

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

Coastal Permit CRC102952 – to discharge treated wastewater from the Duvauchelle Wastewater Treatment Plant into coastal waters off Duvauchelle Bay.

Resource consent CRC102957 – to store wastewater at the Duvauchelle Waste Water Treatment Plant.

BETWEEN

Christchurch City Council

AND

CANTERBURY REGIONAL COUNCIL

DECISION OF THE HEARING PANEL

28 January 2011

Heard on 1st and 2nd September 2010 at the offices of the Canterbury Regional Council,
58 Kilmore Street, Christchurch

Hearing Panel

Mr Robin Delamore (Chair)

Ms Raewyn Solomon

Representations and appearances

Applicant:

Mr A. Prebble, Counsel

Mr M. Bourke, Operations and Maintenance Manager, CCC Water and Waste Unit

Ms C. Penman, Environmental Consultant, MWH NZ Ltd

Mr J. Dunning, Planner, MWH NZ Ltd

Mr S. Kelsen, Funds and Financial Policies Manager, CCC

Submitters:

Mr D. Newey, Resource Management Planner, Department of Conservation

Ms A. Lobb, Manager, Mahaanui Kurataiao Ltd

Section 42A reporting officer:

Ms B. Sullivan, Principle Consents Advisor, Canterbury Regional Council

Dr L. Bolton-Ritchie, Senior Water Quality Scientist – Coastal, Canterbury Regional Council

It is the decision of the Canterbury Regional Council, pursuant to sections 104, 104B, 105, 107, 113, and 117, subject to Part 2 of the Resource Management Act 1991, that the Christchurch City Council be granted Land Use Consent CRC102957 to store waste water at the Duvauchelle Waste Water Treatment Plant for a consent duration of 12 years, and Coastal Permit CRC102952 to discharge treated wastewater from the Duvauchelle Treatment Plant to the coastal marine area for a consent duration of 12 years: all subject to the conditions set out in Annexure 1.

BACKGROUND AND PROCEDURAL MATTERS

1. This is the decision of Hearing Commissioners Robin Delamore (Chair) and Raewyn Solomon, appointed by the Canterbury Regional Council (herein referred to as “ECan”) to hear and consider an application by Christchurch City Council (herein referred to as “CCC” or “the applicant”) for resource consents associated with the storage and discharge of treated sewage containing human waste from the Duvauchelle Wastewater Treatment Plant (herein referred to as the DWWTP), into coastal waters off Duvauchelle Bay.
2. The applications were lodged on 30th April 2010, and are therefore subject to the provisions of the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
3. The New Zealand Coastal Policy Statement 2010 (NZCPS) came into effect on 3 December 2010, prior to the hearing being formally closed. The provisions of the 2010 NZCPS have therefore been taken into account in the decision.
4. The coastal permit (discharge) application is deemed to be a restricted coastal activity (RCA), and Commissioner Delamore has also been appointed by the Minister of Conservation pursuant to section 117(7) of the Resource Management Act 1991 (the “Act” or the “RMA”).
5. Prior to the hearing, a report was produced pursuant to section 42A of the Resource Management Act by ECan’s Reporting Officer Bianca Sullivan. The report provided an analysis of the matters requiring consideration and recommended that the application be granted, subject to a number of conditions.
6. The hearing was held on 1st and 2nd September 2010, and we undertook a site visit on 2nd September. Details of the application as publicly notified were confirmed. The hearing was formally closed on 16th December 2010, following receipt of the applicant’s final right of reply.

7. Following the hearing on 1st and 2nd September, the Canterbury earthquake occurred. Possible implications for the application arising from this event were referred to in the applicant's right of reply, which was received on 22nd October. We determined that, as the earthquake had occurred after the hearing and might have a material bearing on the outcome, the other parties should be invited to respond to the matters raised in the right of reply. Following receipt of comments, the applicant was then requested to provide a final right of reply. This was received on Monday 13th December.
8. The hearing was formally closed on 16th December 2010, following consideration of the applicant's final right of reply.

THE APPLICATIONS

9. The application CRC102952 is for a coastal permit to discharge up to 250 cubic metres of treated wastewater per day into Duvauchelle Bay, and up to 600 cubic metres per day during and after rain events (to address stormwater infiltration issues). The discharge is via an existing 1.6km outfall pipeline to a point approximately midway between Onawe Peninsula and Ngaio Point, off Duvauchelle Bay.
10. Wastewater will continue to be treated at the existing DWWTP, which comprises initial screening, primary sedimentation, a rotating biological contactor with secondary sedimentation, and UV treatment. The treatment plant is located adjacent to State Highway 75, on an old quarry site across the road from Duvauchelle Bay.
11. The discharge from the DWWTP was first authorised in 1987. The existing consent was issued in August 2000 for a term of 10 years. The consent was issued to Banks Peninsula District Council (BPDC), which has since amalgamated with CCC, the current consent holder.

12. The land use consent CRC102957 is sought to store a maximum volume of 300 cubic metres of wastewater within 50m of the CMA.
13. A consent duration of 20 years was originally sought for the applications. This was reduced to 15 years by the applicant at the hearing.
14. The application was publicly notified in the Resource Management Section of the Christchurch Press on 15th May 2010, and in the Public Notices section of the Akaroa Mail on 21st May 2010. The closing date for submissions was Monday 21st June 2010, 20 working days after notification in the Akaroa Mail. A copy of the notification public notice is at Annexure 2.
15. Four submissions on both applications were received. The submission from the Director General of Conservation neither supported nor opposed the application. Three submissions opposed the applications: Sea Right Investments; Tikao Bay Boating Club; and a submission from Mahaanui Kurataiao (MKT) on behalf of Te Runanga o Onuku, Te Runanga o Wairewa and Te Runanga o Ngai Tahu. All the submitters sought a reduced duration term for the application.
16. A full description of the proposed activity is set out in the AEE sections 4.1 -4.6, and a description of the receiving environment in AEE sections 7.1-7.5 . We adopt and cross refer to these section of the AEE in terms of section 113 (3) (a) (ii) of the RMA.

THE HEARING

The applicant's case

17. Mr Aidan Prebble appeared for the applicant, and provided written legal submissions. CCC has only recently taken over responsibility for wastewater services on Banks Peninsula from the former Banks Peninsula District Council (BPDC). It has subsequently committed a

disproportionate amount of funding to resolving wastewater difficulties on the Peninsula. Council's medium to long term objective is, where possible and practicable, to remove discharges from the harbour and discharge to land. The Duvauchelle discharge is small, and will have minor effects on water quality. Because of this, CCC is "candid in its recognition that consideration of alternatives to this discharge is not a current priority". Priority is being given to more significant discharges at Akaroa, and into Lyttelton harbour.

18. Mr Prebble considered that the main issues arising from the proposal are the environmental and cultural effects of the discharges, and the appropriate duration of consent. He summarised the CCC case as follows:

- The applications are for the medium term continuation of low volume existing discharges servicing about 250 people.
- The DWWTP has operated well in recent years and achieved high levels of compliance with the existing consent conditions
- There is agreement between CCC experts and ECan officers that the environmental effects of the discharge are minor and acceptable.
- CCC agrees with Ms Sullivan there should be a mixing zone condition, but prefers a 50m rather than 20m zone.
- The discharge will comply with the relevant standards in the Regional Coastal Environment Plan (RCEP) at the edge of the 50m mixing zone, and will satisfy sections 105 and 107 of the Act.
- CCC agrees to a condition requiring an investigation of alternative discharge options to be resolved within 10 years, and a consent duration that would enable the favoured alternative to be in place by the expiry of the consent.
- CCC considers 5 years is appropriate to design, consent and implement any alternative, and seeks a consent duration of 15 years.
- The most likely alternative is land based discharge to the Council owned golf course. Estimated costs for this are about \$3.5 million.
- CCC accepts that any discharge of wastewater to the harbour will be culturally offensive to iwi, but this issue requires a balancing of

competing interests. The tangible environmental effects on water quality are minor, and any intangible adverse effects are offset by the wider benefit to the community, and the commitment to investigate alternatives and implement any preferred alternative to the current discharge within the life of the consent.

19. In relation to the statutory framework for assessing the application, Mr Prebble cited *Mahuta v Waikato Regional Council (A91/98)* to support his contention that consideration of alternative methods of discharge in terms of section 105 (1) (c) is not required if the discharges would not have significant adverse effects.
20. Mr Prebble considered there was agreement amongst the experts that the application is compliant with the RCEP standards, there is a low risk of toxicity, the effects of suspended solids will be insignificant, and any effects on public health will be minor. In relation to the potential risk from pollutants to Hector's dolphins raised by the Department of Conservation (DoC), it was Ms Penman's evidence that this is insignificant.
21. CCC accepts the discharge of wastewater to the harbour is culturally offensive to runanga. For this reason, it has agreed to investigate alternative discharges, and a shorter consent term. The issue is the significance of effects on cultural values and whether these justify a further reduction in consent duration.
22. Mr Prebble discussed the cultural relationship between runanga and Akaroa harbour in the context of case law around Part II of the Act. The Courts have generally recognised that there is an interrelationship between sections 5, 6(e), 7(a), and 8 and that they can be considered together when assessing the protection of cultural and spiritual values. Section 6(e) reflects the general duty of active protection under the Treaty, and may require some consideration of alternatives which will assist in evaluating the reasonableness of a proposal. However, there must be a balancing of competing interests, and the protection of cultural

issues is not absolute. It may also be necessary to establish tangible physical effects on receiving waters.

23. Mr Prebble considered that the MKT submission requires a balancing of competing interests, and their concerns must be placed in context. Costs are an issue for Council in relation to duration, as there are a number of waste water projects around the Peninsula that require prompt action. The Council has obligations and responsibilities under the Local Government Act 2002 (LGA) and to ratepayers to carefully and prudently manage its finances. Bringing forward budgeted expenditure for wastewater projects could have potentially significant consequences.
24. The expert opinion is that the discharges do not have tangible or detectable adverse effects on mahinga kai. Cultural offensiveness does not translate to an automatic prohibition on discharges, or an absolute protection of cultural values. When all the factors are brought together, including the investigation of alternatives, the benefits outweigh the cultural effects for the duration requested. The adverse effects on cultural values are for a limited period, and are unavoidable and acceptable.
25. The 15 year duration sought was appropriate to allow investigation of long term options to be undertaken and implemented, and took into account issues of cultural offensiveness to iwi. There is no public benefit in rushing the process to achieve an unreasonably tight timeframe, and if the duration is too short a further consent would be required with additional costs to the community.
26. Overall, Mr Prebble considered that the proposal was generally consistent with the policy framework, the overall effects would be minor, and none of the effects listed in section 107(1) would arise. He considered that the purpose of the Act would be achieved by the grant of consent for a 15 year term.
27. Ms Claire Penman, an Environmental Consultant employed by MWH New Zealand Limited, provided evidence on the effects of the proposed

discharge of the marine environment. Ms Penman stated that, outside the recommended mixing zone of 50m the discharge would comply with all the matters that are required to be met under section 107 RMA, and all the applicable standards in the RCEP for class SG waters. Many of the RCEP standards would be met within a 20 metre mixing zone. These include standards for faecal coliforms, dissolved oxygen, bacterial and slime growths, temperature, BOD, and heavy metals.

