BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 178

IN THE MATTER	of the Resource Management Act 1991
AND	of an application under sections 316 to 320 of the Resource Management Act 1991
BETWEEN	THE FRIENDS OF SHERWOOD
	NGĀTI PAOA TRUST BOARD
	(ENV-2018-AKL-000177)
	Applicants
AND	AUCKLAND COUNCIL
	Respondent
AND	WATERCARE SERVICES LTD
	DIRECTOR-GENERAL OF CONSERVATION
	s 274 parties
AND	AUCKLAND REGIONAL PUBLIC HEALTH SERVICE (in attendance)

Court:	Environment Judge M Harland Environment Commissioner G Paine Environment Commissioner R Bartlett
Hearing:	at Auckland on 13 and 14 September 2018
Appearances:	S Grey for applicant S Quinn and K Rogers, counsel for Auckland Council P McNamara, counsel for Watercare Services Limited C Lenihan and S Bradley for the Director-General of Conservation (s 274 party) VS Evitt for Auckland Regional Public Health Service
Date of Decision:	21 September 2018
Date of Issue:	21 September 2018 at 10.45 am

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

DECISION OF THE ENVIRONMENT COURT
ON APPLICATION FOR INTERIM ENFORCEMENT ORDERS

A: The application for interim enforcement orders is refused.

B: Costs are reserved.

C: This decision is to be initially released to counsel for the parties listed in the intituling and their nominated representatives within their organisations, and can be made available to nominated representatives of the Auckland Regional Public Health Service. It is not to be released to the media or the general public until 1.00pm, 21 September 2018 to enable the parties time to consider their response to it.

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REASONS

Introduction

[1] The Auckland Council (**the Council**) and Department of Conservation (**DOC**) have planned a pest control operation involving a drop of sodium fluoroacetate (**1080 poison bait**) in the Hunua Ranges Regional Parklands, Whakatiwai and Waharau, (collectively referred to as **Kohukohunui**), which they wish to undertake now. The target species for this 1080 drop are possums and rats, with the expectation that there will be secondary poisoning of stoats that may feed on poisoned carcasses. All three are considered 'pest' species. The application of 1080 is said to be necessary to protect biodiversity in Kohukohunui, which is home to a range of threatened bird and plant species. The Friends of Sherwood filed an application for interim and final enforcement orders seeking to prevent the planned drop, and on 6 September 2018 at a judicial telephone conference convened on an urgent basis by Judge Smith, they obtained an interim order preventing the drop from occurring until their interim application could be heard by the Environment Court on 13 September 2018.[1] This decision determines the

[1] [2018] NZEnvC 167, Smith, EJ

application for an interim enforcement order filed by the Friends of Sherwood which is supported by the Ngāti Paoa Trust Board, who were granted leave to join in the proceedings as a joint applicant.

The parties

The Friends of Sherwood

[2] The Friends of Sherwood is an incorporated society previously known as the Auckland Environment and Peace Centre Trust, an entity incorporated under the Charitable Trusts Act 1957. It was unclear at the hearing whether the Friends of Sherwood still maintained its Charitable Trust Act status. Mr Hilton, who filed an affidavit supporting the Friends of Sherwood's application, described himself as a trustee of it at a time when it was considered that the correct applicant entity was the Friends of Sherwood Trust. The status of the Friends of Sherwood Trust was an issue identified by Judge Smith as one that would need to be addressed in the hearing, but in this hearing the issue is relevant only to the issue of an undertaking for damages, as under s 316(1) any person may make an application of the kind now before the Court.

Ngāti Paoa

[3] Kohukohunui is of historical, customary, cultural and spiritual significance to mana whenua: Ngāi Tai ki Tāmaki, Ngati Koheriki, Ngāti Tamaoho, Ngāti Paoa and Ngāti Whanaunga. Four other mana whenua groups have identified themselves as having customary interests in Kohukohunui; Ngāti Maru, Ngāti Te Ata, Te Ākitai Waiohua and Waikato-Tainui.[2] The Ngāti Paoa Trust Board (**the Trust Board**) is the mandated pre-settlement iwi authority for Ngāti Paoa people, and claims mana whenua in its rohe, which covers areas across Auckland and Waikato, and includes Kohukohunui.[3] Although the Council and DOC consulted with the Ngāti Paoa Iwi Trust Board (**the Iwi Trust Board**) about their proposal, the Trust Board says that it has the mandate to speak for Ngāti Paoa on issues such as this, and it was not consulted; rather it has been notified of what is to occur. It does not support the proposal.

Auckland Council

[4] Kohukohunui is owned in part, but managed by Auckland Council and comprises

[2] Affidavit of Mr Ward dated 11 September 2018, page 29, paragraph [65]
[3] Second affidavit of Ms Allies dated 10 September 2018, paragraph [5]

an area of approximately 17,000 hectares. Under the Auckland Regional Parks Management Plan 2010, the protection of the ecological values of Kohukohunui is identified as a priority.[4] Part of fulfilling this obligation includes managing pests including possums, rats and mustelids, the latter category of which includes stoats, weasels and ferrets.

[5] As a result of the boundary adjustment associated with the reorganisation of local government in Auckland, in about 2010, what appears to be over half of Kohukohunui falls within its statutory boundary of the Waikato Regional Council.[5] The Waikato Regional Council pays an annual contribution to the Auckland Council to deliver pest control on its behalf in this area.

The Department of Conservation

[6] The Department of Conservation (**DOC**) administers ten areas of land comprising reserves and conservation areas totaling 2,659.38 hectares within the proposal area.[6] The land it administers is within the Waikato Regional Council statutory boundary of Kohukohunui. DOC is undertaking the proposed pest control operation with the Auckland Council.

Watercare Services Limited

[7] Watercare Services Limited (**Watercare**) operates the Cosseys, Waiaroa, Mangatawhiri and Mangatangi reservoirs for water supply purposes. Each reservoir has its own distinct catchment area. These reservoirs supply approximately 65 percent of Auckland's drinking water.[7] At the end of the hearing, upon application by it and without opposition it was struck out as a respondent in these proceedings because none of the orders sought by the applicants were against it.

[8] The Council, DOC and Watercare all oppose the application for interim and final enforcement orders.

[9] The Auckland Regional Public Health Service (**Public Health Service**) was not a party to the proceedings, but because it has a regulatory function to assess and grant

[4] Affidavit of Mr Allan, paragraph [8]
[5] Affidavit of Mr Wall dated 11 September 2018, paragraph [41]
[6] Affidavit of Ms Wilson dated 11 September 2018, paragraphs [2] and [3]
[7] Affidavit of Dr Sinclair affirmed 10 September 2018, paragraph [30]

permissions for the use of selected Vertebrate Toxic Agents (**VTAs**) including 1080 under the Hazardous Substances and New Organisms Act 1996 (**HSNO**), and because it issued a permission for the proposed pest control operation, Judge Smith directed that it be served with a copy of the application for enforcement orders. Dr Sinclair, a public health medical specialist and Medical Officer of Health, filed an affidavit covering many topics including the Regulatory and Guidance Framework for VTAs, including 1080, the Public Health Risk Assessment Procedure and Permission for the proposed pest control operation (and comparing this with a similar operation undertaken in the same area in 2015), and he provided details about the drinking water source protection proposed for the 2018 pest control operation.[8]

The applications for enforcement orders

[10] The applications before the Court have their genesis in a notice issued around 30-31 August 2018 by the Council, which was also placed on the Auckland Regional Health Board website, relating to its intention to undertake an aerial drop of 1080 in Kohukohunui, in the catchment for the Auckland water supply. A map of the area covered by the proposed operation is attached to this decision as Annexure **1**. Another map showing the statutory boundaries of the two Councils, the DOC administered land and the neighbouring privately-owned properties adjacent to the proposed operation area is attached to this decision as Annexure **2**. Annexure 2 was provided by the Council after the hearing at the request of the Court.

[11] Following directions by Judge Smith, an amended application for enforcement orders and interim enforcement orders was filed on 6 September 2018. The two orders sought are the same in relation to both interim and final orders. The orders sought are as follows:

(a) Order 1

Under s 314(1)(a)(ii) of the RMA, Interim and Final Enforcement Orders prohibiting the Auckland Council and its agents and employees from:

(i) depositing bait containing sodium fluoroacetate ("1080 poison bait") or

(ii) authorising the Department of Conservation or any other person to deposit bait containing sodium fluoroacetate ("1080 poison baits")

[8] Affidavit of Mr Wall dated 11 September 2018, paragraph [41]

in, on or under the bed of any river (including any continually or intermittently flowing body of freshwater and any stream or modified watercourse) in the Hunua water catchment, as this would contravene or is likely to contravene s 13(1)(d) of the Resource Management Act and/or Part E3 of the Auckland Unitary Plan, including the activity Rules E3.4.1(A5) and E3.4.1(A7);

(b) Order 2

Under s 314(1)(a)(ii) of the RMA, Interim and Final Enforcement Orders prohibiting Auckland Council and its agents or employees from:

(i) depositing bait containing sodium fluoroacetate ("1080 poison bait") or

(ii) authorizing the Department of Conservation or any other person to deposit bait containing sodium fluoroacetate ("1080 poison baits")

on the grounds that the deposit of 1080 bait in a water catchment that supplies drinking water to the city of Auckland is likely to be noxious, dangerous, offensive and/or objectionable to such an extent that it has or is likely to have an adverse effect on the environment.

[12] It is clear from the application that the focus, and therefore the scope of the order sought, is on the potential for discharges of 1080 to water and the impact this could have on drinking water.

[13] The Court received three Eastlight folders of evidence and annexures a day before the hearing of the interim application. In support of its application, the applicants filed affidavits from:

- Mr Hilton, a trustee of the Friends of Sherwood, who describes himself as an ecologist (dated 4 September 2018);
- Ms Allies, the Environmental Manager for the Trust Board (dated 4 September, 10 September and 12 September 2018), (the latter being in reply);
- Mr Gyde, an organic farmer, hunter and neighbouring land owner, (dated 9 September 2018) and
- Mr Graf, a documentary maker (dated 12 September 2018), who purportedly filed in reply to the affidavit evidence filed by the Council, DOC and the Public Health Service.

[14] The affidavits filed on behalf of the Council opposing the application were as follows:

- Mr Ward, General Manager Park, Sports and Recreation within the Operation Division of the Council (dated 11 September 2018);
- Mr Allen, a planner employed by the Council (dated 11 September 2018);
- Mr Perera, Head of Operations Excellence at Watercare Services Limited (dated 11 September 2018).

[15] Affidavits filed by the DOC opposing the application were from:

- Ms Wilson, a Senior Biodiversity Ranger for DOC (dated 11 September 2018);
- Dr Fairweather, the National Technical Advisor (Threats) for DOC (11 September 2018).

