

**IN THE MATTER OF** the Resource  
Management Act 1991

**AND**

**IN THE MATTER OF** applications by  
**Eastland Port Limited** for resource  
consents to establish and operate a  
proposed cargo yard at Dunstan Road,  
Matawhero, Gisborne

<p style="text-align: center;"><b>Decision of the Gisborne District Council, through its appointed Hearings Commissioners</b></p>
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The hearing was convened at 10:30 am on 4 August 2010 at the Gisborne District Council Administrative Centre, Fitzherbert Street, Gisborne to hear the applications lodged by Eastland Port Limited for activities associated with a proposed cargo yard on a site along Dunstan Road, Matawhero. The site is presently owned by the Gisborne District Council.

**PRESENT:** **Independent Hearings Commissioners**  
**("Commissioners")**

Mr Alan Watson (Chair), Mr David Roke

**APPLICANT:** **Eastland Port Limited ("EPL" or "the applicant")**

Ross Muir, Planning Consultant (Insight (Gisborne) Ltd)

Andrew Gaddum (EPL General Manager)

Andrew Appleby (Land Development and Exploration Ltd)

Dave Peacock (DH Peacock Ltd)

Michael Morrow (Marshall Day Acoustics Ltd)

**CONSENT AUTHORITY:** **Gisborne District Council ("Council")**

Paul Murphy (Senior Water Conservator), reported on the water permit applications

Nicki Davies (Planner Development Control), reported on the land use application

Louise Bennett, Senior Environmental Health Officer, called to the hearing to respond to questions relating to dust discharge.

**SUBMITTERS:** **In Opposition:**

**Te Awapuni Moana Charitable, Paokahu and Kopututea Trusts:**

Ian Howatson (Agricultural Engineering Consultant)

Colin Jones (Trustee, Arai Matawai Incorporation- lessee-Deputy Chair)

Butch Pardoe (Arai Matawai Incorporation- lessee)

Bill Pardoe (Arai Matawai Incorporation- lessee)

**Timothy M Walker** (17 MacDonald Rd)

**George Brown** (19 MacDonald Rd)

**John M Peake** (23 MacDonald Rd)

**In Support:**

**Nicholas J Ferkins** (202 MacDonald Rd, on conditions)

**D&S Ferkins Family Trust** (191 MacDonald Rd, on conditions),

**Andrew J Costello** (Juken Nissho Ltd).

**ONTRACK** (NZ Railways Corp) (did not appear but a statement of evidence from Aaron Hudson, RMA Advisor

was tabled)

**DB Judd**

(164 MacDonald Rd – did not appear).

## **A. THE APPLICATIONS**

1. On 15 January 2010 EPL applied for<sup>1</sup> a water permits for site development works (including diversion of flood waters, diversion, ground level alteration in F4 Flood Hazard Overlay), a water permit for development of cargo storage yard (including consequential diversion of flood waters of discharge of treated stormwater, obstruction of more that 33% of floodway width) and treated stormwater, and district land use consent for establishment and operation of a cargo storage yard (including for yard reduction, outdoor storage, heavy vehicles, landscaping, and accessway).
2. It had been proposed at the outset that non-notified initial site development works consents be sought to enable this to be completed before the onset of winter. However, as necessary neighbours written approvals were not forthcoming, all three applications for the full development and ongoing operation of the proposal, involving three applications, were limited notified to the affected parties together in February 2010.

## **B. PROCEDURAL MATTERS**

3. During the hearing it became apparent that certain aspects of the proposed discharges, including of contaminants to ground, and mitigation conditions regarding noise and vibration as detailed in the recommended conditions in the officers' reports either had not been completed or required further consideration as a result of new evidence at the hearing. Consequently, with the agreement of the parties, the officers were asked to revise their recommended conditions in the light of this new evidence, and in collaboration with the applicant's agent, present revised conditions. These were then provided to all the parties, and any supplementary comments, to be restricted to those matters, were to be provided to the Commissioners via the Council's Hearings Administrator, Wilma Baty. The hearing was adjourned pending these responses. The details are recorded in our Memorandum dated 4 August 2010 to the parties.
4. We received comments from the applicant and from John Peake by the date set, 3 September 2010. We considered that information, noted the applicant did not wish to add anything further by way of a right of reply, and closed the hearing on 8 September 2010, providing notice to the parties accordingly.

## **C. NOTIFICATION /SUBMISSIONS**

5. Limited notification of the applications was undertaken by the Council pursuant to Section 95B(2) of the Resource Management Act 1991<sup>2</sup> ("the Act" or "RMA") on 5 February 2010. By the closing date of 5 March 2010 submissions had been received from eight parties of whom five requested to be heard. The submissions were summarised in the Section 42A RMA officers' reports, on pages 30-32 of Paul Murphy's report and on pages 8-11 of Nicki Davies' report. We adopt that summary.

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<sup>1</sup> Pages 1- 6 of Appendix 1 of Hearing Agenda/Staff Report

<sup>2</sup> As the application was lodged on 15 January 2010 it is considered under the provisions of the 2009 version of the Resource Management Act 1991.

6. We have taken all of the matters raised in the submissions into account in making our decision and refer to the submissions and further evidence presented by the submitters at the hearing as appropriate in this decision.

**D. DESCRIPTION OF THE PROPOSED ACTIVITIES**

7. The nature of the applications was set out in the application documents and the officers' reports. In summary three applications were made, one for establishment activities (Regional Plan functions), one for operation of the site (also Regional Plan functions), and a third land use (District Plan) application. The relevant description of the site is as follows:

<i>Legal Description</i>	<i>Land Area</i>	<i>CT</i>	<i>Owner</i>
Lot 4 DP 6770	4.97 ha	GS4D/61	Gisborne District Council
Lot 3 DP 6770 (access only)	5.00 ha	GS4D/60	Gisborne District Council

The applications associated with the Regional Plan functions (including their relevant rules and activity status), are as follows:

**A. Establishment**

<i>INSTRUMENT</i>	<i>CATEGORY</i>	<i>STATUS</i>
Resource Management Act (S14(1))	Diversion of Floodwaters (caused by the raising of the natural ground level associated with the construction and formation of vehicle accessways and vehicle hardstand areas)	Innominate (Discretionary Activity)
Regional Discharges Plan (Rule 6.5.3)	Other Liquid Discharges (treated stormwater shed from the surface of the works site – including to ground and a tributary of Awapuni Drain)	Discretionary
Part Operative District Plan (Rule 5.20.3.4)	Alteration of ground level in F4 Flood Hazard Overlay	Restricted Discretionary

**B. Establishment and Operation**

<i>INSTRUMENT</i>	<i>CATEGORY</i>	<i>STATUS</i>
Resource Management Act (S14(1))	Diversion of Floodwaters (caused by the raising of the natural ground level associated with the construction and formation of vehicle accessways and vehicle hardstand areas).	Innominate (Discretionary Activity)
Regional Discharges Plan (Rule 6.5.3)	Other Liquid Discharges (Discharge of treated stormwater shed from the surface of the storage yard, including to ground);	Discretionary
Part Operative District Plan (Rule 5.20.3.4)	Alteration of ground level in F4 Flood Hazard Overlay	Restricted Discretionary
Part Operative District Plan	Obstruction of F4 Floodway	Restricted Discretionary

(Rule 5.20.3.5)	(Obstruction of more than 33% of the width of the floodway over the site).	
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The components of the land use consent application associated with the District Plan functions (including their relevant rules and activity status), are as follows:

**C. Establishment and Operation**

<i>DISTRICT LAND USE</i>	<i>DISTRICT PLAN RULE</i>	<i>STATUS</i>
Yard Reduction	19.14.8	Restricted Discretionary
Outdoor Storage	19.14.9	Restricted Discretionary
Heavy Vehicles	19.14.11(a)	Restricted Discretionary
Landscaping	19.14.13 32.1(a) 32.4(h)	Restricted Discretionary
Activity classification	19.17.2.1	Controlled
Accessway	15.3.4(d)	Restricted Discretionary

**E. CONSENT CATEGORIES**

8. While Ms Davies correctly advised in her officer’s report that the components of the District Plan application were primarily restricted discretionary activities, Ross Muir for the applicant accepted that both regional and district consents should be “bundled” in terms of the most stringent activity class, and consequently accepted that the proper classification for the whole proposal was discretionary. No party contested that position, and we agree with the suggested approach, and adopt it.
9. The applications are covered by the provisions of the Regional Policy Statement, the Partly Operative Combined Regional Land and District Plan, the Regional Plan for Discharges to Land, Water, Waste Management and Hazardous Substances; and the Regional Air Quality Plan.

**F. EVIDENCE PRESENTED**

10. At the hearing we heard submissions and evidence from the parties listed on page 1 of this decision. We thank all those attending the hearing for the clear and concise manner in which the submissions and evidence were presented to us. We note that the witness for ONTRACK did not appear, but there was no objection by any party to the evidence from Aaron Hudson which was tabled in support of the submission. Mr Hudson explained in that evidence that the submission had been lodged by NZ Railways Corporation under its former trading name of “ONTRACK” but that it now trades as “KiwiRail”.
11. All of the material presented by the above parties is held on file at the Council. We refer to relevant parts of that material in section G that follows.