28. The wastewater is subject to a considerable degree of treatment, and the treatment plant has consistently complied with previous consent requirements. The receiving water outside the mixing zone is compliant with the Class SG standard for shell fish gathering. Ms Penman agreed with Dr Bolton-Ritchie that the existing discharge may contribute to observed bacteria concentrations in shellfish. However there is no conclusive evidence from monitoring, which indicates no abnormal spikes in wastewater flow or faecal coliform counts around the period when shellfish contamination occurred. Other possible sources of contaminants may include the resident population of Canada geese.
29. Concerns had been raised by DoC about the possible impacts that endocrine disrupting chemicals (EDC) in treated effluent can have on Hector's dolphins. Ms Penman assessed this risk to be low due to low concentrations of EDCs in the influent, further reductions due to the treatment process, dilution of the effluent once discharged, and the likelihood that dolphins would have limited contact with prey species exposed to the discharge.
30. Overall, Ms Penman concluded that the discharge will comply with all relevant standards, and any effects on water quality and marine ecosystems are minor.
31. Mr Steven Kelsen is the Funds and Financial Policies Manager for CCC. His evidence discussed the affordability of rates, the process used by CCC to prioritise capital projects, and the city's policy in relation to

infrastructure funding, and included financial data about the funding of an alternative wastewater treatment solution.

32. Christchurch City has an obligation under the LGA to properly manage, and prioritise infrastructure projects, and ensure that funding requirements are sustainable. The capital works programme adopted by Council goes through an extensive planning process and is rigorously tested by Council officers, members, and community consultation.
33. The 2009-19 Long Term Community Plan (LTCCP) as adopted by the Council does not provide any funding for alternatives to the current wastewater treatment plant and discharge. Should Council be obliged to fund an alternative, this would be a renewal asset and the costs would be funded through rates. The council would have to either defer or cancel other capital expenditure, or add the expenditure to existing budgets. Mr Kelsen considered that a decision to change one part of the capital programme would “unbalance” the programme as a whole. CCC officers have estimated the capital cost for an alternative to be \$3.4 million, which would increase rates throughout the city by 1.3%, or \$17 a ratepayer. Alternatively CCC could borrow, and repay this through a targeted rate on Duvauchelle ratepayers, which would increase their annual rates by about 63%. Mr Kelsen considered this would exacerbate the problem of rates affordability in Christchurch.
34. Mr Kelsen considered that a comprehensive, integrated and managed approach to infrastructure expenditure is required, to balance legal obligations with community needs and financial sustainability. It was his opinion that expenditure that has not been carefully considered or planned has the potential to undermine the social and economic wellbeing of Christchurch ratepayers.
35. Mr. Janan Dunning provided planning evidence on behalf of the applicant. He was involved in preparing the application document and AEE for the DWWTP project. Mr Dunning considered that the proposal achieves the purpose of the RMA , because:

- The environmental effects have been shown to be minor.
 - Refusal to grant a permit may result in unreasonable economic effects by preventing the community utilising the existing system to its fullest extent, or obtaining a reasonable return on investment.
 - The treatment plant has sufficient capacity to accommodate growth in inflows for at least 15 years.
 - The applicant is not yet able to investigate alternatives. Because of other waste water treatment commitments, investigation, design, and implementation of alternatives will take time.
 - The treatment plan is effective, has operated without incident, and monitoring shows consistent compliance with consent conditions.
36. Mr Dunning agreed with Ms Sullivan that the key matters to be addressed are the duration of the coastal permit, and the effect of the discharge on cultural and spiritual values. The relevant rules and activity status are Rule 7.3 (Restricted Coastal Activities that are Discretionary Activities) under the RCEP , and Rule WQL29 in the Proposed Natural Resources Regional Plan (NRRP) (Discretionary Activity).
37. It was Mr Dunning's opinion that there is a limited permitted baseline in respect of the storage of wastewater at the treatment plant, but no permitted baseline applies to the discharge to the coastal marine area.
38. Mr Dunning drew our attention to section 104(2A) of the Act, which directs us to have regard to the investment of the existing consent holder, and to section 105 which requires that we have regard to:
- a) The nature of the discharge, and the sensitivity of the receiving environment to adverse effects.
 - b) The applicants reasons for the proposed choice; and
 - c) Any possible alternative methods of discharge, including ...other receiving environments.
39. In respect of these matters, Mr Dunning considered that the receiving environment was of moderate to high sensitivity due to the high community use, the presence of wildlife, and the cultural values of the harbour. He referred to Mr Bourke's evidence on the reasons the applicant wishes to continue the discharge. These include:
- The absence of significant adverse effects.

- The anticipated remaining life of the wastewater plant, and its ability to accommodate population growth being well beyond 15 years.
 - The level of capital expenditure already committed to wastewater and water supply projects on Banks Peninsula.
 - Lack of funding for investigations to implement land based disposal.
 - Continuing the discharge is the best practical option (section 2 RMA).
40. In terms of 105(c), Mr Dunning discussed the possible alternatives to the DWWTP discharge identified in the application. In all cases there was a significant economic impact on the community, particularly given the efficiency of the existing wastewater plant, and the quality of the discharge. Investigation into the use of the golf course as a land based alternative is not sufficiently advanced to ensure certainty that it can be used for wastewater disposal. The applicant has considered all reasonable alternatives, and continuing the discharge for the term sought is the best practical option.
41. In relation to the relevant tests under section 107 (1), Mr Dunning accepted Ms Penman's assessment that the discharge would not significantly degrade water quality or result in any of the effects identified in s. 107(1) (c) – (g). He considered that this demonstrates that effects of the discharge over 15 years would be minor. Even if the tests under 107(1) were not met, the discharge could potentially be allowed as an exceptional circumstance under s.107(2) (a) because of financial implications, the lack of disposal options, and the effects on the community of refusing the application. However, in his view the tests are met and no further consideration of s.107 (2) is required.
42. In relation to consent duration, Mr Dunning considered that the shorter timeframes sought by submitters were unrealistic. He noted that all parties accept that the discharge cannot be removed from the harbour immediately. Responding to the submission by MKT that discharges be prohibited, he suggested that a reduced term may not address the issue, or be acceptable in terms of mitigating cultural effects.

43. Mr Dunning considered the consent term should provide for least ten years investigations, and be for a total of 15-20 years to allow a reasonable time to design and implement any viable alternatives. A 10 year term would not take into account the economic effects on the community, or the benefits of a treatment plant with at least 50 years of useful life remaining. Sufficient time is required to ensure that funding is available, and alternatives have been adequately considered and are able to be put in place. It was Mr Dunning's view that other work to improve discharge quality being undertaken in the Akaroa harbour basin (and for which LTCCP funding was committed) would have a more positive effect on water quality. In the short term, the applicant is committed to undertaking a stormwater inflow and infiltration investigation at Duvauchelle.
44. In Mr Dunning's opinion, the application is generally consistent with the relevant objectives and policies of the New Zealand Coastal Policy Statement (NZCPS), the Canterbury Regional Policy Statement (RPS), the RCEP and the PNRRP, other than in respect of policies relating to tangata whenua values. He considered that there is tension between the "tangible effects" that can be determined by science, and the "intangible values" held by tangata whenua, and that the proposal is generally inconsistent with the objectives and policies in regard to intangible effects.
45. In relation to Part II RMA matters, it was Mr Dunning Considered that the application represents the best practical option for achieving the purpose of the Act. In doing so, he acknowledged that, in terms of section 6(e) the adverse effect of spiritual values was more than minor, and that the applicant acknowledges the cultural offense caused by the discharge, and has volunteered to investigate alternatives over the next 10 years.
46. Mr Mike Bourke is Operations and Maintenance Manager for the City Water and Waste Unit of CCC. He gave evidence about water treatment infrastructure on Banks Peninsula, the DWWTP, and consideration of alternatives.

47. The state of Banks Peninsula water and waste infrastructure is generally poor, and upgrading has occupied a disproportionate amount of CCC resources since local body amalgamation. In the current LTCCP, 17% of the capital spend on water and wastewater items is for the peninsula area, which makes up only 3% of the population of Christchurch City.
48. However, Mr Bourke considered that the modern infrastructure is operating well, and as intended by their design. The Duvauchelle treatment plant is in this category, and has consistently produced high quality effluent. The plant was commissioned in 1988, and was upgraded in 2006 and 2007. UV disinfection was added in 1995, and the system was replaced in 2005. The treatment assets have a major portion of their useful lives remaining.
49. Mr Bourke stated that there has been no investigation into feasible alternative discharge options, due to the level of infrastructure work currently programmed on the peninsula, and because no funding is allocated. Iwi aspirations for Akaroa harbour were made very clear to council staff during lodgement of the application, and the 20 year term sought was not acceptable to iwi under any circumstances.
50. It was Mr Bourke's experience that planning and achieving community agreement on changes involving wastewater systems takes time. The technical feasibility of options can be readily assessed – community acceptance can take significantly longer. Mr Bourke agreed with Ms Sullivan that 10 years is an appropriate time frame for this process. He considered that an alternative option (if technically feasible) could be put in place within the amended consent term of 15 years sought.
51. Data presented by Mr Bourke showed that the wastewater treatment plant has been fully compliant with consent conditions since 2005. If future population increases are similar to the current rate, the plant has ample capacity beyond the term sought, and effluent quality is expected to remain well inside current consent limits.

52. Mr Bourke acknowledged that the discharge of even highly treated wastewater is a serious affront to the cultural aspirations of local Maori and objectionable to many other people with close association with the harbour. This is well understood by Council, and will ensure that there is a full investigation of alternative discharge options during the term of the consent.

Submissions in opposition

53. Ms Andrea Lobb is an environmental and resource management analyst and is General Manager of Mahaanui Kurataiao (MKT). She presented evidence in support of the MKT submission which is on behalf of Onuku and Wairewa Runangas, and Te Runanga o Ngai Tahu.
54. Ms Lobb confirmed that a meeting between the applicant and Ngai Tahu had occurred in May this year at the request of CCC, and after the application had been lodged. Ngai Tahu has expressed their concern and opposition to consents for the direct disposal of human sewage to Akaroa harbour since before the amalgamation of BPDC and CCC. The Runanga supported Council in taking steps to remove the Tikao Bay and Wainui discharges from the harbour, and agreed to consent terms of 5 years to in order to enable this process. They have understood the need to continue discharges to the harbour during evaluation and construction phases, and agreed to extensions to consent terms, most recently in the case of delays to the Wainui scheme due to the consents being appealed.
55. Ms Lobb stated that there had been no early engagement with Ngai Tahu in relation to the current DWWTP application: the consultation was prompted by consent timeframes, and Council knew Ngai Tahu would have concerns. At the meeting in May it was indicated that a consent term of 20 years would be unacceptable to Ngai Tahu, but no consideration appears to have been given to this by CCC. Previous consent terms for the discharge have been short, with successive renewals: 5 years from 1987, and then again from 1994, and 10 years from 2000. Ngai Tahu hold serious concerns about CCC applying for a

20 year term, given it has clearly been the approach to remove wastewater from Akaroa Harbour.

