

In the matter of	The Resource Management Act 1991
and	
In the matter of	Resource Consent Application CRC093701 by the Christchurch City Council for a Coastal Permit to discharge treated domestic wastewater into Akaroa Harbour.

**Decision of Hearing Commissioners
Michael Conrad Freeman & Sharon McGarry**

Date and location of hearing

12 September 2011, Lincoln Events Centre, Lincoln

Appearances

Applicant

- Mr Mike Bourke, Operations and Maintenance Manager, Christchurch City Council

Submitters

- None. Advised that Rural Management Limited have withdrawn their right to be heard.

Reporting Officer

- Ms Joanne Pacey, Consents Investigating Officer, Environment Canterbury
- Mr Paul Hopwood, Team Leader Residential Consents, Environment Canterbury

Hearings Officer

Ms Johanna Christensen, Consents Hearings Officer, Environment Canterbury

Decision summary

Resource consent application CRC093701 by the Christchurch City Council for a Coastal Permit to discharge treated domestic wastewater into Akaroa Harbour is granted, subject to the attached conditions.

1. Background

- 1.1 We have been appointed and empowered by the Canterbury Regional Council (Environment Canterbury or ECan) to hear and decide this coastal permit application.
- 1.2 The following section is a very brief description of the application. The details are contained in the application and in the evidence presented at the hearing. It is therefore not necessary (Resource Management Act (RMA) section 113(3)(a)) to repeat those details here.
- 1.3 We have deliberately kept this hearing decision brief in recognition of the short duration sought, the relatively small size of the discharge, our conclusions about the lack of any significant adverse effects, the continuing nature of the discharge and the relative lack of any significant changes in the policy framework.

2. Notification and submissions

- 2.1 The initial application was receipted by ECan on 22 April 2009 and was publicly notified on 10 October 2009 with the following wording:

"Applicant: Christchurch City Council

Address: PO Box 237, Christchurch 8140
Attn: Mr Mike Bourke

CRC093701 - a coastal permit application to discharge treated domestic wastewater into Akaroa Harbour. The volume of wastewater discharged shall not exceed 30 cubic metres per day. The wastewater will be from a residential subdivision in Wainui and will be treated with sand filtration and ultra violet light disinfection prior to discharge. The discharge will be via a submarine outfall located on the sea floor at map reference NZMS 260 N36:0333-1011, being approximately 550 metres offshore from the headland north of Wainui.

The contaminants in treated wastewater are known to include organic material, nitrogen, phosphorus, metals and micro-organisms.

This coastal permit is sought to authorise the discharge that is currently authorised by CRC032102.1. The applicant intends to divert this discharge onto land subject to being granted the required resource consents for which a hearing has been held and a decision is expected shortly.

A consent duration of 18 months is sought for the above consent."

- 2.2 One submission in opposition was made on the application by Rural Management limited, as summarised in the section 42A reports.

3. Summary of the hearing

Preliminary matters

Restricted Coastal Activity

- 3.1 Dr Freeman was appointed and delegated as a sole commissioner on 10 February 2010. On 25 July 2011 Dr Freeman advised ECan that he considered that the proposed activity appeared to be a Restricted Coastal Activity by virtue of the operation of Rule 7.3 of the Canterbury Regional Coastal Environment Plan (RCEP).

This rule effectively classified discharges of sewage into the Coastal Marine Area that did not utilise a soil or wetland treatment system as restricted coastal activities. If a coastal permit application is classified as a restricted coastal activity the Minister of Conservation has the power to nominate a person for such resource consent applications.

- 3.2 The 2010 New Zealand Coastal Policy Statement (NZCPS 2010) removes the ability to create restricted coastal activities, but this application was publicly notified prior to the NZCPS 2010 taking effect on 3 December 2010. The status of the activity under the provisions of the RCEP remains as a Restricted Coastal Activity and the application is considered under s117 of the RMA (as amended in October 2009, prior to the notification of this application).
- 3.3 On 18 August 2011 ECan appointed and delegated the Minister of Conservation's nominee, Ms Sharon McGarry, as a joint commissioner.