**G. EVALUATION OF THE PROPOSAL**

12. The application is a discretionary activity. Relevant sections of the Act are therefore Sections 104, 104B, 107 and 108, and of course Part II.
13. We have had the benefit of all the evidence presented by the applicant's experts, the submitters, and the Council officers. We also record here that on 4 August 2010, prior to the commencement of the hearing, we carried out a walk-over site inspection of the site, including of the proposed outfalls beneath the ONTRACK corridor and into the Awapuni Drain. We also inspected the site and general area in relation to other features, activities, industries and residences on Dunstan and MacDonald Roads and the State Highway intersection. We have assessed the proposal in the light of evidence given and the range of issues raised as a result of the submissions.

#### **H. PRINCIPAL ISSUES IN CONTENTION, SUMMARY OF EVIDENCE HEARD, AND MAIN FINDINGS**

14. Section 113 of the Act directs us to state the principal issues that were in contention together with our main findings in relation to those issues. Based on the application documents, the submissions, the evidence and submissions presented to the hearing, and the contents of the two Council officers' reports, we have identified what we consider are the principal issues in contention. We discuss those issues sequentially in the sections of this decision that follow, and present our main findings on these in turn. Where relevant, we refer to matters raised in the evidence and submissions.

##### **Flooding Effects – On Flood Levels, Flows and Drainage**

15. Ian Howatson, an Agricultural Engineering Consultant, based in Gisborne, gave evidence and coordinated the case on behalf of the three Maori Trusts: Te Awapuni Moana Charitable Trust; Kopututea Trust; Paokahu Trust, and also the present Lessee- Arai Matawai Incorporation. Evidence was given on their behalf by Butch Pardoe, Bill Paku and Colin Jones. They gave a history of the development of the land from its early reclamation and conversion to farm land out of what was once a hind-dune lagoon, to the design and subsequent installation of a drainage system in 1949. The drainage system includes a system of drains, culverts under the railway (built in 1938), embankments and a 1.8 metre flood-gated outlet pipe through the stopbank into the tidal Waipaoa River.
16. The Trust representatives and Mr Howatson drew our attention to their efforts over recent years, to enhance and develop the land under their stewardship by improved farm management practice. This included more comprehensive fencing and fertiliser regimes and stock management, which had been showing significant improved productivity until the recent past. As a result of recent adverse flooding effects and wetter pasture land the enhanced stocking levels have had to be heavily reduced because of pugging, with productivity and profits being consequently reduced. A sum of \$80,000 to \$100,000 had been lost as a result of de-stocking e.g. from 8,000 to 6,000 lambs. The primary cause of this turn of events was seen as the inadequacy of both maintenance and development by the responsible authority, the Gisborne District Council, presumed to be as a result of inadequate budgets to carry out the required works. We were advised that the Trusts' efforts and discussions with the relevant Council Rivers and Drainage officers since early 2009 have resulted in little progress or action to date.

17. These adverse flooding effects, such as weed growth, sediment build-up, and leaking and malfunctioning floodgates, are also seen as being exacerbated by the progressive increases in stormwater runoff rates and volumes which are considered to be a result of progressive intensification of land use and development in the catchment, of which the applicant's proposal is seen as one example. Mr Howatson referred to the additional two 375mm culverts proposed to be installed at the detention pond outlet as evidence of the need to discharge additional stormwater runoff from the site. This is in contrast to his perception of implied assessments in the application that the increase in stormwater runoff from the pre-development conditions will be insignificant.
18. Evidence regarding flooding and stormwater effects was presented on behalf of the applicant by David Peacock, a consultant engineer with 30 years experience in river control, flood hazard, stormwater and coastal engineering. He has significant local knowledge of flooding, flood control and drainage effects and works including those within the Waipaoa and Awapuni Catchments. He had been commissioned by the applicant to investigate the flood hazard effects in the general location of the proposed site. This involved assessing the hydraulic effects of the proposal, including its land contour re-shaping and stormwater detention ponds, on flood risk both on-site and off-site.
19. He presented the results of his standard engineering assessments of the detention ponds capacity to handle the developed site stormwater run-off as compared to present day conditions, during standard "1 in 10 year" and "1 in 100 year" 20 minute and 60 minute duration storms. He concluded that peak runoff for the 20 minute duration storm will be reduced by about 25% and 16% respectively as a result of the proposed mitigation works. He also concluded that, for a 60 minute 1 in 100 year storm, the peak runoff rate will be increased by up to 16%. However he also noted that for all storms up to 1 in 10 year event, and for shorter durations than 60 minutes in a 1 in 100 year storm event, significant reductions in peak discharge do result. He noted that storms of greater than 1 in 100 year period, although very rare indeed, would have such consequences that the relative effects of the resulting discharge from the proposed ponds will be an insignificant additional adverse effect on the environment.
20. Mr Peacock went on to contrast the impact of such a discharge from this site into the Awapuni Drain catchment with the total storm runoff from the catchment as a whole. Given that the site sits within the top half (700ha of 1,425 ha total) the peak 1 in 10 year storm at the site would be 5,400 L/s compared to 120 L/s (max) from this site. This represents 2.2% of the maximum 1 in 10 year design storm. It is therefore concluded to have an insignificant effect on both peak discharge and total volumes runoff into the Awapuni Drain. In spite of this, during storms over the 1 in 10 year frequency, flows *could* be even further reduced by diverting one of the two proposed 375mm pipes into the western rail-side depression, and thereby retaining these flows on the "upstream" side of the 1938 railway embankment (and outside of the Awapuni Drain floodgate catchment) when floods are not already overtopping the railway.
21. Mr Peacock also presented rebuttal evidence at the hearing regarding ongoing (past and present day) flooding problems in the Awapuni Drain catchment especially in the winter months. He drew our attention to the longer term rainfall records for the area, and focused on the critical winter rainfall months. He noted that the May-July (three-month combined) rainfalls have been much higher than normal (between 121% and 164%) for the 2008-2010 years. He also provided evidence that showed that there have been very high rainfall totals for individual months in recent years.

22. He concluded that these higher than normal rainfalls over these months in recent years have been by far the major cause of the observed increased flooding effects including on farmland. In addition to rainfall effects he noted that, while the limited (only three hours) opening of the gravity outfall floodgate was a relatively short time during each low tide cycle, its discharge capacity would have been significantly reduced over the years by incremental ongoing rises in mean sea level (approx 140mm since it was installed in 1949 - 61 years ago), and that was also predicted to continue at an increasing rate. Mr Peacock also noted that, even in earlier times of farm management in the drain catchment, portable flood pumps were routinely used to shift water from the farmlands internal drains into the main drain during extended wet periods. He concluded that even in earlier (pre-industrial development) times the gravity flood-gated outfall was not adequate on its own to control winter runoff water levels.
23. A further potential effect relating to drainage is possible disruption to existing field tile drainage from Lot 2 DP7967 and Lot 2 DP6770 draining through the proposed cargo storage yard site. This field tile drainage is protected by way of legal easements in favour of the relevant submitter's (the Ferkins) land. The applicant is aware of these and has committed to not compromise these field drains in the development of the site, and it is noted that they will also assist the EPL site development plan.

#### **Other Flooding Effects – Flow Velocities and Escape of Materials Off-Site During Floods**

24. Mr Peacock identified flooding of the site has the potential to raise water levels as a result of flood water moving across Dunstan Rd, or otherwise by the Awapuni Drain waters backing up across the rail embankment onto the site. Flood levels from the latter flood could reach as high as RL 2.8. The net effect of this could be inundation of about three quarters of the site by up to 0.18m. Single logs could be at risk of floating in such a depth of water, albeit in slow-moving ponded flood waters. Accordingly the risk of any potential damage is assessed as being "probably very low". Stacks of logs are considered unlikely to float in such waters due to friction effects between them. There will be some very small "heading up" of floodwater passing into and around the northern and western corners of the site but filling right out to the extremities of these corners is not intended, as a mitigation measure against the potential greater flow velocities at these locations. The maximum damage is said to potentially result in taller crops adjoining the site e.g. maize being flattened.

#### **Findings on Flooding and Drainage Issues**

25. We find that the proposed stormwater detention ponds, if built and operated according to the design principles provided in the application details, will effectively achieve lesser than pre-development stormwater runoff rates except for very large and rare floods in excess of a 1 in 100 year 60 minute duration design where pre-development flows could be exceeded by up to 16% flows. During such major storm events the relative environmental effects of this are likely to be insignificant and would result in no more than minor adverse effects on flooding of land including within the Awapuni Drain catchment. Diversion of floodwater resulting from the raised site platform has been mitigated by the shaping of northern and western corners, and consequently, while increased flooding damage effects may possibly result in more than minimal potential effects, they are deemed to be no more than minor.



## Effects on Water Quality

26. Mr Howatson and the Trusts raised concerns about the potential for contaminants from the proposed log storage area such as bark, wood products and residues, tannins, timber sprays, and machinery petrochemical products and activities carried out on the site migrating off-site via surface and groundwater, and thereby contaminating the Awapuni Drain. They were concerned about potential for:

- water pollution, as some of their summer farm stock water supply is directly from the drain,
- adverse effects on their food sources ( e.g. tuna and mullet), and on other native fish life,
- contaminants entrained in floodwaters spreading across pastures and thereby affecting the health of grazing stock (sheep and beef cattle).
- Other unknown contaminants from yet unspecified future cargoes.

