequate freeboard buffer between the design flood level and the existing stopbank levels; and/or works necessary to control erosion of the river banks can be undertaken.

We also received expert written evidence from Dr Bruno David, Waikato Regional Council freshwater ecologist who stated in his memo, submitted as evidence in support of the Sec 42A report:

“Our knowledge from other localities indicates that invertebrate faunas will most likely re-colonise very rapidly following any bed disturbance through passive downstream drift and the typically transient salmonids in this river will also probably re-populate altered sections relatively quickly. Providing the main spawning runs are avoided (which is proposed) the effects should be relatively benign. To this end I largely agree with conclusions as outlined in the AEE provided.

While there may be some limited juvenile trout mortality directly associated with the works, in my opinion relative to the production of larval/juvenile trout that occurs within streams and tributaries throughout the wider Taupo catchment, such mortality is likely to be inconsequential.”¹

As no contrary expert evidence dealing with this matter was presented or available to us, we saw no need to call Dr David as his report was clear and unequivocal.

We are therefore satisfied that provided the works are undertaken outside the period May to October inclusive, adverse effects on trout spawning are likely to be less than minor.

The issue of diurnal timing of non-emergency works was raised by some submitters. The applicant was invited to address this matter in its right of reply. It put to us that the activities authorised by the consents be restricted to the hours/days Monday – Saturday, 7am – 7pm. WRC recommended consent conditions provide for Monday – Saturday, 7am – 6pm with no works to be undertaken during public holidays.

We prefer the hours of operation proposed by WRC. Given the nature of the particular environment that is and surrounds the Tongariro River, and the significant amenity that is represented by its fishery potential, we believe that a 6pm finish time is required to ensure that adverse effects on the amenity values of the river and its environment are no more than minor.

7.2.2.2 Storage of Gravel On-site and Off-site

It was made clear by the applicant at the hearing that river bed material is not proposed to be stored on the river bed. All material extracted would be placed in trucks and transported to a storage and processing facility offsite where boulders, rocks and gravel would be segregated from other materials (sand, silt, volcanic ash) of no commercial value. Unwanted materials would be transported to suitable disposal sites. The applicant did not identify where the storage and processing facilities or disposal sites would be located and further resource consents may be

¹ Memo to Graeme Cooper “Tongariro River Works Consent”, Bruno David, 27/1/11

required from the Regional Council and/or the District Council in respect of these activities.

7.2.2.3 Areal extent of activities

Commissioners noted that there was no particular reference in the AEE to the potential environmental effects of large scale bed material removal in the ecologically sensitive delta section of the river. It was noted that historically there had been little or no extraction from this lower section. It was suggested to the applicant that if river bed material and debris removal extended down to the "Main Mouth" & "First Mouth" as originally proposed, then we may have difficulties in assessing the adverse effects of the proposal. The applicant was invited to address the extent of the proposal from an areal point of view in its right of reply. A map was subsequently provided by the applicant indicating a new downstream limit for river bed material and debris removal, effectively removing the sensitive delta area from consideration. We also raised the issue of defining the reach of the river using map references with WRC staff.

As a result, a new definition of the areal extent of the activities to be authorised by these consent was proposed. We will restrict the activities authorised by the consents to the reach extending from 100m above "Hydro Pool" at map reference NZMS 260 GRID T19:537-407 downstream to map reference NZMS 260 GRID T19: 519-456, the latter point being some 5km from the current river mouths.

7.2.2.4 Fishery Impacts Including Relocations

The works are timed to avoid the spawning runs; however, the removal of river bed material and debris will disturb trout habitat and increase sedimentation. Dr Bruno David has assessed the applications and advised that the associated losses of juvenile trout, relative to juvenile trout production within the wider Taupo catchment, are likely to be inconsequential.

WRC consent conditions require that immediately after the construction of each temporary diversion bund, fish stranded in pools in the diverted section of river channel are to be salvaged in conjunction with DOC and returned to the main channel of the river; or, alternatively fish passage is to be maintained past the bund.

Subject to the imposition of these consent conditions, we are satisfied that the adverse effects of the proposed activities on the fishery will be no more than minor.

7.2.2.5 Sediment control downstream of works

DOC requested that consent conditions address the effects of vehicle crossings and avoiding the effects of working within the water section of the river. We note that the operation of machinery in flowing water will increase sedimentation and that the AEE is not clear regarding the applicant's intention to avoid the operation of machinery in flowing water. WRC recommended consent conditions require that machinery shall be operated so as to minimise time spent in flowing water, and that no extraction of river bed material and debris shall be undertaken in flowing water. We are satisfied that the recommended conditions will ensure that adverse effects from sedimentation associated with the operation of machinery in flowing water are no more than minor.

We were advised that under normal circumstances, river bed material and debris removal would be undertaken during low flows so as to avoid contact with water within the channels. We acknowledge that adverse effects associated with sediment discharges would be dependent on the scale of the works and that for large excavations effects may be significant, albeit temporary. We note that while they would be similar to those arising from a natural flood event, they have the potential to occur over a much longer period and at a time when other uses of the river would

normally be available. We are satisfied that conditions imposed restricting times of operation will go some way to addressing these issues.