[16] As already mentioned, Dr Sinclair filed an affidavit on behalf of the Public Health Service.

[17] At the outset of the hearing, all parties agreed that the affidavits and their annexures should be taken as read. There was no cross-examination of any of the deponents. This is the usual approach taken to applications for interim enforcement orders.

[18] The applicants sought to file further evidential material at the hearing relating to adverse effects from, it is understood, members of the public who wished to support their application, however given the nature of the hearing, and the need to effectively "draw a line in the sand" in relation to the evidential material presented to the Court, this was not permitted. There is a fairness issue associated with the filing of evidence in a proceeding such as this, where there is no opportunity for the other parties to properly respond to it. The approach taken was for all parties to be required to rely on the evidence they had filed in accordance with the timetable set by Judge Smith, however further material was sought by the Court to clarify aspects of the evidence already filed. The applicants have also sought to provide further evidential material to the Court since the hearing last week. For the same reasons, we have not taken into account this material, apart from that relating to the undertaking as to damages.

[19] For reasons that will become evident later in this decision, it is not necessary for us to traverse most of the evidence, and particularly that which was contentious concerning the alleged adverse effects on the environment if the proposed 1080 drops are able to proceed. We note that there are difficulties with the admissibility of most of the evidence filed by the applicants dealing with potentially adverse effects, because it was opinion but not expert evidence and/or there was insufficient information about the context to the alleged adverse effects or historical events, and in relation to Mr Graf's evidence it was not in reply.

The legal test for interim enforcement orders

[20] Section 320(3) of the RMA requires the following:

> (3) Before making an interim enforcement order, the Environment Judge or the District Court Judge shall consider—
> (a) what the effect of not making the order would be on the environment; and
> (b) whether the applicant has given an appropriate undertaking as to damages; and
> (c) whether the Judge should hear the applicant or any person against whom the interim order is sought; and
> (d) such other matters as the Judge thinks fit.

[21] The following definitions from the RMA are provided for clarification:

> **3 Meaning of effect**
>
> In this Act, unless the context otherwise requires, the term effect includes—
> (a) any positive or adverse effect; and
> (b) any temporary or permanent effect; and
> (c) any past, present, or future effect; and
> (d) any cumulative effect which arises over time or in combination with other effects—regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
> (e) any potential effect of high probability; and
> (f) any potential effect of low probability which has a high potential impact.
>
> **environment** includes—
> (a) ecosystems and their constituent parts, including people and communities; and
> (b) all natural and physical resources; and
> (c) amenity values; and
> (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters

[22] The purpose of an interim enforcement order is to guard against serious damage to the environment rather than any business or economic loss to any of the parties or

affected persons.[9] The RMA, however, does not set to one side the general principles of justice pertaining to interim injunctions. For example, questions as to what, on the balance of convenience, is the right order and where the major risk of damage and any irreparable damage may lie, are factors the Court will consider.[10]

The issues

[23] In relation to the interim orders sought, the following are the issues counsel submitted we need to determine:

- Issue 1
  Was Ngāti Paoa adequately consulted about the proposed pest control operation in Kohukohunui?

- Issue 2
  Concerning proposed Order 1 (s 314(1)(a)(i) of the RMA)
  (a) Is the entry of 1080 into waterways an activity regulated by s 13 of the RMA?
  (b) If s 13 of the RMA applies, is it permitted under the AUP-OP and other planning instruments?

- Issue 3
  Concerning proposed Order 2 (s 314(1)(a)(ii) of the RMA)
  (a) Is the deposit of 1080 in a water catchment that supplies drinking water to the city of Auckland an activity to which s 319(2) of the RMA applies?
  (b) Alternatively, if s 319(2) of the RMA does not apply, do the alleged adverse effects reach the required threshold for an order under s 314(1)(a)(ii) of the RMA?

- Issue 4
  If grounds have been made for the making of an order either under s 314(1)(a)(i) or (ii), does the balance of convenience favour continuing the interim order, bearing in mind the provisions of s 320(3) of the RMA?

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[9] *MacFarlane Group Developments Limited v Calder Stewart Industries Limited*, C031/04

[10] *Berhampore Residents Association Inc v Wellington CC* [1992] 1NZRMA 41, which quoted with approval the dicta of Sach LJ in *Breese v Woodhouse* [1970] 1WLR 586.

Background

[24] There are some important matters of background that need to be outlined to provide a context to the arguments before the Court. These include understanding the need to control pest animals, the importance of the forests of Kohukohunui, as well as understanding the nature of 1080, why it is used and how it is regulated.

Why do we need to control animal pests?

[25] The need to control animal pests in New Zealand is widely known and the means of achieving it is subject to ongoing debate. The need for pest control was usefully summarised by Mr Ward,[11] who included as an attachment to his affidavit a document entitled "Pest Management Options for the Hunua Ranges Regional Parklands" (Auckland Council 2014)), which outlines the following:

> The indigenous plants and animals in New Zealand are unique because we have no native ground-dwelling mammals. Plants, birds, snails, lizards, insects and all other native species have evolved in almost total isolation from the reset of the world. This makes them particularly vulnerable to predators such as possums, rats and stoats because they have not developed natural defences against them. Possums, rats and stoats, for example eat nesting adults, eggs and chicks. As a result, the breeding success of native birds is threatened. Possums also pose a significant threat to forest canopy health.
>
> An increase in pest numbers across the country is putting New Zealand's already endangered wildlife at greater risk. High levels of seed production in forests (called a mast event) as a result of extreme weather such as hotter summers, is currently triggering a significant increase in animal predators.
>
> When seed supplies run out, these pests then prey on indigenous birds such as kokako and kaka, along with other at-risk species like bats, frogs and land snails. When predator levels rise, this also puts our native trees and plants at risk, through significantly increase browsing damage.
>
> Climate change and global warming make it highly likely that climatic conditions triggering these mast events will become more frequent.
>
> In response to these threats the Department of Conservation (DOC) has initiated its 'Battle for our Birds' programme. This is a predator response to protect native wildlife from predators. It involves 22 predator control operations of aerially applied 1080 bait over about 600,000 ha of public conservation land.

[11] Affidavit of Mr Ward, paragraph [17]

Why are the forests of Kohukohunui important?

[26] The characteristics of Kohukohunui were described by Mr Ward[12] as follows:

> Kohukohunui is the largest mainland forest in Auckland, characterised by rugged terrain, low human population densities, outstanding wildlife habitat and high ecological values. Kohukohunui is home to the only naturally occurring population of kōkako in mainland Auckland. It is also the habitat for a number of rare and endangered fauna and flora, including the long-tailed bat, Hochstter's frog, kaka and toropapa. The park contains the largest areas of kauri-hard beech forest in the Auckland region; this forest type is significant in the context of the North Islands flora. Importantly, Kohukohunui is currently free of kauri die-back disease.

[27] In his affidavit, Dr Fairweather[13] indicated that these values extend to reserves in the ranges that are managed by DOC.

[28] In Kohukohunui, until 2015, pest species were controlled using ground bait (brodifacoum and cyanide) in certain target areas. Monitoring of possums and rats in 2014[14] showed that threatened species numbers were declining and hence it was decided by the Council to control possums and rats via the aerial application of 1080. The first aerial application was made in 2015.

[29] Mr Ward's affidavit[15] described the benefits of the 2015 1080 application. Monitoring of rats showed a decline in density from 91.6% (rodent tracking index or "RTI") before the 1080 application to 1.03% RTI after the application (low compared to the target of 5% RTI). No rats were found in the high value Kokako Management Area. Possum numbers declined to 0.25% (residual trap catch or "RTC") in one block and 1% in the second block, also well below the (then) target RTC of 5%. The effectiveness of the 2015 aerial 1080 application has allowed a reduction in the density of bait in the 2018 application from 2.5 kg/ha to 2 kg.

[30] Benefits to the species being protected included the fledging of 13 kokako chicks in the two seasons following the 2015 1080 application compared to no chicks in the 2014-15 season. Hochstetters frogs and long-tailed bats were monitored and their populations were found to be stable or increasing (in some localised areas).

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[12] Affidavit of Mr Ward, Attachment **A**, page 8
[13] Affidavit of Dr Fairweather, paragraph 17
[14] Affidavit of Mr Ward, paragraph [14]
[15] Affidavit of Mr Ward, paragraphs [22]-[26]

[31] Recent monitoring of the possum RTC and rat RTI (2017) has indicated that the numbers of possums and rats are above the target densities, such that aerial 1080 is again required. The need for repeated treatment is as expected - 1080 is not sufficient to eradicate the pest animals in a single application; repeat applications are required to control their numbers and allow bird and animal populations to recover.

[32] Recreation and other activities are undertaken in Kohukohunui, including camping, walking, mountain biking and school education camps. In the areas where the Councils have statutory responsibility they employ hunters for goats and pigs,[16] but our understanding is that on the DOC land hunting is by permit only. It was not clear whether deer are present in Kohukohunui, however Attachment A of Mr Ward's affidavit refers to the need to liaise with DOC "to prevent incursion of deer". We infer from this that deer are not likely to be present, although there is a need to prevent them from establishing in Kohukohunui. As well, there may be customary rights in respect of food gathering for mana whenua, but we did not receive any detailed evidence about this.

What is 1080 and why is it used?

[33] 1080 (sodium fluoroacetate) is a plant-based toxin that is used as a vertebrate toxin agent or VTA. It is toxic to vertebrate animals (mammals) in very small doses.

[34] 1080 is biodegradable, dilutes quickly in water and does not build up in the food chain.[17] It breaks down in the environment and does not leave permanent residues in water, soil, plants or animals. The rate at which 1080 breaks down depends on the temperature, and the level of bacteria and other micro-organisms present.

[35] The toxin is applied aerially as a cereal bait laced with 1080 and an agent such as cinnamon that attracts the target pest animals, which are possums and rats. Stoats (and other mustelids) are killed as a by-catch of 1080, via secondary ingestion of the toxin in dead animals. Native birds and invertebrates are known to have been killed by ingesting 1080. The degree to which this has occurred is a matter of disagreement between the applicants and the Council and DOC.

[36] 1080 is toxic to dogs and other animals if they eat the poisoned animals and is also toxic to humans if consumed in sufficient quantity. Given its highly toxic nature, the use of 1080 is controlled under HSNO and its use governed by licence (as we outline

[16] Affidavit of Mr Ward, Attachment G – reference to email 13 July with "hunters"
[17] Affidavit of Mr Ward Attachment A, paragraph [65]

shortly).