27. They said that the water quality of the Awapuni Drain is adversely affected by land uses in the catchment including rearing of animals, crops and vineyard activity. In addition to agricultural land use other timber and primary products processing and fertiliser manufacturing facilities already exist. There is also a closed landfill in the catchment, the leachate from which is cause for concern.

28. While there is a reticulated water supply, we were advised that there is no public stormwater and wastewater collection and treatment systems servicing the industrially zoned land of the Dunstan and MacDonald Roads area. Until such public services are made available individual site developers will have to provide their own facilities to a degree that avoids or minimises adverse environmental effects. We were not advised of the present day water quality of the drain, but even with very effective waste management and runoff controls, it is unlikely to be pristine, or free from present day contamination. Nevertheless there is a need to manage existing and future water quality to avoid compromising existing statutory uses, and to preserve stream life. Even where waters are not classified, the Act requires that point source discharges of contaminants to surface and ground receiving waters do not result in certain effects, after reasonable mixing. These include:

- The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials,
- Any conspicuous change in the colour or visual clarity,
- Any emission of objectionable odour,
- The rendering of fresh water unsuitable for consumption by farm animals,
- Any significant adverse effect on aquatic life.<sup>3</sup>

29. The applicant engaged Land Development and Exploration Ltd to undertake geotechnical testing and prepare a civil design of the proposed storage yard including pavement design and stormwater infrastructure. Andrew Appleby, who holds a New Zealand Certificate in Civil Engineering and has approximately 15

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<sup>3</sup> Section 15B of the Act

years of practical experience, gave evidence including on removal of stormwater pollutants.

30. The design included the removal of pollutants from stormwater runoff (including via infiltration and groundwater). The methodology involved the use of swale drains and sediment detention ponds to remove sediments, floatables and heavy metals. Swales are proposed that will be wide, shallow and of low gradient and vegetated with grass, and regularly maintained to between 100 and 150mm long to enable infiltration, and entrapment and removal of accumulated sediment and floatables. These have been shown to be effective in removing 75% of suspended solids, particulates, trace metals, oil and grease, and bacteria on sediments. The swales will then discharge to permanently wet ponds in the base of the stormwater and sediment retention basins. These wet ponds were designed to provide advanced treatment to the stormwater runoff by the further removal of sediments and floatables. Silt fences are proposed to limit escape into the pond outlets.
31. A specific area will be set aside for site plant and vehicle parking, refuelling and maintenance. Stormwater runoff from this area will be separated, captured and treated to remove hydrocarbons, oil and grease, before discharge to swales. Water together with any dissolved contaminants will infiltrate through the yard pavement and swale materials, but as the soils beneath the site are of low permeability this will occur at a slow rate. Water leaching through the low permeability soils of the site will continue to be collected via a tile drainage system, which will provide the opportunity for further treatment if necessary, before discharge.
32. It is understood that the primary cargoes to be handled at the site in the foreseeable future will be logs in transit for export. No buildings are intended at the present time. "Portaloos" type toilet facilities will be provided for workers on site. The types of contaminant from handling of logs for export are known, and quantities of waste are likely to be related to the varying throughput volumes and site management practices. The general site management practices have been described but will be specified in a site management plan as a condition of consent.
33. Unknown future cargoes related to the port export business at the site may give rise to new potential contaminant discharges not specifically identified in the applications and submissions. Provision has been made for annual reviews of the consent conditions, including modifying or imposing new conditions, as may be required as a result of any future adverse effects that may arise as result of the exercise of consent. If new cargoes are proposed in due course, then prior to being allowed to be handled in site, any additional effects could be assessed and conditions reviewed as necessary to ensure the ongoing protection of the environment.
34. If found necessary space is available and provision can also be made for further treatment of surface runoff by for the construction of a reed bed along the south eastern boundary, which would further reduce heavy metals, nitrogen, sediments, oil and grease. Contaminants adhere to the increased surface area provided by the vegetation and decompose by aerobic processes. Space is also likely to be available if new or modified treatment methods were required in due course. It is also noted that further works are presently underway in the area to provide for separate community domestic and trade wastewater services, and in the event that wastes from future land use/cargoes cannot be adequately treated in on-site systems, then public wastewater infrastructure could be a suitable alternative.

### **Findings on Water Quality Issues**

35. We find that present day stock water supplies and aquatic life in the Awapuni Drain rely on ongoing preservation and maintenance of good water quality for their future sustenance. These uses are potentially threatened by industrial developments, including that proposed by the applicant. Unless and until public wastewater and stormwater treatment infrastructure is put in place individual developers will need to install and maintain systems and processes of a high standard to ensure the preservation of both surface and ground waters in the catchment.
36. The applicant proposes to construct an integrated low profile site gravity system, swale drains, wet settlement detention and treatment ponds. Provision has also been made for further possible treatment in reed beds before discharge to the surface waters of a tributary of the Awapuni Drain. The further treatment may be required depending on the results of performance testing of the proposed system, and depending on the rate and intensity of use of this site, or in the event of new different cargoes needed different or additional treatment to meet receiving environment standards that are set to preserve existing uses and needs of the downstream receiving environment. A Site Management Plan will set out the measures required for ongoing high levels of site construction and operation, and receiving environment stewardship can be ensured by enforcement of limits set on key indicator pollutants that ensure that the downstream surface and ground waters will not be contaminated by the proposed development. Given the above we find that, subject to compliance with the proposed conditions, the adverse effects of the proposal on water quality will be no more than minor.

#### **Traffic, Noise and Vibration**

37. The land proposed for development by the applicant sits within the Rural B Industrial zone, which has as its purpose:

“To provide particularly for large timber processing and allied industries, and to reduce the cumulative effects of these industries on the rural environment by reducing pressure for large industries to establish in areas where there could be further loss of fertile soils”.

38. In spite of this zoning, and as a mitigation measure in resolution of traffic and noise issues raised by submitters at the time of the debate leading to the 1997 District Plan, heavy traffic movements were restricted to the period 0600 hours to 2100 hours. To access the site traffic will need to travel from the State Highway along MacDonald Road into Dunstan Road. Vehicles, including heavy traffic, will pass seven dwellings. These include three dwellings at 17, 19, and 23 MacDonald Rd, near the State Highway intersection originally built to house railway staff who serviced the original Matawhero railway station and yards. Their ongoing presence is anomalous within the more recent Rural B/Industrial B planning context.
39. Unsurprisingly the residents (Timothy Walker, George Brown, and John Peake) have made submissions opposing the application, but also reinforcing their concern based on present day sleep disturbance arising from noise and vibration caused by vehicle movements including heavy traffic, and speeding worker commuter traffic. This is exacerbated by the physical condition of the road at their location, including impaired pavement, and water and rail siding infrastructure within the road reserve carriageway. Some of this reported disturbance coincides with reported non-compliance with the current operating hours and speed limits for heavy (and domestic/commuter) vehicle movements.

40. The D&S Ferkins Family Trust, and Nicolas Ferkins also raised issues regarding night time noise (from machinery reversing beepers and chainsaws) at the site.
41. The application itself seeks a dispensation from the current heavy traffic operating time limits, to enable unlimited heavy traffic operating hours. This will then allow night-time removal of stored logs to the port during the sporadic but tight ship loading timeframes. On such occasions at night time truck movements would be up to six per hour. The applicant commissioned Marshall Day Acoustics Ltd to assess the noise and vibration traffic effects, and relevant evidence was presented by acoustics engineer, Michael Morrow. The evidence was based on measurements taken of truck pass-bys at three locations along MacDonald Road. The conclusion was that sleep may be disturbed at 17-23 and 191 (D&S Ferkins) MacDonald Road, with bedroom windows open, and accordingly alternative means of fresh air ventilation should be provided as mitigation. Prior to the hearing the applicant met with the owners and discussed possible resolution of these submitters' concerns. Offers have now been made by the applicant for the provision of air conditioning units in these houses, together with double glazing of the front rooms. A lump sum equivalent to 20 years of the electric power costs of running and maintenance the ventilation units (\$1,000 per dwelling) has also been offered as mitigation. We cover this matter with a condition of the land use consent, noting that the applicant offered it in order to assist in addressing the concerns of the submitters.
42. We also record that John Peake from 23 MacDonald Road raised the matter of double glazing of the window to the bedroom on the west side of his dwelling, that being in addition to the front facade, in his comments upon the proposed conditions of consent. We consider this window should be included as part of the applicant's offer given it will assist to address the concern about noise and the limited additional costs that would be involved.
- As far as vibration is concerned there is concern that the condition of the road surface and water and rail siding crossing infrastructure are key causes of present day and ongoing noise and vibration effects. While these are outside the power of the applicant to remedy directly it is willing to fund some remedial works which would require to be initiated by the Council. While it says that the relative levels of traffic noise and vibration impact from its own proposed activity are relatively small when compared to current and potential future traffic movements in the industrial zoned area, the applicant is willing to collaborate with the relevant Council infrastructure divisions to achieve resolution of the necessary road repair work to resolve that issue. We cover this matter with a condition of the land use consent, noting that the applicant offered it in order to assist in addressing the concerns of the submitters. The condition addresses the reasonable concerns of the submitters which we do not consider extends to attending to the water and rail siding crossing.
43. From our considerations we consider the offers made by the applicant to the submitters in the above respects to be justified in addressing concerns and also commendable on the part of the applicant in being prepared to step outside normal processes in order to address these matters.
44. A further key cause of noise and vibration is the current open road speed limit on MacDonald Road. Both the applicant and the submitters considered that speed was an issue for noise, vibration and safety, and that it would also be more in keeping with the Industrial zoning and the growing traffic densities that the maximum speed should be reduced to 70km per hour. The use of air brakes by the drivers of heavy trucks in the vicinity of the dwellings also adds unnecessarily to noise disturbance levels, and should also be restricted by the Council. The applicant advised that on-site noise will be limited at night. Loaders and other vehicles will have their

reversing beepers disconnected. The use of chainsaws will be very infrequent during the daytime, and will be prohibited at night. Management Plans will set rules in that regard.