WRC recommended consent conditions require that suspended solids shall be measured where works cause a conspicuous change in the visual clarity of the river after a mixing distance of 100 metres downstream from the activity; water clarity and suspended solids standards must be met. The conditions do not specify who shall measure the concentration of suspended solids in the river and we have amended conditions accordingly.

We are satisfied that compliance with the amended conditions will ensure that adverse effects of sedimentation, particularly, will be no more than minor.

7.2.2.6 Notification of Spills

DOC has requested to be notified of hazardous substances spillages. WRC staff have recommended an amendment to a condition requiring notification of hazardous substances spillages to the Waikato Regional Council to also provide notification to DOC.

We are satisfied that this condition will ensure that DOC is notified of hazardous substances spillages.

7.2.3 Access to River

DOC has requested that alternative public access to the river be provided during the works. A WRC recommended condition requires that public access to the river be maintained at any location where works are undertaken, except where there was a need to exclude the public for health and safety reasons. We have extended this to ensure that where necessary and practicable, alternative access is provided for fishers and others needing to access other sections of the river unaffected by the works.

A WRC recommended condition requires that the Consent Holder shall ensure that contractors are made aware of the conditions of the resource consents relevant to their work area and ensure compliance with those conditions.

We are satisfied that subject to public safety considerations, public access to the river will not be adversely affected by the activities.

7.2.4 Dust Control

Submitters have expressed concerns regarding dust emissions associated with operation of trucks and machinery on the river bed. A WRC recommended condition includes the requirement that all dust emissions are kept to a practicable minimum; and, that there shall be no discharge of dust as a result of the activities that causes an objectionable or offensive effect beyond the boundary of the property on which the works are undertaken.

We are satisfied that adverse effects from dust emissions will be no more than minor.

7.2.5 Notification of Archaeological Sites

A submitter requested that the recommended condition regarding notification of archaeological remains be amended to ensure that Tangata Whenua are promptly notified of the accidental discovery of archaeological remains. We have amended the relevant condition to include the requirement that Tangata Whenua (and other parties) shall be notified as soon as practicable and within 48 hours.

We are satisfied with the proposed condition regarding notification of any archaeological sites discovered during the activities.

7.2.6 Replanting – eco-sourced vegetation

DOC supports the addition of a condition requiring the use of native plants as part of any re-vegetation programme as past use of exotic species especially willows has created a narrowing of waterways in Lake Taupo. They consider that avoiding the use of such exotic plants will assist in controlling the spread of weeds downstream and in the surrounding environment.

DOC noted the applicant proposes to use sterile willows in conjunction with rip-rap to control river bank erosion. While it supported the use of sterile willows, DOC considered that such plantings on their own should not be applied over continuous stretches of the river as this would affect the natural character of the surrounding environment.

We note that WRC has addressed DOC's concerns in recommended resource consent conditions that require proposed annual works programmes to be provided that include scheduled works and maintenance requirements authorised by consents that are to be carried out for the proceeding 12 months including riparian planting proposed using eco-sourced indigenous plants. Conditions include that proposed annual works programmes are to be distributed to specified parties including DOC for comment and comments received are required to be copied to the WRC (Resource Use Group). The proposed annual works plans require approval from the WRC Resource Use Group.

We are satisfied that this condition will facilitate and provide for increased and effective use of eco-sourced native plants in re-vegetation programmes.

7.2.7 Consents Durations

Submitters requested that the 35 year terms sought for the consents be reduced to a period ranging from 3-25 years. They sought a reduction in the term to allow increased knowledge, improvements in technology and changing circumstances to be taken into account in processing applications for replacement consents.

We consider that the matters raised by submitters are valid given the nature and scale of the proposed activities, the particular sensitivities with this river and potential variability of bed load movement initiated by the ever-present risk of volcanic eruptions depositing large quantities of readily erodible material into/onto its catchment. We consider that a term of 20 years for the consents sought is appropriate.

7.2.8 Tangata Whenua Monitoring

Tangata Whenua seek an ongoing monitoring role as the works progress. There is no provision or precedent for a requirement for such monitoring to be imposed as an RMA consent condition. In our view such "monitoring" would be part of the general consultation process provided for on a year by year basis as part of the "Proposed Annual Works Programme" as discussed below. As the costs of this role would be borne by the consent holder we consider that it is a matter to be addressed by the consent holder either during that process or as part of any land access agreements that may be needed to exercise the consents. Such processes are separate to this decision.

7.2.9 Permitted Baseline Issues

We note that the staff report and indeed the applicant did not place any great store on the following current consents that authorise a number of activities to occur within the same reach as the applications.

