BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE NORTHLAND REGIONAL COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of applications by the Far North District Council for resource consents associated with the operation of the East Coast Bays Wastewater Treatment Plant

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SUBMISSIONS OF COUNSEL FOR THE APPLICANT – FAR NORTH DISTRICT COUNCIL

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24 JUNE 2019

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SUBMISSIONS OF COUNSEL FOR THE APPPLICANT – FAR NORTH DISTRICT COUNCIL

Introduction

1. These applications concern the ongoing operation of the Taipa wastewater treatment plant by the Far North District Council. The current infrastructure to which the applications relate are treatment ponds, screening, a wetland system and a discharge point into a farm drain. The farm drain then captures farm effluent and discharges into the Parapara stream. The treated effluent ultimately discharges into the Awapoko river and the coast. The scheme has been in operation for several decades and, over that time, the volumes and conditions of operation have altered as the area has become more populated, both in terms of permanent residents and summer/holiday season residents.

Issues for determination

2. At a broad level, I submit that the principal macro issues for determination are:

    a. What is the existing environment (including farm operations)?
    b. What are the effects of the activity on the receiving environment?
    c. Whether the applications meet the necessary statutory requirements under the Act (ss104, 105 and 107);
    d. Whether applications meet the necessary requirements of the following planning instruments:
        i. National Policy for Freshwater Management 2014;
        ii. Northland Regional Policy Statement;
        iii. Northland Regional Water and Soil Plan;
        iv. Northland Regional Air Quality Plan; and
        v. Proposed Northland Regional Plan.

3. However, I submit that the key issues which will be determinative of the outcome of the applications are:

    a. The adverse cultural effects of the applications and whether these can be mitigated;
    b. The ongoing need for a system which treats effluent for the Tapia area;

c. The affordability constraints for alternative options to the current one;
d. The timing of any improvement or development of an alternative system which has lesser adverse effects (and, therefore, the duration of the consents to be granted).

Evidence

4. The applicant has 4 witnesses to present evidence in support of the application:
    a. Tim Hegarty for planning issues (expert);
    b. Becky MacDonald for wastewater engineering issues (expert);
    c. Dr Jamie Mackay for ecology issues (expert); and
    d. Barry Somers, Assets Manager at FNDC (part factual and part-expert).

5. The witnesses will address the lengthy factual background to the current applications (including extensive consultation), the current adverse effects of the wastewater treatment plant, the planning framework, the process required for the consideration of alternative systems and funding constraints on these, and conditions which are considered to be appropriate if consents are granted.

Specific legal considerations

6. I turn now to consider the specific legal considerations which I believe are relevant in this case, over and above the extensive consideration of the issues addressed in expert evidence.

7. Key to the applications is section 107 of the Act: **attached**-which prohibits discharges of contaminants into water or land which will end up in water if the discharge results in specified adverse effects on the receiving water. In this case, that would be contaminants from the treatment system which end up in the rivers and the coastal environment.

8. However, there is a proviso to that provision in s107(2) which allows a consent authority to grant a discharge permit if (inter alia) there are "*exceptional circumstances*" which justify the granting of the permit.

9. In this case, there are "*exceptional circumstances*" which are at play which enable consent to be granted, subject to conditions. These include:

    a. The need to continue to treat effluent for the Taipa catchment area;
    b. The affordability of alternative "better" options;
    c. The length of time required to consider the alternative options;
    d. The uncertainty of being able to secure funding for alternative options.

10. I refer to the case of *Paokahu Trust v Gisborne District Council* (RMA 1240/99, 2003) **attached**. This was a case where treated wastewater was being discharged on to the sea by submarine outfall pipe. It was considered to be culturally offensive to local tangata whenua who appealed the granting of consents for the continuation of the discharge. Similar to the current applications, the system had been in operation since the 1960s. Also similar to the present applications were the lengthy (decades) but inconclusive deliberations by Council regarding alternative options.[1]

11. On a parallel with the current application, the focus of the case in *Paokahu* was on the effect of the discharge on tikanga Maori and the application of s107. The Court considered the evidence of tangata whenua and found that there were significant adverse cultural effects of the discharge on the tikanga of collecting kaimoana and protection of taonga of the appellants.[2] The Court found that:

    "[40] We have found that the discharge of municipal wastewater, as it currently occurs, violates Maori tikanga and that this is a major adverse effect on the cultural and spiritual sensitivities of the tangata whenua."

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[1] Paras 7-9 and 10: refer
[2] Paras 27-28: refer

12. The Court also called into question the length of time the Council had been deliberating alternatives without conclusion.[3]

13. However, the Court also found that:

> *"[48] We accept, that in the short term, Gisborne City would face insurmountable difficulties by reason of not being able to dispose of its sewage. The associated social, economic and health effects alone are beyond comprehension. On balance we have no alternative but to dismiss the appeal in the exercise of our discretion.* [...]"

14. The Court ultimately determined that, after reasonable mixing, the discharge would give rise to adverse effects and that Council would continue to be in breach of s107 for a number of years. However, it held that *"exceptional circumstances"* existed which persuaded it to grant consent. At para [77], it held that:

> *"Exceptional circumstances connoted something out of the ordinary. The consequences of a coastal permit to discharge being refused, would mean that the City would be unable to legally use its sewerage and wastewater system. The likely social, economic and health related affects* [sic] *have already been referred to. Notwithstanding the tardiness of the Council to address a problem which has been extant for many years, we are compelled to grant consent* [...]".

15. I submit that this case is directly relevant and applicable to the present applications and that consent should be granted subject to conditions. The appropriate conditions are outlined in Council's evidence.

Dated 24 June 2019

J S Baguley

Counsel for the applicant

[3] Para 42.

New Zealand Legislation

Resource Management Act 1991

- not the latest version

107 Restriction on grant of certain discharge permits

(1) Except as provided in subsection (2), a consent authority shall not grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A allowing—

(a) the discharge of a contaminant or water into water; or

(b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or

(ba) the dumping in the coastal marine area from any ship, aircraft, or offshore installation of any waste or other matter that is a contaminant,—

if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:

(c) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:

(d) any conspicuous change in the colour or visual clarity:

(e) any emission of objectionable odour:

(f) the rendering of fresh water unsuitable for consumption by farm animals:

(g) any significant adverse effects on aquatic life.

(2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied—

(a) that exceptional circumstances justify the granting of the permit; or

(b) that the discharge is of a temporary nature; or

(c) that the discharge is associated with necessary maintenance work—

and that it is consistent with the purpose of this Act to do so.

(3) In addition to any other conditions imposed under this Act, a discharge permit or coastal permit may include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure that upon the expiry of the permit the holder can meet the requirements of subsection (1) and of any relevant regional rules.

Section 107(1): amended, on 20 August 1998, by section 14(2) of the Resource Management Amendment Act 1994 (1994 No 105).
Section 107(1): amended, on 7 July 1993, by section 57(1) of the Resource Management Amendment Act 1993 (1993 No 65).
Section 107(1)(b): replaced, on 20 August 1998, by section 14(1) of the Resource Management Amendment Act 1994 (1994 No 105).
Section 107(1)(ba): inserted, on 20 August 1998, by section 14(1) of the Resource Management Amendment Act 1994 (1994 No 105).
Section 107(2): replaced, on 17 December 1997, by section 23(1) of the Resource Management Amendment Act 1997 (1997 No 104).
Section 107(2): amended, on 20 August 1998, by section 14(2) of the Resource Management Amendment Act 1994 (1994 No 105).
Section 107(3): replaced, on 7 July 1993, by section 57(4) of the Resource Management Amendment Act 1993 (1993 No 65).