45. The applicant has committed to meet the District Plan requirements in regard to construction noise, during daytime only, and noisy construction limited to Monday-Saturday between 0600 and 1800 hours. Construction work includes the use of heavy machinery involved with the formation of stormwater management, vehicle manoeuvring and hard stand areas. There is no present plan for building construction on site.
46. Conditions have accordingly been imposed which will serve to reduce the effects of the applicant's proposed activities on the environment to no more than minor.
47. We have included **Advice Notes** with the consents regarding relevant traffic, noise and vibration matters.
48. We have also made **Recommendations** regarding general infrastructure and other matters within the jurisdiction of the Council, which have a bearing on issues raised at the hearing, but which fall outside the specific scope of our powers as the Hearings Commissioners.
49. It is noted that the applicant intends to rearrange site access. Entry to the site will be by way of the existing "panhandle strip" intersecting the bend in Dunstan Rd, but a new egress back onto Dunstan Road by vehicles leaving the site will be created by creating roadway access over the south-western side of Lot 3 DP6770 (also presently owned by the Council, but intended to be transferred to the applicant). This will result in minimum sightlines for exiting drivers of 210m to the south-west and 210m to the north-east. The applicant does not oppose the imposition of a condition enforcing egress by this route, and requiring a ROW in the event that the subject site and Lot 3 are separately transferred to it by the present Council owner.

### **Findings on Traffic, Noise and Vibration Issues**

50. With all the mitigation measures volunteered by the applicant we conclude that there are reasonable means of reducing the effects of heavy vehicle movements at night on the affected residential properties. These measures, coupled with the upgrade of the road and the preparation and implementation of a Management Plan for the noise and vibration effects of the proposal, will result in effects that are satisfactorily mitigated, and accordingly, subject to suitable conditions are considered able to be no more than minor. The Management Plan includes processes for best endeavours to reduce the effects of night time noise, including reducing speed of trucks on MacDonald Road [during the night] and the avoidance of air braking in the vicinity of the dwellings. Suitably re-arranged site egress will enable vehicles to leave the site safely, without unnecessary risk to other road users, especially if maximum speed limits are reduced to 70km per hour by the District Council. A review condition on the land use consent will provide for some further consideration of these effects if that is found to be necessary at a future time.

### **Visual and Landscape Effects**

51. Visual effects will include the periodic accumulation of goods awaiting shipment, primarily logs. The visual impact will be industrial nature, but not uncommon in the

area. The applicant intends to retain the existing shelter belt at the rear of the site, which will continue to provide a partial level of screening from the adjacent Rural Production zone. There will be some visual impacts generally, because views of the site will be possible from Dunstan Road and MacDonald Road until the adjoining land is developed. It is noted that the property is a rear site and that over time it will be screened by industrial development on the sites in front of it. However, the proposed activity will not be markedly different than the visual impacts of other industrial operations in the locality. Some of these operations are significantly larger in scale than the proposed activity.

52. It is noted that the District Plan Rule (19.14.8(c)) requires a 10 metre yard to be provided adjacent to the south-eastern boundary, and that while a yard will be provided in conjunction with the development of site drainage and stormwater facilities it may not be planted in the manner contemplated in the rules. Given the applicant's proposed retention of the existing mature poplar shelter belt the same effects will be achieved as addressed in the Rule 32.1(a) landscaping margin, and so the dispensation sought is considered reasonable and realistic. It is also noted that dispensation is sought for the temporary situation from Rule 19.14.9(a) in which outdoor storage areas are to be screened, when viewed from Dunstan Road, or MacDonald Road, or Te Awapuni Moana Trust property. This dispensation would apply for as long as this rear site becomes screened by developments on the adjoining industrially zoned land.

#### **Findings on Visual Issues**

53. We find that visual issues, including visual contrast, zone location, and landscaping effects, even given the dispensations sought, are likely to result in no more than minor adverse effects on the environment. Such minor effects as may result are likely to be of a temporary nature, and are likely to continue only for as long as it takes for other industrial activity to be established in the adjoining suitably zoned land area.

#### **Dust**

54. Hard stand and vehicle access areas will be metalled, not sealed. Provided the dust effects are retained within the site and the site activities result in no effects beyond the property boundary that are noxious, dangerous, offensive or objectionable as assessed by a suitable qualified enforcement officer of the Council, then the discharges to the air from the site are a permitted activity under the partially operative Regional Air Quality Plan rules. In order to avoid dust nuisance, and meet the permitted activity rules of the Plan, the applicant intends to use a dust suppressant as a means of controlling unacceptable dust generation from the site. Nevertheless it is considered that an Environmental Management Plan, including for dust management, should be prepared and guide the operation of the facility, including the control of dust emissions.
55. Louise Bennett, as Senior Environmental Health Officer for the Council, confirmed at the hearing that the dust could be managed to meet the permitted activity standards of the Regional Air Quality Plan.

#### **Findings on Dust Issues**

56. Subject to suitable conditions limiting unacceptable levels of dust generation, by way of dust suppressants, it is considered that dust and other airborne particulate

emissions can be managed in a way that does not breach the permitted activity levels as determined in the Regional Air Quality Plan.

### **Lighting & Glare**

57. The applicant may install exterior lighting to assist with night time uses and for site security purposes. Any exterior lighting is intended to be designed and installed to ensure avoid a light spill nuisance beyond the site. It is noted that all such lighting will be designed, located, and operated to ensure that the maximum lux level standards in the District Plan are complied with. The applicant proposes taking particular care to respect the amenity values of the Ferkins' residence at 191 MacDonald Road. It is noted that the applicant will keep exterior lighting to the minimum required to provide safe and effective light coverage, and will be shielded to prevent nuisance to aircraft approaching or departing the Gisborne Airport.

### **Findings on Lighting and Glare Issues**

58. We find that subject to compliance with the commitments made in the application, there will be no more than minor adverse effects from lighting and glare from the applicant's proposed activity.

### **Cultural Issues**

59. There are no recorded archaeological sites or waahi tapu on the site, although several do exist some distance away, including possible garden sites at the end of Dunstan Rd. No evidence was provided at the hearing that suggested that new site existed that had not been identified in the District Plan or its 1993 industrial re-zoning investigations. The applicant volunteered the standard requirement if archaeological material were to be unearthed, including stopping work in that vicinity and notification of appropriate authorities and iwi groups for appropriate responses. Nevertheless concerns were raised at the hearing by submitter representatives of Te Awapuni Moana Charitable Trust and Arai Matawai Incorporation drawing our attention to the potential adverse effects of the proposal on kaimoana – eels, mullet, and whitebait and recreation water uses – if pollutants were to be allowed to escape into the Awapuni Drain.

### **Findings on Cultural issues**

60. Careful attention will be required in the operation of the site and management of potential pollutants to avoid the risk of adverse off-site water quality effects that may harm in-stream biota or downstream recreational uses. We find that with careful monitoring of the effectiveness of the proposed stormwater treatment systems and compliance with conditions, including site management plans for refuelling and machinery servicing operations, the potential risk of harm to downstream biota is avoidable and should result in no adverse effects on the downstream environment.
61. We further note that, should the proposed settlement and runoff treatment pond facilities prove inadequate in meeting the downstream water quality standards required to protect downstream biota, provision can be made by the applicant for further treatment through an additional reed bed polishing system constructed along the south-eastern boundary, prior to final discharge.

## **I. CONSENT DURATION**

62. Mr Murphy recommended a term of fifteen years for the discharge permits for treated floodwater to surface waters and onto ground and into ground waters, and 35 years for water permits for floodwater diversion associated with the raising of land during the establishment and ongoing operation of the cargo storage yard, and also for the obstruction of more than 33% of floodway width over the site. The Act provides for terms of up to 35 years maximum. However the range of terms in the relevant Regional Plans for the relevant proposed activities range from 15 years, for liquid discharges, to 35 years for floodwater diversions related to elevation of natural ground level, and with indefinite terms for the balance of the relevant proposed activities. We are satisfied with the terms recommended, given that those consents proposed for 35 years are for permanent ongoing changes to the current environment, and, while subject to potential reviews of conditions, form an integral part of the development, if approved. Those activities involving discharges may be the subject of reviews, and if necessary, require changes to the activity that could result in the need for new or alternative consents. Consequently together with the provision for the review of conditions under Section 128 of the Act, we consider the terms recommended to be appropriate. We also accept that the land use consent should have no set term, but note that the Section 125 lapsing provisions apply to all these consents, in the event that significant progress towards exercising the consents does not occur within 5 years of their date of commencement. We also note that the Applicant did not oppose the proposed consent terms.