Consent No.	Type	Purpose	Expiry
950033	Land use - Bed disturbance	Erosion protection works	28/2/2030
953160	Land use - Bed disturbance	Erosion control works on the bank of the lower Tongariro River	1/11/2030
104532	Land use – Bed structure	Undertake erosion protection works on the bed and banks of a 250m reach of the left bank of the Tongariro River and to undertake ongoing maintenance of that structure	1/3/2036
104807	Water permit - Diversion	Divert floodwaters of the Tongariro River by a 250 metre stopbank on the true left bank of the Tongariro River	1/3/2036
109925	Land use – Bed structure	Construct, use and maintain erosion control structures and permeable groynes/retards in the bed of the Tongariro River	22/3/2019
109926	Land use – Bed structure	Undertake works including vegetation and debris removal, bank stabilisation works and other bed disturbance associated with maintenance in the bed of the Tongariro River	22/3/2019
109927	Water permit - Diversion	Divert water, including floodwaters, via the operation of groynes/retards and infilling of local overflow channels in river banks in the bed and on the floodplain of the Tongariro River	22/3/2019
110223	Land use – Bed structure	Undertake works, including gravel abstraction, debris/vegetation removal, soil disturbance and other bed disturbance associated with construction and maintenance of stop banks on the Tongariro River & its floodplain	30/9/2039
110224	Water permit - Diversion	Divert water, including floodwaters via the operation of stopbanks and floodwalls in the bed and on the floodplain of the Tongariro River	30/9/2039

The general existence of these consents was mentioned by both the applicant and some submitters in the course of the hearing. The detail above was extracted from a document tabled by the applicant at our request just before the hearing was adjourned, prior to initial deliberations. We believe that their existence and duration effectively establishes a permitted baseline.

RMA section 104(1)(a) provides that when considering a consent application, the consent authority must, subject to Part 2, have regard to the actual and potential effects on the environment of allowing the activity. Case law has determined that the "environment" must be read as the environment which exists at the time of the assessment and as the environment may be in the future as modified by the exercise of permitted activities under the plan and by the exercise of existing resource consents which are being exercised, or which are likely to be exercised in the future. It does not include the effects of resource consents which might be sought in the future nor any past reversible effects arising from the consent being considered.

The existing environment in this case is the Tongariro River bed, adjacent stop banks and flood plain and involves the reach extending from 100m above Hydro Pool map reference NZMS 260 GRID T19:537-407 downstream to map reference NZMS 260 GRID T19: 519-456, the latter point being some 5km from the current river mouths;

and, the activities within the reach provided for by the existing consents tabulated above.

Also Section 104(2) provides that when forming an opinion about the actual or potential effects of the activity, the consent authority may disregard an adverse effect of the activity on the environment if the regional plan permits an activity with that effect. This is often referred to as the "permitted baseline" and calls for a discretionary decision to be exercised by the consent authority as to whether or not to discount such permitted effects. This provision, introduced into the legislation in 2003, codifies previous case-law which, as a mandatory requirement, held that the consideration of effects required: "an assessment of the proposal on the environment as it exists or would exist if the land were used in a manner permitted as of right by the plan." (Bayley v Manukau CC).

This was expressed in further case law (Arrigato v ARC) as:

"the existing environment overlaid with such relevant activity (not being a fanciful activity) as is permitted by the plan. Thus, if the activity permitted by the plan will create some adverse effect on the environment, that adverse effect does not count in the s104 or s105 assessments...it is deemed to be already affecting the environment...The consequence is that only other or further adverse effects emanating from the proposal under consideration are brought to account."

The permitted baseline includes the existing environment and must include any effect associated with non-fanciful activities permitted by the "Plan". In this case, the "Plan" is the Waikato Regional Plan.

The existing environment in this case is as described above. The potential adverse effects of the proposal within Waikato Regional Council's jurisdiction relate to flow regimes and aquatic ecology, hazardous substances spillages, and archaeological sites and sites of cultural significance. The issue is whether those effects exceed or go beyond the effects provided for by relevant WRP permitted activity rules and existing resource consents.

As well as the effects of the current resource consents detailed above, flood events, which are certainly part of the existing natural environment cause temporary increases in turbidity, erosion and deposition of gravels and the effects of flood events have similarities to some of the effects associated with proposed activities. We acknowledge that while they would be similar to those arising from a natural flood event, they have the potential to occur over a much longer period and at a time when other uses of the river would normally be available.

On balance, we find that this permitted baseline, including the analysis of the current environment must be taken into account as the effects of the activities above, on the relevant reach of the Tongariro River and its environment, are undoubtedly similar in nature to those of the proposed activities.

7.2.10 Proposed Works Plan

7.2.10.1 Notification of Parties

Genesis Energy, and Waipapa and Tokaanu Maori Lands Trust requested that they be included in the list of parties to be distributed the Proposed Annual Works Programmes for comment. The Applicant in its right of reply agreed to their inclusion. The recommended WRC condition providing for distribution of the Proposed Annual Works Programmes has therefore been amended to include these parties.

7.2.10.2 Consultation with all parties especially iwi

Some submitters expressed concern at the lack of consultation between the applicant and themselves, either that it was non-existent or minimal or lacked timeliness.

Evidence presented by the applicant indicated that there had been some attempts at consultation particularly with iwi over a period, but that issues arising from land ownership, Treaty of Waitangi Settlements and Claims had proved a barrier. This was not the case with DoC, the organisation with the responsibility for the Tongariro River fishery, where there appears to have been significant pre-consultation.

Appended to the Sec 42A staff report were the minutes of a pre-hearing meeting for these applications held on 2 February 2011, evidence of further focussed consultation on the issues surrounding the applications.