[37] In the 60 years since 1080 was first used considerable research has been undertaken to establish the rate at which bait needs to be applied to achieve a specified reduction in the number of possums and rats killed and the rate has been reduced many-fold as a result.[18] For example, in the 1950s average sowing rates were 30 kg/ha, but the bait proposed in the 2018 Hunua aerial operation is to be sowed at a rate of 2 kg/ha, (i.e., approximately 4-6 baits in an area the size of a tennis court). Approximately 0.15% (30 g/ha) of that is toxin.[19] Ms Grey referred in her submissions to the proposed operation involving "the aerial spreading of 45,000kg (45 tonnes) of deadly poison baits over 22,500 hectares of the Hunua catchment."[20] The amount of bait is correct if viewed as a total figure, but it does not identify the proportion of the bait that is toxic and the rate which it is to be applied which is expressed in terms of kg/ha. These matters are important context to the potential effects that could arise from the aerial operation.

[38] The Environmental Risk Management Authority (**ERMA**), the Environmental Protection Agency (**EPA**) and the Parliamentary Commissioner for the Environment (in two reports) have all indicated that they regard 1080 as effective and appropriate to combat significantly increased pest numbers, for the protection of forests and their native birds and rare species.[21] In her 2011 report, which was attached to the affidavit of Dr Sinclair, the Parliamentary Commissioner for the Environment concluded in her Overview:[22]

> It is my view, based on careful analysis of the evidence, that not only should the use of 1080 continue (including in aerial operations) to protect our forests, but that we should use more of it.

The proposed 1080 operation for Kohukohunui

[39] In his affidavit, Dr Sinclair from the Public Health Service included details about the assessment and regulation of 1080 use. Regulation of 1080 is primarily under HSNO, the Agricultural Compounds and Veterinary Medicines Act 1997 and the Health and Safety at Work Act 2015 and associated regulations. In the Auckland Region, the role of assessing and regulating 1080 operations is assigned to HSNO enforcement officers in the Public Health Service. The regulatory framework controlling the application of 1080

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[18] Affidavit of Mr Ward Attachment A, paragraph [53]
[19] Affidavit of Mr Ward, paragraph [48]
[20] Outline submissions 13 September 2018
[21] Affidavit of Mr Ward, paragraphs [59]-[63]
[22] Affidavit of Dr Sinclair, paragraph [14]

was outlined in further detail in Dr Fairweather's affidavit.

[40] The Council's application for this operation was made to the Public Health Service on 16 July 2018.[23] It was assessed under the Ministry of Health's "Issuing Permissions for the use of Vertebrate Toxic Agents (VTAs) Guidelines for Public Health Units (2013)". Dr Sinclair outlined that the standard risk assessment methodology was employed in considering the application and this included the following:[24]

(a) hazard identification (including toxicology information);

(b) a dose-response assessment;

(c) an exposure assessment; and

(d) risk characterisation.

[41] Dr Sinclair explained that the two main exposure routes that need to be managed are accidental direct exposure of people to baits and domestic animals entering the 1080 operational area and indirect exposure through contamination of drinking water. Dr Sinclair noted that the application to the Environment Court focused on protection of water. He explained that the Hunua Ranges includes four catchments that supply approximately 65% of Auckland's drinking water and noted that the application identified the presence of private domestic and farm water supplies that take water from the operational area. He noted that a small proportion of bait pellets would be expected to fall into streams in the operational area where they would break up and the 1080 would biodegrade. He said that monitoring in other districts has shown that 1080 is only detectable within a few centimetres downstream of such a bait.[25]

[42] The Public Health Service granted the Council's application, which is known as "a permission". A copy of the permission granted was attached to Dr Sinclair's affidavit. Several conditions to the permission granted by the Public Health Service address the actual and perceived risks of the drinking water source in the Hunua reservoirs becoming contaminated as follows:[26]

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[23] Affidavit of Dr Sinclair, paragraph [21]
[24] Affidavit of Dr Sinclair, paragraphs [28]-[29]
[25] Affidavit of Dr Sinclair, paragraph [31]
[26] Affidavit of Dr Sinclair, paragraph [32]

(a) Aircraft involved in bait distribution are prohibited from flying over water supply lakes / reservoirs and the Mangatawhiri Stream;

(b) There must be a 200m exclusion zone around the intake valve towers of each reservoir.

(c) There must be a 50m buffer zone around the high-water mark of the four reservoirs and a 20m buffer along a major tributary of the Mangatangi reservoir.

(d) Bait must be distributed from a 'trickle bucket' along the boundaries of the operational area, exclusion zones and buffer areas.

(e) Each reservoir must be disconnected from the treatment supply (in two zones of two lakes each, as described above) and only reconnected when water quality tests show no detectable levels of 1080. Watercare has developed an extensive water testing programme for returning reservoirs to service. Watercare's testing laboratory is IANZ certified.

(f) Other conditions manage risks to private water supplies by excluding 1080 application around specific watercourses.

[43] We note that according to Mr Ward,[27] a setback has been applied to the full length of the Mangatangi and Mangatawhiri Rivers inside the operational area.

[44] In relation to water quality testing, the laboratory detection limit is approximately 0.1 µg/L, 35 times lower than the Provisional Maximum Acceptable Value (PMAV) for 1080 which is 3.5 µg/L in the Drinking Water Standards for New Zealand 2005 (revised 2008). The Maximum Acceptable Value of a chemical in drinking water is "the highest concentration of that chemical, on the basis pf present knowledge considered not likely to cause any significant risk to the health of a consumer after 70 years of consumption of that water", or put more simply, a person could drink water with that level of 1080 in it for 70 years without any significant adverse effect on their health.[28]

[45] Dr Sinclair noted that the treatment system at Ardmore Water Treatment Plant is expected to remove particulate residues from the 1080 bait and carcasses, should any

[27] Affidavit of Mr Ward, paragraph [98]
[28] Affidavit of Dr Sinclair, paragraphs [32]-[33]

find their way into the reservoirs.[29]

[46] As well, Dr Sinclair noted that the monitoring, contingency and emergency plans included in the application were considered by the Public Health Service to be adequate.[30]

[47] We cannot assume that lawfully imposed conditions (in this case the conditions attached to the permission) will not be met by the Council or those who are contracted to apply it.[31] As well, we observe that the Public Health Service has an obligation to monitor the conditions it has imposed to ensure that they are met. Given its role in protecting public health, again we cannot assume that it will not fulfill this task appropriately. The same observations apply to Watercare, which has responsibilities in relation to the public water supply for reticulated water.

How will the 1080 be applied?

[48] Dr Sinclair described the details of the proposed operation as follows:[32]

(a) The operational area covers 30,501 ha of public and private land. The maps attached to this decision assist in understanding the operational area.

(b) The four water catchment lakes have been divided into two zones by Watercare, to allow the 1080 operation to take place in one zone (where the lakes have been disconnected from the public water supply), with the water supply continuing from the second zone where no 1080 is being applied. Only when the monitoring of the lakes in the first zone has found there to be no detectable 1080 in its two lakes will water from the first zone be reconnected to the public water supply. Once this has taken place the second zone will be disconnected from the public water supply and the 1080 operation will take place there. The water quality monitoring requirements are addressed in a separate section later in this decision.

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[29] Affidavit of Dr Sinclair, paragraphs [35]

[30] Affidavit of Dr Sinclair, paragraph [36]

[31] *Guardians of Paku Bay Association Inc v Waikato Regional Council* [2011] 16 ELRNZ 544 at [134], High Court

[32] Affidavit of Dr Sinclair, paragraph [21]

(c) The Public Health Service has imposed restrictions on applying any toxic bait within 24 hours of the commencement of school holidays and through the holiday period. We were advised that the school holidays commence on Monday 1 October for a two-week period.

[49] Dr Sinclair stated the Public Health Service's conclusion that the conditions in the permission issued to the Council for the proposed 1080 operation are adequate to safeguard public health and mitigate reasonable and foreseeable risks to the public from accidental exposure. He added that the 2018 operation is to be like the 2015 operation which the Public Health Service considers was implemented well.[33]

How is the operation to be managed?

[50] In his affidavit Mr Perera described the protocols developed by Watercare to ensure the 2018 1080 application is controlled to ensure the quality of water stored in the reservoirs is not affected by the operation. The protocols were developed in association with experts with national and international experience and were reviewed and approved by the Auckland Regional Council Public Health Service – Drinking Water Assessment Unit and the Medical Officer of Health.[34] The protocols include:[35]

(a) A Pre-1080 Application Water Quality Testing Plan which details a monitoring plan to establish the pre-application water quality of the Hunua ranges water supply reservoirs.

(b) A Source Isolation and Recharge Plan which outlines the proves for taking reservoirs out the supply prior to the application of 1080 within a reservoir catchment.

(c) A Water Quality Sampling Plan which details the sampling and testing procedures to be carried out during and after the operation.

(d) A Raw Water Source Return to Service Plan which defines the process protocols and responsibilities to ensure the safe return to service of the water reservoirs after the 1080 application.

Copies of these plans were attached to Mr Perera's affidavit.

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[33] Affidavit of Dr Sinclair, paragraph [43]
[34] Affidavit of Dr Perera, paragraph [21]
[35] Affidavit of Dr Perera, paragraphs [23]-[29]

[51] Mr Perera[36] outlined that the protocols above were used successfully during the 2015 1080 operation and that 1080 was not detected in any water quality sample collected at that time. Mr Ward noted in his affidavit that 300 water samples were collected during the 2015 operation, the largest and most comprehensive monitoring programme ever undertaken for a 1080 operation in New Zealand. He corroborated Dr Sinclair's statement that no 1080 was detected in any of these 300 samples.

How are private water supplies to be managed?

[52] The boundaries of the 1080 application have been designed taking into account the location of private properties around the perimeter of the Hunua application area, including private water supplies. The Council has been engaged in communication with landowners to address any site-specific requirements. We provide more detail about how this is being managed in a later section of this decision.

[53] In relation to the Mr Gyde's concern about the potential for dust contamination of the water supply on his property, or of the land generally, Mr Ward noted the normal 50 m setback has been extended such that, at its closest point, his property boundary is 180 m away from the operational area.[37] The Council has offered to supply drinking water if there are continued concerns about the drinking water supply and monitoring is available if desired, as above. Mr Ward provided the results of dust drift monitoring surveys carried out in 1997 and 1998 during aerial 1080 operations.[38] These found that while dust can drift over a considerable distance the concentrations of 1080 in the dust are small. He noted that the loading sites for the operations are where the greatest amount of dust is present, and that the Council has confirmed with Mr Gyde that his property is well away from any potential loading sites.[39] As a result, Mr Ward does not believe there is any risk of dust travelling to Mr Gyde's property during any potential aerial application. We accept Mr Ward's explanation.

Can carcasses affect the water supply?

