

IN THE MATTER OF

AND

IN THE MATTER OF

The Resource Management Act 1991 (“the Act”)

An application to the Bay of Plenty Regional Council (Environment BOP) by Carter Holt Harvey Limited (“the Applicant”) to place, use and maintain a discharge pipe, including the construction of associated erosion protection; and to discharge stormwater to the Whakatane River.

DECISION OF THE HEARING COMMITTEE

1. Introduction

- 1.1 Carter Holt Harvey Limited (“the Applicant”), as the result of an Order of the Environment Court dated 15 December 2008, is required to design and construct a pump station and associated drainage system at a property owned by the Rangitaiki 28B22 Trust (the Trust) on the corner of Keepa Road, Whakatane.
- 1.2 The Map Reference is at or about map reference NZMS 260 W15:5935-5333.
- 1.3 The Bay of Plenty Regional Council’s file reference is 65604.
- 1.4 The Bay of Plenty Regional Council, as consent authority, has delegated its authority under s.34A(1) of the Act to Cr Andrew von Dadelszen (Chair) and Cr Malcolm Whitaker to hear and determine the application.

2. Background

- 2.1 The pump station will be designed to discharge stormwater from the Trust land and upstream catchments, comprising a total area of 21.9 hectares.
- 2.2 The construction of the pump station is a requirement of the original land use consent issued by Whakatane District Council to Carter Holt Harvey Limited. The purpose of the pump station is to mitigate the effects of the landfill activity that occurred on the Trust land and was carried out by the applicant, in that the fill

activity removed flood storage of stormwater that previously existed on the landfill site. There are existing flooding issues in the upstream catchment, which are considered to be the result of the fill activity and the proposed pump station is designed to address these. The intention is for the Whakatane District Council to take over the management and maintenance of the pump station once it is constructed. This is also covered by the Consent Order.

- 2.3 The applicant proposes to construct the pump station on the western side of the existing stopbank, adjacent to an ephemeral stream, within the disused landfill site on land owned by the Rangitaiki 28B22 Trust. The applicant does not yet have a lease or landowner agreement to construct the pump station itself. Although this application forms part of the pump station proposal, neither the pump station itself nor any of the proposed works on the Rangitaiki 28B22 Trust land form part of this application. The applicant has confirmed that they do not consider that any of the works on the Rangitaiki 28B22 Trust land associated with the construction of the pump station require resource consent from the Regional Council.
- 2.4 Therefore, the applicant only seeks resource consent for the placement, use and maintenance of the discharge pipe and associated erosion protection on the river side of the existing stopbank and for the discharge of stormwater to the Whakatane River from the discharge pipe during storm events. This consent is limited to the consideration of these two activities.

3. Description of Proposal

3.1 Activities requiring consent

The two parts which make up this resource consent application are outlined below.

3.2 Placement, Use and Maintenance of Discharge Pipe and associated Erosion Protection

Although originally proposing to install three separate pipes, following review of the application by the Regional Council, the applicant has amended the proposal to include one discharge pipe. This discharge pipe will require excavation and reinstatement of the stopbank to allow its placement. The works associated with the stopbank disturbance were issued a Bylaw Authority by the Regional Council's Rivers and Drainage Section on 23 April 2009.

The discharge pipe is a 1,050 mm diameter pipe set through the stopbank with associated scour protection and energy dissipation at the outlet in the form of a rip rap basin.

The design of the outlet and the dissipation structure are shown on Tonkin & Taylor plan entitled Proposed Pump Station: Outlet Pipe Energy Dissipation Structure Details, Drawing No. 851200-401, Rev. 2 and is referenced as B.O.P.R.C. Plan No. 65604/5.

3.2 Discharge of Stormwater to Whakatane River

This discharge will serve a total catchment of 21.9 hectares as shown in Figure 1.

FIGURE 1 - LOCATION OF THE CATCHMENT AND PROPOSED DISCHARGE POINT



The catchment includes parts of Keepa Road, the State Highway, the closed Carter Holt Harvey landfill on Keepa Road and land zoned for commercial development to the north of Keepa Road.

The quality of the water discharged will therefore be influenced by these varying land uses in the catchment. There are current ponding issues during rainfall events within this catchment and the proposed discharge is intended to mitigate the effects of this ponding.

The pump station is designed to discharge sufficient water to prevent flooding of the existing catchment in a 10 year average recurrence interval (ARI) flood event. The discharge will commence once the water level within the catchment reaches a pre-set level which will trigger the pump station to start. The discharge from the pipe will be a constant flow driven by two of the three pumps within the pump station (two working and one standby) the capacity will be 520 litres per second per pump, resulting in a maximum discharge from the pipe of 1,040 litres per second to the river. It is proposed that the pumps will operate for varying durations during rainfall events depending on rainfall intensity, runoff and water level within the river.

There is an existing 450 mm culvert beneath the stopbank which is to remain to continue to provide catchment drainage during small events.

The following activities require consent:

Resource consent 65604: To place, use and maintain a discharge pipe, including the construction of associated erosion protection; and to discharge stormwater to the Whakatane River.

4. **Statutory Reasons for Requiring Resource Consents**

There has been consideration given as to whether the activities should be considered under s12 of the RMA (activities within the Coastal Environment) or section 13 of the RMA (activities in the beds of lakes or rivers). It has been resolved to consider these activities under s13 of the RMA. Sheet 24a of the Regional Coastal Environment Plan indicates that the Whakatane River mouth ends just downstream of the proposed discharge outlet and point. Therefore the proposal is not considered to fall within the Coastal Marine Area as defined by s2 of the Resource Management Act.