Against the background of there being no mandatory consultation requirement for an applicant for a resource consent in the RMA, notwithstanding that it is good practise to do so, and given that the notified resource consent application process effectively has a very formal consultation process embedded in it, to the extent that we need to comment on the matter, we are satisfied that the applicant consulted appropriate parties to the extent practicable.

7.2.10.3 Timing of annual works programme consultation

Concerns were expressed by some submitters at the tight timeframe afforded to them for comment on the Proposed Annual Works Programmes. Responding to those concerns the applicant agreed to the date of notification of the Proposed Annual Works Programmes be changed from 31 August each year to 30 June each year, allowing a timeframe for consultation of 20 working days. It also extends the period for the review of the comments received from the parties by two months. We accept that three months provides a realistic timeframe for these processes to occur and we have amended condition 38 accordingly.

7.2.11 Other Issues

7.2.11.1 Burning of removed vegetation and timber debris

The applicant proposes to burn vegetation and timber debris removed from the river bed. We note and accept the advice given in section 1.2 of the applicant's Right of Reply which sets out Waikato Regional Plan permitted activity rule 6.1.13.1 which would apply to this activity. It is indeed a permitted use subject to the above Rule.

7.2.11.2 The Need for an Integrated Catchment Management Plan and the Role of the WRC in its Development.

Several submitters asserted that preparation and adoption of an Integrated Catchment Management Plan (ICMP) for the Tongariro catchment should either be a pre-cursor for or a condition of any consents granted. Indeed, reference was made to a condition imposed on a 2007 consent, No. 110223, which contained a similar condition which it was asserted had not been complied with.

At our request this consent was produced by the applicant. It authorises activities in this same reach of the river involving the stabilisation of the river channel flowing through Turangi, the optimisation of its capacity by removing excess "gravel" and the construction of stopbanks/floodwalls on both banks of the river to protect the township. Among other things it pointed to the existence of other current consents for a range of similar activities over the same reach of the Tongariro River which is the subject of these applications. These were also produced on request and led us to forming our view on the permitted baseline referred to in Section 8.2.9 above.

The condition referred to is condition 22 set out below:

“Within 6 months of the commencement of this consent, the consent holder shall establish a process for the development of a Tongariro River Catchment Management Plan. The details of the process shall be provided in writing to the Waikato Regional Council (Resource Use Group) for their information. The Plan shall address as a minimum the management of nuisance riparian vegetation that may fall into the river where river bank erosion occurs, the removal of vegetative debris from the river bed where that debris would increase the risk of flooding in the Turangi urban area, and the gravel management and extraction regime required to ensure the ongoing functionality of the stop banks and floodwalls authorised by this consent. Note: The consent holder should use their best endeavours to complete the Plan within two years of the commencement of this consent.”

We sought advice as to the progress with the preparation of that plan at the hearing and had a WRC document produced in response entitled *“Proposed Tongariro River and Catchment Plan – Discussion Document”* Doc No 927658 by David Speirs, dated February 2006. The copy produced was endorsed *“Discussion Document – Not for Public Dissemination”* on each page.

After attempts to determine the status of this document, a later and final copy of the document was eventually produced, dated December 2006. Its preface records:

“Notwithstanding the minimum requirements set out in the consent condition above, the management plan also seeks to identify (but not address) the broader context within which the Waikato Regional Council’s management of the Tongariro River sits.

Through the consultation process and development of this plan it became apparent that the community are interested in developing a management plan with a significantly wider scope than has been attempted here. In order to address this desire, the Tongariro River Management Forum, a community representative group set up to provide a consultative and advisory forum for Environment Waikato’s management of the river, concluded that a separate and more community focused plan should be developed. Further, the Forum concluded that the development of the plan should proceed with Environment Waikato as a community participant rather than the responsible agency. This wider plan development process is therefore to be lead initially by Genesis Power with assistance from the members of the Tongariro River Management Forum.”

We were also subsequently advised that this Plan has not yet been adopted by WRC and therefore we are unable to assess whether the last sentence in the quoted section above is indeed WRC policy.

The applicant in exercising its right of reply noted that some 2-3 years of investigations, consultation and statutory processes may be required to achieve adoption of such a plan, whereas these consents are required now to enable identified problems to be addressed. The wide range of people and organisations who would need to be involved in such a project was also brought to our attention.

The applicant appeared to be unaware of the existence of the Tongariro River Catchment Management Plan referred to above, and surprisingly apart from advising that WRC *“do(es) not (have) any additional funding for preparing an ‘ICMP”*, the applicant advised that the *“WRC is not a body which has control over the whole catchment”*. That latter statement appears to be at least partially in conflict with Sec

30 of the RMA which clearly mandates regional councils to provide for the integrated management of all natural and physical resources within the region.

We note that the Plan required by condition 22 and the ICMP sought by submitters, differs by only the descriptor “Integrated”. The extent to which the WRC can “integrate” is well set out in Sec 30 of the RMA. It is therefore disappointing that WRC appears to be unwilling to accept its statutory leadership role in this matter as noted by both the applicant and in the above quoted portions of the Preface to the adopted Tongariro River Catchment Management Plan which condition 22 of Resource Consent 110223 initiated.