[54] Mr Hilton expressed concern that 1080 in carcasses could be washed into the public water reservoirs. In response Mr Ward noted that the risk of contaminants entering the water supply is an everyday risk of pest control that is actively managed by

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[36] Affidavit of Mr Perera, paragraph [30]
[37] Affidavit of Mr Ward, paragraph [165]
[38] Affidavit of Mr Ward, paragraph [170]
[39] Affidavit of Mr Ward, paragraph [167]

Watercare. He described the monitoring proposed to be undertaken in and around the reservoir margins at intervals from 6-8 hours, 20-24 hours and 40-48 hours, with additional monitoring to be carried out if there is significant rainfall (>25 mm in 24 hours) within four weeks of the bait's application. Water quality is further managed by the regime of project design and the protocols put in place under the permissions regime by the Public Health Service.

[55] Mr Gyde expressed concern that carcasses would be concentrated in water courses that drain onto his property with potential effects on his water supply or pets. He stated his belief that as animals that have been poisoned are drawn to water, this would exacerbate the potential for adverse on water quality in streams. He suggested small quantities of semi-decomposed carcasses could continue to be washed onto his property, posing an ongoing threat to water quality, his dogs, and his lifestyle. [40]

[56] In response to Mr Gyde's concerns, Dr Fairweather cited a published paper reporting on a study of radio-tracked possums that were subject to 1080 poison. The study concluded that there was no evidence that animals move toward water once poisoned. In his affidavit, Mr Ward explained that the Council monitored the breakdown of 1080 bait and poisoned carcasses including analysing samples from them after the 2015 operation. No 1080 was present in any of the samples at the time the caution period ended, approximately six months after the final poison drop.[41]

[57] Mr Hilton[42] and Mr Gyde[43] believe that at least four dogs died of suspected 1080 poisoning during or after the 2015 application. The Council is aware of only one death, that of Lulu, the pet of the previous owner of Mr Gyde's property, and one other suspected case.[44]

[58] Clearly, the Council and DOC are fully aware of the distress loss of a pet causes, as is this Court. We understand the Council has actively sought to manage the risk of 1080 to dogs by providing muzzles, emetics and precautionary information as part of the communication with landowners and occupiers of properties adjacent to or near the application area, as described under Issue 2 above.

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[40] Affidavit of Mr Gyde, paragraph [4]
[41] Affidavit Mr Ward, paragraph [53]
[42] Affidavit of Mr Hilton, paragraph [31]
[43] Affidavit of Mr Gyde, paragraph [7]
[44] Affidavit of Mr Ward, paragraph [179]

[59] In his affidavit, Mr Hilton[45] referred to the text of the notice issued by the Council entitled "Managing dogs during and after the operation" as follows:

> Dogs are the most at-risk pets during a 1080 based pest control operation. Most reported dog deaths occur after eating poisoned carcasses – not the bait itself. It is important that dogs are closely supervised to ensure they do not enter the operational area or scavenge carcasses that may have come from the operational area following the operation.
>
> - To keep dogs safe we recommend:
> - Keep dogs under supervision at all times – don't allow them to roam
> - If you must walk your dog in or near the operational area keep it on a leash and keep it well fed and well-watered
> - Don't let dogs scavenge carcasses on parkland or any land close to the operational area.
> - Observe all signage and caution periods.

[60] This notification provides a clear indication of the risks of 1080 to dogs and precautions necessary. Mr Ward noted that there is no antidote for 1080 but dogs can be safe if early appropriate action is taken.[46]

[61] In the Overview of her 2011 report "Evaluating the use of 1080: predators, poison and silent forests"[47] the Parliamentary Commissioner for the Environment acknowledged the distress that loss of a pet can cause but stated:

> ... only eight dogs have died in this way in the last four years. The sad reality is that many many more will die on roads each year and no-one is proposing a moratorium on traffic. It is important to keep the risks in perspective...

[62] We agree that this is a very emotive issue, and acknowledge that a 1080 programme such as the one proposed at Hunua places a burden of responsibility on dog owners that may last some months (until the end of the caution period). We consider that the communication undertaken by the Council is satisfactory, as it offers all dog and pet owners adjacent to and around the application area the opportunity (and the necessary gear) to take precautions to ensure their animals are not affected.

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[45] Affidavit of Mr Hilton, paragraph [3]
[46] Affidavit of Mr Ward, paragraph [178]
[47] Affidavit of Dr Sinclair, Exhibit H

Conclusion

[63] The information provided by the Council about the regulation, planning, delivery and monitoring proposed for the 2018 1080 programme, summarised above, is comprehensive. The detail provided is sufficient to show that the discharge of the 1080 pellets is necessary, will not be indiscriminate, and has been carefully planned. It will be governed by the conditions applied to the permission by the Public Health Service to address this particular operation. The documents provided by the Council make it very clear there are risks to the use of 1080. We consider the methods proposed to manage those risks are appropriate and adopt the necessary precautions.

Analysis of Issue 1 – Consultation with mana whenua

[64] As outlined above, Kohukohunui is of historical, customary, cultural and spiritual significance to mana whenua Ngāi Tai ki Tāmaki, Ngāti Koheriki, Ngāti Tamaoho, Ngāti Paoa and Ngāti Whanaunga. Four other mana whenua groups have identified themselves as having customary interests in Kohukohunui, Ngāti Maru, Ngāti Te Ata, Te Ākitai Waiohua and Waikato-Tainui.[48]

[65] The Court was provided with evidence that the mana whenua iwi engagement strategy, developed during the 2015 Hunua Ranges pest management operations, informed the engagement with mana whenua for this proposal. The current engagement approach has involved written communication, several hui, a marae visit, and opportunities for involvement in the operation by mana whenua. The participants in this engagement have included, and continue to include Ngāi Tai ki Tāmaki, Ngāti Tamaoho, Ngāti Paoa and Ngāti Whanaunga at both the leadership and operational level and communication with Ngāti Maru, Ngāti Te Ata, Te Ākitai Waiohua, Waikato-Tainui and Mangatangi and Wharekawa marae.[49]

[66] The evidence revealed that although there were differing opinions between mana whenua involved in the engagement, there was general agreement that there was a preference to see:

(a) pest control focused on eradication rather than ongoing suppression;

[48] Affidavit of Mr Ward, page 29, paragraph [65]
[49] Affidavit of Ms Allies dated 4 September 2018, Pages 30-31, paragraphs [69] – [73]

(b) and a desire to see continued investment and effort at looking at other alternatives to toxins.[50]

[67] Ms Allies' evidence for the Trust Board supported the generally agreed matters above. She also stated:

> ... While there is mixed views around the need for toxins there has also been recognition of the need to ensure our native species are protected using best methods available.[51]

[68] It is apparent from the evidence there was no engagement with the Trust Board by either the Council or DOC before late August 2018[52] because of the conflicting views within the Ngāti Paoa iwi about who had the appropriate mandate to speak on behalf of Ngāti Paoa. As this Court has often said, representational or mandate matters such as this are not matters it can or should determine. It is however clear, mandate issues notwithstanding, that the affidavit evidence provided to us shows that the Trust Board has an ancestral connection with the Kohukohunui[53] and their expectation of consultation regarding the proposal is not without merit.

[69] Ms Allies expanded on the Trust Board's concerns, saying "consultation is important for the mana and respect of our people ... and the specific obligation that the Department of Conservation owed under the Conservation Act".[54]

[70] In terms of cultural effects, Ms Allies said that the Trust Board was particularly concerned that 1080 is proposed to be dropped into a water catchment and food collection area. This is considered by it to be culturally and spiritually offensive and it was contended that it would undermine the mauri or life force of the land.[55] In our view, it is fair to say that the views expressed by Ms Allies for the Trust Board were stronger and more negative than those expressed by other Ngāti Paoa mana whenua during the consultation that had been carried out as described above.

[71] On 4 September, DOC met with members of the Trust Board to discuss the proposal covering, among other things, the lack of consultation and the cultural effects of

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[50] Affidavit of Ms Allies dated 4 September 2018, Page 15-16, paragraph [74],
[51] Affidavit of Ms Allies dated 4 September 2018, Attachments E and F, paragraph [4]
[52] Affidavit of Ms Allies dated 4 September 2018, attachment E and F
[53] First affidavit of Ms Allies, paragraph [2]
[54] Second affidavit Ms Allies, paragraph [15]
[55] Third affidavit Ms Allies

the proposal. We were provided with minutes from that meeting. [56]Counsel for the Trust Board, in response to questions, agreed that the meeting was productive and generally her client was comfortable with the minutes and the outcome of the meeting. However, counsel reiterated that although the meeting went some way in meeting her client's concerns, about how the proposed operation was to be conducted, the Trust Board regarded the meeting as being "notification" rather than "consultation". From our reading of the minutes, other members of the Trust Board appeared to be more satisfied with the explanations given to address their concerns than Ms Allies.

[72] Counsel for DOC submitted that while the operation may be considered culturally and spiritually offensive by some people, that is not a determining factor justifying the making of the orders sought. Ms Wilson's evidence outlined that DOC has supported the Council by engaging with mana whenua and that this engagement specifically regarding the use of aerial 1080 in the operational area commenced in October 2014, prior to the 2015 winter operation. Ms Wilson provided details about the time, date and people present at the various consultation meetings held in 2018.[57]

[73] Having said that, and as a result of the meeting on 4 September 2018, counsel for the Trust Board confirmed there was now an understanding between DOC and the Trust Board that engagement would continue, with the expectation a communication strategy would be developed between them.

[74] Mr Ward's evidence set out the steps taken by the Council when consulting with mana whenua about the proposed operation.[58] Mr Ward explained that the Council was aware of the mandate dispute between the Trust Board and the Iwi Trust, saying that until 3 August 2018 the Iwi Trust was listed as the mandated representative for the purposes of the RMA on Te Puni Kokiri's website – Te Kāhui Mangai.[59] On 3 August 2018, however, the site was amended, replacing the Iwi Trust with the Trust Board. Subsequent enquiries with Te Puni Kokiri on 29 August showed this change had not been authorised, that Te Puni Kokiri would review what had occurred and the Council would be advised of the outcome. Further to this, on 6 September 2018, the Council became aware that Te Kāhui Mangai had listed both the Trust Board and the Iwi Trust as mandated representatives. The Council made further enquiries with Te Puni Kokiri to

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[56] Third affidavit Ms Allies, Attachment D
[57] Affidavit of Ms Wilson affidavit, pages 10-11, paragraphs [26]–[31]
[58] Affidavit of Mr Ward, pages 27-29, paragraphs [134]-[147]
[59] Affidavit of Mr Ward, paragraphs [134]-[147]

understand whether this was an interim or permanent change. At the time of the hearing we heard that the Council had not yet received a reply from Te Puni Kokiri.[60]

[75] Based on the above, we are satisfied that the Council made every endeavour to engage with the correct mana whenua entity for Ngāti Paoa. Mr Ward said that if there is ever a dispute about mandate between mana whenua entities, the Council does not involve itself directly in the resolution of these issues.[61]

[76] It is apparent from the evidence that the Council had met with the Iwi Trust, along with other mana whenua, to inform the 2015 pest control operation on at least six occasions regarding this proposed operation.[62]

[77] We have considered the evidence from all parties regarding consultation with Maori regarding this application. It is apparent mana whenua in the operational area have been and continue to be engaged about the proposed joint operation by the Council and DOC.