Dr Freeman's change of employer

- 3.4 On 9 July 2011 Dr Freeman advised ECan that he was considering joining URS New Zealand and that the applicant and ECan should consider whether there would be any actual or perceived conflicts with him undertaking the commissioner role while also being an employee of URS. Dr Freeman was advised on 13 July by ECan that neither ECan nor the Christchurch City Council (CCC) considered that his employment with URS New Zealand would create any actual or potential conflict. Dr Freeman started employment with URS New Zealand on 1 August 2011.

Time period applied for

- 3.5 Prior to the hearing there were a number of memoranda issued by Dr Freeman seeking clarification on a various matters. In Dr Freeman's second memorandum he highlighted concerns about potential ambiguities about the period of time for which the resource consent application had been made. Specifically, while the application form and public notice specified an 18 month consent duration, an 'end date' of 29 March 2011 had been specified in the application covering letter. The CCC provided legal advice that suggested that the specific information in the application form and the operation of sections 124 and 116 of the Resource Management Act (RMA) meant that the 18 month duration sought would apply from the date of any grant/issue of the resource consent sought.
- 3.6 In addition to the CCC legal advice, independent legal advice was also sought from Ms Margo Perpick, Wynn Williams, who concluded that the most likely interpretation of the notification is that the period applied for would be an 18 month period that commenced from the date of grant.
- 3.7 While we have concerns that members of the public would not necessarily have understood the subtleties of how the RMA operates, and it is quite possible that there could have been a public perception by some interested parties that the application was for a period until 29 March 2011, we accept that the legal position proposed by the CCC and supported by ECan's legal advice is valid.

Background

- 3.8 Because of the length of time that passed between the original application and the date of the hearing it is appropriate to briefly outline some key events over that

period. It is also useful to appreciate that the submission by Rural Management Limited (RML) was one of a number of related issues between that company and the CCC, and both those parties appear to have reached a mutually satisfactory outcome on all those related matters.

9 June 2010	A joint request by the applicant and submitter for a deferral of the hearing date.
30 July 2010	A joint request by the applicant and the submitter for a further deferral of the hearing date.
August 2010	Feedback received from Te Rūnanga o Ōnuku and Wairewa Rūnanga and Mr Roger Beattie that they had no major reservations about the joint request to see if the applicant and the submitter could resolve the wide range of issues under contention between them.
4 September 2010	First major Christchurch earthquake.
8 October 2010	A further joint request for a deferral of the hearing in part as a consequence of the September earthquake in Christchurch.
26 November 2010	A further joint request for a deferral of the hearing.
22 February 2010	Second major Christchurch earthquake.
March 2011	Agreement between parties that the hearing needs to be adjourned to enable the CCC to concentrate on high priority major water and wastewater problems arising from the February earthquake.
20 May 2011	Advice to ECan that the CCC and RML had reached agreement on all issues and RML had withdrawn their submission.

The applicant's representatives

3.9 Mr Bourke explained the background to the application. In particular he highlighted the following:

- The range of methods currently used for treating and discharging domestic wastewater in Wainui.
- The key characteristics of the current marine discharge from the RML development of 34 lots.
- That all issues related to the consents granted for the land discharge system had been resolved and a draft consent order had been provided to the Environment Court.
- The priority accorded by the CCC to re-direct the current marine discharge to the land discharge system and his confidence that that could be achieved within an 18 month period.
- That the CCC and the reporting officers were in general agreement on proposed resource consent conditions.