56. The discharge of human waste to areas used for mahinga kai is totally culturally unacceptable to Ngai Tahu. This is acknowledged appropriately in the AEE and section 42A Report, but no methods are proposed to address these effects. Akaroa harbour is a significant taonga for Ngai Tahu, and ensuring it is in good health for whanau today and in the future, is of utmost concern to the whanau there. Ngai Tahu have particular concerns about the ability of the upper harbour bays to be fully flushed during tidal cycles, and about the cumulative effects of discharges. There are reports from Onuku fishers that the upper harbour water circulates and does not fully clear.
57. It was Ms Lobb's opinion that the importance of the harbour to Ngai Tahu, the Statutory Acknowledgement and current iwi management plan, are acknowledged in the application, but not the Taiapure under the Fisheries Act that is in place over the harbour. The Taiapure includes objectives to prevent further degradation of the mauri of the harbour, and to ensure that adverse effects are avoided remedied or mitigated and that fisheries resources are fit for human consumption.
58. Ms Lobb considered that the stated concerns and objectives of Ngai Tahu for Akaroa harbour should be given appropriate weight in terms of Part II of the Act in the decision on the application. She noted that, in relation to wider community perceptions of sewage discharges to the harbour, the requirement to actively protect the interests of Maori under both the LGA and Part II of the Resource Management Act is unique to tangata whenua. It was Ms Lobb's view that this is a significant matter that cannot be outweighed by a long term strategy of continuing to discharge under existing conditions, with adverse effects on tangata whenua.
59. Ms Lobb considered that the ability of Ngai Tahu to act as manawhenua and kaitiaki of Akaroa harbour has been significantly adversely affected by wastewater discharges. There are only limited areas suitable for

mahinga kai, and many of these are further out of the harbour and difficult to reach. This particularly affects older whanau, and limits on the ability to harvest mahinga kai compromises the mana of whanau, and of Onuku marae.

60. In response to questioning, Ms Lobb identified two ways in which cultural values were being adversely affected by sewage. The mauri (or living element) of the water was directly affected by discharges containing human waste, and there were cumulative effects on the environment including the loss of mahinga kai, in part due to a lack of flushing.
61. It was Ms Lobb's opinion that, in pursuing the application without modification, there has been a lack of responsiveness by Council to tangata whenua interests. This is totally unacceptable to Ngai Tahu, for whom the continued discharge of sewage is culturally offensive. It has been Ngai Tahu strategy to work with Council to achieve removal of wastewater from the harbour, but this has not occurred with this application, which is essentially to maintain the status quo. Ngai Tahu therefore have been left with one option – to strongly oppose the application.
62. Ms Lobb considered that the section 42A report ignores effects on tangata whenua, and does not address mitigation. Under the RMA, it is not anticipated that effects on cultural values be offset against economic or social benefits. Adverse effects must be avoided, remedied or mitigated.
63. Ms Lobb noted that the recent decision on applications to discharge sewage to Lyttelton Harbour/ Whakaraupo addressed the cultural effects of these discharges, and concluded that budgetary and timing constraints were not sufficient reasons for not addressing cultural concerns. Her evidence also included excerpts from evidence presented by Mr Paul Horgan to that hearing, which addressed the relevance of LTCCP budgetary constraints. This expressed the opinion that budgetary constraints for CCC that may arise due to a reduced consent term for

those discharges is not a relevant effect in terms of section 104(1) (a), and that only limited weight should be attributed to any effects on LTCCP funding in terms of 104(1)(c). In the event of any conflict between the LGA and the RMA, the achievement of the purpose of the RMA must supersede that of the LGA. It was Ms Lobb's opinion that these arguments were also relevant to the DWWTP application.

64. Ms Lobb stated that the only conditions under which continuation of the discharge would be acceptable to Ngai Tahu would be a five year consent term, during which time alternative options (including discharge to land) are identified, evaluated and developed, with on-going engagement from Ngai Tahu. This is consistent with the approach for other sewage discharges to Akaroa Harbour. Ngai Tahu also sought regular monitoring of the cultural health of the harbour, including sampling of kaimoana species at locations to be agreed upon. In response to questioning, Ms Lobb stated that Ngai Tahu could agree to a staged approach.
65. Mr David Newey is a resource management planner with DoC. He gave planning evidence in support of the Department's submission. DoC is currently a member of the Working Party evaluating options for the long term disposal of wastewater from Akaroa.
66. It was Mr Newey's evidence that the inner part of the harbour adjacent to the discharge point is an Area of Significant Natural Value (ASNV) in the RCEP, and that Duvauchelle bay has been identified as a Recommended Area for Protection. The harbour is also part of the Banks Peninsula Marine Mammal Sanctuary.
67. Mr Newey relied on the analysis of actual or potential effects in the section 42A Report, which he considered to be thorough. He agreed with the conclusions of the report. In its submission, the Department raised the issue of contaminants such as hormones and pharmaceuticals (endocrine disrupters) in the wastewater having potential effects on Hector's dolphins. The section 42A Report notes that the applicant has not investigated or quantified these effects.

68. Mr Newey quoted from a South Australian Environmental Protection Agency report which found that environmental contaminants from wastewater may disrupt the endocrine system in marine organisms by causing unpredictable and abnormal cell responses, impairing cell responses, leading to an increased hormonal effect, altering natural cell activity, or disrupting the natural production of hormones.
69. Mr Newey noted that one site specific study studied PCB and organochloride levels in Hector's dolphin. One of the conclusions of this report was that the pollutant burdens found in Hector's dolphin highlighted their potential vulnerability to discharges. He was critical of the fact that the applicant had not considered the actual or potential effects of the waste water discharge on Hector's dolphin, although he acknowledged that monitoring the effect of the substances in question is difficult.
70. On questioning about the conclusions of the Endocrine Disrupting Compound report tabled with Ms Penman's evidence, Mr Newey said that report appeared to indicate that there were gaps in knowledge about effects on Hector's dolphin, but that risks were low, and effects were minor. However, he considered that cumulative effects may be a factor, and that although risks may be low there is insufficient information to say the effects are minor. A precautionary approach is therefore required – for this reason DoC has sought the addition of a monitoring condition.
71. In his Objective and Policy assessment, Mr Newey identified a number of policies in the NZCPS, RPS, RCEP with which he considered the application to be inconsistent. These include NZCPS policy 1.1.2, Objective 1, Policies 1 and 2 of Chapter 11 of the RPS, and RCEP Objective 6.1 e) in relation to potential effects on Hector's dolphin and their habitat. In relation to RCEP Policy 6.1 a) (ii) and (iii), Mr Newey generally agreed with Ms Sullivan that special or extraordinary and unique circumstances may exist that justify the applicant not being able to avoid potential significant effects, due to the time required to investigate and develop alternative treatment and discharge options. However, he

did not consider that this differentiates the application from the Akaroa discharge to the extent that it justifies a term of 20 years (as opposed to a 5 -10 year term) while alternative options are investigated.

72. In relation to the Coastal Water chapter of the RCEP, Mr Newey generally agreed with the analysis and conclusions in the section 42A report. However, he noted that the absence of information about potential adverse effects does not mean that there is no adverse effect. Mr Newey suggested (with reference to decisions on the Lyttelton harbour discharges), that a precautionary approach could be required and that this would warrant the granting of only a short term consent, while alternatives were investigated.
73. It was Mr Newey's opinion that, if granted for the consent term sought, the application would not avoid, remedy or mitigate adverse effects in terms of section 5 RMA, and would not be consistent with section 6(c) and (e) and section 7(f) of the Act. In relation to section 107 of the Act, he considered that there is insufficient information to assess whether the proposed discharges are having any significant adverse effects on aquatic life, particularly Hector's dolphins.
74. Mr Newey considered that a pragmatic solution to avoiding these effects, as well as unnecessary costs on the applicant, would be to limit the consent term to not more than 10 years. He supported the establishment of a working group to investigate options, as well as Council adopting a final recommendation and a budget to implement the recommendation within the 10 year period.

Section 42A Officer's Report

75. Ms Bianca Sullivan prepared the section 42A Officer's report. She is a Principal Consents Advisor with Ecan. Ms Sullivan attended the hearing and answered questions together with Dr Lesley Bolton-Ritchie, a Senior Water Quality Scientist with Ecan, who provided advice on the preparation of the Report.

76. The application is a discretionary activity, and a restricted coastal activity in accordance with Rule 7.3 of the RCEP. The standards and terms for Rule 7.3 refer to Schedule 4 of the RCEP, which set classes for coastal waters, and water quality standards within these. The point of discharge is within Class SG, to be managed for shellfish gathering, contact recreation and aquatic ecosystems, while Duvauchelle bay is Class CR (contact recreation and aquatic ecosystems). The AEE assesses the water quality resulting from the discharge as meeting these standards.
77. Ms Sullivan generally agreed with the applicant's assessment of the positive effects of the application. These include considerable physical, social, and environmental benefits. The applicant has assessed potential effects on water quality by comparing monitoring results from the existing discharge with the Class SG standards, the relevant figures in ANZEC guidelines, and section 107 of the Act. The AEE states that effects on water quality are likely to be minor.
78. The applicant did not propose a reasonable mixing zone. Such a zone is an important tool for determining the effects of the discharge: it is difficult to establish the extent of effects without it. Dr Bolton-Ritchie considers that a 20m mixing zone would be appropriate for the Duvauchelle discharge.
79. Ms Sullivan agreed with the AEE that the discharge would meet the Class SG water standards for faecal coliforms, dissolved oxygen, bacterial or fungal slime growths, temperature, BOD, and heavy metals, as well as the additional 'standards' set by section 107 of the Act. She also agreed that effects on water quality and public health were likely to be minor.
80. In relation to stormwater infiltration, Ms Sullivan recommended that a new condition be provided stipulating the rain event size that would trigger an increase in the discharge volume during such events. On the basis of Dr Bolton-Ritchie's recommendations, she also supported additional

monitoring of the receiving environment for ammonia, as well as a trigger level for monitoring of faecal coliforms of 0.91mg/L.

81. In relation to effects on marine ecosystems Ms Sullivan noted that, while the AEE used appropriate ANZECC trigger values, the focus was on water quality parameters as indicators of ecosystem health. There was no assessment in relation to the effects of the discharge on marine mammals and their food supply. In particular, she identified the effects of some chemicals on wildlife endocrine systems as a potential issue.
82. Ms Sullivan referred to Dr Bolton Ritchie's concerns in respect of nutrient loadings in the discharge, and potential cumulative effects on water quality and ecosystem health in the harbour. Ms Sullivan recommended monitoring of total nitrogen (TN) and dissolved reactive phosphorus (DRP) levels in the receiving environment. She did not consider that the contribution of suspended solids from the outfall was likely to be significant.
83. It was Ms Sullivan's view that adverse effects on cultural values was the key issue for the application. In relation to this, she noted that the applicant had not proposed investigations of alternative methods of discharge, and recommended such a condition be included.
84. Ms Sullivan undertook a planning analysis of the application against the relevant provisions of the (then) operative 1994 NZCPS, the RPS, and the RCEP. Generally she found that the proposed discharge would not be contrary to these provisions, apart from Policy 7.7 of the RCEP which states:
Ensure that discharges of water or contaminants into water, or onto or into land in the Coastal Marine Area avoid significant adverse effects on cultural or spiritual values associated with sites (e.g. areas covered by controls such as taiapure or mahinga mataitai), of special significance to tangata whenua.