PAOKAHU TRUST v GISBORNE DISTRICT COUNCIL — BC200368001

New Zealand Unreported Judgments · 81 Paragraphs

New Zealand Environment Court

RMA 1240/99

9–11, 18 June, 19 September 2003

Environment Judge R G Whiting (presiding), Environment Commissioner K Prime and Environment Commissioner H A McConachy

Environment Judge R G Whiting.

Introduction

[1] Since 1964 the Gisborne City municipal wastewater has been discharged into Poverty Bay by way of a submarine outfall pipe. The Gisborne District Council applied for, and was granted, three coastal permits to enable the continued use of the existing wastewater outfall. The appellants, who are representative bodies of tangata whenua, have appealed the grant of the consents and seek that the consents be refused. They oppose the granting of the consents because, they argue, the consents are inconsistent with sustainable management and with ss 5, 6(e), 7(a) and 8 of the Resource Management Act 1993. They also rely on the provisions of s 107 of the Act.

[2] Underlying the appellants' case is, that the outfall discharge is an affront to, and desecration of, their cultural values as tangata whenua. Specifically, the discharge of human waste to the coastal marine area is fundamentally inconsistent with tikanga Maori.

Background

[3] The ocean outfall off Waikanae Beach was constructed in 1964. Since then, the outfall has continuously discharged Gisborne City's domestic and industrial wastewater and solids. Since late 1990, the wastewater has received primary treatment by a milliscreening arrangement at the discharge station, located close to Midway Beach, prior to passage through the outfall pipe.

[4] The treated wastewater is conveyed through a 1.7 kilometre seafloor pipeline, to a 180 metre long offshore diffuser containing 22 ports or circular holes of 140mm diameter. At present, the discharge occurs through the first 11 ports, because the remaining seaward ports are blocked internally by a build-up of sand and wastewater grit. This means the discharge presently occurs between 1.6 and 1.7 kilometres offshore, with the most seaward port discharging at a depth of 15.9 metres below the mean level of the sea. The larger end port at the terminus of the diffuser has been closed off.[1]

[5] Originally, we were told, the outfall acquired existing rights status under the provisions of the Water and Soil Conservation Act 1967, but that particular status changed with the preliminary classification of the Poverty Bay coastal waters in 1989 and subsequent appeals, coupled with the passage of the *Resource Management Act 1991* into law.

[6] As a consequence of the classification process the existing right was allowed to continue on condition that an application for a new right was made prior to 30 September 1991. An application was made to discharge through the outfall prior to that date. A hearing on the application took place in 1993. The Committee's decision and recommendation was dated November 1993.

[7] The Committee recommended granting the discharge consent in November 1993 until 31 December 1999, with approval from the Minister of Conservation being granted, subsequent to the withdrawal of an appeal, in November 1996. We note from the Committee's decision in 1993, that the Committee believed that s 107(1) of the Act, relating to restrictions on the grant of certain discharge permits and the water classification standards, were not being met because, from time to time, there was a conspicuous change in colour of the receiving waters beyond the area required for *"reasonable mixing"*. The Council at that time, faced with submitters concerned with the adverse effects

of the discharge on the receiving waters and cultural sensitivity, expressed its intention to improve the situation. Submissions requested a limited term and a commitment from the Council to land based disposal.

[8] We also note, that at that earlier time the Committee agreed that *"exceptional circumstances"* did exist in terms of ss 107(2)(a) and 369(4)(a) of the Resource Management Act. The Committee expressed the view, that the duration of the consent, which the Committee recommended (until 31 December 1999), was in order to allow time for the Council to carry out evaluation, consultation with the community and implementation of all decisions necessary for the adoption and implementation of a long-term wastewater disposal scheme. That did not occur.

[9] Consequently in 1999 the respondent made the application, which is presently under appeal, to again continue exercising those existing consents for a further 7 years. On 30 November 1999, the Hearings Committee granted consent, but for a reduced term of 4 years. The 1999 decision acknowledged the criticism that the respondent was in 1999 *"seeking a further similar period for similar reasons it had advanced in 1993 for seeking consent through to the end of 1999"*. The Commissioners found that criticism had a basis in that *"the evidence to the Commissioners was somewhat 'light' on alternatives being considered by the Council in pursuing any longer-term strategy of a land based disposal system"*. The decision concluded that *"there is justification to grant the consents sought by a limited term of 4 years on the basis of section 107(2)(b) that the discharge is of a temporary nature"*.

[10] The appellants appealed the 1999 decision. The appeal has taken over three years to reach a substantive hearing. This has been due mainly to the requests by the Council to adjourn the proceedings to enable the Council to put in place a "wastewater strategy". As a consequence the Council approved a "wastewater strategy" in April 2002 and applied for a suite of consents on 15 May 2003, to enable effect to be given to that strategy. As we understand the position, the consents sought by the Council to give effect to the strategy seek the continuation of the present discharge through the marine outfall for a period of up to 35 years, but with a gradual increase in the primary treatment of the effluent.

[11] The proposed strategy is unacceptable to the tangata whenua representatives. Effectively, what has been occurring for the last 13 years, will continue without any improvement (not even treatment) until at least 2010. Significantly to tangata whenua there is no place in the strategy for "to land" disposal. The strategy deals with treatment of wastewater. Treatment is not a matter that addresses tangata whenua concerns. The issue is discharge of raw sewage to the coastal marine area. They argue that it is the discharge that severs the s 6(e) relationship of tangata whenua with the moana (sea) and kaimoana (seafood).

[12] Hence, the appellants seek the cancellation of the consents granted by the Hearings Committee on 30 November 1999. The Council on the other hand not only seeks confirmation of the resource consents granted on 30 November 1999, but an extension of the term of 4 years, which is almost expired, to enable them to put into effect their "wastewater strategy".

The consents

[13] Three applications are sought by the Council. They are for the discharge of municipal wastewater, the occupation of land of the Crown and consent to a structure in the coastal marine area.

[14] More particularly the applications are described as follows:

(i) Coastal Permit 199007

> To discharge up to 103,680m^3 of municipal wastewater per day at a maximum rate of 1,200 litres per second, 24 hours a day, 7 days a week, and 52 week per year to the coastal marine area. This is an application for a coastal permit under ss 12, 15 and 87 of the *Resource Management Act 1991*. The application is a non-complying activity and a restricted coastal activity in terms of the Transitional Regional Coastal Plan for the Gisborne District and a discretionary activity in terms of the Proposed Regional Coastal Environment Plan for the Gisborne District unless the Council relies on s 107(2)(a) of the Act in which case it becomes a restricted coastal activity.[2]

(ii) Coastal Permit CP 199008

> To occupy land of the Crown in the coastal marine area. This is an application for a coastal permit

under ss 12 and 87 of the Act. The application is for a non-complying activity in terms of the Transitional Regional Coastal Plan and a discretionary activity In terms of the Proposed Regional Coastal Environment Plan.