The reporting officer

3.10 Ms Pacey summarised key information in her report dated 14 July 2011 and the earlier report by Mr Bruce Apperley dated June 2010. In addition, Ms Pacey

outlined the conclusions of a NIWA review of the CCC assessment of the outfall dilution performance. Her key conclusions were:

- The evidence strongly indicates that the discharge meets the water quality standards specified in the Regional Coastal Environment Plan
- While no submissions were made by tangata whenua on this application, the responses to memoranda from Dr Freeman from the representative of Te Rūnanga o Ōnuku and Wairewa Rūnanga indicate that in the context of the resource consents granted for the land discharge, tangata whenua have no major concerns about the proposal.
- That the proposal to continue the marine discharge subject to proposed conditions for 18 months from the date of grant is not inconsistent with the key objectives and policies of:
 - * the New Zealand Coastal Policy Statement 1994,
 - * the New Zealand Coastal Policy Statement 2010,
 - * the Canterbury Regional Policy Statement,
 - * the Proposed Canterbury Regional Policy Statement, and
 - * the Canterbury Regional Coastal Environment Plan.

The right of reply

- 3.11 Mr Bourke provided a brief verbal right of reply on behalf of the applicant and clarified that he agreed with Ms Pacey's overall conclusions.
- 3.12 The hearing was adjourned on 12 September 2011 at approximately 10.30 am after we raised a number of technical questions of clarification about the proposed conditions.
- 3.13 We requested the applicant and the reporting officers to confer on how best to address the issues that we raised and to provide a revised suite of proposed conditions that ideally both parties could agree on. This information was supplied on 15 September 2011. With the receipt of that information, we were satisfied that we had all the information we needed, and closed the hearing on 16 September 2011.

Site visit

- 3.14 It would normally be our practice to undertake a site visit. However, given our knowledge of the location and the limited duration sought, in this situation we did not consider that a site visit was necessary. Dr Freeman is particularly familiar with the overall site location having undertaken an extensive site visit of the wider Wainui location as a commissioner on the hearing of the related land discharge permit applications in 2009.

4. The principal issues, evaluation and main findings

- 4.1 In summarising and evaluating the principal issues we have considered the original application and the associated assessment of environmental effects, the evidence provided at the hearing, and the section 42A reports.

4.2 The principal resource management issues and actual or potential adverse effects have been discussed in some detail in the section 42A reports and in the evidence provided by the applicant and in the submissions. We will not repeat all that information here. We will focus solely on the key issue which can be summarised as follows:

- The actual or potential adverse effects of allowing the existing discharge to continue for the 18 month period sought, specifically the effects on water quality in the context of the established tangata whenua concerns about the discharge of sewage to water.

The actual or potential adverse effects of granting the application

4.3 We agree with the conclusions of Ms Pacey that the overall adverse effects of granting consent for the continuation of this discharge for an 18 month period would be extremely small and of no material consequence. The technical evidence and NIWA review strongly support the conclusion that the environmental effects of the discharge are, and would continue (providing full compliance with conditions) to be, insignificant.

4.4 We do accept that there are, and would continue to be, some adverse effects on tangata whenua and their cultural values as a consequence of deeply held views about the discharge of human waste to such waters. However, taking account of the relatively small scale of the discharge, the fact that consents have been granted for an alternative land discharge, the relatively short duration sought by the CCC, and the apparent acceptance of the proposed 18 month continuance by tangata whenua, we conclude that these adverse effects are acceptable.

The policy context and policy implications

4.5 Analyses of the relevant objectives and policies of the NZCPS 2010, the Operative and Proposed CRPS, and the RCEP have been provided in the section 42A reports and in the applicant's evidence. It is not necessary for us to repeat all the relevant provisions of the NZCPS 2010, the CRPS and the RCEP here. We are satisfied that the relevant provisions have been identified at the hearing.

Objectives, policies and rules

4.6 We will not repeat each relevant NZCPS 2010, CRPS and RCEP provision or the analyses of these provisions here. These are contained in the applicant's evidence and in the section 42A report.