85. Ms Sullivan also assessed the application against Te Whakatau Kaupapa¹. She noted that the policies it contained signal the unacceptability of discharges to water without land treatment.
86. It was Ms Sullivan's opinion that the proposed discharge would enable people to provide for their social and economic wellbeing and for their health and safety in terms of section 5(2) of the RMA. However, there is a potential conflict with the matters set out in section 5(2)(c) and 6 (e) of the Act with respect to Maori cultural values, and with section 7 (f) in relation to enhancing the quality of the environment. Section 8 is also a relevant consideration.
87. Other relevant matters identified by Ms Sullivan included the provisions of section 105(1) and 107 of the Act. If appropriately comprehensive conditions were imposed, the proposed activities were unlikely to breach section 107 requirements.
88. Ms Sullivan recommended that the applications be granted, subject to appropriate conditions. She acknowledged that effects on tangata whenua values would be significant, but considered that declining the application and leaving the community without a sewage disposal system would be far more significantly adverse. Given the applicant proposed to investigate land disposal options, it was her opinion that consent duration was the key consideration.
89. Ms Sullivan noted that the PNRRP contains criteria for determining the duration of a resource consent, but that these do not have any statutory significance for the coastal permit applications. There were financial limitations to upgrading the treatment plant in the short term, and that other projects the applicant is currently undertaking are likely to improve the Harbour's water quality more. Ms Sullivan considered that time was needed to investigate alternative options to the discharge, and recommended that this investigation be undertaken within 10 years of the grant of consent.

¹ The Ngai Tahu Resource Management Strategy.

90. It was also Ms Sullivan's view that there could be potential economic impacts with the continued discharge, given the unique cultural and ecological values associated with the harbour which is a popular recreational area and tourism site. The continued discharge of wastewater (and particularly the nutrients it contained) could result in long term adverse effects on water quality, and these could have potential economic and environmental impacts.
91. The discharges will result in significant adverse cultural effects which are not likely to be mitigated through consent conditions. A reduced duration may be appropriate to address these particular effects. In response to questioning it was her opinion that a consent term of less than 10 years would be likely to result in an application for a new consent.

Applicants Right of reply

92. In his right of reply, Mr Prebble identified the areas of agreement between the applicant's experts, and the Reporting Officers. These included agreement on:
- A 50m mixing zone for all parameters
 - Monitoring dissolved reactive phosphorus (DRP), without a trigger value.
 - Linking the higher discharge volume of 600 cubic metres to a rainfall volume of 25mm over 3 days.
 - Revised trigger values and reporting for total nitrogen (TN) and ammonia.
93. Other areas of agreement included:
- That the scale of the discharge and effects beyond the mixing zone would be no more than minor, other than in respect of tangata whenua values.
 - Other uncontrolled contaminants from wildlife, streams, and natural processes were a significant contributor to background water quality.

- The proposal is generally consistent with the relevant planning and statutory provisions, other than in respect of tangata whenua relationships and values.
- That a 15 year duration was appropriate and reasonable.

94. In relation to Mr Newey's evidence about a possible link between EDC's and the health and wellbeing of Hector's dolphin, it was Mr Prebble' view that the weight of expert evidence is against the finding of any causal link, and that any uncertainties are not sufficient to justify a precautionary approach. There is no evidence of a resident Hector's dolphin population in the upper harbour, and monitoring at Akaroa showed EDC levels were low to undetectable. It is the Council's position that the monitoring conditions requested by DoC are not required.
95. In relation to the issues raised by Ms Lobb, Mr Prebble stated that her suggestion that funding and budgeting constraints are of limited relevance is incorrect, and the significant cost of alternatives must be considered. Ultimately section 5 of the Act calls for an overall judgement which may involve a trade-off between social and economic wellbeing, and cultural wellbeing. It was the Council's position that it has demonstrated that it was properly informed of cultural concerns and has given due regard to them. It is not required to elevate these above section 5 matters and particularly the social and economic welfare for the community and its health and safety. Mr Prebble submitted that the Council is not subject to the principle of active protection, and at most is required to take such action as is reasonable in the circumstances.
96. Mr Prebble also addressed the circumstances that have arisen following the Christchurch earthquake. The CCC now faces a number of priority projects to repair and upgrade water and wastewater systems across the district. He submitted that this is a further matter to consider in the overall judgement, and the determination of reasonable duration.

ASSESSMENT

97. In assessing this application we have considered the original application and assessment of environmental effects (AEE), the section 42A report and supplementary information, the submissions received and the evidence presented at the hearing.
98. In terms of section 113 (1) (ac) we have identified four principle issues associated with the coastal permit CRC102952. These are:
- 1) Effects on water quality, aquatic ecosystems, and public health.
 - 2) Effects on cultural values and use of the harbour by tangata whenua.
 - 3) Potential effects on Hector's dolphins.
 - 4) Duration.

We discuss these issues and make our associated findings in terms of section 113 (1) (ae) under the relevant headings below. None of these effects are associated with the land use consent CRC102957, and on the basis of the AEE and the evidence we have concluded that the adverse effects of storing wastewater at the DWWTP are less than minor.

Status of the activities

99. There is agreement that consent application CRC102952 (Discharge of contaminants into coastal waters) is a Discretionary activity and a Restricted Coastal Activity in accordance with Rule 7.3 of the RCEP.
100. In relation to CRC102957 (use of land to store contaminants) it was Ms Sullivan's view that, because the relevant PNRRP Rule WQL29 is not yet operative, the activity meets the criteria of section 20A of the RMA. It is therefore consistent with section 9A of the Act, and consent is not currently required. This is because the section 20A specifically states that an activity may continue until the rule becomes operative.

101. As the relevant Chapter and rules of the PNRRP are likely to become operative in the near future and trigger a requirement for a resource consent under proposed Rule WQL29, the applicant has applied for resource consent. Ms Sullivan pointed out that, as the PNRRP is not operative we would therefore have to anticipate the final version of Rule WQL29 in our decision if we were to grant consent. However, Ms Sullivan also provided an alternative interpretation: that the activity is not permitted; rather section 20A of the Act provides an exemption for requiring consent.
102. Mr Dunning supported this second interpretation (i.e. that section 20A provides a 'waiver'). He also noted that submissions on Rule WQL29 have closed, and there are no outstanding matters that affect it. The rule is beyond challenge, and can be expected to become operative. In his opinion, there is nothing preventing the application being granted "ahead of time".
103. We agree with Mr Dunning on this matter. Despite the "enabling" provisions of section 20A, an application made under the proposed rule would clearly constitute a resource consent in terms of section 87 of the Act. Accordingly we consider that the application can be made for resource consent CRC102957 as a Discretionary Activity under PNRRP Rule WQL29.

Section 104 RMA: Actual and Potential Effects on the Environment

Effects on water quality, aquatic ecosystems, and public health (Issue 1)

104. The actual and potential adverse effects on water quality, aquatic ecosystems and public health were identified in the AEE, the section 42A Report, and evidence of Ms Penman, Mr Bourke, Ms Lobb, and Mr Newey. The principle matters in relation to water quality raised by Ms Lobb and Mr Newey are discussed below in the sections on effects on cultural values and use of the harbour by tangata whenua, and effects on Hector's dolphins, respectively.

105. Effects on water quality, including water quality standards, storm water infiltration, effects on marine ecosystems, toxicity, nutrients, suspended solids, and effects on public health are summarised in Ms Sullivan's section 42A report. We concur with her general analysis, and cross-refer to paragraphs 42-79 of her report in terms of section 113 (3) (a) (ii) of the RMA.
106. It was Mr Bourke's evidence that the DWTTP consistently produces a high quality effluent, and met resource consent decisions (paragraph 6). The data showed no impacts on water quality at the point of discharge, and indicators are almost always below detection level (paragraph 21). Ms Sullivan noted that, based on advice she has received, the plant has a good record of compliance with existing consent conditions (paragraph 12), and the plant is operating well (paragraph 146).
107. Ms Penman stated that DWWTP inflows are predominately from domestic sources (i.e. they contain virtually no industrial input), and are subject to a considerable degree of treatment (paragraph 16). The wastewater discharge will comply with the RCEP standards for SG waters, as well as the criteria under section 107 of the Act outside a recommended mixing zone of 50m. SG standards for faecal coliforms, dissolved oxygen, bacterial or fungal slime growths, temperature, biological oxygen demand, and heavy metals would be met within a 20m zone (paragraphs 8-9).
108. It was Ms Penman's evidence that bacterial contamination of shellfish at Ngaio Point from samples collected between February and June 2010 was unlikely to have come from the WWTP discharge, as monitoring records showed the plant was providing effective treatment to remove bacteria at that time (paragraph 70). Bird populations may be one contributor.
109. There was a high degree of agreement between Ms Penman and Ms Sullivan both on the conditions required to avoid, remedy or mitigate adverse effects on water quality, public health and aquatic ecosystems,

and that any remaining effects on these matters were likely to be less than minor.

110. Ms Sullivan proposed several additional conditions, including a reasonable mixing zone of 20 metres in radius, proposed trigger values for nutrients, and tying the proposed increased discharge volume from stormwater infiltration to specific rainfall events. Ms Penman generally agreed with these additions but considered that a 20m mixing zone may be inadequate for some concentrations of contaminants and recommended that this be increased to 50m. This was subsequently agreed to as being appropriate by Dr Bolton-Ritchie and Ms Sullivan.
111. We find that, subject to the amended conditions agreed to between the applicant and Ms Sullivan, and to the matters discussed below, the adverse effects of the wastewater discharge on water quality, public health and aquatic ecosystems will be less than minor, and that, after reasonable mixing, the discharge will comply with the RCEP standards for SG waters, as well as the criteria under section 107 of the Act

Effects on cultural values and use of the harbour by tangata whenua (Issue 2)

112. The submission of MKT, on behalf of Te Runanga o Ngai Tahu, Wairewa, and Onuku, expressed concerns about the on-going and unacceptable adverse effects of the discharges on Ngai Tahu values, both from the DWWTP, and in combination with other sewage discharges to Akaroa harbour. MKT state that the discharge of human sewage (whether treated or not) into water, especially waters prized for mahinga kai, is totally incompatible with tangata whenua values. Onuku and Wairewa Runanga have therefore advocated for many years that wastewater should not be discharged directly to the harbour, and have worked with CCC to achieve this at Akaroa.
113. The submission states that the discharge remains culturally offensive to Ngai Tahu, adversely affects mahinga kai in the harbour, and directly

affects their ability to gather kaimoana and exercise their cultural and traditional relationship within Akaroa Harbour, especially around the wastewater discharges.

114. MKT oppose the application on grounds that include the following:
- a) Significant adverse effects on Ngai Tahu values and culture from the discharge.
 - b) The degradation of the mauri of coastal waters.
 - c) Significant adverse effects on mahinga kai and the ability to harvest kaimoana, and the adverse effects of this on Ngai Tahu's mana and manaakitanga.
 - d) Significant adverse effects on the ability of Ngai Tahu to be effective kaitiaki and to practice kaitiakitanga in the face of on-going pollution.
 - e) Significant adverse effects of the relationship of Ngai Tahu with their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.
 - f) Inadequate assessment of effects on tangata whenua values, and consideration of alternatives.
115. In her Report at paragraph 38, Ms Sullivan notes that Onawe Peninsula and Duvauchelle Bay are included in Schedule 3 of the RCEP, as identified areas of value to Tangata Whenua. At paragraph 151, Ms Sullivan states that the discharges will result in significant adverse cultural effects that are not likely to be mitigated through consent conditions, and therefore a reduced duration may be appropriate to limit these effects. This is discussed further below.
116. In his legal submissions, Mr Prebble acknowledged that the discharge is culturally offensive to runanga (paragraph 37). For this reason the Council has agreed to a shorter duration of 15 years. The issue was the significance of the effects on cultural values, and whether these justify a further reduction in duration (paragraph 38).