## **H. STATUTORY PROVISIONS CONSIDERED**

63. The three applications were lodged on 15 January 2010. The group of applications is therefore subject to the Act as amended by the Resource Management (Simplifying and Streamlining) Amendment Act 2009. As mentioned in Section G above we note that in accordance with the “bundling” principle, for the purposes of making an overall decision on these applications, the statutory tests applicable to discretionary activities in Sections 104 and 104B of the Act have been applied.

64. Relevant sections of the Act in regard to consideration of the applications are therefore Sections 104, 104B, 105, 107, 108, and Part II. The relevant provisions of the following were applicable in this case: The Regional Policy Statement (“RPS”), the Operative Transitional Regional Plan, the Regional Plan for Discharges to Land and Water, Waste Management and Hazardous Substances, the Regional Air Quality Plan, and the Part Operative Combined Regional Land and District Plan.

### **Regional and District Planning Instruments**

65. Sections 3.5 to 3.7 of Mr Murphy’s report and Section 4 of Ms Davies’ report (as modified in final comments following submission of all evidence) discussed the relevant provisions of the RPS and the Combined Regional Land and District Plan. We do not find it necessary to repeat that evaluation here. We heard no qualified planning evidence contradicting that policy evaluation and so we accept the conclusions of these reports, namely that the applications (subject to certain conditions) are consistent with the relevant Council policy and plan provisions.

66. We note that the RPS and Regional and District Plans all provide for the recognition of the relationship of Maori with natural resources (mirroring to some extent the requirements of Section 6(e) of the Act), and the avoidance, remedying or mitigation



of the adverse effects of groundwater abstractions. We have considered those matters above.

67. Section 104(1) of the Act states:

- (1) When considering an application for a resource consent and any submissions received, 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 environmental standard;
    - (ii) other regulations;
    - (iii) a national policy statement;
    - (iv) a New Zealand coastal policy statement;
    - (v) a regional policy statement or proposed regional policy statement;
    - (vi) a plan or proposed plan; and
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

68. We have considered the effects of the activity and the relevant policy and plan provisions.

69. There are no relevant national environmental standards, other regulations, national policy statements or recognised customary activities<sup>4</sup> in this case. Unlike the assessment in Mr Murphy's officer's report, we do however consider two other matters of relevance under Section 104(1)(c). These are the September 2005 Gisborne Coastal Strategy, and the May 2009 Gisborne Urban Development Strategy, which together recognise the importance of maintaining and preserving the port asset and related operations as key elements in the district economy.

70. We note the prohibition in Section 104(3)(c) and have addressed the potential threat of non-compliance with the requirements of Section 107(1) regarding protection of receiving (ground and surface) waters against the threats of unacceptable adverse effects, including gross contamination that would make them unsuitable for stock water and cause adverse effects on aquatic life. Appropriate conditions have been imposed that ensure such effects cannot occur.

71. In terms of other receiving environments we also note the applicant's stated intention to ensure that the permitted activity threshold regarding discharges of contaminants (mainly dust) to the air beyond the boundary of this trade and industrial site is met, and controlled by way of a proposed dust management plan and by the use of suppressants if necessary. We have reinforced this goal by the imposition of a suitable condition.

72. In terms of **Part II** of the Act we find that the proposed activity will enable people and communities (namely the applicant) to provide for their social and economic wellbeing. We are also satisfied that, provided appropriate conditions are imposed to avoid, remedy or mitigate potential adverse effects, the proposal will be consistent with sub Sections 5(2)(a),(b) and (c) of the Act.

73. We have also considered Sections 6, 7 and 8 of the Act. We have considered those matters in our evaluation of the potential effects of the proposal.

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<sup>4</sup> Section 107A of the Act

## J. DECISION

74. For the reasons set out below, and overall, because we believe the proposal represents sustainable management of natural and physical resources and is consistent with the policy direction provided by Part II of the Act and the Regional/District statutory documents, we grant the consents set out in **APPENDIX 1**, subject to the conditions attached to each consent and also subject to all or part of the appended General Conditions as specified in each consent. We have taken the conditions recommended by the Council officers and amended them in light of our evaluation of the issues in contention, and the evidence provided to us by the applicant and submitters.

## K. REASONS FOR THE DECISION

75. In arriving at the decision to **grant** the applications sought, subject to conditions, our conclusions have relied heavily on the following matters:

Significant benefits will be derived from the proposed development including that the establishment of the cargo storage area will generate positive economic and environmental effects for the Gisborne District. There is a significant present need for off-port storage of cargoes, particularly logs, given the limited available space and increasing predicted growth in the future demand for port-related cargoes. The present need arises limited space at the existing port site, particularly for build-up of stored logs in preparation for ship loading, which requires rapid, efficient loading over short timeframes. The site is in close proximity to the port and is on land zoned among other things for port and timber-related industrial activities.

76. In making this decision however we note that there are matters that require to be addressed in collaboration with the relevant Infrastructure sections of the Council. While the carrying out of these works are important it is not for the Commissioners to require actions of the Council, but to draw important matters to its attention that do require action. We have noted in this regard that the applicant is ready and willing to cooperate with the necessary funding and support as may be necessary. These matters are addressed in conditions, with those conditions being clear that these matters are “offers” by the applicant/Consent Holder and are otherwise laid out in the attached **APPENDIX 2** Recommendation to the Council.

### **Monitoring and Reporting Requirements**

77. The Consent Holder should, and will be required to, carry out “self-monitoring” of its performance against the standards and conditions of any consents granted. The frequency and intensity of such monitoring needs to be responsive to the ongoing results of compliance with such conditions and so should be reviewed at regular intervals with a view to reduction, or in the event of any non-compliance increased, in frequency. Provision also need to be made to accommodate sampling by the Council of its own State of the Environment monitoring of the Awapuni/Waipaoa Catchments at times that would best coincide with monitoring the effects of the Applicant’s activities.

78. The monitoring and reporting conditions have accordingly been worded in a way that provides flexibility to adjust the monitoring requirements.

## L. DETERMINATION

79. Pursuant to Sections 104, 104B, 105, 107 and 108 of the Resource Management Act 1991, and for the reasons set out in this decision, the Gisborne District Council **grants** resource consents to **Eastland Port Limited** for the following activities associated with construction and operation of a proposed Cargo Yard at Dunstan Road, Gisborne:

**WP-2010-104292-00:** Construction – divert floodwaters resulting from raised ground levels, discharge treated stormwater from works site surface;

**WP-2010-104234-00:** Divert floodwaters caused by raised ground levels

**DW-2010-104235-00:** Discharge treated stormwater shed from surface to Awapuni  
- Drain and onto and into ground and groundwater,  
Obstruct more than 33% of floodway width over site;

**PR-2010-104230-00:** Establishment and operation of cargo storage yard, including Dispensations from rules for landscaping, yards and sealing of the accessway, Operation of heavy vehicles during day and night;

All subject to **terms and conditions** as detailed in **APPENDIX 1 Attached**.



.....  
Alan Watson (Chair)  
Independent Hearings Commissioner



.....  
David Roke  
Independent Hearings Commissioner

24 September 2010

## APPENDIX 1

### RESOURCE CONSENTS AND CONDITIONS OF GISBORNE DISTRICT COUNCIL

#### CONSENTS FOR

#### EASTLAND PORT LIMITED; PROPOSED CARGO YARD. DUNSTAN ROAD

#### A “REGIONAL” CONSENTS

**WP-2010-104292-00:** Construction – divert floodwaters resulting from raised ground levels, discharge treated stormwater from works site surface;

**WP-2010-104234-00,** Divert floodwaters caused by raised ground levels

**DW-2010-104235-00:** Discharge treated stormwater shed from surface to Awapuni,  
- Drain and onto and into ground and groundwater,  
Obstruct more that 33% of floodway width over site;

#### Subject to the following Conditions:

##### General Conditions

1. All activities shall be in accordance with the submitted application and accompanying plans including as submitted at the hearing, except to the extent that these are required to be modified to comply with the conditions of this consent.
2. The conditions of these Consents shall be read in conjunction with the conditions of resource consent PR-2010-104230-00.