4.7 We agree with Ms Pacey's conclusion that the grant of this application, subject to appropriate conditions, would in an overall sense be consistent with the objectives and policies of the relevant planning provisions.

Tangata whenua values

4.8 After considering the overall proposal, the changes to proposed conditions, the limited duration of consent, the views of Te Rūnanga o Ōnuku and Wairewa Rūnanga provided in response to Dr Freeman's memorandum, our specific conclusions that adverse effects would be less than minor and that the proposal would not be inconsistent with the relevant objective and policies, we consider that there would be no significant adverse effects on tangata whenua values.

5. Statutory provisions

Status of the application and key sections of the Resource Management Act

- 5.1 The applicant and reporting officer agree that the application is a discretionary activity and a restricted coastal activity. We agree with that interpretation.
- 5.2 Section 104(1) of the RMA requires that the consent authority must, subject to Part 2, have regard to:
- “a) any actual and potential effects on the environment of allowing the activity; and
b) any relevant provisions of -
 (i) a national policy statement;
 (ii) a New Zealand Coastal Policy Statement;
 (iii) a regional policy statement or proposed regional policy statement;
 (iv) a plan or proposed plan; and
c) any other matter the consent authority considers relevant or reasonably necessary to determine the application.”*
- 5.3 As noted in paragraph 4.7 above we consider that the proposed application is consistent in an overall sense with the objectives and policies of the relevant planning provisions.
- 5.4 Section 104B of the RMA states that:
- “After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority-
 (a) may grant or refuse the application, and
 (b) if it grants the application, may impose conditions under section 108.”*
- 5.5 Section 105 of the RMA states that:
- “105 Matters relevant to certain applications***
*(1) If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), 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.”*
- 5.6 We consider that the evidence strongly supports a conclusion that the discharge does not, and would not, result in any significant adverse effects. Clearly the applicant has considered alternatives and the reason for the short duration sought is to provide authorisation for a continuation of the discharge before moving to a land based discharge system. Therefore we conclude that the grant of the application would be consistent with the requirements of section 105 of the RMA.
- 5.7 Section 107 of the RMA states that:

“107 Restriction on grant of certain discharge permits

- (1) Except as provided in subsection (2), a consent authority shall not grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A allowing—*
- (a) the discharge of a contaminant or water into water; or*
 - (b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or*
 - (ba) the dumping in the coastal marine area from any ship, aircraft, or offshore installation of any waste or other matter that is a contaminant,—*
- if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:*
- (c) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;*
 - (d) any conspicuous change in the colour or visual clarity;*
 - (e) any emission of objectionable odour;*
 - (f) the rendering of fresh water unsuitable for consumption by farm animals;*
 - (g) any significant adverse effects on aquatic life.*
- (2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied—*
- (a) that exceptional circumstances justify the granting of the permit; or*
 - (b) that the discharge is of a temporary nature; or*
 - (c) that the discharge is associated with necessary maintenance work—*
and that it is consistent with the purpose of this Act to do so.”

- 5.8 We are satisfied that the technical evidence strongly supports a conclusion that none of the adverse effects listed in section 107 (c) - (g) are currently occurring or would occur during the proposed duration. Even in the extremely unlikely event that any of those adverse effects could occur, we consider that section 107 (2)(b) would be applicable in this situation.
- 5.9 We have had regard to the matters specified in sections 104, 104B, 105 and 107 of the RMA and consider that the grant of the application would be appropriate and consistent with the purpose of the RMA.

6. Proposed conditions

- 6.1 We consider that this coastal permit application should be granted, subject to the conditions developed during the hearing.
- 6.2 We have made a number of small but significant changes to the final suite of conditions proposed by the applicant and reporting officers. We appreciate that for such a short duration resource consent it may not be absolutely essential to make these changes. However, as a matter of principle we want to ensure that best practice is achieved. The changes are outlined as follows
- Specifying the effluent flow monitoring accuracy requirement.
 - Clarifying the faecal coliform ‘high result’ monitoring and response. We consider that this condition needs to be changed to make it clearer that a

single high faecal coliform result warrants an additional sample but that only non-compliance with the median standard requirement warrants an action report to the consent authority.