(iii) Coastal Permit CP 199009

For a structure in the coastal marine area. This is an application for a coastal permit under ss 12 and 87 of the *Resource Management Act 1991*. It represents a non-complying activity in terms of the transitional plan and a discretionary activity in terms of the proposed plan.

[15] For convenience, a summary of the consents sought and their agreed status is set out in the following table, taken from the submissions of counsel for the Council.

SUMMARY OF APPLICATIONS

Activity	Plan Provision	Status	Description	Result
Discharge	Transitional Coastal Plan	Non-Complying (default under 5.15)	Restricted Coastal Activity	Court has power to hear and recommend to Minister
Structure	Transitional Coastal Plan	Non-Complying (default under s 12)		Court has power to hear and decide
Occupation	Transitional Coastal Plan	Non-Complying (default under s 12)		Court has power to hear and decide
Discharge	Proposed Regional Coastal Environment Plan	Discretionary (Rule 4.5.7(G)		Court has power to hear and decide
Structure	Proposed Regional Coastal Environment Plan	Discretionary (Rule 4.5.6U)		Court has power to hear and decide
Occupation	Proposed Regional Coastal Environment Plan	Discretionary (Rule 4.5.8E)		Court has power to hear and decide

Basis for decision and scope of hearing

[16] We are required to identify and then have regard to the relevant matters set out in s 104. These are:

(i) Part II matters — section 104(1) of the Act;

(ii) Any actual and potential effects — section 104(1)(a) of the Act;

(iii) New Zealand Coastal Policy Statement and the Gisborne Regional Policy Statement — section 104(1)(b) of the Act; and

(iv) The Transitional Coastal Plan for the Gisborne District and the Proposed Regional Coastal Environment Plan for the Gisborne District section 104(1)(d) of the Act.

[17] Having identified and considered the relevant s 104 matters we are then required to consider the two threshold tests of s 105(2A) of the Act. Finally, we are required to evaluate the evidence in relation to the provisions of ss 107 and 119(6) of the Act.

[18] It was apparent, both from the evidence and from Council's submissions, that the focus of the hearing was on two matters:

(i) The effect of the discharge on tikanga Maori; and

(ii) Compliance with the water quality standards set out in section 107 of the Act, particularly section 107(1)(c) and (d).

[19] This narrow focus was a direct result of the parties refining the issues and thus reducing the scope of the hearing. We are grateful to the parties for that. We accordingly do not propose to address other matters, such as ecological and health effects, on which no issue was taken.

[20] We therefore propose to address within the statutory framework:

(i) The effect of the discharge on Maori and their culture; and

(ii) Secondly, the application of s 107.

Maori cultural issues

The evidence

[21] We heard from a number of eminent and respected Maori witnesses, including kaumatua, who addressed the effects of the discharge on tikanga Maori. Mr William Te Aho, a shareholder in both Paokahu and Kopututea Trusts, cited a whakatauki (proverb) which encapsulates the concern of tangata whenua:

Toitu Te Marae A Tane,

Toitu Te Marae A Tangaroa,

Toitu Te Iwi.

If the domain of Tane (forests and life within) survives and prospers,

If the domain of Tangaroa (moan a and life within) survives and prospers,

Then so too will the people.

[22] Mr Te Aho explained the meaning of the whakatauki to the tangata whenua. The first meaning is the interconnectedness between the forests, the moana and people because of shared genealogy. The second meaning is that what happens to one affects the other. If the moana and the life within it are not treated properly, then that equally affects the people both physically and spiritually .

[23] Mr Rapiata Darcey Ria gave evidence as a kaumatua on behalf of the appellants. He described in some deta the ancestry of the iwi of Turanganui a Kiwa and explained how and why the people, the moana and the land are all bound together in the korero and whakapapa. He emphasised, that the role of kaitiakitanga rests with the descendants of the Horouta waka, namely Te Aitanga a Mahaki, Rongowhakaata and Ngai Tamanuhiri. He lamented the eroding of that kaitiakitanga role of tangata whenua as a result of the sewerage pollution. He told us, his people have lived in the area for over 700 years and how the sea is a taonga and how the moana is part of the people.

[24] Mr Ria then explained the tikanga about the moana and said:

I remember when they put the pipe out into the water, it concerns me that all the rubbish and waste goes through that pipeline into our sea. Even the wastewater from the hospital and *te taha wahine* (the women side of things). To me the wastes going out there is like we are *takahi ki runga i to tatou moana* (trampling on the sea). You know, the sea *i heke mai i a Io* (came down from God). It is a taonga.

With the building up of Gisborne there are more people and all their waste goes out that pipe to the sea. It goes into the rivers too sometimes. The waste from the factories goes out that pipe too. All wastes are going out and polluting our

ancestor Tangaroa and his offsprings. Our kaitiaki such as ruamano and waahi tapu are now desecrated through these things.

No kai is acceptable to eat now, no matter what reports we get. The pollution mixed with the sea is called waimate. Our moana has lost its mauri, and may cause harm to us the people and the local environment.

Now the pipi and the fish have almost disappeared. Even if they were there, you can't take them because of the paru in the sea. You wouldn't want to. It doesn't matter how much they treat the sewerage, it is wrong to put body wastes in the sea. It is trampling on our tikanga. We have lost our right to protect our resources; we have also lost the rights to define our own interaction with our traditional places and the special places of spirits and our tribal history.[3]

[25] Mr Eric John Tupai Ruru, a trustee of both the Paokahu and Kopututea Trusts, had this to say:

There is no question that, as Gisborne has grown, so too have the sources of pollution into our waters. The degradation to our rivers and waters is tragic. There is no offence so great as adding human sewerage to the debri already going into the rivers and the bay. Not only does it add to the pollution and degradation but it cuts across everything that we believe in and everything that forms an important part of our own position on earth.[4]

[26] The wider implications and impact on tangata whemia was explained by Ms Dreena Hawea who said:

The wider implications of the sewerage outfall are that even as iwi we can no longer manaaki manuhiri (care for our guests) as we once could. When people come to our marae they do have an expectation that kaimoana will be a major part of the menu (eg pipi, cockles, kina, paua, crayfish, fish), because we are from the coasts, it is what we are renowned for.

Commercial avenues are the perceived new ways of getting kaimoana on the menu. It is not right to do that for maintaining the mana of our iwi.

The human effluent issue is one of absolute abhorrence to me. Because of the degradation of tikanga. The mixing of the human waste with the waters creates contaminations according to our tikanga.

Our kaumatua perspective has been one of consistent opposition to this type of strategy as the issues are wider than those being pushed in the past and currently. For example, it is not just human sewerage, its also mortuary waste, hospital waste, industrial waste and human waste.

The practice of our people and our tikanga has always been for these waste products to remain isolated on the land. The reason for this is quite simple: the whenua (land) is the source of purification of these bi-products, not the sea. The moana (sea) is not the right place.

The cultural cost to us as the people is further alienation from our "pataka" (store of wellbeing).[5]

[27] We find that the appellants uncontroverted evidence is, that the coastal marine area, including kaimoana, is a taonga of the tangata whenua. The appellants' evidence demonstrates that there are significant adverse effects arising out of the proposal. It focuses on the profound adverse effects of the discharge on tikanga Maori, on the taonga, and on the tangata whenua and their relationship with those taonga, according to their tikanga.