117. Mr Prebble reviewed relevant case law in relation to the protection of cultural and spiritual values. There is a duty on the Crown to protect Maori values: this is reflected in section 6(e) of the RMA. However, the case law shows that this duty does not guarantee absolute protection of Maori interests, and there must be a “balancing of competing interests” (paragraph 42.3). The protection of cultural issues is not absolute, and it may also be necessary to establish tangible adverse physical effects (paragraph 42.5).
118. Mr Prebble considered that the MKT submissions require a balancing of competing interests, and that this is recognised in the MKT submission (paragraph 43). He goes on to state that the expert evidence is that the discharges do not currently have any tangible or detectable adverse effects on contamination of mahinga kai (paragraph 51). Even if offensive to some Maori, this does not translate to an automatic prohibition on discharges, or an absolute protection of cultural values. In discussing the overall effects (paragraph 54), Mr Prebble accepts the effects on cultural values may be more than minor, but states that they are intangible in their nature, and are outweighed by the long term benefits of the permanent removal of waste water discharges from the harbour.
119. Mr Dunning agreed with Ms Sullivan that the effect of the discharge on cultural values was a key issue for the application. At paragraph 61, he acknowledged (in relation to the MKT submission) that the discharge causes cultural offense, but considered that this needs to be balanced against the fact that high quality wastewater has been discharged since 1988 without significant adverse environmental effects. Given his earlier acknowledgement, we find this a rather surprising conclusion, as we do his statement at paragraph 82 that “Ms Penman’s evidence indicates that the discharge does not in fact prevent the use and enjoyment of the harbour”. However, at paragraph 88 Mr Dunning does acknowledge the cultural and spiritual offence (which he terms “intangible effects”) caused by the discharge, and its effects on the gathering of mahinga kai and the exercise of associated traditions. He concludes that the degree of cultural

offence alone does not override the potential social, cultural and environmental effects of refusing consent, or reducing its term (paragraph 145).

120. In Mr Dunning's view the proposal does create a tension between cultural spiritual values and the enabling provision of the statutory provisions and the RMA. This conflict is to be weighed against the well being of the wider community and the physical environment in a broad judgement of whether the proposal meets the purpose of the Act (paragraph 147).
121. Ms Lobb stated that Ngai Tahu have expressed their concern and opposition to the disposal of human sewage directly to the harbour ever since resource consents have been sought for these activities. They have supported Council to achieve this process and, where necessary, agreed to extensions of time for the existing discharges to continue. Given the general approach has been to work towards removal of discharges to the harbour, Ngai Tahu have serious concerns that the Council would make an application for a consent term of 20 years (paragraph 10). Ngai Tahu have submitted against all the proposed discharges, and expressed in many forums that the discharge of human waste to areas used for mahinga kai is totally culturally unacceptable (paragraph 11).
122. Akaroa harbour is a significant taonga for Ngai Tahu, and ensuring it is in good health for whanau today and in the future is of the utmost concern (paragraph 12). The application correctly acknowledges the importance of the harbour to Ngai Tahu, but did not identify the Taiapure under the Fisheries Act that is in place over the harbour. The Taiapure has objectives to prevent further degradation of the mauri of the area; to ensure adverse effects of human activities are avoided, remedied or mitigated, and to ensure all fisheries resources are fit for human consumption (paragraph 14).
123. Ms Lobb stated that Ngai Tahu hold particular concerns about the ability of the bays in the upper harbour to be fully flushed on tidal cycles. Onuku fishers consider that the upper harbour does not fully clear on every tidal

cycle, and there are concerns about the cumulative effects of discharges in this part of the harbour (paragraph 15).

124. The ability of Ngai Tahu as manawhenua and Kaitiaki of Akaroa harbour has been significantly adversely affected by discharges of wastewater. Only very limited areas suitable for mahinga kai, many of them are further out in the harbour and more difficult to reach, which particularly affects older whanau. This affects the ability to harvest mahinga kai, and provide for guests in homes and at Onuku marae, and compromises their mana (paragraph 19).
125. It was Ms Lobb's opinion that the RMA does not anticipate that effects on cultural values be offset against economic and social benefits, but requires that adverse effects be avoided, remedied or mitigated (paragraph 22). The continued discharge of treated human sewage has been, and will continue to be culturally offensive to tangata whenua.
126. In his right of reply, Mr Prebble stated that CCC fully acknowledges and recognises the concerns and long held belief of tangata whenua that discharges of wastewater to coastal waters used for mahinga kai is culturally offensive and unacceptable (paragraph 15). However, cultural concerns are only one matter to be taken into account under Part 2 of the Act. All section 6 RMA matters are subordinate to, and must serve the purpose of, promoting sustainable management in terms of section 5 (paragraph 21).
127. The requirement in Section 7(a) also does not amount to a right of veto by kaitiaki. By proposing a shorter consent duration, and committing to a process of actively pursuing waste water disposal options, CCC is having particular regard to the views of kaitiaki. Both matters are directed at recognising and providing for the long term cultural relationship of runanga with the harbour (paragraph 23).
128. We find that all the parties to the hearing are in agreement that the discharges are culturally offensive and/ or having adverse effects on Maori cultural values, but there is disagreement between the MKT (and to

a lesser extent the Reporting Officer) and CCC as to the significance of these effects, and the weight that should be placed on them.

129. Both Mr Prebble and Mr Dunning emphasised the “intangible” nature of the cultural values affected by the discharge, with the inference that these should be given less weight in terms of adverse effects than more tangible qualities and values (such as water quality indicators). Mr Prebble raised the issue of the necessity to establish tangible adverse effects with reference to *Mahuta v Waikato RC*. However, our understanding of that case was that the Court found there were intangible effects but these were outweighed by the benefits to the community. We also note that the Court’s decision in *Outstanding Landscape Society v Hastings City Council and Unison Network (W24/2007)*, where it turned down a wind farm application, was partly based on intangible Maori cultural values associated with a landform and landscape.
130. We see no reason why effects on so called intangible cultural values should be accorded less weight than more tangible aspects of the environment, and note that Part II of the Act contains a number of references to matters which are either intangible, or contain an intangible component. Along with Maori values and relationships, these include references to cultural wellbeing, landscapes (some attributes of which are intangible), stewardship, amenity, and qualities of the environment. In any event some aspects of the concerns expressed by Ngai Tahu are tangible (or have a tangible effect), for example: effects on mahinga kai and the ability to harvest and feed their people and guests, and concerns about tidal flushing.
131. We agree with Mr Prebble about the relevance of the *NZ Rail* case, that sections 6, 7 and 8 are subordinate to the sustainable management purpose of the Act, and that section 5 of the Act requires a weighing and balancing exercise. However, we note that the section 5 assessment encompasses social and cultural wellbeing as well as consideration of economic wellbeing and health and safety. We are also in agreement

with Ms Lobb that there is a requirement under section 5 to avoid, remedy or mitigate adverse effects.

132. Because of its small size and relatively high effluent quality, CCC consider that DWWTP is of less of a priority in terms of alternatives than the more “significant” discharges at Akaroa and Lyttelton. While it is not clear from their submission and evidence, this ordering of priorities may not necessarily be the case for runanga given their expression of concerns about the potential lack of flushing in the upper harbour.
133. While the applicants counsel and witnesses acknowledged that the discharge would be culturally offensive and that there would be adverse effects on cultural values, it was not clear to us that they had an appreciation of what those effects might be. We would also have found it helpful to have more detailed evidence from local whanau and runanga about the cultural impacts of the discharge to the harbour (and the cumulative effects discharges generally), and to have been provided with more specific information on the impacts on the mauri of coastal waters and on mahinga kai. However, the submissions and evidence show that tangata whenua have had considerable involvement with both BPDC and CCC over discharges to the harbour, and there have been the longstanding and unanimous expressions of concerns from the three runanga. On the basis of the submissions and evidence heard and our own knowledge of tikanga, we are persuaded that the existing discharges are both culturally offensive, and are giving rise to adverse cultural effects.
134. We therefore find that that the application would give rise to significant adverse effects on Ngai Tahu values and culture, their ability to be effective kaitiaki and practice kaitiakitanga in Akaroa harbour, their relationship with their culture and traditions and the harbour, and on mahinga kai.
135. We discuss how these adverse effects could be avoided, remedied or mitigated in the Duration section below.

Potential adverse effects on Hector's dolphins (Issue 3)

136. The potential for adverse effects from wastewater discharges on marine mammals, and specifically Hector's dolphins, was raised in the submission of the Director General of Conservation, and discussed in the evidence of Mr Newey. Mr Newey identified the potential for endocrine disrupting chemicals (EDC) in the sewage discharge to adversely affect marine mammals. He considered that the presence and potential effect of these substances on Hector's dolphins warranted a precautionary approach to the discharge, and that this should be addressed through additional monitoring for EDC, and a reduction in the term of consent to 10 years.
137. In her section 42A report, Ms Sullivan acknowledged the potential for these effects to rise and noted that while they were not identified in the AEE, they were likely to be addressed at the hearing. She did not discuss the issue further in her report.
138. Ms Penman discussed EDCs in her evidence (paragraphs 57-63). Whilst there is the potential for effects from EDCs, the concentrations and conditions under which these could arise is unknown, and no guidelines are available. Therefore the risk cannot be quantitatively assessed. Where EDC effects have been identified internationally, they have typically been associated with contaminants which would not be expected in the DWWTP discharge. However, EDC effects have been associated with hormones, which would be present in the DWWTP discharge.
139. Ms Penman referred to a recent report² on the effects of EDCs on marine mammals from the Akaroa WWTP that was appended to her evidence. The Clement report notes that EDCs levels in Akaroa wastewater are low to non-detectable, due to the lower inflow and lack of industrial sources compared to those reported overseas. Ms Penman considered that the

² Clement D 2010. Effects of Endocrine Disrupting Compound sin Akaroa Wastewater on Marine Mammals. Prepared for CCC. Cawthron Report No.1818.

composition of the DWWTP is likely to be similar, but of an even smaller volume.