Having said all this, the Sec 42A report assisted us when it noted that:
“An ICMP could necessitate consideration of all activities within the catchment and their effects, however as such the development and implementation of an ICMP falls outside the scope of the consents sought by RCS.”

While we felt obliged to acknowledge the submitters concerns in this matter with the commentary above, which we trust will be heeded by the applicant, we must concur with the WRC conclusion on this matter. In any case, there were other factors and notably the permitted baseline/existing environment consideration which have directed our judgement.

7.2.11.3 Land ownership Treaty of Waitangi Settlements and Claims

Submitters representing Tangata Whenua interests expressed concern that we should be even considering these applications given that certain areas of land adjacent to the reach of the Tongariro River covered by them are subject to Treaty of Waitangi claims.

We have made no findings on matters of land ownership either now or in future. Land ownership is not a matter which we are able to consider in assessing applications for resource consents under the RMA. We accept that an applicant may require access over or occupation of land to enable it to exercise a consent. These are matters to be negotiated or resolved using other processes. In this particular case we are aware that the applicant, as a “catchment board” within the meaning of the Soil Conservation and Rivers Control Act 1941, has powers particularly relevant to such matters under Sec 132 and 133 of that Act.

7.2.11.4 Te Kapua Island Urupa

Rakato Te Rangiiita’s submission asserts that works will erode the Island of Te Kapua in the delta endangering an Urupa within which the Ariki of Tuwharetoa are buried.

As noted above, the applicant has revised the downstream limit of the proposed works to a location above the delta. The Island of Te Kapua will not be affected by the proposed activities.

7.3 Statutory Provisions Considered

In considering these applications we are obliged, subject to Part 2, to have regard to those matters set out in section 104 of the RMA, before exercising our overall judgement whether or not to grant the applications.

Given that we have established that the existing consents have established a permitted baseline within which most of the adverse effects resulting from the proposed activities would lie, we consider that we have limited discretion other than to grant the consents.

Notwithstanding this baseline, we have carefully reviewed the recommended conditions and refined them taking into account the particular sensitivities of this river's environment over the relevant reach.

7.3.1 Relevant Policy Documents and Plans

There are numerous provisions in the Waikato Regional Policy Statement and the Waikato Regional Plan. These were well canvassed by Mr Cooper in his Section 42A Report. Mr Cooper considers the applications to be consistent with these documents.

We found his reporting on this matter comprehensive.

And therefore, instead of repeating these assessments we have used our discretion under Section 113(3) of the RMA to adopt all of the assessment of the Regional Policy Statement and the Regional Plan set out by the reporting officer in his Section 42A Report. We refer those wishing to closely evaluate this material to the above mentioned report accordingly. We note that no submitter made submissions or provided evidence contrary to these assessments.

7.3.2 Part 2 RMA

The purposes and principles of the RMA are set out in Part 2 of that Act. Section 104 requires that our consideration of resource consents and any submissions received be subject to Part 2 of RMA.

Notwithstanding our consideration under s104 referred to above, we have analysed these applications under the statutory provisions of Part 2 of the RMA. We note that the s42A report dealt with these matters in some detail and we adopt that discussion pursuant to s113 of the Act while noting that there were some modifications to the proposal during the course of the hearing which must be superimposed over that discussion relating to matters such as the areal extent of the consents and the duration of the activity.

8. MAIN FINDINGS OF FACT

We consider that the main findings of fact that have lead to the decisions and the reasons for the decisions are as follows:

As discussed in the body of this report, based on the evidence we have heard and the submissions received, we are satisfied the proposed activity will not result in significant adverse effects, subject to appropriate conditions.

We have formed these conclusions on the proposal for the following reasons:

- It would promote the purpose of the RMA and would promote the sustainable management of natural and physical resources;
- It has environmental effects that with appropriate conditions imposed on the consents, are or can be satisfactorily avoided, remedied or mitigated;

- It is consistent with the provisions of the various statutory planning documents;

Our decision is that the consents should be granted.

9. DECISION OF WAIKATO REGIONAL COUNCIL

Pursuant to the powers delegated to us by the Waikato Regional Council under Section 34 of the Resource Management Act 1991 and having read the application documents, the officer reports, the submissions received, and having listened to all of the evidence presented, and considered the various requirements of the Act we are satisfied that:

- i. The potential adverse effects of the Waikato Regional Council's application for resource consents to undertake erosion control and flood protection works in the Tongariro River can be adequately avoided, remedied or mitigated by the imposition of conditions under Section 108 of the RMA as discussed in the detailed evaluation set out in the body of this decision report.
- ii. The effects of the proposed activities, when managed in accordance with those conditions, will not be inconsistent with the relevant policies of the Waikato Regional Policy Statement, and the Waikato Regional Plan.
- iii. The activity is consistent with the purpose and principles of the Resource Management Act 1991.

Accordingly we grant the applications to Waikato Regional Council, with consent conditions imposed, as set out in the attached resource consents and general conditions in *Schedule One – General Conditions for Resource Consent Numbers 121305 and 121306*.