[28] We accept that Maori culture and tikanga requires an absolute separation of human waste from both the moana and the "kapata kai" (the traditional food "cupboard"). The discharge of human waste to the coastal marine area is fundamentally inconsistent with tikanga Maori.

[29] The respondent's evidence does not contradict the evidence given by the Maori witnesses. The evidence of Mr Kerry Hudson, senior water conservator for the Council, accepts the impact on tangata whenua. He variously says:

I accept that the relationship of Maori submitters with the coastal waters of Poverty Bay has not been met by the discharges. In my view this is an aspect more properly addressed when the substantive applications are considered....

I acknowledge that kiatiakitanga over Poverty Bay may not be met by continuation of the discharge....

I accept that this particular method of waste disposal fails to enable some Maori people to provide for social and cultural wellbeing....

The present discharge will not avoid, remedy or mitigate adverse effects on the amenity values enjoyed by some tangata whenua and other members of the community in respect of the natural resources of Poverty Bay...

Significant opposition to these applications and the substance of this appeal is based on the discharge being culturally unacceptable. This has been accepted by the applicant and the consent authority throughout this process.[6]

Part II matters

[30] We are mindful of our responsibility to consider as directed, the provisions of ss 5, 6(e), 7(a) and 8 of the Act. In *TV3 Network Services v Waikato District Council*[7] the High Court had this to say of those sections:

The importance of these sections [ss 5, 6(e), 7(a) and 8) should not be underestimated or read down. For, they contain the spirit of the new legislation.

[31] More recently, when delivering the Judgment of the Privy Council in *McGuire v Hastings District Council*[8] Lord Cooke of Thorndon made reference to the single broad purpose of the Act; then emphasised, that in achieving it, all the authorities concerned are bound by certain requirements including requirements of particular sensitivity to Maori issues. He said:

Section 5(1) of the RMA declares that the purpose of the Act is to promote the sustainable management of natural and physical resources. But this does not mean that the Act is concerned only with economic considerations. Far from that, it contains many provisions about the protection of the environment, social and cultural wellbeing, heritage sites, and similar matters. The Act has a single broad purpose. Nonetheless, in achieving it, all the authorities concerned are bound by certain requirements and these include particular sensitivity to Maori issues. By s 6, in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for various matters of national importance, including "(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu [sacred places], and other taonga (treasures)". By s 7, particular regard is to be had to a list of environmental factors, beginning with "(a) Kiatiakitanga [a defined term which may be summarised as guardianship of resources by the Maori people of the area]". By s 8, the principles of the Treaty of Waitangi are to be taken into account. These are strong directions, to be borne in mind at every stage of the planning process. The Treaty of Waitangi guaranteed Maori the full, exclusive and undisturbed possession of their lands and the estates, forests, fisheries and other properties which they desired to retain. While, as already mentioned, this cannot exclude compulsory acquisition (with proper compensation) for necessary public purposes it and the other statutory provisions quoted do mean that special regard to Maori interests and values is required in such policy decisions as determining the routes of roads. Thus, for instance, their Lordships think that if an alternative route not significantly affecting Maori land which the owners desire to retain were reasonably acceptable, even if not ideal, it would accord with the spirit of the legislation to prefer that route. So, too, if there were no pressing need for a new route to link with the motorway because other access was reasonably available.[9]

[32] We are mindful that the provisions relating to Maori issues must be balanced with the other provisions of Part II to give effect to the single broad purpose of the Act. They are not to be raised to the status where they are tantamount to the exercise of an exclusionary veto — that would be impermissible.[10] However on the other hand, they should not be underestimated or read down.

The relevant statutory instruments

[33] We were referred to the relevant provisions of the New Zealand Coastal Policy Statement, the Regional Policy Statement for the Gisborne District, the Transitional Regional Coastal Plan for the Gisborne District and the Proposed Regional Coastal Environment Plan for the Gisborne District. All of these instruments, with the exception

of the transitional coastal plan, contained provisions which reflect the provisions of particular sensitivity to Maori contained in Part II of the Act. We do not intend to list them all. As an example, we refer to the following provisions of the New Zealand Coastal Policy Statement:

> **Policies**
>
> **Chapter 2: The Protection of the Characteristics of the Coastal Environment of Special Value to the tangata whenua including waahi tapu, tauranga waka, mahinga mataitai and taonga raranga.**
>
> 2.11 Provision should be made for the identification of the characteristics of the coastal environment of special value to the tangata whenua in accordance with tikanga Maori. This includes the right of the tangata whenua to choose not to identify all or any of them.
>
> 2.12 Protection of the characteristics of the coastal environment of special value to tangata whenua should be carried out in accordance with tikanga Maori. Provision should be made to determine in accordance with tikanga Maori, the means whereby the characteristics are to be protected.

[34] We also refer to the Proposed Coastal Environment Plan. In Ch 2, the plan discusses a number of important concepts for Maori including kaitiakitanga, mauri and the protection of water quality. It sets out the following four objectives:

> 2.5.3A To protect the special value of sites for tangata whenua...
>
> 2.5.3B To rehabilitate where practical sites of value to Maori degraded by human activities...
>
> 2.5.3C To maintain the integrity of the relationship of Maori with their culture, traditions, ancestral lands, and other resources.

[35] There is a clear directive emanating from the provisions of the relevant statutory instruments, to provide for the special values to the tangata whenua in accordance with tikanga Maori, and for all persons exercising functions and powers under the Act, to recognise and facilitate the special relationship between tangata whenua and the coastal environment.

Section 105(2A) — the threshold tests

[36] All three applications are non-complying under the transitional coastal plan. We are therefore required to determine whether the proposal passes through either of the "two gateways" of s 205(2A).

[37] We find on the evidence, that the discharge of raw sewerage, subject only to primary treatment by a milliscreening arrangement, is an affront to the cultural sensitivity of the tangata whenua. The uncontroverted evidence adduced by the appellants, established that the discharge of human waste to the coastal marine area is in violation of tikanga Maori. One of the flow-on effects is, that the traditional practice of harvesting and gathering fish and shellfish according to Maori culture and traditions is prohibited by the contamination. Accordingly we find, that the proposals do not pass through the first gateway.

[38] We now turn to the second gateway and a consideration of the relevant plans. As to the transitional plan, we were not referred to any provisions relating to Maori matters.

[39] As for the proposed coastal plan, we have already referred to the provisions giving effect to the Maori cultural matters provided for in Part II of the Act. But like Part II of the Act, the proposed plan does not prohibit activities that transgress Maori tikanga. While there are strong directions to be borne in mind, such matters have to be balanced with the other Part II matters that are also reflected in the proposed coastal plan. Accordingly we find, that the proposals are not contrary in the sense that they are "opposed to in nature, different, opposite to ... also repugnant and antagonistic"[11] to the proposed plan.

Exercise of our discretion

[40] We have found that the discharge of municipal wastewater, as it currently occurs, violates Maori tikanga and that this is a major adverse effect on the cultural and spiritual sensitivities of the tangata whenua. We have also referred to the strong directions contained in the provisions of Part II of particular sensitivity to Maori issues and reflected in the relevant statutory instruments.

[41] The Council witnesses conceded the affront to Maori being perpetrated. This together with the strong directions in ss 6(e), 7(a) and 8 of the Act, to be borne in mind at every stage of the planning process, causes us to ask the question — why have the Council waited so long to address these issues?