[78] As we noted earlier, Ms Wilson deposed that consultation with DOC about aerial 1080 drops in Kohukohunui have been ongoing with mana whenua since 2014. Mr Ward also said that the Council began consulting with mana whenua in October 2017, prior to the application being made for the permission for this proposed operation. For this reason, counsel for the Council submitted that its obligations to consult have been met.

[79] It is unfortunate that, in this instance, the Trust Board has not been engaged in the process leading up to the lodging of this application because of the mandate dispute within Ngāti Paoa iwi. However, the evidence filed satisfies us that both DOC and the Council understood that the Iwi Trust was the mandated representative for the Ngāti Paoa iwi and as identified above, had taken steps to ensure the appropriate mana whenua entities were being engaged. In our view the evidence is clear that the Ngāti Paoa iwi have been engaged through the Iwi Trust on this application.

[80] Accordingly, we are inclined to the view that consultation with mana whenua has been adequate.

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[60] Affidavit of Mr Ward, paragraph [132]
[61] Affidavit of Mr Ward, paragraph [143]
[62] Affidavit of Mr Ward, paragraph [138]

Analysis of Issue 2 - Order 1 - s 314(1)(a)(i) argument

[81] The applicants have applied for an interim enforcement order under s 314(1)(a)(i) of the RMA, which provides:

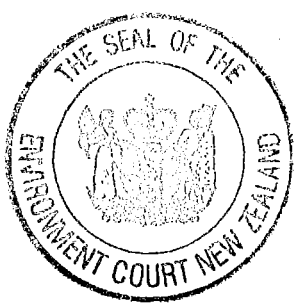
> **314 Scope of enforcement order**
> (1) An enforcement order is an order made under section 319 by the Environment Court that may do any 1 or more of the following:
> (a) require a person to cease, or prohibit a person from commencing, anything done or to be done by or on behalf of that person, that, in the opinion of the court,—
> (i) contravenes or is likely to contravene this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, or a resource consent, section 10 (certain existing uses protected), or section 20A (certain existing lawful activities allowed);

[82] The applicants contend that the proposed drop of 1080 breaches s 13 of the RMA because s 13(1)(d) of the RMA provides that "no person may, in relation to the bed of any lake or river, deposit any substance in, on, or under the bed".

[83] The applicants' case is that the proposed 1080 drop will, or is likely to result in the entry of 1080 into waterways either directly during the aerial drop or as a result of carcasses of animals who have ingested 1080 finding their way into waterways. The applicants argue that, as there is no applicable national environmental standard and no resource consent has been sought or granted, the question is whether the deposit is provided for by a rule in a regional plan.

[84] In accordance with case authority, the burden of proof that a breach has or is likely to occur rests with the applicant for an enforcement order, and it is to be determined on the balance of probabilities having regard to the seriousness of the matter at hand.[63]

[85] It should be noted that in the past, the incidental entry of 1080 into waterways has been dealt with as a discharge under s 15 of the RMA, given that s 15 of the RMA provides that no person may discharge any contaminant into water or onto or into land in circumstances which may result in that contaminant entering water, unless the discharge is expressly allowed by a national environmental standard or other regulation, a rule in a plan (or proposed plan) or a resource consent.



[63] *Christchurch City Council v Ivory* [1994] NZRMA 442; *Marlborough DC v NZ Rail Limited* [1995] NZRMA 357

[86] In 2017, the Resource Management (Exemptions) Regulations 2017 (**the Exemption Regulations**) were promulgated. They have the effect of overruling any s 15 (discharge of contaminants into the environment) matters under the RMA in relation to certain contaminants including 1080 (sodium fluoroacetate), providing certain conditions are met.

[87] Clause 7 provides a specific exemption for the discharge of 1080 if:

(a) the discharge is for the purpose of killing vertebrate pests; and

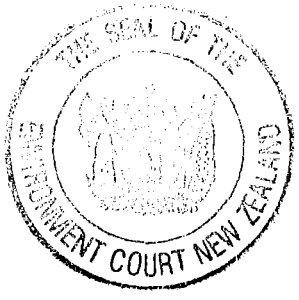
(b) the operator complies with the conditions in Schedule 2.

[88] The conditions to Schedule 2 deal with matters such as notification to the Regional Council prior and after any drops. In this case, the Council and DOC have provided notification *prior* to the drop in accordance with Schedule 2 of the Exemption Regulations, and have committed to comply with the remainder of the conditions outlined in Schedule 2 that are required to occur *after* any drop. There was no challenge by the applicants to this.

[89] If an activity, therefore, satisfies the requirements of the Exemption Regulations, the provisions of the relevant District or Regional Plans become redundant in regard to s 15 matters, as they relate (relevant to this case), to the aerial disposal of 1080.

[90] The Council contends that the incidental discharge of any 1080 into waterways during this proposed drop is caught by s 15 of the RMA (and therefore the Exemption Regulations) and that s 13 does not apply.

[91] The case for the Council and DOC is that the entry of 1080 into waterways is not an activity captured by s 13 of the RMA as it will not be *deposited* in or on or under the bed of a river; and it is not a *substance* under s 13 of the RMA, in accordance with how those words have been interpreted by the High Court in *Brook Valley Community Group Incorporated v Trustees of the Brook Waimarama Sanctuary Trust and Ors*,[64] which, despite being under appeal to the Court of Appeal, they nonetheless submit is binding authority on this Court.



[64] [2017] NZHC 1844

[92] The lawfulness of the Exemption Regulations is not able to be challenged in the context of this application, or indeed in this Court. In fact, the lawfulness of the Exemption Regulations was directly challenged in the *Brook Valley Community Group* case in the High Court, which, although it was dealing with another VTA (brodifacoum), dealt with exactly the same issue of statutory interpretation, namely the interrelationship of s 13 and s 15 of the RMA, and whether authorisations were required under both sections for any proposed VTA drop where there was a risk of the toxin entering water.

Is the Brook Valley Community Group High Court decision binding on this Court?

[93] It should be noted that both counsel for the applicants and counsel for DOC were involved as counsel in the *Brook Valley* decision. That case concerned a proposed drop of brodifacoum to eradicate mammalian pests from approximately 711ha of public land the trustees of the Brook Sanctuary Trust leases from the Nelson City Council, upon which it was developing and operating a wildlife sanctuary. Having initially obtained resource consents for the proposed aerial drop in 2016, the drop was postponed to 2017. The Exemption Regulations then came into force. The Trust relied on compliance with these regulations, a code of practice relevant to the application of brodifacoum (and documents prepared under it) to perform the proposed three separate aerial drops, with a minimum two-week delay between each of them.

[94] The plaintiff challenged the validity of the Exemption Regulations, but also contended that the regulations only applied to s 15, and that s 13 of the RMA applied as well and required an additional (and unobtained) resource consent.

[95] The meaning of 'deposit' and 'substance' in s 13 needed to be interpreted by the High Court. Churchman J adopted the interpretation of 'deposit' and 'substance' in s 13 as they had been interpreted by the Environment Court in *Contact Energy Limited (re an application)*, where it was held that:

> ... having regard to the scheme of the Act,
>
> (a) "deposit any substance", is different from "discharge any contaminant";
>
> (b) "deposit" is a limited subset of "discharge";
>
> (c) "substance" does not include contaminant, so that substances must be benign and usually natural; and
>
> (d) "deposit" involves actions by the depositor because passive non-interference of effects can be addressed by imposing conditions on the active cause (such as dam construction).[65]

[65] *Contact Energy Limited (re an application)*, paragraph [47]

[96] The High Court said: "the starting point for interpreting conditions is to consider what each says in its text and in light of its purpose"[66] and found that the word "deposit" should be read in light of the action-based context to connote direct and physical usage, thereby agreeing with the interpretation adopted by the Environment Court in the *Contact Energy* case.

[97] Again, considering the legislative context, the High Court found that a deposit of a 'substance' excludes contaminants (also agreeing with the interpretation adopted by the Environment Court in the *Contact Energy* decision) and disagreed with the argument by the applicant in that case that interpreting a 'substance' as something benign and not including a contaminant would result in less protection of the river bed. At paragraph [63], the Court said:

> Section 15 operates to cover all discharges of toxic and other contaminants into land, air and water, including places where land and water meet, or where the land discharge may result in a contaminant entering water.

[98] In addition, the High Court was persuaded that the wording of s 13 was not intended by Parliament as a secondary hurdle to resolve resource consents granted under s 15, duplicating the process for a single activity. In this case, Ms Grey contended that this statement by the High Court was incorrect, as the Ministry for the Environment website refers to the possibility of resource consent being required under both ss 13 and 15 if, for example, tyres were deposited into a river.

[99] Ultimately, the High Court found that the interpretation of s 13 put forward by the applicant would "strip s 15 and s 360(1)(h) of the RMA of any meaning, and prohibit the release of any VTAs anywhere near any bodies of water". Churchman J considered that this could not have been Parliament's intention, noting that "the context of each section is sufficiently distinct in s 13 (issues involving physical and direct interference with river beds) and in s 15 (discharge, whether active or passive, of hazardous substances into air, land or water)". He concluded that "any interpretation which overlaps the two would lead to absurd outcomes".[67]

[100] The *Brook Valley* decision was then appealed to the Court of Appeal. We were advised that the hearing has been held of the appeal has been held, however a decision

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[66] *Contact Energy Limited (re an application)*, paragraph [54]
[67] *Contact Energy Limited (re an application)*, paragraph [120]

on it is not expected until October 2018. In the meantime, the Court of Appeal has issued two preliminary decisions; one dealing with an application for stay and interim relief of the High Court decision,[68] and another concerning security for costs.[69]

[101] In this case, Ms Grey sought to rely on the Court of Appeal's observation that the appellant in the *Brook Valley* case, whom she represents, has an arguable case that raises relevant public interest issues. She submitted that these observations added weight to the applicants' application for an interim enforcement order in this Court. The Council and DOC, however, contended that until the Court of Appeal issues its judgment, the decision of the High Court stands, and this Court is bound by it by virtue of Rules 52 and 12 of the Court of Appeal (Civil) Rules 2005.