140. The Clement report concludes that there is no resident population of Hector's dolphin that resides in the harbour, there is high daily turnover, and seasonal trends in distribution and density indicate they are rarely found in the upper harbour.
141. It was Ms Penman's opinion that the risk to the dolphins is likely to be low due to: the low concentrations of EDCs in the influent; further (but unknown) reductions of any EDCs during the treatment process; dilution in the receiving environment; and the generalist diet and roving nature of the dolphins, which would result in limited contact with prey species exposed to the discharge.
142. On the basis of Ms Penman's evidence and the Clement report, we find that the risk to Hector's dolphins from the DWWTP discharge is likely to be low, and that any adverse effects would be less than minor. We make these findings on the basis of the reasons outlined above, and because of the relatively rare occurrence of Hector's dolphins in the upper harbour.
143. We do note that there is some uncertainty about the concentrations of EDCs that can give rise to adverse effects, and that this may be a fruitful area of research in the future. Arising from this uncertainty, there is also a potential issue of cumulative effects from EDCs in various sewage discharges around the harbour, particularly if settlement patterns, influent composition or population were to change.
144. Although we think that it would have been helpful to have a monitoring condition to establish what levels of EDCs were entering the harbour from the DWWTP, we accept that there are difficulties in imposing such a condition given the potential for EDCs to be at low or non-detectable levels. In any event, we are satisfied a relatively short duration term would address any need for a precautionary approach, and that longer term proposals to remove discharges from the harbour would effectively address any residual issues around EDCs. We also consider that if DoC

has continuing concerns about EDCs in Akaroa harbour, these could potentially be raised through its membership of the Akaroa and proposed Duvauchelle wastewater working parties.

Positive effects

145. Section 8.1 of the AEE listed a number of positive effects arising from the operation of the DWWTP and the renewal of the discharge permit. These included:
- The continuation of quality waste water treatment and management for the catchment area.
 - Maintaining a treated wastewater discharge from a point source, rather than diffuse discharges from septic tanks. This has the effect of improving overall water quality.
 - The ability to monitor the discharge from a point source, and to modify treatment and discharge should the need arise.
 - Adequate time to investigate the need and suitability of an alternative treatment and management process.
146. In her report, Ms Sullivan agreed with these matters, and noted that there are considerable benefits to the physical, social and economic environment through operating well-managed sewage treatment plants (paragraph 41).
147. Mr Prebble noted that the continuation of the consents will enable CCC to discharge its wastewater servicing obligations under the LGA, and provide for the health, economic and social wellbeing of the community. Mr Bourke stated that the option of ceasing discharge of treated wastewater by removing the current treatment is not considered a viable alternative on health grounds (paragraph 10).
148. Subject to the matters we have discussed above, we find that the proposed discharge will have positive effects on the physical, social and economic environment.

Section 104: Relevant Planning Provisions

New Zealand Coastal Policy Statement (NZCPS)

149. Both Ms Sullivan and Mr Dunning provided a useful analysis of the (then) operative 1994 NZCPS, and proposed NZCPS 2008 respectively.
150. Both these documents have been overtaken by the 2010 NZCPS, which became operative on 3 December 2010. It is therefore to this national policy statement that we turn.
151. Policy 2 (Treaty of Waitangi, tangata whenua, and Maori heritage), Policy 21 (Enhancement of water quality), and Policy 23 (Discharge of contaminants) are of particular relevance to this application. Policy 2 reads (in part):

In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment:

(a) recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;

...

(d) provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pūkenga, may have knowledge not otherwise available;

(e) take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council, to the extent that its content has a bearing on resource management issues in the region or district; and

...

(f) provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:

(i) bringing cultural understanding to monitoring of natural resources;
(ii) providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;
(iii) having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiāpure, mahinga mātaītai or other non commercial Māori customary fishing; and
...

152. The application is partly consistent with this policy, in that it provides for a working party process to investigate options to the current harbour discharge. This process will provide opportunities for input into decision making from runanga. However, for the life of the consent the discharge will adversely affect tangata whenua's cultural relationship with the harbour, and their ability to act as kaitiakitanga, and it does not appear to have regard to the Akaroa taiapure management plan. Overall, the application will be inconsistent with this policy.

153. Policy 21 reads (in part):

Where the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on ecosystems, natural habitats, or water based recreational activities, or is restricting existing uses, such as aquaculture, shellfish gathering, and cultural activities, give priority to improving that quality by:

...

(c) where practicable, restoring water quality to at least a state that can support such activities and ecosystems and natural habitats;

...

(e) engaging with tangata whenua to identify areas of coastal waters where they have particular interest, for example in cultural sites, wāhi tapu, other taonga, and values such as mauri, and remedying, or, where remediation is not practicable, mitigating adverse effects on these areas and values.

154. Based on the submissions and evidence from MKT, it is our understanding that sewage discharges are restricting existing uses such as shellfish gathering and cultural activities in Akaroa harbour, and the application is not consistent with this policy. We consider that the

imposition of conditions providing for a working party to explore alternatives to the DWWTP harbour discharge that includes tangata whenua membership, together with a reduced term of consent would assist in restoring water quality, and in remedying or mitigating adverse effects, in terms of this policy.

155. Policy 23 reads (in part):

(1) In managing discharges to water in the coastal environment have particular regard to:

(a) the sensitivity of the receiving environment;

(b) the nature of the contaminants to be discharged, the particular concentration of contaminants needed to achieve the required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded; and

(c) the capacity of the receiving environment to assimilate the contaminants; and:

(d) avoid significant adverse effects on ecosystems and habitats after reasonable mixing;

(e) use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and

(f) minimise adverse effects on the life-supporting capacity of water within a mixing zone.

(2) In managing discharge of human sewage do not allow:

(a) discharge of human sewage directly to water in the coastal environment without treatment; and

(b) the discharge of treated human sewage to water in the coastal environment, unless:

(i) there has been adequate consideration of alternative methods, sites and routes for undertaking the discharge; and

(ii) informed by an understanding of tangata whenua values and the effects on them.

156. We consider that the application is largely consistent with (1) (a)- (f) of this policy, except in regard to the cultural sensitivity of the receiving environment, and the effects of the discharge on these. We are not convinced that the discharge necessarily uses the smallest mixing zone possible in terms of (e). It was clear from the evidence that the discharge could achieve compliance with the standards within a 20 metre zone in

respect of a number of contaminants. That said, we accept that the 50 metre mixing zone is required in respect of some of the contaminants, and that it would be impracticable to require two mixing zones.

157. The application is clearly contrary to (2) (b) of Policy 23 in that there has not yet been adequate consideration of alternative methods and/ or sites for undertaking the discharge which have been informed by both an understanding of tangata whenua values and the effects on them. However, it is the applicant's intent to address these matters as part of the conditions of consent.
158. Having considered the reports and the evidence presented, and taking into account the assessment of environmental effects and proposed mitigation measures, we find the proposal is partly consistent with and partly inconsistent with the most relevant policies in the NZCPS, except in relation to Policy 23 (2) (b) where it is contrary to that policy. We have taken these matters into account in our decision and in the conditions imposed.

Regional Policy Statement

159. We concur with Ms Sullivan's general analysis of the RPS provisions, and cross-refer to paragraphs 102-106 of her report in terms of section 113 (3) (a) (ii) of the RMA.
160. Policy 3 of Chapter 6 of the RPS is of particular relevance to our consideration of adverse effects on cultural values. Taking into account the reports and evidence presented, we consider that, unless adequate mitigation of these effects is provided, the application would not be consistent with this policy, as it would not recognise and provide for aspects of the relationship of tangata whenua with their ancestral lands water and sites. We have therefore taken this policy into account in our decision and the conditions we have imposed.

Regional Coastal Environment Plan

161. We concur with Ms Sullivan's general analysis of the RCEP provisions, and cross-refer to paragraphs 107-120 of her report in terms of section 113 (3) (a) (ii) of the RMA. In particular, we agree with her conclusions that the application is generally not contrary to the relevant objectives and policies. Ms Sullivan notes two exceptions to this with which we concur: Policy 2.1.2 in that the discharge compromises the values of Onawe Peninsula and Duvauchelle Bay, and Policy 7.7 in that the discharges would not avoid significant adverse effects on cultural and spiritual values of special significance to tangata whenua.
162. We consider that, unless adequate mitigation of these adverse effects is provided, the application would not be consistent with these policies. We have therefore taken this policy intent into account in our decision and the conditions we have imposed.

Section 104: Other relevant matters

Te Whakatau Kaupapa – Ngai Tahu Resource Management Strategy.

163. In her report Ms Sullivan noted that Onawe Peninsula are identified in this document as silent files 025 and 026. The document contains a number of policies which are relevant to the application. These include policies 1, 4, 6 and 12 under the General Water Statement, and policies 1 and 4 under Mahinga kai. Collectively these signal the unacceptability of discharges to water without land treatment, the need to consult with runanga on all management practices that impact on waterways and their resources, and the need to protect water quality and mahinga kai.
164. We consider that Te Whakatau Kaupapa is a relevant matter for consideration. We find that, in respect of the proposed investigations into alternatives to which tangata whenua would be a party, the applications is

partly consistent with these policies. However, the continued discharge would be largely inconsistent with these policies.

Akaroa Taiapure

165. Ms Lobb drew our attention to the fact that the applicant has not identified the Taiapure that is in place over Akaroa harbour. She referred to several objectives for the taiapure which are to prevent further degradation of the mauri of the area, ensure that adverse effects of human activities are avoided, remedied or mitigated, and that all fisheries resources are fit for human consumption. Unfortunately we unable to source the document which contains the objectives to which she refers, although we understand this to be a management plan.
166. We agree with Ms Lobb that the existence of the taiapure is a relevant matter for consideration.

Section 105 (1)

167. As this is a coastal permit for a discharge, Section 105 (1) of the Act applies. We are therefore required to have regard to:
- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
 - (b) the applicant's reasons for the proposed choice; and*
 - (c) any possible alternative methods of discharge, including discharge into any other receiving environment.*
168. We have given consideration to these matters as part of the assessment of effects. In particular we have reached the conclusion that the receiving environment has a high degree of sensitivity to the proposed discharge in terms of adverse effects on Maori cultural values. We have addressed this issue and the other matters under (a), (b) and (c) through the conditions and term of consent we have imposed.

Section 107

169. We concur with Ms Sullivan's general analysis of section 107, and cross-refer to paragraphs 137-138 of her report in terms of section 113 (3) (a) (ii) of the RMA. Both Mr Dunning and Ms Penman also comprehensively addressed the proposed discharge quality and its compliance with the provisions of section 107 of the Act in their evidence.
170. We are satisfied that if appropriate conditions are imposed the discharge will, after reasonable mixing, not give rise to any of the matters identified in section 107(1) of the Act.

Part II of the Resource Management Act 1991

171. We concur with Ms Sullivan's general analysis of Part II of the Act, and cross-refer to paragraphs 124 -131 of her Report in terms of section 113 (3) (a) (ii) of the RMA.
172. The proposed discharge would enable Duvauchelle residents and visitors people to provide for their social and economic well being, and health and safety, by providing a functioning sewage treatment system and relatively high quality discharge to the harbour. However, the discharge would not enable tangata whenua to provide for aspects of their social and cultural wellbeing. Removal of the discharge from the harbour would be consistent with section 5 (2) (c), in that it would avoid or remedy adverse effects on the environment, but for the life of the discharge there will be adverse effects on Maori cultural values that cannot be avoided, remedied or mitigated.
173. In relation to section 6 of the Act, it is clear from the evidence that the discharge both on its own, and cumulatively, is having an on-going adverse effect on the relationship of Maori and their culture and traditions with Akaroa harbour. This relationship is a matter of national importance that must be recognised and provided for. Removal of the discharge

would assist the exercise of this relationship, but in the interim the discharge would remain.