- Other minor wording changes to improve the certainty of a number of proposed conditions.

7. Decision and reasons

Part 2 Matters

7.1 In considering this application, we have considered the relevant principles outlined in sections 6, 7 and 8 of the RMA, as well as the overall the purpose of the RMA as specified in section 5.

Section 5

7.2 This section of the RMA defines sustainable management. We consider that the application is consistent with the definition in the RMA, noting particularly that the discharge would:

- (a) assist in providing for the social wellbeing of people and communities and for their health and safety,
- (b) not compromise the reasonable needs of future generations,
- (c) not result in adverse effects on the life supporting capacity of water or ecosystems, and
- (d) not result in any significant adverse effects on the environment.

Section 6

7.3 Section 6 of the RMA lists seven matters of national importance that must be recognised and provided for. Clause (e) is relevant:

“the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:”

The views of Te Rūnanga o Ōnuku and Wairewa Rūnanga indicate that the granting of this application would not have any significant adverse effects and would therefore not affect these matters.

Section 7

7.4 Section 7 of the RMA lists matters that we must have particular regard to. The matters of particular relevance to the present application appear to be the following:

“(d) intrinsic values of ecosystems:

...

(f) maintenance and enhancement of the quality of the environment: ...”

7.5 We consider that granting this application would be consistent with these matters.

Section 8

- 7.6 Section 8 of the RMA states that “...all persons exercising functions and powers ... shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).”
- 7.7 The views of Te Rūnanga o Ōnuku and Wairewa Rūnanga provided in response to Dr Freeman’s memoranda indicate that granting the application would not be inconsistent with the Principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

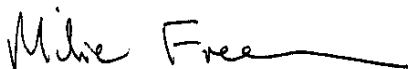
Decision

- 7.8 For the reasons detailed in this report (sections 4, 5, 6 and 7) and under sections 104, 104B, 105, 107, and 108 of the Resource Management Act 1991, and under section 117 of the Resource Management Act 1991, we grant resource consent application CRC093701 by the Christchurch City Council for a Coastal Permit to discharge treated domestic wastewater to Akaroa Harbour, subject to the conditions specified in Attachment 1.

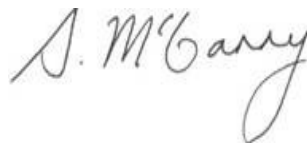
Right of appeal

- 7.9 The applicant has the right to appeal this decision in accordance with the provisions of section 120 and 121 of the RMA. Any such appeal must state the reasons for the appeal and the relief sought, and must be lodged with the Environment Court and served on the Canterbury Regional Council within 15 working days of receipt of the notice of the decision.

Dated: 28 September 2011



Mike Freeman



Sharon McGarry

Attachment 1

Coastal Permit CRC093701: Conditions

- 1) The discharge shall be only treated sewage effluent from up to 51 lots of the three-stage residential subdivision shown on attached Plan CRC093701A.
- 2) Prior to discharge, the domestic sewage effluent shall be treated in the Wainui Subdivision Sewage Treatment Plant as shown on attached Plan CRC093701B and Plan CRC093701C, and located on Lot 17 DP69197, as shown on Plan CRC093701A.
- 3) The discharge into Akaroa Harbour shall occur at or about map reference NZTM2000 BY25:9332-4851 (NZMS 260 N36:0333-1011) via the existing outfall pipe.
- 4) The total volume of treated sewage effluent discharged into Akaroa Harbour shall not exceed 30 cubic metres per day averaged over any seven-day consecutive period.
- 5) The consent holder shall measure the treated sewage effluent outflows from the Wainui Subdivision Sewage Treatment Plant on a continuous basis using a flow meter with an accuracy of at least $\pm 10\%$ and shall maintain a record of total daily outflows (cubic metres per day). The consent holder shall submit the results of the outflow measurements to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, by the 10th working day of the following month.
- 6) (a) A single grab sample of treated sewage effluent prior to discharge via the ocean outfall shall be collected by a suitably qualified and experienced person, in accordance with AS/NZS 5667.1:1998 (Water quality - Sampling - Guidance on the design of sampling programs, sampling techniques and the preservation and handling of samples) and analysed, using the most scientifically recognised and current method by a laboratory that is certified for that method, by a nationally recognised accreditation authority such as International Accreditation New Zealand, for the variables and at the corresponding frequencies set out in the following Sampling Schedule:

At least once every two months, on separate days selected at random, from 1 March to 30 November; and at least fortnightly samples, on separate days selected at random, during December, January and February

- (i) Five-Day Biochemical Oxygen Demand, (BOD5) - reported as grams per cubic metre
 - (ii) Total Suspended Solids — reported as grams per cubic metre
 - (iii) Faecal Coliforms — reported as number per 100 millilitres.
- (b) The time of the day and date that the sample is collected shall be recorded.
- 7) The median value of any consecutive three samples taken in accordance with Condition (6) and/or Condition (8) shall not exceed the following standards for each of the named contaminants:

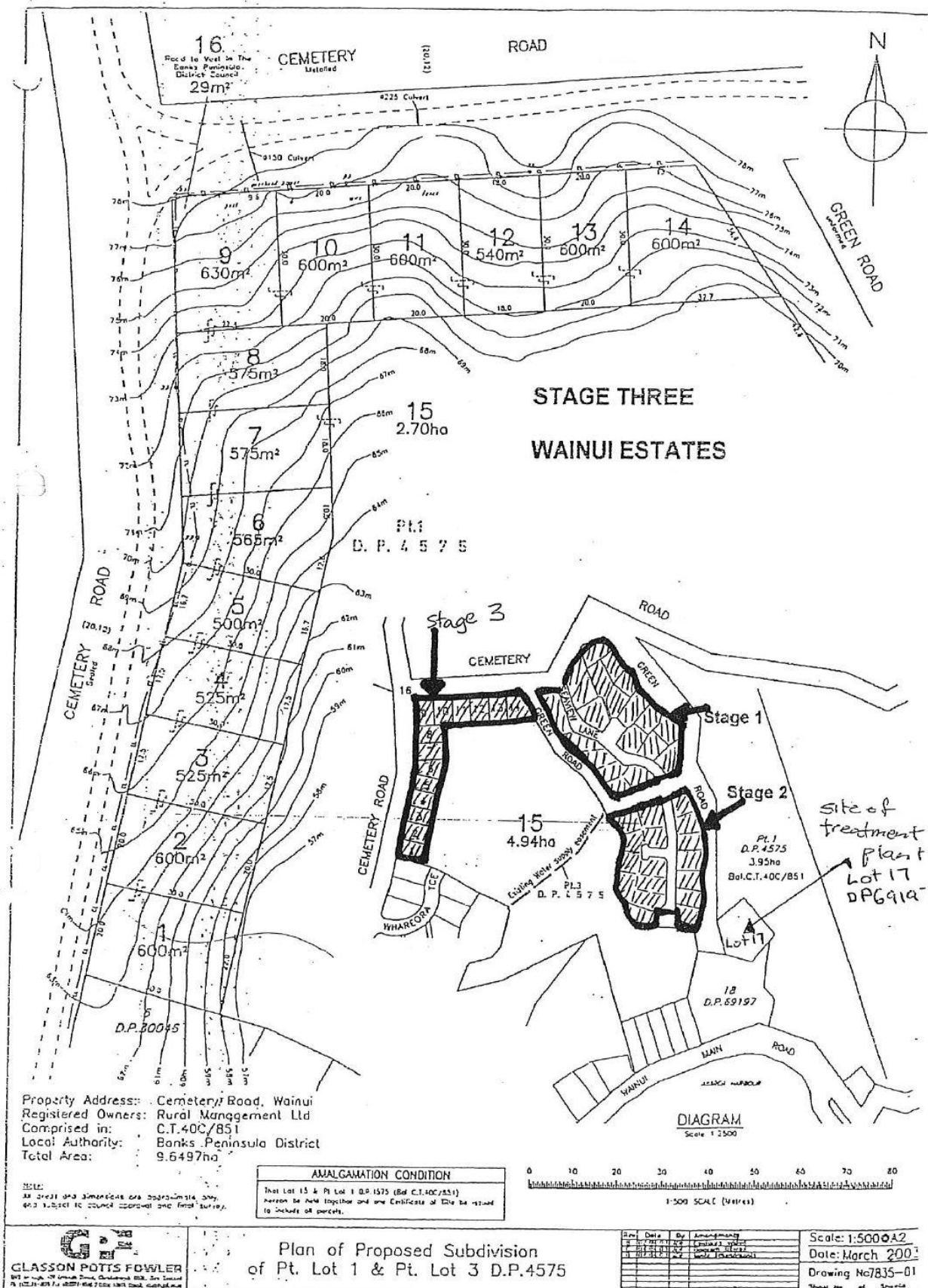
Contaminant	Unit	Standard
BOD5	grams per cubic metre	30
Total Suspended Solids	grams per cubic metre	30
Faecal Coliforms	colony forming units (CFU) per 100 millilitres	1000