[42] The failure by the Council to address the issues in the six years from 1993 to 1999, being the time the Committee decision of 1993 considered would be sufficient, is in our view far from satisfactory.

[43] In the three years since the filing of this appeal the Council has approved a long-term "wastewater strategy". Mr Apperley, Special Projects Manager for the Council, outlined the iterative investigation and decision process, that led to the Council adopting its "wastewater strategy" in April 2002. He also summarised the strategy which the Council proposes a strategy, if consented to, will control the City'S wastewater development over the next 30 years. The strategy can be summarised in the following table:

Stage/Year	**Development Stage Description**
(1) 2003–2006	Continue basic corrections to sewer and stormwater systems (to minimise rainwater infiltration and hence minimise costs of further stages.
(2) 2007	Initial treatment improvements at Stanley Road — grit and grease removal — to minimise visual effects and maintain outfall performance.
(3) 2010	Primary sedimentation or equivalent treatment at Airport site — expected to remove about 50% of oil and sediment and about 10% of pathogens.
(4) 2016	Secondary treatment — activated sludge plus ultra-violet light (or equivalent) at Airport site — to remove most pollutants and pathogens.
(5) 2017	Commence trials of a through land step (rapid infiltration or equivalent) at the Airport site.
(6) 2024	Subject to feasibility, to iwi and public approval, to Council approval and to resource consents being given, add a rapid infiltration ("down through land") or equivalent step in the vicinity of the Airport.
(7) 2031	Investigate a "to land" step.[12]

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[44] As we have said, a suite of resource consents has been filed to give effect to the Council's "wastewater strategy". It is not for us to pre-empt the outcome of those consents. However, the wastewater strategy does nothing to address tangata whenua concerns in that:

(i) Even up to Stage (4) there does not appear to be any intent to remove sewerage from the discharge;

(ii) It is not until Stage 6 of the strategy (2024) that the Council will *"subject to feasibility, to iwi and public approval..."* and Stage (7) ... investigate a *"to land"* step.

[45] Even at the end stage, there appears to be no real intention or commitment to do anything about what is clearly a violation to Maori tikanga. Such an attitude is unacceptable in this more enlightened day and age.

[46] All we can say is, that in relation to these proceedings, on the evidence we have heard, to allow the continued discharge as presently constituted would in our view be culturally debilitating. It is time for the Council to address, in a robust manner, the continuing desecration occasioned by the present discharge.

Jo Baguley

[47] With respect to this proceeding, it is merely seeking a continuation of the present discharge for a period to enable the Council to put in place a wastewater strategy. A strategy, that the Council in the past has shown a real timidity in addressing to the satisfaction of tangata whenua.

[48] We accept, that in the short term, Gisborne City would face insurmountable difficulties by reason of not being able to dispose of its sewage. The associated social, economic and health effects alone are beyond comprehension. On balance we have no alternative but to dismiss the appeal in the exercise of our discretion, The adverse social, economic and health effects that would result from Gisborne City being required to terminate its sewerage discharge obliges us to exercise our discretion to enable the Council, for a short period of time, to continue to discharge its sewage, thus enabling it to address what has now become an urgent problem.

[49] We feel compelled to send a clear message to the Council, that time IS running out. It is now some 12 years since the precepts binding consent authorities to requirements of particular sensitivity to Maori issues, was legislated. These precepts have been robustly reflected in the statutory instruments prepared by the Council under the Resource Management Act. However, the Council's "wastewater strategy" as explained by Mr Apperley, causes us to ask the question — is the Council only giving lip service to these precepts?

[50] Simply to dismiss the appeal would only give the Council until December 2003, as that is all that remains of the extension period under appeal. All parties agreed that we have jurisdiction to extend the term of the consents for a further three years until December 2006, being the date applied for in the application.

[51] We are of the view, that a reasonable time for the Council to address the issues is a further two years, until 31 December 2005. This time also accords with our view and findings under s 107, which we discuss in the next section of this decision.

Section 107 — Statutory Wastewater Standards

[52] Section 105(2) and in the case of a restricted coastal activity s 119(6), requires that no consent is to be granted contrary to s 107 of the Act. Section 107 provides that a consent authority shall not grant a discharge permit, if after "reasonable mixing" the discharge is likely to give rise to all or any of a number of effects in the receiving waters. Of the effects set out the following are relevant:

> (c) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
>
> (d) Any conspicuous change in the colour or visual clarity;
>
> ...

[53] Notwithstanding that a discharge may allow the effects on the receiving waters set out in s 171(c) and (d), subs (2) provides that a permit may be granted if the consent authority is satisfied that exceptional circumstances justify the grant of the permit, or the discharge is of a temporary nature, and that it is consistent with the purposes of the Act to do so.

[54] The minimum standards contained in s 107(1)(c) and (d) have been given even greater prescriptive effect by r 4.5.7(g) of the Proposed Coastal Environment Plan. This rule provides for discharges into the coastal marine area to be a discretionary activity, provided certain standards and terms are met, including the standards set out in s 107(c) and (d). If those standards are not met, it provides for the discharge to be a prohibited activity. We note the definition of "prohibited activity", in s 2 of the Act is dependent on the plan being operative. Accordingly, the activity, if it breaches the water quality standards referred to, is not yet prohibited.

[55] Earlier this year the Council notified a Variation to its proposed coastal plan removing the potential for the discharge to be a prohibited activity. Ms Kapua criticised the Council's motives in notifying the Variation; describing the procedure as self-serving and undermining the proposed coastal plan so that the Variation effectively creates the Council's own resource consent by default. There is, at least on the face of it, some justification for the criticism.

[56] Both counsel made full submissions on the effect of the Variation in terms of s 88A of the Act and cl 16(b) of the First Schedule to the Act. Mr Webb relying on *Awly Investments Ltd v Christchurch City Council*,[13] submitted that the effect of cl 16(b)(2) is that, in the resource consent process, regard is to be had to the proposed plan as if it had been altered by a publicly notified Variation. We prefer that approach. However, in the final analysis we do not

consider it makes too much difference in the present case, having regard to the prescriptive provisions of s 107 to which we now turn.

[57] Putting to one side the question of "reasonable mixing" we find on the evidence, particularly the evidence of Mr Hudson, that at times the discharge has the effect of:

(i) Producing conspicuous oil and grease; and

(ii) Conspicuously changing the colour or visual clarity of the receiving waters.

[58] The change of colour and visual character was quite noticeable to us from the summit of Kaiti Hill, during our site visit. According to Mr Hudson the discolouration extended a distance of between 600 and 800 metres on that occasion.[14]

[59] Mr Hudson's evidence reflected a report dated June 2003 from Mr B I Apperley, an engineer employed by the Council as special projects manager, and appended to his evidence as App 1, where it said:

> Total oil and grease results show regular non-compliance, although compliance has been improving. Screen tests results remain non-compliant on approximately 1 in 10 sample runs.
>
> Visible signs of a discharge continue within the Bay, being the result of sediment. oil and grease films, colour components of the discharge or any combination of these factors.[15]

[60] Mr Hudson anticipated a continuing breach of s 107(1)(c) and (d) for a further 13 years, notwithstanding the Council's proposed "wastewater management strategy" .

[61] Mr Apperley was recalled in an endeavour to undertake some rescue management and make light of the breaches of s 107. However, we found his evidence somewhat self-serving — although we accept there will be some improvement of the present situation over time.