174. In relation to section 7, we heard evidence that the discharge of sewage is adversely affecting the ability of tangata whenua to exercise kaitiakitanga over Akaroa harbour. Ms Sullivan also points out the application is inconsistent with section 7 (f) in that continued discharge does not enhance the quality of the environment.
175. Under section 8, we are required to take into account the principles of the Treaty of Waitangi. This includes the principle of active protection. Allowing continued discharges of sewage to Akaroa harbour may be in breach of this principle. We have discussed the cultural effects and proposals to mitigate these in relation to sections 5, 6, and 7 above, and in the sections of this report addressing adverse effects and duration.
176. It is our overall conclusion that the application will give rise to adverse effects on cultural values that cannot be avoided, remedied or mitigated in terms of section 5(2) (c) of the Act, and that it will not provide for aspects of Maori social and cultural wellbeing associated with Akaroa harbour. However we consider that, in the interim, the discharge is necessary to allow residents of Duvauchelle and users of the harbour to provide for their social and economic wellbeing and their health and safety. Therefore we find that, subject to the conditions and duration term set out below, the application is consistent with the sustainable management purpose of the Act.

Conditions

177. There was a high degree of agreement between the reporting officers and the applicant's experts regarding appropriate consent conditions. In general, we find that the proposed conditions are reasonable and appropriate.

178. We have made only minor changes to the draft conditions proposed, principally to clarify the purpose of the wastewater working party, and the intent of the milestones.

Duration (Issue 4)

179. The applicant originally sought a consent term of 20 years, but reduced this to 15 years at the hearing. Of the submitters, Mr Roger Beattie sought a maximum consent term of 2 years, the Tikao Bay Boating Club 5 years, and the Director General of Conservation 10 years. In their evidence to the hearing, MKT suggested a 5 year term, during which alternative options are identified, evaluated and worked towards, with on-going engagement of Ngai Tahu (paragraph 30). During questioning, Ms Lobb indicated that if there was a staged approach with milestones, a term of 10 years may be acceptable.
180. The applicants reasons for a 15 year consent duration included:
- The fact that the discharges have been in place for many years and comply with all relevant standards and guidelines, together with the lack of clear direction from the RCEP that discharges must be removed from the harbour.
 - The level of investment in the DWWTP, and the remaining life of the assets.
 - Other higher priority capital commitments for replacement sewage and water system on Banks Peninsula, and lack of funding for an alternative disposal system at Duvauchelle in the current LTCCP.
 - The time required to investigate alternatives, undertake consultation, and finalise a preferred option, with sufficient time prior to the expiry of the consent for this to be consented, constructed and operational.
 - The cost implications for Council and the community if the duration is too short.
 - The lack of clear evidence of adverse effects on health or on Hector's dolphin.

181. In his final right of reply, Mr Prebble also cited the effects of the Christchurch earthquake, and stated that this would inevitably have some effect on the priority to be afforded infrastructure projects over the next 3-5 years.
182. In conjunction with the consent term of 15 years, the applicant has proposed “milestone” conditions which would establish: time frames for constituting a working party, identifying and consulting on long term methods of treatment and disposal, and the selection and implementation of an alternative form of discharge.
183. Ms Sullivan generally supported the consent duration sought by the applicant. She commented that the discharge is an essential activity, the plant is working well, the discharge is small compared to Akaroa, and time is needed to investigate alternative discharge options. She thought other projects in the harbour more likely to yield improvements to water quality. Ms Sullivan acknowledged that the discharge will have significant adverse cultural effects, and that a reduced duration may be appropriate to mitigate these effects. It was her opinion that a term of less than 10 years was likely to result in an application for a new consent.
184. In considering the applicant’s reason for the proposed duration, we agree that considerable public investment has been made in the DWWTP, and that there is a relatively long life left in the treatment plant infrastructure, which is working well. However, while the pipeline may be rendered redundant by an alternative discharge option, it is not clear that this would be the case with the treatment plant as on the evidence of Mr Kelsen this could be utilised for a possible land based discharge.
185. We heard argument that there are already a number of other higher priority wastewater projects on the Peninsula in the LTCCP, and there would be significant implications for Council’s capital expenditure programme and its financial planning process (and costs to ratepayers) if consent duration was reduced and alternatives to the current DWWTP

had to be brought forward. We have considered these arguments carefully, but have not placed much weight on them in arriving at our decision on duration. This is because, first and foremost, as the consent holder CCC has a duty to avoid, remedy or mitigate adverse effects on the environment, and we have found that the application will give rise to adverse effects that are more than minor. We also consider the issue of expenditure allocations within the LTCCP to be primarily a LGA rather than an RMA matter. Under the LGA the Council has an opportunity to review its LTCCP policies and expenditure every three years. Consent requirements under the RMA would be one of the matters CCC would need to take into account during its review, and this may require a re-ordering its current expenditure priorities, including reconsideration of a range of activities beyond waste water treatment and disposal.

186. We agree with Mr Prebble that there is no public benefit in rushing the process to achieve unreasonably tight time frames, and potentially dragging the parties through another consent process. We note that this is the fourth application for resource consent for the DWWTP since 1987. We find ourselves in agreement with Ms Sullivan that a term of less than 10 years may require another consent application to resolve the matters which are the subject of this hearing. In reaching this conclusion, we have taken into account the likely timeframes for the process of investigation, achieving consensus, and developing an alternative discharge option, as well the potential effects of the Canterbury earthquake in delaying new infrastructure provision within the city.
187. At the same time, there was a consensus amongst the parties to the hearing that the on-going discharge to the harbour is culturally offensive and is having adverse cultural effects (and in the case of DoC, other environmental effects). There was also overall agreement that mitigation measures to address these effects could involve a reduction in the duration that was originally sought, together with a timely process that engaged with runanga to examine and develop alternatives (possibly land based) to the current discharge. We are also mindful that, in respect of effects on Maori cultural values, the application is contrary to a key policy

in the operative NZCPS, and inconsistent with several other policies in that policy statement, and the RCEP.

188. The consent term is the main point of difference remaining between the parties. We have therefore looked closely at the applicants reasons for their proposed amended duration, and in particular at the time intervals between their proposed milestones, to determine if the 15 years sought is reasonable under the circumstances, or whether this could be reduced to provide additional mitigation.
189. We agree that the establishment of a working party within 6 months of the grant of consent is a reasonable and timely milestone. The second proposed milestone is a report on options for the wastewater treatment and disposal for consultation with the working party by October 2020. Depending on when the consent is granted, this is over 9 years after the establishment of the working party. We heard from Mr Bourke in relation to the Akaroa working party process that consultation was not the issue, but getting agreement was the problem. He stated that there are difficult decisions facing the community, and that one of the issues that was delaying the process was that there was no clear obvious solution to the current discharge at Akaroa. However, Mr Kelsen's evidence contained a reference to a costed proposed alternative Duvauchelle wastewater disposal option to land on Duvauchelle golf course.
190. The MKT evidence clearly expressed a desire to co-operate with Council to achieve a land based alternative to the current DWWTP discharge, and CCC are prepared to form a working party with runanga representation to explore such alternatives. The Akaroa WWTP working party has provided CCC with some experience in running these types of processes, and this may potentially assist in streamlining the process for Duvauchelle. In addition, the DWWTP discharge is relatively small in relation to Akaroa and to other sewage discharges around Banks Peninsula, and at least one alternative land based option may potentially be available.

191. Given these factors we are not convinced that the proposed time frame for the second milestone proposed by CCC, is necessary or desirable as it may result in the process becoming excessively drawn out. We are aware that Council will have other wastewater working processes going on at the same time, but we do not consider that it is appropriate for for the Duvauchelle working party to have to wait 9 years after its establishment to consider the report on options, even if it does have some input to the preparation of that report.
192. We think that 5 years is an adequate period in which to undertake investigations and prepare an options report. However, we think that the one year proposed for the third milestone (a report on the preferred option) may, in the light of Mr Bourke's comments on getting agreement, be too optimistic. We agree with CCC that the fourth milestone (report on implementation programme) provides sufficient time for the alternative option to be consented and constructed before the expiry of the existing discharge consent.
193. We therefore propose that the time frame for the second milestone (report on options) be October 2016, and that the third milestone (report on preferred option) time frame be increased to 2 years and fall on October 2018. The date for the fourth milestone (report on the implementation programme) would then be October 2020.
194. As a result, we find that an appropriate consent duration for the application would be 12 years. We consider that a term of this duration, in conjunction with the other conditions we have imposed, would strike an appropriate balance between the need for realistic timeframes to investigate, reach agreement on, and implement an alternative discharge, and the adverse effects that have and will continue to occur on Maori cultural values associated with Akaroa harbour.
195. We gave consideration as to whether there should be a different term of consent for Land Use Consent CRC102957 (storage of wastewater), as we have already determined that the adverse effects of this activity are

less than minor. However, there appeared to be no great benefits in a longer term consent, and there could be advantages in the consent terms remaining synchronised, so we have chosen to impose the same term for both consents.

DECISION

196. Having assessed the application on the basis of the information provided, we find that the discharge from the DWWTP will have positive social and economic effects for the community and on the physical environment, but there will be adverse effects on cultural values that are more than minor. The activity is inconsistent with, or contrary to, section 5 (2) (c), 6(e) and 7(a) and (f) of the RMA, several of the policies in the NZCPS and RCEP, and Te Whakatau Kaupapa. It is largely consistent with the other Part II matters, NZCP and RCEP policies, and the RCEP water quality standards.
197. The applicant has proposed conditions which are intended to address the adverse cultural effects arising from the activity in the longer term, through the investigation and implementation of an alternative discharge option. This would also have the effect of ensuring that there is consistency with the relevant provisions of Part II of the Act, and the NZCPS and RCEP.
198. Is our overall judgement that the purpose and principles of the Act can be achieved by the granting of these resource consents, subject to a reduced duration and the conditions proposed.
199. **It is the decision of the Canterbury Regional Council, pursuant to sections 104, 104B, 105, 107, 113 and 117, subject to Part 2 of the Resource Management Act 1991, that the Christchurch City Council be granted Land Use Consent CRC102957 to store waste water at the Duvauchelle Waste Water Treatment Plant for a consent duration of 12 years, and Coastal Permit CRC102952 to discharge treated**

wastewater from the Duvauchelle Treatment Plant to the coastal marine area for a consent duration of 12 years: all subject to the conditions set out in Annexure 1.

Right of Appeal

200. The parties are advised there is a right of appeal to the Environment Court, which must be lodged within 15 days from this decision being received, in terms of section 121 of the RMA.

Dated at Christchurch this 28th day of January 2011

A handwritten signature in black ink, appearing to read 'Robin Delamore', written in a cursive style.

Robin Delamore
Chair

Annexure 1: Conditions

CRC102952: coastal permit

1. The discharge shall be only treated sewage and stormwater inflow from the Duvauchelle Wastewater Treatment Plant, located at Duvauchelle Bay, Akaroa Harbour.
2. Treated wastewater from the Duvauchelle Wastewater Treatment Plant shall be discharged into Akaroa Harbour via an existing 1600 metre long submerged outfall, at or about map reference NZMS 260 N36:0528-1561.
3. The site of the discharge shall be marked with a buoy.

FLOW

4. The volume of treated wastewater discharged shall not exceed 250 cubic metres per day, except during or the day after rainfall events of a total of 25 millimetres or more over three consecutive days, when the volume of treated wastewater discharged shall not exceed 600 cubic metres per day. Rainfall records shall be kept for all days where the volume of treated wastewater discharged exceeds 250 cubic metres per day.