- 8) If any single sample measured has a faecal coliform value greater than 1,000 faecal coliforms per 100 millilitres of effluent, the consent holder shall:
 - (a) Take a further sample of treated effluent within two days of obtaining that result

and shall test for faecal coliform concentration in accordance with the requirements specified in Condition (6).

- (b) If the median value of three consecutive samples including the further sample taken in accordance with Condition (8)(a), has a faecal coliform count greater than 1,000 faecal coliforms per 100 millilitres of effluent, the consent holder shall within three working days of receipt of the sampling result obtained in accordance with Condition (8)(a), inform the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, stating the reason(s) for the exceedence and what has/is been done to reduce faecal coliform concentrations.
- 9) The consent holder shall submit to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, the results of any monitoring required each month under Conditions (6), (7) and (8) of this consent, by the 10th working day of the following month.
- 10) The consent holder shall submit a report to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, in October of each year summarising the monitoring data collected and providing an interpretation of the results of monitoring, for the year period ending 30th June of the same year.
- 11) The diffuser section of the outfall pipe shall be positioned and maintained at all times at not less than the 10 metres bathymetric contour line.
- 12) The consent holder shall inspect the outfall pipeline and anchor structures at 12 monthly intervals and shall provide a certificate, signed by a person who is a Chartered Professional Engineer or by a person who has demonstrated that they have the appropriate level of expertise, to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, within one month of completion of the inspection, confirming the structural integrity of the outfall pipeline, anchor structures and diffuser are maintained.
- 13) The consent holder shall submit a Management Plan, to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, within one month of the commencement of this consent. The Management Plan shall include:
 - (a) An Operations and Maintenance Manual, which contains the key operation and maintenance tasks of the operator, normal operations, emergency operations and safety precautions.
 - (b) The Management Practices to ensure compliance with all conditions of this consent.
 - (c) The monitoring programme and reporting provisions, including a specific requirement that monitoring is undertaken in accordance with conditions (4) to (12) (inclusive) of this consent.
- 14) The Canterbury Regional Council may, once per year, on any of the last five working days of August or February, 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 later; 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 variables monitored, and the reporting required.
- 15) This consent shall expire 18 months after its commencement.

Plan CRC093701A



Plan CRC093701B