[102] We agree that the High Court decision is binding on us. We observe that, whilst the Court of Appeal in its first decision (dealing with the application for stay and interim relief) identified that the appeal to it raised issues of interpretation relating to important sections of the RMA, including the relationship between ss 13(1)(d) and 15, it also noted, when making that observation, that it had received no detailed argument about the substantive issues. It noted that the questions of statutory interpretation before it were 'not straightforward', and it could not be said that the appeal had 'no reasonable prospect of success'. However, the Court of Appeal was careful to say that it was unable to express any view on the strengths of the argument because it had not received detail argument on the substantive issues at that stage, and further noted "we go no further than saying that there are, in our view, issues that will be open to argument".[70]

[103] Furthermore, and importantly, the Court of Appeal rejected the appellant's application for a stay of the High Court decision and interim orders preventing the aerial drop, noting that if that relief was not granted, the aerial drop was likely to proceed. The Court of Appeal, however, noted that this did not mean that the proceeding before it would be rendered nugatory. It held, at paragraph [16]:

> We agree with Churchman J's conclusion that the right of appeal and relief sought will have value for the Community Group, even if the current proposed drop proceeded as planned. The proceeding involves a general challenge to the validity of the Regulations. Success will mean that the Trust will not be able to proceed with further action using poisons without obtaining some new form of legal

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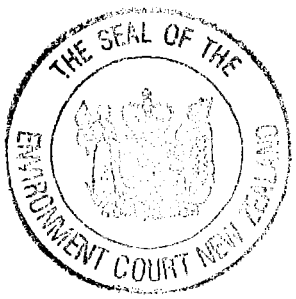
[68] [2017] NZCA 377, 31 August 2017
[69] [2017] NZCA 438, 6 October 2017
[70] [2017] NZCA 377 at [12]



authorisation. It cannot be said, therefore, that the right of appeal will be rendered entirely nugatory should the proposed drop proceed as planned.

[104] In weighing the above matters against the cost to the Sanctuary Trust if the drop was not able to proceed, the Court of Appeal found that the application for a stay and interim orders could have the consequence of improving the appellant's position, rather than merely preserving it.[71] Furthermore, at that point no undertaking as to damages had been provided by the appellant.

[105] The Court of Appeal, in a separate judgment, then dealt with the issue of security for costs, and whilst noting that the case before the Court of Appeal raised relevant public interest issues, noted "it is not possible to say anything meaningful about the prospects of success other than to observe that this Court previously decided the appeal raises arguable issues". Security for costs was awarded, but reduced.

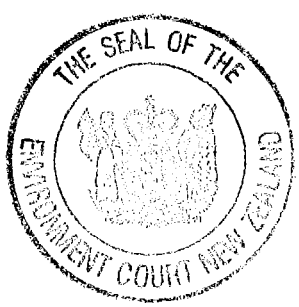
[106] The Court of Appeal decisions do not add weight to the applicants' application for interim orders in this case. The Court of Appeal did no more than indicate that the case for the appellant was arguable, which means arguable either way. Until the judgment of the Court of Appeal is released, the decision of the High Court stands and we are bound by it.

[107] As the High Court decision determines that s 13 does not apply to aerial drops such as this as they are covered by s 15 and permitted under the Exemption Regulations, and we are bound by it, the application for interim orders under s 314(1)(a)(i) in this case must be refused.

Analysis of Issue 3- Order 2 – s 314(1)(a)(ii) – s 319(2) argument

[108] Section 314(1)(a)(ii) of the RMA provides:

> **314 Scope of enforcement order**
>
> (1) An enforcement order is an order made under section 319 by the Environment Court that may do any 1 or more of the following:
>
> (a) require a person to cease, or prohibit a person from commencing, anything done or to be done by or on behalf of that person, that, in the opinion of the court, —
>
> ...
>
> (ii) is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment:



[71] [2017] NZCA 377, at paragraph [17]

[109] The order sought by the applicants is an interim order prohibiting the Council and its agents or employees from either depositing 1080 bait or authorising DOC or any other person to deposit such bait. The grounds for the order are that "the deposit of 1080 in a water catchment that supplies drinking water to the city of Auckland is likely to be noxious, dangerous, offensive and/or objectionable to such an extent that it has or is likely to have an adverse effect on the environment". Accordingly, the scope of the order sought relates to risk of 1080 finding its way into drinking water.

[110] The Council and DOC's position is that s 319(2) of the RMA prevents the Court from making the interim enforcement order that is sought.

[111] Section 319(2), as it is relevant to this case, provides:

> **319 Decision on application**
>
> (1) ...
> (2) Except as provided in subsection (3), the Environment Court must not make an enforcement order under section 314(1)(a)(ii), (b)(ii), (c), (d)(iv), or (da) against a person if—
> (a) that person is acting in accordance with—
> (i) a rule in a plan; or
> (ii) a resource consent; or
> (iii) a designation; and
> (b) the adverse effects in respect of which the order is sought were expressly recognised by the person who approved the plan, or granted the resource consent, or approved the designation, at the time of the approval or granting, as the case may be...

[112] Whilst this was the way in which the case was advanced before us, we are inclined to the view that, because of the way the application for Order 2 is framed, it can only relate to potential discharges to water that might offend s 15 of the RMA, given our findings about the applicability about s 13. The difficulty for the applicants is, therefore, the existence of the Exemption Regulations, which cover any s 15 argument that might arise in relation to the application of 1080. How can it be said that something that is permitted to occur under the Exemption Regulations (subject to conditions) can nonetheless be considered as, or likely to be, "noxious, dangerous, offensive or objectionable to an extent that it has or is likely to have an adverse effect on the environment" if there are conditions in place to meet these potentially adverse effects, and the Council says they will meet them? Rather as Churchman J noted (albeit dealing with ss 13 and 15), if an order can be made under s 314(1)(a)(ii) for a proposed 1080 application where s 15 might be engaged but where the Exemption Regulations (subject to conditions) permit it, this would create a secondary hurdle for an applicant to meet

[113] Section 319(2)(a) does not refer to a regulation. Subsection (2) was inserted into the RMA as from 1 August 2003 by s 83 of the Resource Management Amendment Act

2003 (2003 No 23). As we have outlined above, the Exemption Regulations were promulgated in 2017. Despite the fact that there is no reference in s 319(2) to regulations, the Exemption Regulations in our view would, nevertheless, militate against the making of Interim Order 2 as it is sought, particularly if the conditions deal with any potentially adverse effects.

[114] In the event that we are wrong about this, and that we are required to consider the provisions of the three plans that apply to the proposed operational area (the AUP-OP, the ARC: Air, Land and Water Plan and the Waikato Regional Plan (**WRP**)), we note that the only expert planning evidence we received on this topic was from Mr Allen for the Council. Mr Allen's evidence dealt primarily with the provisions in the AUP-OP, but we were provided with supplementary submissions about the rules of each plan that applied following the hearing.

[115] Based on the plan provisions we have seen, we have no difficulty in concluding that, for the AUP-OP and the ARC: Air, Land and Water Plan the provisions of s 319(2) have been met and therefore the Order 2 as sought could not be granted in relation to the areas covered by them, being the bulk of the operational area as identified in the map attached to this decision as Annexure **2**. The position could be somewhat different for the area of land within the operational area covered by the WRP. This includes the land administered by DOC. Under the WRP, counsel submitted that the activity would be a non-complying one even though this is somewhat artificial because of the existence of the Exemption Regulations in relation to s 15 matters, which underpins the rationale for Order 2. Were we required to consider it, we would then need to look at any potential adverse effects on the environment in accordance with s 314(1)(a)(ii).

[116] We take into account that:

- this is an application for interim orders, and we have concerns about the admissibility of most of the applicant's evidence about the alleged potential adverse effects on the environment;
- there had been extensive rebuttal provided by the Council and DOC and Dr Sinclair from the Public Health Service about the alleged potentially adverse effects on the environment;
- the conditions attached to the permission and the Watercare Plans deal with

identified potentially adverse effects on the environment.

If we were required to consider these matters, we would conclude that the identified potential effects are not likely to be adverse, and are therefore not noxious, dangerous, offensive or objectionable.

[117] For these reasons, we are not satisfied that Interim Order 2 as sought is sufficiently arguable to underpin the need for an interim enforcement order at this time.

Analysis of Issue 4 - Other interim enforcement order requirements (s 320(3))

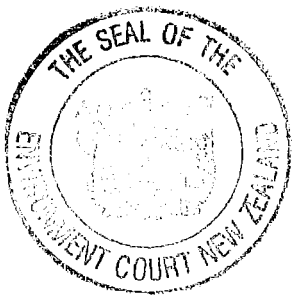
The effects of not making the order (s 320(3)(a) RMA)

[118] This part of s 320 requires us to weigh what the actions that the Council and DOC want to undertake (the 1080 drop) against the applicants' submission that the interim orders should be continued.

[119] We were concerned to understand the importance of the timing of the 1080 drops in relation to the pre-feed drop. This is because the pre-feed went ahead in the knowledge that the pest control operation was being challenged in Court. As Judge Smith observed, it did so, therefore, at its own peril in the event that the interim orders are granted for the longer term.

[120] In fairness to Mr Quinn, on 5 September (the day before the telephone conference before Judge Smith), and in a memorandum, the Council had made it clear that the estimated loss of cancelling the pre-feed activity at that time, because of the booking of the helicopter and the logistical arrangements, was in the order of approximately $60-70,000. At that stage, no undertaking as to damages had been provided, and the rationale given in counsel's memorandum was that the pre-feed drop would have no adverse effects in any event. As well, it was signaled that the programme has tight timeframes as a result of operational requirements, including avoiding the school holidays and taking into account Watercare requirements in relation to the isolation of the public water supply provided by the reservoirs. Counsel's memorandum of 5 September noted that the drops were planned to be completed by the end of October.

[121] Following the telephone conference before Judge Smith, the timeframe required by the Council and DOC and the reasons for it were outlined in Mr Ward's affidavit and



in the supplementary submissions prepared by counsel for the Council.[72]

[122] We accept that there is a need to maximise the uptake of the pre-feed before the 1080 drop so that the target pests are "primed" by the pre-feed. We also accept that the delay between the pre-feed and the 1080 drop cannot be too long, acknowledging that, in these circumstances, the Council would have to consider repeating the pre-feed drop, with additional cost and timing considerations that this would create.

[123] The drop of 1080 is proposed to be completed in two stages as we have outlined above, to allow for two of Watercare's reservoirs to be taken offline during the first drop and to be returned to service after testing is completed. Following the first drop there is a requirement for a four-day delay while the testing is undertaken, followed by two days for the first water supply to return to service. Following that, the second drop can take place.[73]

[124] Bearing in mind weather considerations, and that after the end of October other food is available for the targeted pests (thereby making the 1080 pellets less attractive as a food source), there is also a need, we were told, to link the operational window to the bird breeding season to maximise the return. We accept those matters.