##### Environmental Management Plan

3. Within six months of these consents being granted, the Consent Holder shall prepare an Environmental Management Plan (EMP) demonstrating how compliance with all conditions of these consents shall be achieved and shall include and shall include, but not necessarily be limited to the following matters:
  - (a) A detailed description of the operation and maintenance of the surface stormwater runoff, treatment and disposal system including ‘as built’ drawings,
  - (b) A detailed description of log yard practices to be undertaken to reduce or remove bark debris and sediment that may become suspended within log yard runoff and which may reduce the capacity of the stormwater treatment and retention systems or which may contaminate the stormwater discharged from the site,
  - (c) Monitoring programmes and measures to ensure compliance with conditions,
  - (d) Contingency plans to deal with both Pollution incidents and Non-compliance with conditions.
  - e) The Management Plan shall state how the following Chapter 6 General Regional and the Part Operative Gisborne District Council Combined Regional and District Plan 6.6.1 to 6.6.6 Rules will be adhered to:

- (i) No activity shall cause conspicuous change in colour or natural visual clarity of any off-site receiving water after reasonable mixing.
- (ii) No vegetation, slash, spoil or other debris shall be directly deposited into a permanently flowing water body, lake, wetland or the sea, or be deposited into a position where it can readily enter, or be carried into a permanently flowing water body, lake, wetland, or the sea. No vegetation with a diameter greater than 100mm, spoil, or other debris shall be left in such a position
- (iii) No vegetation, slash, spoil or other debris shall be directly deposited into a permanently flowing water body, lake, wetland or the sea, or be deposited into a position where it can readily enter, or be carried into a permanently flowing water body, lake, wetland, or the sea. No vegetation with a diameter greater than 100mm, spoil, or other debris shall be left in such a position.
- (iv) All land disturbance activities shall include runoff controls around the area of disturbance where necessary to prevent concentration of runoff causing, erosion, scour and sediment discharge off-site
- (v) Where an activity results in areas of exposed ground greater than a 0.5ha contiguous area over a 12 month period on any one site excluding firebreak sites, these areas shall be revegetated to give a ground cover of 75% of that area within 12 months of the activity ceasing
- (vi) Land disturbance batters and side-castings are to be stabilised by methods such as surface revegetation and drainage to avoid slumping and the generation of sediment
- (vii) Spoil and fill shall not be placed over vegetation other than grass, or placed in a position where it can cause erosion.

4. The EMP shall be submitted to the Council's Environment and Planning Manager and amended as necessary until certified by him/her as meeting the conditions of this consent.

5. The certified EMP shall be adhered to at all times.

6. The Consent Holder shall give notice in writing to the Environment and Planning Manager at least one month prior to any cargo other than untreated logs first being stored at the site, to allow an assessment of potential effects to be carried out.

7. The EMP shall be reviewed at the time of the first anniversary of the date of commencement of the consent, and every five years thereafter, provided that the Manager: Environment & Planning may request, or the Consent Holder may offer, a review of the plan at any time to deal with any particular issues that may arise in connection with the operation of the activity and which may require an amendment to the management plan. Any revised EMP shall be re-certified in accordance with the process set out in Condition 4 above.

### **Records**

8. The Consent Holder shall keep a record of all monitoring analyses and inspections results undertaken in accordance with the conditions of this consent and shall submit these records to the Council annually and also immediately upon written request. The Consent Holder shall immediately notify the consent authority in writing of any non-compliance with any condition of this Consent and shall keep a record of this and the action(s) taken to address the matter of non-compliance. These records shall be submitted to the Council annually and also immediately upon written request.

9. The Consent Holder shall keep a record of all complaints and action taken whether received directly from the complainant or advised by the Council or its agent. The form of the records and the Consent Holder's response shall be to the satisfaction of the Council. These records shall be submitted to the Council annually and also immediately upon written request.

### **Surface Water Discharges**

10. The Consent Holder shall at all times adopt the best practicable option to prevent or minimise any adverse effects of the discharge on any water body beyond the boundaries of the site.

11. Notwithstanding the general responsibility imposed by the conditions of this Consent, if for any reason (accidental or otherwise) other wastes or discharges associated with the Consent Holder's operation escape to natural water beyond the boundaries of the site, the Consent Holder shall:

- (a) Immediately commence mitigation procedures to limit or prevent remedy or mitigate any adverse effect associated with the fugitive discharge and to avoid any further any actual or potential adverse effects to any downstream water body. All such actions shall be logged so that a complete record of actions will be available to the Council upon request,
- (b) Notify the Council within 24 hours of the escape of the wastes or discharges,
- (c) Report in writing to the Council within seven days detailing the manner and cause of the escape and steps taken to control and prevent its recurrence.

#### **Advice Note:**

*The above actions do not necessarily prevent the Council from pursuing further legal options.*

12. The discharge shall not cause any erosion at or downstream of the discharge point.

13. As soon as practicable after any rainfall events exceeding 25mm in a 24 hour period the Consent Holder shall inspect the stormwater retention ponds and culvert outlets to ascertain if a discharge from the site is occurring. Should a discharge be apparent into the tributary leading to the Awapuni Drain the discharge shall be assessed for all of the following characteristics:

- Production of any conspicuous change in the colour or clarity of the receiving waters after reasonable mixing;
- Any conspicuous floatable or suspended materials;
- Scums or foams on receiving waters,
- Any emission of objectionable odour in the receiving waters; and

Should any of these characteristics be detected, the Consent Holder shall:

- (a) Inspect the cargo storage yard, and associated stormwater infrastructure to determine the possible cause; and
- (b) Identify those steps required to rectify those effects; and then
- (c) within 2 working days, liaise with the Council's Water Conservation Section and provide, to its satisfaction, the following information:
  - (i) The extent of the apparent effects;
  - (ii) The inferred cause of the apparent effects;
  - (iii) The means the Consent Holder proposes to rectify the situation (including the possible mitigation involving construction and operation of the reed bed on the south-eastern boundary as identified in the rebuttal evidence of Mr Appleby dated 4/08/10;
  - (iv) Any additional monitoring requirements;
  - (v) Frequency of reporting on rectifying the situation.

The Consent Holder shall implement the agreed rectification measures, and continue to liaise with the Council until all steps in the rectification process have been fully completed to its satisfaction.

Any procedures identified to avoid remedy or mitigate the effects of any fugitive discharge, or to minimise the potential for any further fugitive discharge, shall be fully implemented and shall remain in force for such time as the actual and potential effects of the discharge are rendered no more than minor.

14. The Consent Holder shall carry out water quality monitoring to check compliance with the parameter limits specified in Condition 17. This monitoring shall be conducted once every two months, but subject to Condition 16 during times of prolonged dry periods. Samples are to be taken when runoff generated from the cargo storage yard is being discharged to the Awapuni Drain.

**Advice Note:**

*The frequency of monitoring may be reviewed annually, following receipt by the Council of the Consent Holder's report results of the previous year's monitoring results.*

15. A sample shall be taken at the stormwater retention ponds culvert outlets prior to the discharge into the Awapuni Drain tributary. A second sample shall be taken in the Awapuni Drain 10 metres downstream of the confluence with the tributary drain (the mixing zone boundary and surface water compliance point). A third sample shall be taken 10 metres upstream of the confluence of the tributary in the Awapuni Drain.

**Advice Note:** *The receiving environment sampling after reasonable mixing (i.e. 10 m downstream of the confluence drain) shall be carried out to obtain a fully representative sample of combined waters.*

16. Should environmental conditions prevail where no significant runoff is generated from the cargo storage yard enabling a sample to be taken within the two month period, an additional sample shall be taken during the next sampling period.

17. The samples shall taken at the three sites specified in Condition 15 and be analysed for the following parameters for compliance with the limits at the 10 m downstream surface water compliance point:

Parameter	Limit (10m below confluence)	Units
pH	6.5-8.5	-LOG(H <sup>+</sup> )
Suspended Solids	100mg/l above background site	g/m <sup>3</sup>
BOD	20	g/m <sup>3</sup>
Total Petroleum Hydrocarbons	15	g/m <sup>3</sup>
Total Tannins	*	g/m <sup>3</sup>
Total Nitrogen	0.4	g/m <sup>3</sup>
DO	Not less than 80%	total saturation

Conductivity	0.3	mS/cm
Total Resin Acids	0.06	g/m <sup>3</sup>

\*Indicator test only

18. Sample analysis results of the parameters prescribed in Condition 17 shall be provided to the Council no later than 21 working days after the sample collection has occurred.

19. If a sampling result outlined in Condition 17 shows a parameter limit is exceeded at the receiving environment compliance sampling point the Council shall be immediately notified of that exceedance; and the results of the water sampling shall be forwarded in writing to the Council within 24 hours. A further sample shall be taken for the failed test parameter at the next available time that there is sufficient runoff to enable sampling to occur unless otherwise directed by the Council.

The Consent Holder shall also:

- (a) Immediately inspect the cargo storage yard, stormwater retention ponds and culverts for any signs that may identify possible causes of non-compliance,
- (b) If the second sample results also exceed a parameter limit then carry out another sampling and analysis for that parameter at the next available discharge event.
- (c) Re-inspect the cargo storage yard, stormwater retention ponds and culverts immediately for any signs of the possible cause of the contamination.

The Consent Holder shall also liaise with the Council and shall

- (i) Identify and provide the extent of the non-compliance;
- (ii) Identify and provide the inferred cause of the non-compliance;
- (iii) Develop proposals for ongoing monitoring;
- (iv) Develop proposals to rectify the non-compliance.
- (v) Implement any necessary modifications to the treatment system or other remedial action required by the Council within agreed timeframes.

**Advice Note:**

*The above actions do not necessarily prevent the Council from pursuing further legal options.*

20. Notwithstanding the requirements and limits specified in Condition 17 the discharge shall not cause significant detrimental effect on freshwater biological communities and the aquatic life of the receiving waters beyond the mixing zone boundary.

**Ground Water and Discharges**

21. Prior to the storage of goods on the site two groundwater monitoring bores shall be installed into groundwater, one within the cargo storage yard site at the most practical south-easterly point; and the other at the most practical north-westerly point.

The two bore locations shall be marked on a plan and submitted for certification by the Manager: Environment and Planning. The certified plan shall be included in the EMP.