DATED this 4th day of May 2011



Dr JA (Jeff) Jones (Chairman)



Dayle Fenton (Commissioner)

Resource Consent Schedule

Resource Consent: 121305

File Number: 61 25 05A

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Waikato Regional Council
PO Box 4010
Hamilton East

(hereinafter referred to as the Consent Holder)

Consent Type: Land use consent

Consent Subtype: Bed - Disturbance

Activity authorised: Erosion control/flood protection works: extraction of up to 150,000m³/year of river-bed material including debris, erosion control works & vegetation removal, temporary diversion bunds & culvert crossings.

Location: Tongariro River from 100m above "Hydro Pool" at map reference NZMS 260 GRID T19:537-407 extending downstream to map reference NZMS 260 GRID T19:519-456.

Map Reference: Refer location above.

Consent Duration: This consent will commence on the date of decision notification and expire on 30 June 2031

Subject to the conditions as follows:

The consent holder shall exercise this resource consent in accordance with the attached conditions of Schedule One – General Conditions

Resource Consent Schedule

Resource Consent: 121306

File Number: 61 25 05A

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Waikato Regional Council
PO Box 4010
Hamilton East

(hereinafter referred to as the Consent Holder)

Consent Type: Water permit

Consent Subtype: Diversion

Activity authorised: Divert water and temporarily dam and divert water within the Tongariro River as required to exercise Resource Consent 121305

Location: Tongariro River from 100m above "Hydro Pool" at map reference NZMS 260 GRID T19:537-407 extending downstream to map reference NZMS 260 GRID T19: 519-456.

Map Reference: Refer location above.

Consent Duration: This consent will commence on the date of decision notification and expire on 30 June 2031

Subject to the conditions as follows:

The consent holder shall exercise this resource consent in accordance with the attached conditions of Schedule One – General Conditions

Schedule One – General Conditions

General Conditions for Resource Consent Numbers 121305 and 121306

General

1. The activities authorised by this consent shall be undertaken in general accordance with the documents titled "*Land Use & Water Resource Consent Application and Assessment of Environmental Effects for the Tongariro River*"

Gravel Management - Revised October 2010", Sherie McHardy, Taupo Planning Consultant & Design Services except as otherwise identified in the following resource consent conditions.

2. A copy of this resource consent shall be kept onsite at all times that physical works authorised by this consent are being undertaken, and shall be produced without unreasonable delay upon request from a servant or agent of the Waikato Regional Council.
3. The Consent Holder shall notify the Waikato Regional Council in writing of the commencement of activities authorised by this consent, at least 5 days prior to discrete sections of work authorised by this consent commencing.
4. The Consent Holder shall appoint a representative(s) prior to the exercise of this resource consent, who shall be the Waikato Regional Council's principal contact person(s) in regard to matters relating to this resource consent. The Consent Holder shall inform the Waikato Regional Council of the representative's name and how they can be contacted at least 1 working day prior to the commencement of the works authorised by this resource consent. Should the representative(s) change during the term of this resource consent, the Consent Holder shall immediately inform the Waikato Regional Council and shall also give written notice to the Waikato Regional Council of the new representative's name and contact details.
5. The Consent Holder shall arrange and conduct a pre-works site meeting each year that works are proposed and invite, with a minimum of 10 working days notice, the parties listed in condition 38, the Waikato Regional Council Resource Use Group, the site representative(s) appointed under condition 4 of this consent, the contractor if known, and any other party representing the consent holder, prior to commencing the consultative phase of each Proposed Annual Works Programme detailed in condition 37 below.

Advice Note: *In the case that any of the invited parties, other than the site representative does not attend this meeting, the consent holder will have complied with this condition, provided the invitation requirement is met.*

6. The Consent Holder shall be responsible for all contracted operations related to the exercise of this resource consent, and shall ensure contractors are made aware of the conditions of this resource consent relevant to their work area, and comply with those conditions.

Notices

7. The Consent Holder shall erect and maintain notices upstream and downstream of each section of the works not less than 5 working days prior to the commencement of the works. These notices shall provide appropriate warning of:
 - a) the proposed works;
 - b) any relevant safety advice;
 - c) the period over which these works will be occurring.

Access to Tongariro River

8. The Consent Holder shall, in respect of the works authorised by this resource consent, maintain any existing public access at any location where works authorised by this consent are carried out except where the public are required to be excluded for safety purposes. In the latter situation, every effort must be made

to ensure that through or by-pass access to up or down river locations is either available or provided.

Timing of Works

9. Works authorised by this consent shall not be undertaken in the wet river channel during the months May to October inclusive each year, except where:
 - a) flood flows have resulted in stopbank freeboard loss and the remaining freeboard in the reach upstream of the bridge being less than 150mm and/or the remaining freeboard in the reach downstream of the bridge being less than 400mm; or,
 - b) there is a reduction in a cross sectional area which is more than the product of 0.30 times the design width at the design flood level, or
 - c) erosion control works to maintain the integrity of the Tongariro River Flood Control Scheme are required.
10. The Consent Holder shall provide survey information to the Waikato Regional Council confirming the trigger levels set in 9a or 9b above have been met prior to undertaking works provided by condition 9.
11. Works may be undertaken up to a maximum of 10 hours per day during the period 8am to 6pm; and, up to six days per week Monday to Saturday. No works shall be undertaken on a Sunday or a Public Holiday.
12. The Department of Conservation shall be notified prior to any works occurring during the months of May to October.
13. The Consent Holder shall check daily and weekly weather forecasts. In the event of a rain forecast which could result in flood flows which may, in conjunction with undertaking the works authorised by this consent, adversely affect the Tongariro River environment, the works shall be postponed, or be suspended if already commenced, and all machinery shall be removed from the river bed and flood plain until the identified flood risk has passed.