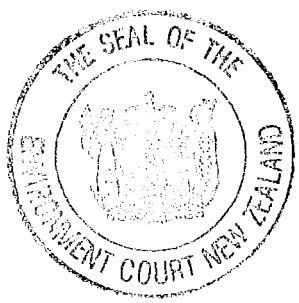
[125] In relation to the reservoirs, we were also advised that Watercare had requested that the operation be undertaken prior to 1 October because of the demand thereafter on water reservoirs. We are not persuaded that this date is an "absolute" in the sense that there could not be some flexibility reasonably built around it. We were provided with no evidence justifying the date nominated by Watercare in an empirical sense.

[126] The Council's preferred timetable, not taking into account the potential weather influences that would avoid the repeat of the pre-feed drop, was:

(a) to undertake the first drop of 1080 on Friday 22 September;

(b) have the return to service initiated Tuesday 25 September;

(c) to undertake the second drop on Thursday 27 September.



[72] Dated 14 September 2018
[73] Memorandum of counsel for the Council ,14 September 2018, paragraphs [5]-[7]

[127] The interim orders we have made may mean that the first drop date (22 September) will not be able to be complied with, but we accept that the conditions that require a drop to be avoided 24 hours before and during the school holidays mean that if both 1080 drops are to occur, the first one would need to be done by 23 September, and the second one done on 30 September so that the start of the school holidays, Monday 1 October through to the return to school on 15 October can be avoided.

[128] All of this means, and we accept, that there is some urgency attached to the Council and DOC's need to get on with the operation to maximise all the benefits and costs of the operation, bearing in mind the variables to which we have referred. We have not mentioned costs, but these were outlined to us as follows:

(a) pre-application planning and boundary confirmation: $28,476;

(b) stage 1 – non-toxic pre-feed across entire operational area: $254,576;

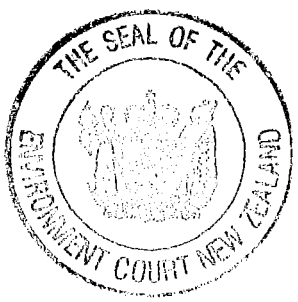
(c) stage 2 – toxic bait application of first treatment block: $288,502;

(d) stage 3 – toxic bait application of second treatment block: $107,675.

[129] The above costs do not include any of the planned ground-based pest control programmes that will also be carried out.

[130] Mr Ward's affidavit also outlined that a significant portion of the stage 2 and stage 3 costs (approximately 50 percent) would still apply even if the operation was stopped in its entirety, as the 1080 has already been purchased by the contractor for the operation. He also noted that these costs do not include animal pest monitoring that has been completed by contractors, and what he referred to as significant staff time in planning and supporting the operational delivery of the programme.[74]

[131] As opposed to the risks to the Council and DOC, as we have outlined above, there is no evidence of a risk of irreparable or serious damage to the applicants or others if the interim orders are not made as the permission granted includes conditions which must be met to protect the health of the public. As we have already outlined compliance with the conditions is required and we cannot assume that they will not be met.



[74] Affidavit of Mr Ward, paragraphs [114]-[118]

Undertakings as to damages (s 320(3)(b) RMA)

[132] As at the outset of the hearing on 13 September 2018, no undertaking as to damages had been provided by the applicants. On the last day of the hearing one was provided, but there were sufficient issues about it to warrant the parties being permitted further time to address them. The Council and DOC filed further submissions on 17 September 2018 addressing this, and the applicants filed further submissions on 18 September.

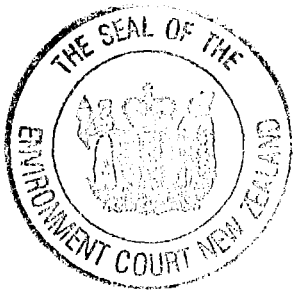
[133] An undertaking as to damages dated 14 September 2018 is provided by Appleseed Environmental Defence Society Incorporated (**Appleseed**) and it is signed by Mr Hilton (also a deponent in this case for The Friends of Sherwood and a trustee of it) as its duly authorised agent. The undertaking as to damages provides:

> **Appleseed Environmental Defence Society Incorporated**, hereby undertakes that if, by reason of the making of the Orders sought in its application dated 5 September 2018, the First Respondent sustains damages which, in the opinion of the Court, the First or Second Applicant ought to pay, **Appleseed Environmental Defence Society Incorporated** undertakes to indemnify the First and Second Applicant with respect to any Order which the Court may make in respect of those damages.

[134] No information was provided to the Court about the status of Appleseed when the undertaking was tendered to the Court.

[135] Mr Quinn addressed the undertaking in his submissions of 17 September. He provided, as an annexure to his submission, the financial statement for Appleseed (filed 14 November 2017) as it appears on the company's office website, which records the income, outgoing expenses, balance in the bank, balance in cash, assets and liabilities as nil. The financial statement is said to have been submitted to and approved by the members of Appleseed at a general meeting held on 6 July 2017. This certification was signed by Ms Lane, the secretary for Appleseed.

[136] Mr Quinn also attached the rules of Appleseed, which by virtue of clause 14(iii) provide that Appleseed may only use money and other assets if the use has been approved by either the Management Committee or by a majority vote of the society. He submitted that there is no indication in the undertaking that the required approvals have been given.



[137] Ms Grey's submissions in reply observed that the annual financial statement dated 31 March 2017 for Appleseed was almost 18 months old. She recorded her

instructions that "this does not reflect the current resources of Appleseed", however she did not provide any further information to support this contention.

[138] Another undertaking as to damages was filed by the applicants and is dated 18 September 2018. This was provided by Sandra Jane Condon of Kumeu. It provides an undertaking to "comply with any order that the Court may make for the payment of damages to the extent of $50,000 that the applicants may sustain through the granting of the interim orders sought by the applicants". Again, however, no information was provided to support the undertaking to enable the Court to establish how much it could rely on it.

[139] Both Mr Quinn and Ms Lenihan for DOC submitted that the undertaking as to damages provided by Appleseed is not "appropriate" in terms of s 320(3)(b) of the RMA, particularly when it is borne in mind that the total project cost to the Council was outlined by Mr Ward in his affidavit as amounting to $679,229 with up to half of this cost already being incurred. Neither counsel had the opportunity to comment on Ms Condon's undertaking, however their submissions are likely to be similar to those they made in relation to Appleseed.

[140] Neither undertaking as to damages can, in light of the above, be considered appropriate. We are not satisfied that an appropriate undertaking as to damages has been provided by the applicants for the reasons we have expressed. This is a highly relevant matter in relation to the exercise of our discretion.

Whether the parties should be heard (s 320(3)(c) RMA)

[141] The applicants, the Council, DOC and Watercare have had the opportunity to provide evidence and to file submissions to assist the Court in making its decision. As well, the Auckland Regional Public Health Service appeared at the hearing to support the affidavit filed by Dr Sinclair. All parties, therefore, have had an opportunity to be heard.

Other matters (s 320(3)(d) RMA)

[142] Section 320(3)(d) enables any other matters to be considered as are thought to be fit. We include "consultation with others apart from mana whenua" as a topic under this heading.

[143] Mr Ward's affidavit set out the communications, notification and engagement that had been undertaken with adjoining landowners and the general public. He deposed that this had been heavily guided by both the Environmental Risk Management Authority's "Communications Guideline for Aerial 1080 Operations" and the conditions placed on the Council by the Auckland Regional Public Health Service.[75]

[144] A communication log was attached to Mr Ward's affidavit[76] and it reveals that email or letter correspondence was sent to adjoining landowners on seven occasions between 9 February 2018 and 6 August 2018, with one being sent to all properties within 3 kilometres of the operational boundary on one additional occasion (27 July 2018); two letters being sent to hunters on the 2018 pest control operation; and email to Betts Medical (we infer) entities; schools and early childcare centres, horse riding permit holders, concessionaires/permit holders/clubs/park users obtained from the Council's 2018 list, with the latter four entities receiving between 3 and 4 communications about the 2018 project.

[145] The details about the communications were outlined in Mr Ward's affidavit in paragraphs [82] to [84].

[146] As well, landowner communications have been followed up with face-to-face meetings where requested, phone calls, project updates by email, the provision of fact sheets specific to adjoining properties, and maps showing the proposed operational area. Muzzles and emetics for dogs have been offered to dog owners, with staff made available to deliver and assist in fitting these where requested.[77]

[147] Where the Council or DOC has had no response from landowners, efforts have been made to contact them by visiting properties, leaving information at the address and other approaches have been taken including approaching real estate agents for one property on the market and also the accountants filing returns for another property.[78]

[148] The Council has:

- placed public notices in four local papers, which are being repeated prior to the

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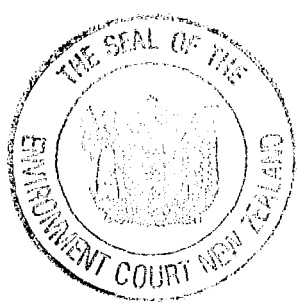
[75] Affidavit of Mr Ward, paragraph [81]
[76] Agreed bundle of documents, Attachment G, page 179
[77] Affidavit of Mr Ward, paragraph [85]
[78] Affidavit of Mr Ward, paragraph [86]

application of the toxic bait;

- provided email and letter updates to a large number of stakeholders, which have included the following groups:
    - the general public who are on the 2015 operation stakeholder database or who have been asked to be added for the 2018 operation;
    - schools and early childcare centres close to the operational area that are known to use the parkland;
    - local vets and veterinary clinics;
    - medical centres as required by the Auckland Regional Public Health Service;
    - all regional park horse-riding and pig-hunting permit holders;
    - concessionaires and research permit holders;
    - recreational clubs and groups known to use the park; and
    - NZ Police.[79]

[149] Mr Ward deposed that the databases include over 1800 email addresses.[80]

[150] As a result of the consultation, Mr Ward deposed that the initial operational area was adjusted to include private land where requested; increased setbacks where issues with livestock fencing was identified and excluded areas surrounding domestic watertakes. As well, a precautionary setback of 200 metres has also been applied to all residential dwellings (greater than 150m set out in the Assessing Applications for VTA Guidelines by the Ministry of Health).[81]



[79] Affidavit of Mr Ward, paragraph [88]
[80] At paragraph [89]
[81] At paragraph [90]

[151] As well, mitigation strategies for domestic water takes have been agreed with landowners. All extraction points are excluded from the treatment area whether requested by the landowner or not. Water is being supplied to two properties at their request, and monitoring will be carried out for those properties that have requested it.[82] As a result of mana whenua engagement on the 2015 operation, the cultural Awa monitoring programme was developed for the purpose of recognising significant waterbodies flowing from the Hunua ranges. A number of culturally significant streams will be monitored after the 2018 1080 drop, despite not being linked to a domestic water supply. During the 2015 operation, drinking water supplies were offered to be made available at Wharekawa Marae to any members of the community who wanted an alternate supply of water, but were not already subject to any specific mitigation. This was not taken up by any party in 2015 and so has not been offered for the 2018 operation.[83]

[152] As identified above, a setback has been applied to the full length of the Mangatawhiri and Mangatangi Rivers inside the operational area.