22. Background groundwater quality samples of the sump tile drainage shall be taken on at least 3 separate occasions prior to commencement of any onsite construction. The sampling shall be of those parameters detailed in Condition 23.

23. Groundwater (background) samples shall be taken from each monitoring bore within the site and also at the sump tile drainage outlet from beneath the site twice annually: once during the month of February and the other during the month of August.

Compliance with parameter limits shall be measured in the receiving groundwater after reasonable mixing (deemed to be at the sump tile drainage outlet, as measured against the limits in the following table). These samples shall be analysed for the parameters as follows:



Groundwater parameter	Limit (as measured at sump tile drainage outlet)	Units
pH	6.5-8.5	-log(H <sup>+</sup> )
Conductivity	0.3 above background	Umhos/cm
Total Petroleum Hydrocarbons	15	g/m <sup>3</sup>
Total Nitrogen	0.6 above background	g/m <sup>3</sup>
Total Resin Acids	0.06 above background	g/m <sup>3</sup>

24. Sample analysis results of the parameters outlined in Condition 23 shall be provided to the Council no later than 21 working days after the sample collection has occurred.

25. If a sampling result outlined in Condition 23 shows a parameter limit is exceeded at the receiving environment compliance sampling point the Council shall be immediately notified of the ground water parameter exceedance and the results of the water sampling shall be forwarded in writing to the Council within 24 hours. A further sample shall be taken for the failed test parameter at the next available time that there is sufficient discharge from the sump to enable sampling to occur unless otherwise directed by the Council.

The Consent Holder shall also:

(a) Immediately inspect the cargo storage yard, stormwater retention ponds, swales, and culverts for any signs that may identify possible causes of non-compliance.

(b) If the second sample results also exceed a parameter limit then another sample analysis for that parameter shall be carried out at the next available time that there is sufficient discharge from the sump to enable sampling to occur. The cargo storage yard, stormwater retention ponds, swale drains and culverts shall be re-inspected immediately for any signs of the possible cause of the contamination.

The Consent Holder shall also liaise with the Council and shall

(i) Identify and provide the extent of the non-compliance;

(ii) Identify and provide the inferred cause of the non-compliance;

(iii) Develop proposals for ongoing monitoring;

(iv) Develop proposals to rectify the non-compliance.

(v) Implement any necessary modifications to the treatment system or other remedial action required by the Council within agreed timeframes.

**Advice Note:**

*The above actions do not necessarily prevent the Council from pursuing further legal options.*

26. Notwithstanding the requirements and limits specified in Condition 23 there shall be no significant adverse effects on the receiving groundwater environment as a result of the exercising of this Consent that would result in non-compliance with the provisions of s15B(1)(b) of the Act.

**Sampling and analyses**

27. Sampling analysis shall be carried out by an IANZ (registered laboratory) and procedures shall be in accordance with Standard Methods for the examination of water and wastewater prepared and published jointly by American Public Health Association, American Water Works Association, Water Pollution Control Federation (Twentieth edition 1998 supplement or newer edition).

### **Site Management**

28. The Consent Holder shall contact the Council's Water Conservation Section at least 14 working days prior to the intended first exercise of this consent. Where construction work is to be undertaken, having been discontinued for more than seven consecutive working days, the Council shall be re-notified.

29. The existing drainage easements within Lot 4 DP6770 serving Lot 2 DP7967 and Lot 2 DP6770 shall be maintained. Construction and operational activities shall be undertaken at all times to maintain the effectiveness of the tile drainage system. Damage (if any) or modification to the drainage system shall be repaired or reinstated to an appropriate standard in consultation and agreement with the owners of the dominant tenements.

30. The proposed cargo storage yard, stormwater retention ponds and culvert outlets shall be designed and managed to withstand the actual and potential effects of flooding up to at least a 100 year rainfall event.

31. Should the Council's Emergency Management or Rivers Control and Land Drainage Section provide sufficient warning of a significant rainfall event with potential to result in loose logs being carried offsite by floodwaters, all loose logs shall be secured onsite to minimise the potential for this.

32. Subsequent to significant rainfall events the facilities infrastructure including the stormwater retention ponds, yard drainage and culverts shall be inspected and reinstated as necessary to achieve the same protective levels and dimensions as were in place prior to the event.

33. This Consent is granted by the Council subject to its servants and agents being permitted access to the relevant parts of the site at all times for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.

34. The Consent Holder can be called upon at any time by duly authorised officers of the Council to produce this consent.

35. The Consent holder shall pay to the Council any administration, inspection, supervision, enforcement or monitoring charges fixed in accordance with Section 36(1) of the Resource Management Act 1991, payable in respect of this Consent.

### **Review of Conditions**

36. The Council may serve notice on the Consent Holder pursuant to section 128 Resource Management Act 1991 of its intention to review the conditions of the consent, giving notice one month after the commencement of the activity and, during the construction works only, at monthly intervals; and also within one month after the first anniversary of the commencement of this consent and thereafter within one month after each subsequent anniversary for the following purposes:

- a) To review the effectiveness of the conditions of this resource consent in avoiding, remedying or mitigating any adverse effects on the environment from the consent holder's activity and, if considered appropriate by the Council, to deal with such effects by way of further or amended conditions;
- b) To review the appropriateness of the conditions in light of changes to relevant national standards, regulations and guidelines, and the Council's relevant regional and district level plans;
- c) To amend the purposes under which future reviews may take place;
- d) To impose additional, or modify existing, conditions of this consent relating, but not limited to, the matters specified hereunder if necessary to deal 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 date:

- i. Restriction or diversion of the passage of floodwaters;
- ii. The endangering of lives or property in the event of flooding.

**Term of Consents**

The consents shall expire as follows:

Consents

**WP-2010-104234-00 and WP-2010-104292-00:** 35 years from the date of commencement of the consents;

Consent

**DW-2010-104235-00:** 15 years from the date of commencement of the consent.

**Advice Notes:**

- 1. The Consent Holder is advised that this resource consent does not in itself give any authority to enter or carry out any work on private land nor does it imply any exclusive right to operate over the area allotted to the holder. It also does not excuse the holder from obtaining all other legal and statute requirements for instance the Health and Safety Act.*
- 2. For further information about the Council's charging policy the consent holder is referred to the Council's current Manual of Fees and Charges-Environment and Planning.*
- 3. Should any archaeological deposits be identified during development the contractor/ occupier should avoid effects to the deposits and contact the Historic Places Trust, Department of Conservation or local runanga immediately. Under Section 99 of the Historic Places Act 1993 it is an offence to destroy, damage or modify an archaeological site (recorded or unrecorded) without authority from the Trust and a fine of up to \$100, 000 may be imposed upon any offender.*

**B. "DISTRICT" LAND USE**

**CONSENT PR-2010-104230-00:**

To Establish and Operate a cargo storage yard on Lot 4 DP 6770, and Lot 3 DP 6770 (access only), within the Rural B Industrial Zone located at Dunstan Road, Gisborne, including Dispensations from rules for landscaping, yards and sealing of the accessway, Operation of heavy vehicles during day and night;

Subject to the following conditions:

**General Condition**

1. The activity shall be carried out in general accordance with details submitted with the application including the further details supplied during the hearing.

**Noise and Vibration Mitigation**

2. The Consent Holder shall offer to replace the existing windows and door(s) on the front facades of each of the dwellings at 17, 19, 23 and 191 MacDonald Road with aluminium framed double glazing. This is a condition that was offered by the applicant/Consent Holder. (The Hearings Commissioners also record that John Peake from 23 MacDonald Road raised the matter of double glazing of the window to the bedroom on the west side of his dwelling in his comments upon the proposed conditions of consent. The Commissioners consider this window should be included as part of the Consent Holder's offer given the noise is a concern and the additional costs are limited.)

3. The Consent Holder shall offer to purchase and install a domestic positive air ventilation system serving the front bedrooms of 17, 19, 23 and 191 that directly face MacDonald Road and offer to contribute \$1,000.00 towards the electric power cost to operate each system, once installed. This is a condition that was offered by the applicant/Consent Holder.

4. The Consent Holder shall, in consultation with the District Council, upgrade the area of MacDonald Road carriageway adjacent to the residential dwellings at 17 – 23 MacDonald Road to provide a smooth surface which will minimise the noise and vibration effects of heavy vehicles using the road. The works shall be designed and undertaken:

- a. To avoid any interference with existing utility services, except to the extent that the water valve within the carriageway adjacent to 19 MacDonald Road shall be set flush with the finished carriageway service, or relocated clear of the carriageway;
- b. To provide for the resurfacing of the carriageway with asphaltic concrete or a surface providing the same or superior finish. The upgrade design of the resurfacing works shall be first certified by the Council's Manager: Engineering & Works as meeting the requirements of this condition, in consultation with the Consent Holder and the residents of 17- 23 MacDonald Road. This is a condition that was offered by the applicant/Consent Holder.