[62] The most difficult issue to determine, is what is meant by the words "after reasonable mixing". Following a decision of the Planning Tribunal given in July 1991, the waters of Poverty Bay were classified under the Water and Soil Conservation Act 1967. The waters within a 250m radius of the Council's diffusers were classified as SO. The main body of the waters surrounding the SD classification were classified as SB. The quality standards for SB waters are higher than for SD waters.

[63] The 250m radius classified as SD, appears to have been used as the area for "reasonable mixing". The Council has recently notified proposed changes to the transitional plan and the proposed plan to delete the references to the water classification standards for Poverty Bay originally established under the Water and Soil Conservation Act 1967. Again we heard argument as to the effect of those changes. However, in our view, the standards adopted under those instruments are not determinative of what is "reasonable mixing" for the purpose of s 107. What is "reasonable mixing" is a question of fact in each case.

[64] No evidence was called by either party at first. We accordingly adjourned the hearing on Wednesday 11 June to 18 June 2003, to enable the parties to call evidence on this aspect. The Council called three witnesses: Mr Apperley, to whom we have already referred; Dr Scott Stephens, a coastal scientist; and Dr Robert Bell, a principal scientist with the National Institute of Water and Atmospheric Research Limited. Of these witnesses, only Dr Bell addressed the issue of what amounts to "reasonable mixing". His evidence:

(i) Reviewed the factors that contribute to initial dilutions;

(ii) Described the empirical relationships or guidelines that are normally used to determine aesthetic impacts of an outfall surface plume, followed by generic analysis of how they apply to the Gisborne discharge; and

(iii) Explained the various aspects of mixing with the receiving waters to assist us in determining what is "reasonable mixing" under section 107 of the Act.

[65] Dr Bell told us that the aesthetic impacts of "conspicuous" slick formation and discolouration are governed by a number of factors including, and in decreasing order of importance:

(i) The concentration and type of suspended solids and grease and oil and the final effluent;

(ii) The range of initial dilutions achievable above the outfall diffuser;

(iii) Background turpidity in the receiving waters, which can be markedly elevated by natural processes such as river floods and heavy seas, or by human activities, such as vessel movements, dredging, stormwater and wastewater discharges;

(iv) Local wind and wave conditions, with quiescent conditions favouring the development of visible plumes or slicks; and

(v) Density stratification in the water column that is able to suppress the outfall plume below the surface, such as may occur after river floods or hot, calm conditions in summer.[16]

[66] Dr Bell emphasised that the key understanding to the initial dilution process is that wastewater is essentially freshwater (with contaminants) and when it is discharged to a marine water body, the wastewater will rise towards the surface because it is lighter than seawater. He pointed out that in most cases the wastewater will break through to the surface, forming a diluted surface plume that could be up to three or four metres thick, which is then transported away from the outfall by the near surface ocean currents.[17]

[67] Dr Bell calculated the minimum initial dilution[18] and the extent of the zone in which this initial dilution takes place, based on the current operational regime of the diffuser.

[68] The result of Dr Bell's calculations showed that the minimum initial dilution achievable by the Gisborne outfall diffuser varies markedly from around 60 fold in the worst case (quiescent conditions) to over 500 fold when currents exceed 0.2m/s. Using the same set of measured current velocities, he calculated that the "zone of initial dilution" varies considerably from a few tens of metres up to 120 metres away from the diffuser, depending on the current velocity. The "zone of initial dilution" is the narrow zone in which the plumes emanating from each port first reach the surface and have then undergone a minimum initial dilution.[19]

[69] Dr Bell then compared these results with empirical relationships between initial dilution, wastewater treatment level, and the likelihood of visible aesthetic impacts, that have emerged over the years based on engineering experience and field measurements. As a result of empirical studies, such measurements have found their way into various guidelines, such as the Scottish Environment Protection Agency Policy on Mixing Zones. Dr Bell told us, that the various empirical guidelines indicate, that for milliscreened wastewaters, the minimum initial dilution should exceed around 100 fold and 85 fold respectively for no "conspicuous" or "acceptable" impacts on slick formation and discolouration.[20] Thus the Gisborne discharge falls short of the guidelines.

[70] Dr Bell then addressed the size and extent of a zone beyond the "zone of initial dilution", within which reasonable mixing, or assimilation of the wastewater with the receiving waters, should be allowed to take place before the water quality standards and s 107 of the Act are complied with. He pointed out that these zones can be different in size, depending on the particular water quality standards that are to be complied with. However, he had not had the opportunity to perform numerical modelling to assess what additional distance is required.

[71] Dr Bell pointed out, that to reduce further the likelihood of aesthetic impacts at Gisborne, key improvements can be made by way of a staged plan to further reduce suspended-sediment and oil and grease concentrations in the wastewater, followed by further optimisation of the diffuser performance to increase the minimal initial dilution that can be achieved.

[72] On the evidence we have heard, it is not an easy issue to determine. Certainly a distance beyond the "zone of initial dilution" is needed to allow a coherent surface plume to form. The current "zone of initial dilution" can be reduced by improvements to the system to reduce suspended sediment and oil and grease concentrations in the wastewater, as pointed out by Dr Bell. This was also recognised by Mr Apperley who said in his report to Council:

> It is recommended that the outfall mixing zone be extended from the present 250 metre radius to approximately 750 metre radius, to allow better compliance with indicator organism guidelines. It can then be brought back towards the outfall as treatment is improved in stages.[21]

[73] Mr Apperley's proposal, proposes extending the mixing zone and then bringing it back towards the 250 metre radius, as the discharge quality improves. With respect, we consider the appropriate approach is to fix a "reasonable mixing zone" and require the Council to undertake staged works under s 107(3), to ensure compliance with s 107(1).

[74] The Council has been applying the 250 metre radius as the "reasonable mixing zone". We can see no reason to depart from that. Such an area is more than double the worst case scenario as calculated by Dr Bell for the "zone of initial dilution". We accordingly fix the "reasonable mixing zone" as being within a radius of 250 metres around the diffusers length.

[75] We are satisfied that the discharge, after reasonable mixing is likely to give rise to the effects set out in s 107(c) and (d) in the receiving waters. We rely particularly on the evidence of Mr Hudson reinforced by our site visit. The evidence of Dr Ben where he compared his calculations of initial dilution with the empirical guidelines also supports our view.

[76] Having so found we may still grant consent if there are exceptional circumstances that justify the granting of the consent. The Shorter Oxford Dictionary defines "exceptional" as:

> Of the nature of or forming an exception; unusual; and
>
> Exception;
>
> Something that is expected, a person, thing or case to which the general rule is not applicable.

[77] Exceptional circumstances connotes something out of the ordinary. The consequences of a coastal permit to discharge being refused, would mean that the City would be unable to legally use its sewerage and wastewater system. The likely social, economic and health related affects have already been referred to. Notwithstanding the tardiness of the Council to address a problem that has been extant for many years, we are compelled to grant consent which we do for a term of two further years — until 31 December 2005.

[78] Under subs (3) we require as a condition of the consent, a condition requiring the Council to undertake such works in such stages throughout the term of the discharge permit as will ensure that upon expiry of the permit the Council can meet the requirements of subs (1). The Council has until Friday 6 December 2003 to lodge with the Court and serve on the appellants a draft condition for approval.