[153] As well, Mr Quinn's submissions of 17 September with reference to the map (Annexure 2 to this decision) identified that the area in yellow includes the private property adjacent to the proposed aerial operational area. He submitted that the map shows the cadastral boundaries of these properties, and he identified that 108 of them adjoin the park and reserve land or directly abut private land included in the operation. Mr Quinn advised that the Council has engaged with the owner/occupiers of those 108 properties. He also advised that there are 1,539 ratable properties within three kilometres of the operational area, all of which were sent information about the programme and provided with the option of subscribing to regular updates from the Council. It was requested that they make contact with the Council if they had a water source used for human drinking purposes drawn from a water source originating from the operational area.

[154] We have already referred to the difficulties we have had with "drawing a line in the sand" and not allowing the process to simply become an iterative one. We acknowledge that the very nature of 1080 means that there needs to be absolute compliance with the conditions, and this is what the Council have assured us will occur.

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[82] At paragraph [95]
[83] At paragraph [96]

The Public Health Service and Watercare will be monitoring and overseeing compliance with their requirements.

[155] We are satisfied that there has been an extensive consultation programme undertaken by the Council and DOC to engage with those people who have the potential to be adversely affected by the proposed operation.

Apparent breaches of other legal obligations

[156] The applicants submitted that there were apparent breaches of s 69U of the Health Act 1956, breaches of the Agricultural Compounds and Veterinary Medicines Act 1997 and also the Wildlife Act 1953.

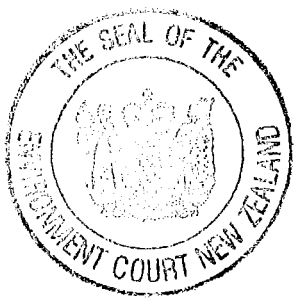
[157] It was not clear to us how or where we were being invited to take these matters into account, even if we had the jurisdiction to determine them. The reality is that we do not have the jurisdiction to determine these allegations, with the result that they cannot be taken into account by us, even if they were able to be established.

Discretion of the Court and result

[158] We are not persuaded that there is likely to be serious harm to the environment if the proposed application proceeds. On balance, for the reasons expressed above we consider that the overall justice of the case favours the interim order not being continued.

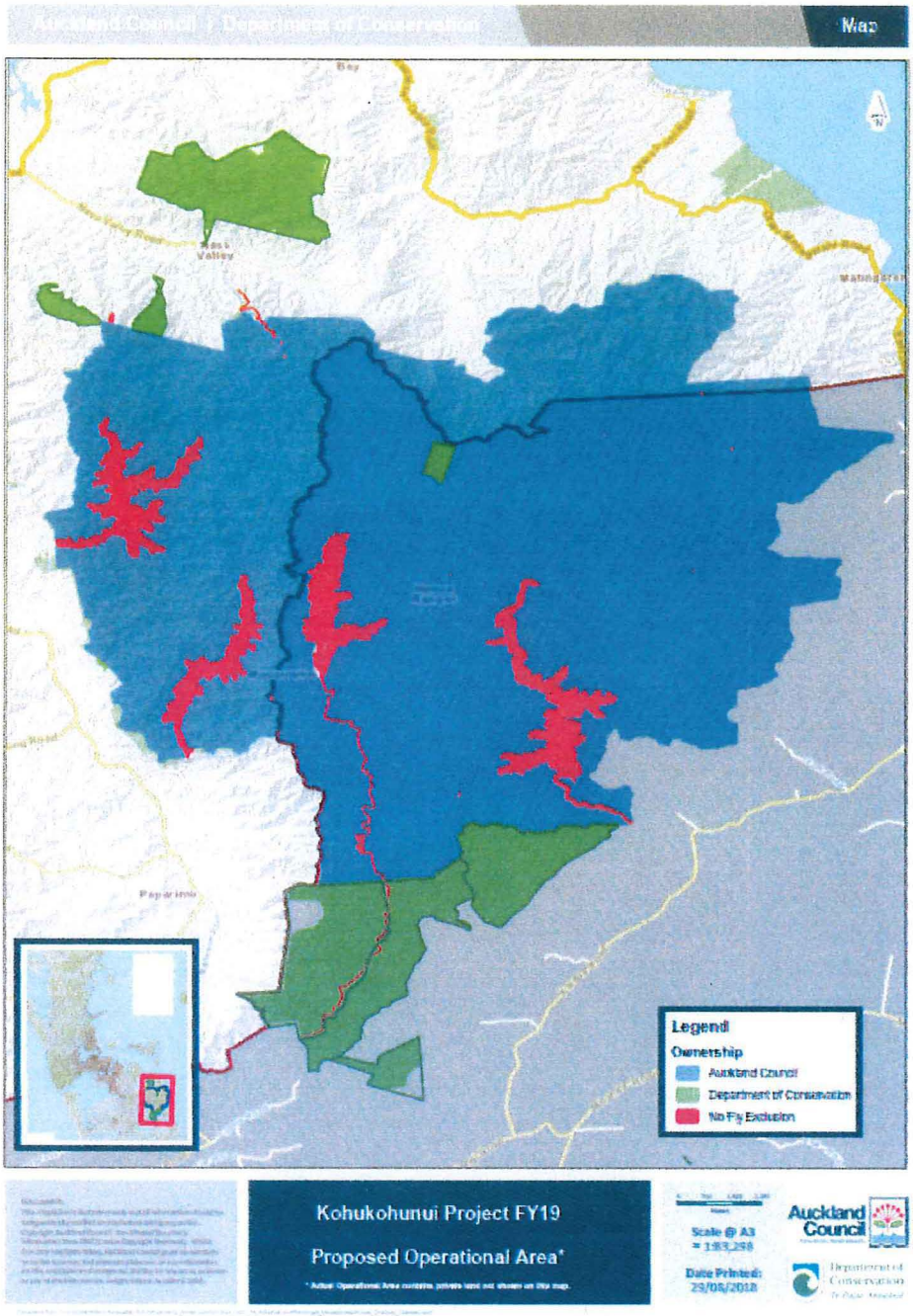
[159] We do, however, consider that some time should be allowed to enable the applicants to further consider their options. For this reason, we determine that the current interim order will expire at 5.00pm on 21 September 2018.

For the Court



M Harland
Environment Judge

Exhibit A – Kohukohunui Project FY19: Proposed Operational Area



This is the document marked 'A' referred to in the annexed affidavit of Brad James Allen sworn at Auckland this 11th day of September 2018 before me:

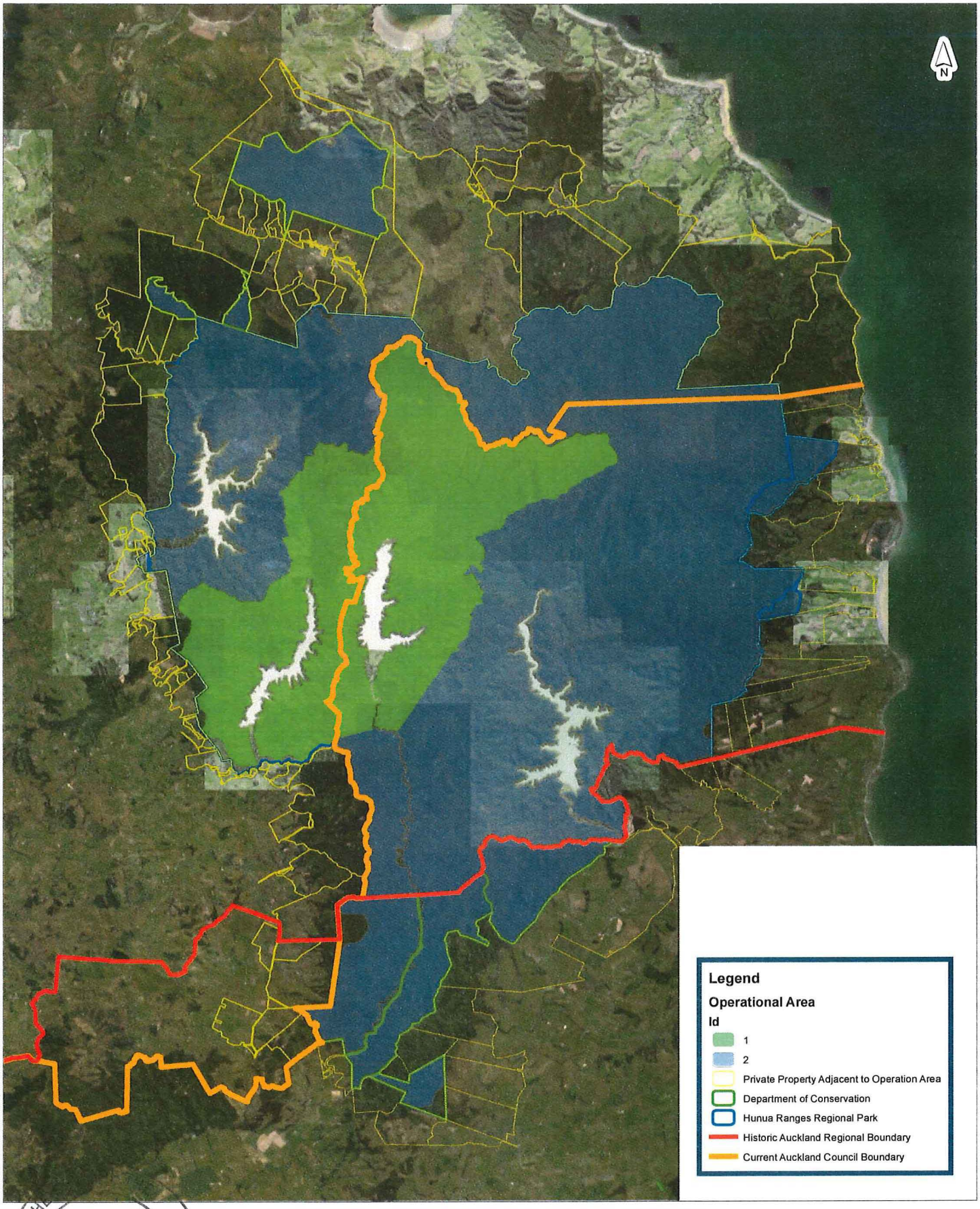
A Solicitor of the High Court of New Zealand

Edward Fox
Solicitor
Auckland

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Auckland Council | Department of Conservation

Map



Kohukohunui Project FY19

Indicative Aerial Operational Area*

* The aerial operational area includes private land not displayed.

Scale @ A3
= 1:87,445

Date Printed:
14/09/2018

Auckland Council

Department of Conservation
Te Papa Atawhai