#### **Environmental Management Plan**

5. Prior to the commencement of the activity, the Consent Holder shall prepare and maintain an Environmental Management Plan (EMP) which shall demonstrate compliance with the conditions of this consent, and also include, but not necessarily be limited to the following matters:

- a. the purpose of the EMP;
- b. Management responsibilities for implementing the plan, document holders, and document control;
- c. General requirements, copies of relevant resource consents/permits, site description and development and operational details;
- d. The appointment of a site manager, and phone and other contact details of key personnel;
- e. the procedure for handling complaints, investigation and reporting, associated with the operation of the cargo storage yard (including storage and the use of the local road network to transport goods to and from the site);
- f. Environmental monitoring including the pre-commissioning phase, post commissioning phase, water quality, routine inspections, environmental reporting procedures, contingency procedures for soil and water quality matters, and noise. (Refer also to condition 3 of resource consents WP-2010-104234-00, WP-2010-104292-00 and DW- 2010-104235-00).
- g. Associated site management plans prescribing detailed measures to regulate the operation of the cargo storage facility including;
- h. A spill minimisation/response plan detailing measures to contain and mitigate the effects of petroleum spillages, and measures to avoid spills associated with the refuelling and maintenance of equipment operated on the site. These measures shall include the reservation of a dedicated service area suitably bunded and drained to an API Separator unit or similar;
- i. A dust management plan including dust suppression measures to be undertaken should a dust nuisance arise;
- j. measures to deal with hazardous materials;

- k. A traffic management plan describing a Heads of Agreement (or equivalent) with cartage operators and staff addressing traffic use of MacDonald and Dunstan Road including:
- Speed limits;
  - Non-use of air brakes;
  - Non-use of Willows Road by heavy vehicles visiting or departing the site;
  - Measures to control bark litter within the road reserves of MacDonald and Dunstan Roads, where this is attributable to the Consent Holder's activities;
- l. A noise management plan Measures including measures to reduce on-site noise including restrictions on the use of chainsaws at night and disabling reversing beepers on vehicles operated on the site;
- m. An archaeological response plan.

6. The EMP shall be submitted to the Council's Manager: Environment and Planning and amended as necessary until certified by him/ her as meeting the conditions of this consent. No construction works associated with the implementation of this consent shall be undertaken on the site prior to the certification of the EMP.

7. The certified EMP shall be adhered to at all times.

8. The EMP shall be reviewed at the first anniversary of the commencement of the consent, and every five years thereafter, provided that the Manager: Environment & Planning may request, or the Consent Holder may offer, a review of the EMP at any time to deal with any particular issues that may arise in connection with the operation of the activity and which may require an amendment to the EMP. Any revised EMP shall be re-certified in accordance with the process set out in Condition 6 above.

#### **Vehicles, Access, and Dust**

9. Vehicles shall only exit the site via the formed accessway created over Lot 3 DP 6770. In the event that Lot 3 DP 6770 and Lot 4 DP 6770 are transferred independently, a right of way easement having a width sufficient to accommodate the types of heavy vehicles using the site, shall be created over Lot 3 DP 6770 in favour of Lot 4 DP 6770.

10. The vehicle crossings shall be formed and sealed in accordance with the requirements of Chapter 15 of the Gisborne District Council Part Operative Combined Regional Land and District Plan, and the Consent Holder shall contact the Utilities Section of Council at least one month prior to any work taking place to arrange access over the public utilities (infrastructure) present at the proposed new access point.

11. All operations on the site, including the use of vehicle accessways, which have the potential to cause dust emissions shall be suitably managed at all times so as to avoid the creation of a dust nuisance. These management measures shall be described in more detail in a Dust Management Plan to be prepared in accordance with the requirements of Condition 5 i. Above.

12. There shall be no creation of dust or particulate discharge from the activity which is offensive or objectionable, as determined by a suitably qualified and experienced enforcement officer of the Council, at or beyond the boundary of the site.

13. The Consent Holder shall implement measures to remedy any breaches of conditions (12 -13) and the Council's Chief Environmental Health Officer shall be informed within 24 hours of any such breach of any condition.

#### **Lighting**

14. All external lighting on site shall be designed and installed to avoid light spill beyond the boundary of the site.

**Waste**

15. All waste generated by the activity is to be contained and disposed of to an approved site.

**Advice Note:**

*An “approved site” is a site which is either being lawfully operated as a “permitted activity” under the Regional Plan for Discharges to Land and Water Waste Management and Hazardous Substances, or otherwise holds a resource consent for such waste management activities under the Resource Management Act 1991).*

**Noise**

16. The average maximum noise level (L10) as measured at or within the boundary of any industrial zone shall not exceed L10 75dBA at all times.

17. The Consent Holder shall take all reasonable steps to ensure that the noise created from the activity is kept to a practicable minimum.

18. The average maximum noise level (L10) and maximum noise levels (Lmax) from activities undertaken on the site, as measured at or within the boundary of any site zoned Rural Residential, Rural Lifestyle or the notional boundary of any dwelling zoned Rural Production, or Rural General, and shall not exceed the following limits:

ZONE	AVERAGE	MAXIMUM	NOISE	LEVEL	(L <sub>max</sub> ) dBA
	(L <sub>10</sub> ) dBA				
	DAY		NIGHT		NIGHT
	0600-2100 hrs		2100-0600 hrs		2100-0600 hrs
Rural	55		45		70

**Review of Conditions**

19. The Council may serve notice on the Consent Holder pursuant to section 128 Resource Management Act 1991 of its intention to review the conditions of the consent, giving notice one month after the commencement of the activity and, during the construction works only, at monthly intervals; and also within one month after the first anniversary of the commencement of this consent and thereafter within one month after each subsequent anniversary for the following purposes:

- a) To review the effectiveness of the conditions of this resource consent in avoiding, remedying or mitigating any adverse effects on the environment from the consent holder’s activity and, if considered appropriate by the Council, to deal with such effects by way of further or amended conditions;
- b) To review the appropriateness of the conditions in light of changes to relevant national standards, regulations and guidelines, and the Council’s relevant regional and district level plans;
- c) To impose additional, or modify existing conditions of consent relating, but not necessarily limited to, the matters specified hereunder if the Manager: Environment and Planning considers it necessary to deal 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 date:
  - i. Construction Effects, including noise, traffic, dust and vibration;
  - ii. Operation Effects, including noise, traffic, access and manoeuvring, visual amenity, landscaping, dust and vibration.

**Term of Consent PR-2010-104230-00:**

In perpetuity.

**Advice Notes:**

**1. Rail ownership - Ontrack arrangements**

*While it has been decided to grant the resource consents sought in regard to the management and discharge of site stormwater via the land owned by Ontrack, and while it is understood that Ontrack has been provided with the details of the proposed system design, the Applicant is encouraged to meet all other reasonable requirements that the landowner, Ontrack may seek, including the obtaining of property rights for the location of the proposed culverts within the railway land, before the design is finalised and works are commissioned.*

**2. Drainage Easements**

*It is noted that legal easements in favour of Mr Ferkin's (Snr) farmland (Lot 2 DP 7967) exist over the land the subject of the application. While relevant applications for diversion and discharge of water have been sought and are granted in this resource consent, the Consent Holder's attention is also drawn to its legal duties in respect of these pre-existing drainage easements.*

## APPENDIX 2

### THESE ARE ADDITIONAL RECOMMENDATIONS TO THE GISBORNE DISTRICT COUNCIL FROM THE HEARINGS COMMISSIONERS

#### TRAFFIC

**Speeds** at or beyond the posted speed limit are having a significant effect on traffic safety and amenity values, even during daytime hours. These adverse effects are not just attributable to heavy vehicles but also include some motor cars. In some instances motor cars travelling at high speed produced higher noise readings than some of the trucks. The lowering of speed limit will have a major positive effect in achieving the internal amenity values, as expressed in policy 19.10 in the District Plan. The Council is urged to give serious consideration to this matter. General support has been indicated by parties to the hearing of a reduction to 70km per hour speed limit. A further recommendation is made for the prohibition of the use of **air braking** by heavy vehicles in the vicinity of the residential premises near the junction Between MacDonald Road and the State Highway.

#### ROAD PAVEMENT - MACDONALD ROAD

There is a need for upgrading of the section of MacDonald Road generally adjacent to the dwellings at 17-23 MacDonald Road. As a mitigation measure for its potential effects on the residents the Applicant - Eastland Port Ltd - has offered to provide to the Council the means for it to upgrade that section of road with asphaltic concrete and to set the water valve flush with the carriageway surface, or to relocate it within the grass berm. The collaboration and cooperation of the Council is sought in giving effect to this mitigation measure.

#### THE "33% RULE" – FLOODWAY OBSTRUCTION

Rule 5.20.3.5 provides that not more than 33% of the F4 floodway width on a site is to be obstructed by buildings or other solid objects. The rule was intended to regulate the Rural Industrial A zone only. For the reasons described in the EPL application, it is considered that the broader application of the rule to F4 Flood hazard areas throughout the District is an error.

#### AWAPUNI DRAIN CATCHMENT - DRAINAGE SCHEME MAINTENANCE PROGRAMME

The Commissioners heard evidence that included concerns about the absence of a focussed maintenance programme for the Awapuni Drain catchment. Significant maintenance in particular of floodgates appears to be long overdue. The resulting poor performance of the flood gates, in addition to the probable need for review of capacity of the main floodgate to achieve the original 1941 design capacity to handle and discharge the 1 in 5 year design flood appears to be the cause of prolonged ponding and consequent damage to the catchment pasture land. The Council is strongly encouraged to prepare and implement a programme that will be in keeping with the actual needs of the Awapuni Drain catchment drainage scheme maintenance, including the recovery of actual and reasonable costs from the benefiting ratepayers.