Determination

[79] For the reasons given in the decision, the appeal is disallowed. The term of the consent is extended until 31 December 2005.

[80] Mr Hudson appended to his evidence suggested conditions of consent. There having been no issue taken with them, the consents are to issue subject to the conditions set out in App VI to Mr Hudson's evidence, and appended as App 1 to this decision.

[81] In addition, we order under s 107(3) of the Act, that the counsel is to prepare and lodge with the Court on or before 6 December 2003, a draft condition requiring the Council to undertake such works in such stages throughout the term of the discharge permit as will ensure that upon expiry of the permit the Council can meet the requirements of subs (1) of s 107 of the Act.

The Environment Court Reports:

(a) That the application by the Gisborne District Council to discharge its municipal wastewater into the waters of Poverty Bay is a restricted coastal activity under the Transitional Regional Coastal Plan of the Gisborne District.

(b) That under the Proposed Regional Coastal Environment Plan of the Gisborne District the application is classified as a restricted coastal activity if the Council relies on s 107(2)(a) of the Act.

(c) That on 26 November 1999 a report from the Commissioners appointed to hear the application recommended the granting of a coastal permit subject to conditions but for a limited term — to 31 December 2003.

(d) That by notice of appeal dated 4 October 1999 the appellants appealed the Commissioners' decision and recommendation.

Jo Baguley

(e) That it has enquired into the appeal, and for that purpose conducted a hearing at Gisborne on 9, 10, 11 and 18 June 2003.

(f) That for the reasons given in this decision it recommends:

(i) that the appeals be dismissed and the coastal permit issue subject to the conditions attached as App 1 to this decision.

(ii) that the term of the consent be extended to 31 December 2005.

(iii) that a further condition be required under s 107(3) of the Act requiring the Council to undertake such works in such stages throughout the term of the discharge permit as will ensure that upon expiry of the permit the Council can meet the requirements of subs (1). The Council is to lodge with the Court on or before Friday 6 December 2003 a draft condition for approval.

Order

Orders accordingly.

Appendix

APPENDIX VI: TO THE EVIDENCE OF KERRY NOEL HUDSON

RECOMMENDED CONDITIONS

A. Discharge

That the Engineering and Works Department of the Gisborne District Council be granted a Coastal Permit to DISCHARGE up to 103,680 cubic metres of municipal wastewater per day at a maximum of 1,200 litres per second from an ocean outfall into Poverty Bay at or about Map Reference NZMS 260 Y18 452678 24 hours per day, 7 days a week, 52 weeks per year until 31st December 2003, subject to the following specific conditions:

1. The seaward end of the submarine outfall pipeline shall terminate, complete with the diffuser section, at or about Map Reference NZMS 260 Y18 452678 and at a nominal depth of 17 metres below Mean Sea Level. This discharge is only to occur from the diffuser section, being the final 189 metres of the pipeline.

2.

(a) The consent holder shall install and operate such systems and measuring devices as are necessary, to monitor, analyse and record wastewater discharge in cubic metres per minute for maximum and average daily flow rates.

(b) The consent holder shall sample, analyse and record the following from the wastewater discharge:

(i) pH

(ii) Floatable oil and grease in terms of g/m^3 and kg/day.

(iii) Total oil and grease in g/m^3 and kg/day.

(iv) Suspended solids in g/m^3 and kg/day.

(v) 5 day BOD or COD equivalent in g/m^3 and kg/day.

(vi) Particles retained by a 1 mm screen in g/m^3 and kg/day.

(vii) Particles retained by a 1 mm sieve in g/m^3 and kg/day.

The above sampling regime shall be carried out in accordance with conditions 4 and 5.

3. The wastewater to be discharged in the exercise of this consent shall be without concentration of toxic substances, and the quality shall be such that:

(a) Floatable oil and grease shall not exceed a concentration of 20 g/m3 and shall be discharged at a rate not exceeding 360 kg/day.

(b) Total oil and grease shall not exceed a maximum concentration of 60 g/m3 and shall be discharged at a rate not exceeding 1,080 kg/day.

(c) Suspended solids shall not exceed a maximum concentration of 900 g/m3 and shall be discharged at a rate not exceeding 16,200 kg/day.

(d) The pH shall not be less than 6.7 or greater than 8.5.

(e) There shall be no solids retained retained on a test section of a 1 mm screen.

(f) The effect on the receiving waters is such that after reasonable mixing there shall be no emission of objectionable odours and there shall be no conspicuous change in colour.

4. The weekly sample shall be analysed from a composite flow proportional sample taken over a period of 24 hours on an agreed day of the week. Once every three months separate "grab" samples shall be taken on the same day of the week as the flow proportional sample and analysed for the parameters listed in condition (2) of coastal permit CP199007. These "grab" samples shall be taken at 1100 and 1500 NZST.

5. Sampling and analysis shall be done by a TELARC registered laboratory and procedures shall be in accordance with Standard Methods for the Examination of Water and Wastewater prepared and published jointly by:

American Public Health Association

American Water works Association

Water Pollution Control Federation

nineteenth or newer edition.

Sample analysis shall be provided to the consent authority within 10 days of samples being collected. Any non-compliant results shall be reported to the consent authority immediately after the sample analysis reveals a noncompliant result.

6. The consent authority may after the granting of this consent give notice of intention to review the conditions pursuant to s 128 of the Resource Management Act.

This may occur on the first day of each month and for all or any of the following purposes:

(a) to deal with any adverse effect on the environment which may arise from the exercise of this permit which are appropriate to deal with at that later stage; or

(b) to require the consent holder to adopt the best practicable option to remove or reduce any adverse effect on the environment; or

(c) to deal with any adverse effects on the environment on which the exercise of the permit may have any influence; or

(d) to ensure that the parameters for wastewater and the effects on the receiving waters, specified in condition 3 of coastal permit CP199007 are met.

7.

(a) The consent holder shall carry out heavy metal analysis of the wastewater stream at intervals not exceeding 12 months or at such other occasions when the consent authority considers circumstances so require. A copy of each analysis report shall be forwarded to the consent authority within 30 days of samples being collected. The following parameters are to be tested for:

(i) Cadmium

(ii) Chromium

(iii) Copper

(iv) Lead

(v) Mercury

(vi) Zinc

The sample is to be taken from a 24 hour flow proportional composite sample and the results are to be given in both g/m3 and g/day.