Machinery Maintenance and Hazardous Substances Spill Prevention and Response Plan

14. The Consent Holder shall ensure that all machinery used in the exercising of this consent is cleaned prior to being transported to the construction site to ensure that all seed and/or plant matter has been removed.
15. All machinery, including bulldozers, loaders, diggers and trucks, shall be operated in a manner so as to minimise time spent in flowing water.
16. No river-bed material extraction shall be undertaken in flowing water.
17. The Consent Holder shall ensure that all machinery shall be maintained and operated in a manner which ensures that spillages of fuel, oil and similar contaminants are prevented. Particular care shall be taken during refuelling and machinery servicing and maintenance. Such activities shall be carried out away from any water body and in such a manner that any spillage can be contained so it does not enter the Tongariro River.
18. The Consent Holder shall provide the Waikato Regional Council with a "Spill Prevention and Response Plan" at least 20 working days prior to the commencement of activities authorised by this consent. This Plan shall be

submitted to the Waikato Regional Council for their written approval, acting in a technical certification capacity. The aim of the Plan shall be to minimise the possibility of contamination of water. This Plan shall address, but not necessarily be limited to, the following matters:

- a) a list of the hazardous materials and their quantities kept on site and their storage details;
- b) the prevention measures that will be undertaken on site in order to avoid a spill of hazardous materials;
- c) the equipment available to contain and/or remove spills of hazardous materials;
- d) specific procedures and measures that will be undertaken when machinery is operating within close proximity to water bodies that are designed to minimise the risk of any spillages or significant leakages of hazardous materials entering the water body;
- e) the training staff will receive in the use of hazardous materials spill prevention, containment and clean up measures and associated equipment;
- f) how the disposal of any contaminated materials arising from spills or leakages of hazardous materials will be undertaken; and,
- g) the procedures involved in reporting of any such incidents to the Waikato Regional Council.

19. The Consent Holder shall in exercising this consent comply with the approved "Spill Prevention and Response Plan". Any subsequent changes to the "Spill Prevention and Response Plan" shall only be made with the prior written approval of the Waikato Regional Council, acting in a technical certification capacity.

20. The Consent Holder shall notify the Waikato Regional Council and the Department of Conservation as soon as is practicable, and as a minimum requirement within 12 hours, of the Consent Holder becoming aware of a spill of hazardous materials, fuel, oil, hydraulic fluid or other similar contaminants. The Consent Holder shall, within 7 days of the incident occurring, provide a written report to the Waikato Regional Council, identifying the following:

- a) the possible causes;
- b) steps undertaken to remedy the effects of the incident; and,
- c) any additional measures that will be undertaken to avoid future spills.

Responsibility for Erosion Control Works

21. The Consent Holder shall be responsible for the provision and maintenance of any erosion control works that may be necessary as a result of the exercise of this resource consent.

Sediment Control and Debris Removal

22. The Consent Holder shall ensure that sediment losses to natural water arising from the exercise of this resource consent are minimised for the duration of the works and during the term of this consent.

23. Stormwater runoff from the river-bed material extraction area access road shall be controlled to such an extent that it is discharged into the ground and not discharged directly into the Tongariro River.

24. River-bed material shall only be removed below the adjacent River water level when the excavation site is bunded from direct surface connection with the River.

25. Excavations below water level shall be backfilled to a level not deeper than 1m below the adjacent river channel water level using river bed material from within the site. Inlet and outlet channels shall be provided to a depth similar to that of the completed backfilled area to maximise continuous river flows through the site. A minimum buffer of 10m from the undisturbed river channels shall be left intact.
26. Debris collected during river-bed material extraction shall be removed from the river bed and the floodplain of the river.
27. Should the works authorised by this consent cause a conspicuous change in the visual clarity of the river after a mixing distance of 100 metres downstream from the activity, then the consent holder or its delegate shall measure the concentration of suspended solids in the river at this location and upstream from the activity and provide those measurements to the Waikato Regional Council within 10 working days.
28. The activities authorised by this consent shall not result in any of the following standards in the Tongariro River being breached after reasonable mixing and at a point 100m downstream of the works:
 - a) black disc horizontal visibility less than 1.6 metres;
 - b) a conspicuous change in the visual clarity of the river;
 - c) An increase in the concentration of suspended solids above 25g/m³ after a mixing distance of 100 metres downstream from the activity except when the concentration of suspended solids in the Tongariro River above the work site is greater than 25g/m³. Then there shall not be any increase in the Tongariro River suspended solids concentration as a result of the activity.