Note: For the purposes of this condition, the rainfall shall be that measured at the weather station operated by NIWA on Duvauchelle (Agent number = 4928).

5. The consent holder shall measure the discharge volume from the Duvauchelle Wastewater Treatment Plant, on a continuous basis, and shall maintain a record of total daily discharge.
6. The consent holder shall conduct an investigation and carry out works to reduce the volume of stormwater infiltrating into the Duvauchelle Wastewater Treatment Plant sewerage pipeline network. The investigation shall be completed by June 2014 and a report shall be provided at this time to the Canterbury Regional Council, Attention RMA Compliance and Enforcement Manager. Any follow-up works outlined in the report, shall be completed by June 2016.

TREATED WASTEWATER QUALITY

7. The median concentration of five-day biological oxygen demand in the effluent discharged shall not exceed 30 grams per cubic metre.
8. The median concentration of suspended solids in the effluent discharged shall not exceed 30 grams per cubic metre.
9. The median concentration of faecal coliforms shall not exceed 1000 faecal coliforms per 100 millilitres of effluent.
10. (a) The effluent shall be sampled at any point after treatment and prior to discharge and analysed for the concentrations of five-day biological oxygen demand, suspended solids, enterococci and faecal coliforms; and

- (b) The effluent shall be sampled at the following frequency:
 - i. monthly samples shall be taken from 1 March to 30 November; and
 - ii. weekly samples shall be taken during December, January and February; and
 - (c) Whenever a new sample result is available for each determinand under condition (7), (8) or (9) it shall be grouped with the previous four results for that determinand and the median result recorded.
11. (a) If any sample measured has a faecal coliform count greater than 1000 faecal coliforms per 100 millilitres of effluent, the consent holder shall take a further sample of treated effluent within two days of obtaining that result and shall test for faecal coliform concentration.
- (b) If the further sample measured has a faecal coliform count greater than 1000 faecal coliforms per 100 millilitres of effluent, the consent holder shall within three working days of receipt of the sampling results, inform the Canterbury Regional Council, Attention RMA Compliance and Enforcement Manager, stating the reason(s) for the exceedance and what has/is been done to fix it.
12. Following treatment and prior to discharge, the effluent shall be sampled and analysed, in grams per cubic metre, not less than once per month for the following nutrients:
- (a) Dissolved reactive phosphorus;
 - (b) Ammoniacal – nitrogen; and
 - (c) Total nitrogen.
13. Following treatment and prior to discharge, the effluent shall be sampled at least annually, with at least one sample during January, and analysed, in milligrams per cubic metre, for the following:
- (a) Arsenic;
 - (b) Chromium;
 - (c) Copper;
 - (d) Nickel; and
 - (e) Zinc.

RECEIVING ENVIRONMENT QUALITY

14. (a) At each of the following locations the water of the receiving environment shall be sampled at least five times over a thirty day period, commencing on 27 December and at least three samples shall be collected within the period 27 December to 10 January:
- i. 50 metres due north of the outfall; and
 - ii. 50 metres due south of the outfall; and
 - iii. 50 metres due east of the outfall; and
 - iv. 50 metres due west of the outfall; and
 - v. at the shoreline nearest the outfall.

vi. At a control site, namely, Robinsons Bay – Onawe Peninsula E
2505188 N 5715219

- (b) Each sample shall be analysed for the concentration of faecal coliforms, enterococci, ammoniacal nitrogen, total nitrogen and dissolved reactive phosphorus, and the time samples are taken shall be recorded.
 - (c) Samples shall be taken at approximately 0.5 metres below the surface of the water.
 - (d) Samples shall not be taken on consecutive days.
15. If the median concentrations of any of the five-sample sets taken in accordance with Condition (14)(a)(i) to (iv) are greater than the following:
- (a) total nitrogen greater than 0.21 milligrams of nitrogen per litre; or
 - (b) ammoniacal nitrogen greater than 0.91 milligrams of nitrogen per litre;

the consent holder shall undertake an investigation of the operation of the treatment plant and the possible causes of the exceedance(s). The consent holder shall report the findings of the investigation to Canterbury Regional Council, Attention RMA Compliance and Enforcement Manager, within 10 working days of receipt of the last sampling results.

16. The monitoring required under condition (14) shall be undertaken on the same days as the monitoring required under condition (10) during the month of January where the sampling frequency coincides. In the event that the monitoring required under conditions (14) and (10) cannot be undertaken on the same days, the reason shall be recorded and submitted to the Canterbury Regional Council, Attention RMA Compliance and Enforcement Manager, with the results required to be submitted in accordance with condition (17).

REPORTING AND ADMINISTRATION

17. (a) The consent holder shall submit to the Canterbury Regional Council, Attention RMA Compliance and Enforcement Manager, by the tenth working day of the following month any of the results which it is required to obtain during each month under condition (10) which comply with the standards prescribed in conditions (7), (8), and (9).
- (b) The consent holder shall submit to the Canterbury Regional Council, Attention RMA Compliance and Enforcement Manager, within three working days of receipt any results which it is required to obtain under condition (10) which do not comply with the standards in conditions (7), (8), and (9) and any results which it is required to obtain under condition (11) which have a faecal coliform count greater than 1000 faecal coliforms per 100 millilitres of effluent.

18. The laboratory carrying out the analyses for all samples collected under this consent shall be accredited for the analyses to ISO guide 25, either by International Accreditation New Zealand (IANZ), or by an organisation with a mutual agreement with IANZ.

19. The consent holder shall maintain an up-to-date management plan. Within one month of an updated management plan being prepared, a copy shall be forwarded to the Canterbury Regional Council, Attention RMA Compliance and Enforcement Manager. The management plan shall include:
 - (a) an operation and maintenance manual which contains the key operation and maintenance tasks of the operator, normal operations, emergency operations and safety precautions, The emergency operations and safety precautions shall set out the contingency measures to be taken at the pumping stations in order to avoid the release of effluent to the environment during periods of any mechanical or electrical failure or power cut;
 - (b) the management practices to ensure compliance with conditions of the resource consent; and
 - (c) the maintenance contractor's monitoring programme and reporting provisions.

20.
 - (a) The consent holder shall use its best endeavours to establish and maintain a Community Working Party (CWP), and provide reasonable organisational and administrative support for such a group for the duration of the consent. The purpose of the CWP shall be to provide community and tangata whenua input into the process of identification and selection of a preferred alternative wastewater disposal option for Duvauchelle.
 - (b) The CWP shall be established within 6 months of the granting of this consent and the first meeting shall set up the framework and aims for the group and their responsibilities.
 - (c) In establishing the group, the consent holder shall invite a representative of each of the following organisations to be members of the CWP and to meet at least once per year:
 - (i) Friends of Banks Peninsula;
 - (ii) Department of Conservation;
 - (iii) Environment Canterbury;
 - (iv) Onuku Runanga;
 - (v) Wairewa Runanga;
 - (vi) Taiapure Management Group;
 - (vii) Akaroa Harbour Marine Protection Society; and
 - (viii) Any other interested person or interest group.
 - (d) The consent holder shall liaise with the CWP with the aim of facilitating the following outcomes:

- (i) The consent holder has access to community opinions, observations, and activities that may be affected by the exercise of this consent; and
 - (ii) Communication and liaison between the consent holder and local community is maintained.
21. (a) The consent holder shall undertake a programme of works associated with the investigation and selection of a long-term method of treatment and disposal of wastewater from the Duvauchelle Wastewater Treatment Plant.
- (b) The consent holder shall submit to the Canterbury Regional Council, Attention RMA Compliance and Enforcement Manager:
- i. a report on the list of options for wastewater treatment and disposal for consultation with the working party, no later than 31 October 2016; and
 - ii. a report of the preferred option for wastewater treatment and disposal, as identified by the working party, no later than 31 October 2018.
 - iii. a report on the proposed programme for implementing the preferred option for wastewater treatment and disposal (including consenting, construction, and operation) before the expiry of this consent, no later than 31 October 2020.
 - iv. A progress report shall be submitted to the Canterbury Regional Council, Attention RMA Compliance and Enforcement Manager, six months prior to the dates set out in (i), (ii) and (iii) above, to show that progress is being made to meet these timeframes.
22. The Canterbury Regional Council may, once per year, on any of the last five working days of June or November each year, serve notice of its intention to review the conditions of this consent for the purposes of:
- (a) Dealing with any adverse effects which may arise from the exercise of this consent and which it is appropriate to deal with at a later stage; or
 - (b) Requiring the adoption of the best practicable option to remove or reduce any adverse effect on the environment; or
 - (c) Complying with the requirements of a relevant rule in an operative regional plan; or
 - (d) Amending the frequency of monitoring and the parameters monitored

CRC102957: land use consent

1. The use of land shall only be for the storage of:

- a. domestic wastewater;
- b. rainfall that has entered the storage facility; and
- c. stormwater that has infiltrated the sewerage pipeline network.

For the purposes of this consent, the collective term for the contaminants referred to above shall be “wastewater”.

2. Wastewater shall only be stored in the wastewater treatment plant facility located on Pt Lot 3 DP5105, at or about NZMS 260: N36:0509-1726, and associated pump stations.
3. The storage facilities shall have a combined maximum capacity volume of up to 300 cubic metres.
4. Components of the storage facilities shall be sealed and maintained at all times to prevent leakage of wastewater onto or into the land where it may enter water.
5. The wastewater treatment plant facility shall be fenced to prevent public access.
6. The Canterbury Regional Council may, once per year, on any of the last five working days of June or November, serve notice of its intention to review the conditions of this consent for the purposes of:
 - (a) dealing with any adverse effect on the environment which may arise from the exercise of this consent and which it is appropriate to deal with at a later stage; or
 - (b) requiring the adoption of the best practicable option to remove or reduce any adverse effect on the environment; or
 - (c) complying with the requirements of a relevant rule in an operative regional plan.

Annexure 2: Notification Wording

RESOURCE MANAGEMENT ACT 1991

Resource consent application:

Applicant: Christchurch City Council
Address: c/- MWH New Zealand Ltd
PO Box 13-249, Armagh, Christchurch 8141
CHRISTCHURCH

Attention: Claire Penman

Christchurch City Council has applied for resource consents associated with the storage and discharge of treated wastewater into the coastal waters of Akaroa Harbour from the Duvauchelle Wastewater Treatment Plant.

The discharge of treated wastewater from the Duvauchelle Wastewater Treatment Plant is currently authorised under resource consent CRC991835, which is due to expire on 2 August 2010.

Christchurch City Council has lodged new applications to authorise the continued discharge of wastewater into the harbour, and the storage of wastewater. The applications are:

Discharge

CRC102952: To discharge treated wastewater from the Duvauchelle Wastewater Treatment Plant into coastal waters at or about NZMS 260 N36:0510-1555, Duvauchelle Bay, Akaroa Harbour.

Land Use Consent

CRC102957: To store wastewater at or about map reference NZMS 260 N36:0512-1726, Christchurch-Akaroa Road, Akaroa Harbour.

More information about the background to this application can be found at www.ccc.govt.nz/wastewater.

A duration of 20 years is sought for each of the above consents.