(b) The levels of heavy metals in the effluent stream shall not be greater than:

(i) Cadmium	0.8 g/m3
(ii) Chromium	2.0 g/m3
(iii) Copper	0.2 g/m3
(iv) Lead	0.2 g/m3
(v) Mercury	0.004 g/m3
(vi) Zinc	2.0 g/m3

8. The consent holder shall ensure that the pumps installed (existing pumps) to discharge wastewater to the outfall pipeline shall at all times have sufficient capacity to discharge the quantities of wastewater delivered to the wetwell.
9. A generator shall be available at the outfall pumping station at all times with sufficient capacity to meet the requirements of condition 8 of resource consent CP199007.
10. The existing probe shall be maintained in the screen bypass line to accurately record any screen bypass events. The duration and time of such events along with the reason that they occurred is to be recorded and forwarded to the consent authority with the weekly water quality analysis reports.
11. The consent holder shall maintain the existing automatic alarm systems to the satisfaction of the consent authority to ensure early attention is drawn to any breakdown or fault at any location as may be necessary to ensure that no breakdowns in pumping equipment go undetected.
12. The consent holder shall provide and maintain sufficient equipment to ensure that operational times of all outfall pumps are to be recorded in such a manner as will clearly indicate any stoppage.
13. The consent holder shall cause the diffuser section of the outfall to be inspected at intervals not exceeding 12 months or at such other occasions when the consent authority considers circumstances so require. A copy of all inspection reports shall be forwarded to the consent authority, within 30 days of the inspection occurring.
14. This right is subject to the consent authority or its agents being permitted access to the consent holder's property for such inspections, measurements or sampling as it considers necessary.
15. On becoming aware of any breakdown or fault or overflow or other circumstance affecting the proper operation of this right the consent holder shall, immediately in the event of major problems, or otherwise within no more than 24 hours advise the Water Resources Section and the Chief Environmental Health Officer of the consent authority, and shall also report in writing to the consent authority within 7 days detailing the manner and cause of the escape and steps taken to control and prevent its recurrence.
16. The consent holder shall undertake the following steps towards medium to long term management of wastewater:

    (a) Complete consultation and investigation of a preferred and selected wastewater system and fully document and lodge applications for all necessary resource consent by December 31 2000.

Explanatory Notes

1. The monitoring conditions of this coastal permit (2–5 inclusive and 7) are conditions aiming at achieving SD water classification standards and satisfy the requirements of s 107 RMA.
2. Effluent stream parameters are used because of the difficulty of a consistent monitoring regime in a marine environment. Consistency is the most important single factor in gathering information for a data set. Adverse sea conditions could result in gaps in the information database leading to false or erroneous conclusions.
3. Parameters outlined in condition 3 may appear high however this is due to these measurements being made prior to dilution. The three most important parameters for visual water quality are total oil and grease, floatable oil and grease and that for suspended solids. Using a dilution factor of 40:1 provided by Engineering and Works the requirement of 900 g/m3 limit for suspended solids in condition 3 is equivalent to 22.5 g/m3 at the mid diffuser site (Site # I). Such a level of suspended solids should give a clear effluent in the mixing zone and thus achieve the SD water classification standard.
4. Figures outlined in kilograms per day are derived by multiplying the g/m3 result by 18000 and then dividing by 1000 to obtain kilograms. The 18000 is the average mid season dry weather flow in cubic metres.
5. Condition 6 is a review clause condition to be used should the parameters in condition 4 fail to achieve the required inconspicuous mixing zone.
6. The heavy metal monitoring condition, 7 (a) and (b) is to prevent excessive levels of toxic heavy metals entering the environment. Further monitoring for non-compliant heavy metal maximum limits will determine whether the noncompliance was the result of a single discharge or an ongoing problem.
7. Conditions 8–15, inclusive, cover the responsibility of the Engineering and Works Department to ensure that all wastewater delivered to the treatment plant is processed through the treatment plant. These conditions cover the reporting procedures should a breakdown in any duty equipment or the treatment plant is bypassed for any reason.
8. Condition 16 is to ensure the investigation into alternative wastewater treatment and disposal methods is carried out and that the associated progress is reported on a regular basis to the parties involved in the application/submission proceedings. This also goes some way to meeting the concerns expressed by the Port Company representative of the situation.

B. OCCUPATION OF SPACE IN THE COASTAL MARINE AREA

That the Engineering and Works Department of the Gisborne District Council be granted a coastal permit for OCCUPATION OF SPACE, CP199008, of the Coastal marine Area for the existing marine outfall pipe (and for appropriate maintenance thereof) at or about Map Reference Y18 453694 to Y18 452 676 until 31 December 2003, subject to the following specific conditions:

1. That upon cessation of the use of the pipe for a permitted discharge, the pipe be sealed at its landward end, to prevent its further use for discharge into the marine environment and to prevent land based seepage from entering the marine environment.
2. That upon cessation of the use of the pipe for a permitted discharge, the diffuser section of that portion buried on the seabed be removed or secured in such a way as to permit the anchorage of vessels, to the satisfaction of the Maritime Safety Authority and the consent authority.
3. That the consent holder continue to be liable for the period of time of this permit, for the mitigation of any adverse effects arising from the existence of the pipe should permitted discharge through the pipe cease.

Explanatory Notes:

1. Condition 1 provides an assurance that discharge will not continue through the outfall pipe.
2. Condition 2 provides safe options for anchorage of vessels around the diffuser should the permitted discharge through the pipe cease.
3. Condition 3 places any liability for mitigation of adverse effects upon the consent holder for the duration of this permit.

C. STRUCTURE IN THE COASTAL MARINE AREA

That the Engineering and Works Department of the Gisborne District Council be granted a coastal permit for a STRUCTURE, CP19909, within the Coastal marine Area at or about Map Reference Y18 453 694 to Y18 452 676 until 31 December 2003, subject to the following specific conditions:

1. That upon cessation of the use of the pipe for a permitted discharge, the pipe be sealed at its landward end, to prevent its further use for discharge into the marine environment and to prevent land based seepage from entering the marine environment.
2. That upon cessation of the use of the pipe for a permitted discharge, the diffuser section of that portion buried on the seabed be removed or secured in such a way as to permit the anchorage of vessels, to the satisfaction of the Maritime Safety Authority and the consent authority.
3. That the consent holder continue to be liable for the period of time of this permit, for the mitigation of any adverse effects arising from the existence of the pipe should permitted discharge through the pipe cease.

Explanatory Notes:

1. Condition 1 provides an assurance that discharge will not continue through the outfall pipe.
2. Condition 2 provides safe options for anchorage of vessels around the diffuser should the permitted discharge through the pipe cease.
3. Condition 3 places any liability for mitigation of adverse effects upon the consent holder for the duration of this permit.

Counsel for the appellants: *Ms P Kapua* and *G Rangi*

Counsel for the respondent: *Mr G R Webb*

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1 Dr Bell, EiC, para 3.2.

2 See r 4.5.76 of the Proposed Regional Coastal Environment Plan.

3 Ria, EiC, paragraphs 24–27.

4 Ruru, EiC, paragraph 8.

5 Hawea, EiC, paragraphs 8–12.

6 Hudson, EiC, paragraph 11.

7 *[1998] 1 NZLR 360*.

8 *[2002] 2 NZLR 577*.

9 Paragraph 21.

10 See *TV3 Network Services; Minhinnick v Watercare Services Ltd* (3 September 1997) HC Auckland HC86/97.

11 *NZ Rail v Marlborough District Council [1994] NZRMA 70* (HC at 80) ; *1993 2 NZLR 641* (HC).

12 Apperley, EiC, paragraph 4.8.

13 C103/02; 7 NZED 791.

14 See transcript: Tuesday 10 June 2003, pp 44–46.

15 Apperley, EiC, Appendix 1, page 11, paragraphs 5.5 and 5.6.

16 Bell, EiC, paragraph 4.2.

17 Bell, EiC, paras 5.1 and 5.2.

18 The minimum initial dilution is the lowest dilution (or highest concentration) that occurs at the centre line or central core of each of the plumes emanating from each port of the diffusers.

19 Bell, EiC, paras 5.12 and 5.13.

20 Bell, EiC, para 6.2.

21 Apperley, EiC, Appendix 1, page 13, at paragraph 4.2.

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