Flow Diversion and Re-contouring

29. The Consent Holder shall, immediately after the construction of each temporary diversion bund either maintain fish passage past the bund or, in conjunction with the Department of Conservation, salvage any fish stranded in pools in the diverted section of river channel and return them to the main channel of the Tongariro River.
30. Except as provided for by conditions 24-25, on completion of river-bed material extraction at any one location, the Consent Holder shall re-contour the surface of the extraction area back to its original form, to the satisfaction of an officer of the Waikato Regional Council's Resource Use Group.

Erosion Control Structures

31. Structures and floodways in the immediate vicinity of structures shall be maintained clear of debris.
32. Structures shall not decrease the cross sectional area of the river.
33. All construction materials and equipment shall be removed from the river upon completion of the activity.
34. Where the weight of the structure is insufficient to keep it in place it shall be permanently anchored to the bed of the river.
35. All structures shall be maintained in a structurally sound condition at all times.

Dust Emissions

36. All activities undertaken on site shall be conducted and managed in a manner that ensures that all dust emissions are kept to a practicable minimum. To this end there shall be no discharge of dust as a result of the activities authorised by this consent that causes an objectionable or offensive effect beyond the boundary of the property on which works are authorised by this consent.

Proposed Annual Works Programme

37. The Consent Holder shall prepare a Proposed Annual Works Programme including (but not limited to) the following:

- a) details of scheduled works and maintenance requirements authorised by this consent that are to be carried out for the 12 months commencing 1 November including a description of the nature, scale and location of the works; and
- b) the proposed timing of the works; and
- c) any contingency procedures that may be required for specific activities; and
- d) any specific mitigation measures that will be undertaken; and
- e) riparian planting proposed using eco-sourced indigenous plants;

Any changes to the Proposed Annual Works Programme (with the exception of works required to be undertaken without delay, for example, unscheduled works in response to flood events) shall be advised in writing by the Consent Holder to the Waikato Regional Council within 10 working days of the work commencing.

38. The Consent Holder shall distribute the Proposed Annual Works Programme required by condition 37, to the following parties on or before 30 June each year requesting comment(s) on the proposed works (if any) to be provided in writing within 20 working days of receipt:

- a) Department of Conservation;
- b) Tongariro and Lake Taupo Anglers Club Inc.;
- c) Advocates for the Tongariro River;
- d) Taupo Fishery Advisory Committee;
- e) Tuwharetoa Maori Trust Board; and
- f) Ngati Turangitukua,
- g) Genesis Energy; and,
- h) Waipapa and Tokaanu Maori Lands Trust.

Comments received by the Consent Holder from the above parties regarding the proposed works shall be copied to the Waikato Regional Council.

Any changes to the Proposed Annual Works Programme (with the exception of works required to be undertaken without delay, for example, unscheduled works in response to flood events) shall be advised in writing to the groups listed in this condition.

39. The Consent Holder shall address any comments from the parties listed in condition 38, and upon completion of any related changes to the Proposed Annual Works Programme, advise these parties in writing of any changes. The Consent Holder shall submit the Proposed Annual Works Programme to the Waikato Regional Council prior to 1 October annually. The Consent Holder shall not commence these works until the Proposed Annual Works Programme has been approved by the Waikato Regional Council acting in a technical certification capacity.

Tangata Whenua Values

40. In the event that any archaeological remains are discovered, the works shall cease immediately in the vicinity of the discovery, and Tangata Whenua, the Historic Places Trust and the Waikato Regional Council shall be notified as soon as practicable and within 48 hours of a discovery. Works may recommence with the written approval of the Waikato Regional Council. Such approval shall only be given after the Waikato Regional Council has considered:
- a) Tangata Whenua interests and values,
 - b) the Consent Holder's interests,
 - c) Historic Places Trust advice, and
 - d) any archaeological or scientific evidence.

Review

41. During the April to June period each year for the term of this consent Waikato Regional Council Resource Use Group may, following service of notice on the Consent Holder, commence a review of this consent under section 128(1) of the Resource Management Act 1991, for the following purposes:
- a) To review the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the environment from the exercise of this resource consent and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions; or
 - b) To review the adequacy of and the necessity for monitoring undertaken by the Consent Holder and specifically to review the method and frequency of record collection for the purposes of determining the most appropriate method and frequency; or
 - c) If necessary and appropriate, to require the holder of this resource consent to adopt the best practicable option to remove or reduce adverse effects on the environment.

Administration

42. The Consent Holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulations made under section 360 of the Resource Management Act.

Advice notes:

1. In accordance with section 125 RMA, this consent shall lapse five (5) years after the date on which it was granted unless it has been given effect to before the end of that period.
2. Where a resource consent has been issued in relation to any type of construction (e.g. dam, bridge, jetty) this consent does not constitute authority to build and it may be necessary to apply for a Building Consent from the relevant territorial authority.
3. This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.
4. This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).
5. The consent holder may apply to change the conditions of the resource consent under s.127 RMA.

6. The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.
7. Note that pursuant to s332 of the RMA 1991, enforcement officers may at all reasonable times go onto the property that is the subject of this consent, for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.
8. If you intend to replace this consent upon its expiry, please note that an application for a new consent made at least 6 months prior to this consent's expiry gives you the right to continue exercising this consent after it expires in the event that your application is not processed prior to this consent's expiry.