The following activities require consent:

- Under section 13(1)(a) of the Resource Management Act, 1991 (RMA) and Rule 71 of the Regional Water and Land Plan to undertake a discretionary activity being to place, use and maintain a discharge pipe and associated erosion protection structures on the bed of the Whakatane River; and
- Under section 13(1)(b) of the RMA and Rule 71 of the Regional Water and Land Plan to undertake a discretionary activity being to temporarily disturb the bed of the Whakatane River to allow for the placement and maintenance of a discharge pipe and associated erosion protection structures on the bed of the Whakatane River; and
- Under section 15(1)(a) of the RMA and Rule 30A of the Regional Water and Land Plan to undertake a restricted discretionary activity being to discharge stormwater to the Whakatane River.

5. **Consultation**

5.1 **Tangata Whenua consultation**

As part of their grievance settlement with the Crown (settled July 2002) Ngati Awa have their traditional relationship with the Whakatane River recognised by way of Statutory Acknowledgement. As a result, it was considered appropriate to require the applicant to consult with Ngati Awa regarding this application.

Also, as part of the Statutory Acknowledgement the Regional Council is required to provide application documentation to Ngati Awa upon the receipt of a consent

application with the Statutory Acknowledgement area. The Regional Council provided this documentation to Ngati Awa on 22 January 2009.

Ngati Awa did confirm two concerns that they would like to see addressed by the proposal:

- (a) That the suspended solids in the discharge will continue to be captured in the wet land area; and
- (b) That the contaminated areas in the catchment be contained and not allowed to contaminate the stormwater discharged.

As a result of the consultation by the applicant with Ngati Awa, Beverley Hughes agreed on behalf of Ngati Awa that the application be processed on a non-notified basis on 16 April 2009.

No further iwi consultation was considered necessary, in accordance with the Bay of Plenty Regional Council Consents and Compliance Guidelines, September 2002 and section 8 of the RMA, 1991.

5.2 Rangitaiki 28B22 Trust

The applicant also consulted with the Rangitaiki 28B22 Trust. This consultation has been ongoing, but to date the parties have been unable to reach agreement.

5.3 Other Consultation

The applicant consulted with the Rivers and Drainage Section of Environment Bay of Plenty and as a result has obtained a Bylaw Authority for the proposal.

The applicant consulted with the Department of Conservation and as a result the Department provided s94 RMA approval for the application on 2 June 2009. The applicant is required to obtain a Concession from the Department of Conservation for the discharge. Consent processing staff has been advised by a Department of Conservation representative Tony Lockwood that a concession has been granted for the activity.

The river is recognised as a habitat for Koaro and a whitebait spawning site. It is also recognised as having regionally significant trout habitat and fishery values. Therefore, the applicant has consulted with Eastern Region Fish and Game who have indicated that they have no concerns with the application.

6. Notification

The proposed activity was considered to have minor adverse environmental effects. The Rangitaiki 28B22 Trust (the Trust) on whose property the pump station is proposed is considered an affected party. The Trust does not support the proposal as described in the application. Therefore, the application was limited notified

under Section 94(1) Resource Management Act 1991 to the Rangitaiki 28B22 Trust on 18 September 2009.

7. Pre-Hearing Meeting

On 3 December 2009 a pre-hearing meeting was held with representatives from Carter Holt Harvey (Mark Tito and Graham Miller) and the Rangitaiki 28B22 Trust (Brian Simpson). The key points are as follows:

The Rangitaiki 28B22 Trust (the Trust) identified the following outstanding issues:

- (a) The open stormwater drain that bisects their property should be filled or covered.
- (b) Consideration should be given to increasing the capacity of the pump station.
- (c) Clarity is needed regarding future ownership and maintenance of the pump station.
- (d) It is not clear how much land will be required in order to provide maintenance access to the pump station and who will own this land.

Carter Holt Harvey Limited responded as follows:

- (a) Stormwater Drain – their engineers are concerned that covering the drain may restrict how much stormwater can be drained by the pump station. Options are being considered, but this work is not complete. Carter Holt Harvey are happy to provide an interim report to the Trust.
- (b) Pump Station capacity – Carter Holt Harvey have designed the pump station to cater for the current stormwater requirements (designed to accommodate the run-off generated from a 100 year event). The design also facilitates future upgrades should another party, such as the Trust, wish to increase the pump station capacity; for example by addition of a third pump or installation of larger pumps. Carter Holt Harvey are happy to provide further information to the Trust regarding future upgrade options.
- (c) Ownership and Maintenance of Pump Station – the pump station will be constructed by CHH and ownership transferred to Whakatane District Council, which will then be responsible for its operation and maintenance. Carter Holt Harvey agreed to put together, in conjunction with Whakatane District Council, a document setting out how this will work in practice.
- (d) Land for Maintenance Activities – Carter Holt Harvey has more information regarding this aspect of the proposal, which they will supply to the Trust.

It was agreed that CHH and the Trust continue consultation to resolve the raised issues.

8. Matters for consideration

As this application was lodged before 1 October 2009, the Resource Management (Simplifying and Streamlining) Amendment Act 2009 does not apply.

8.1 The application has been considered under s.104 and 104B of the Act:

“104 Consideration of applications

- (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 policy statement;*
 - (ii) *a New Zealand coastal policy statement;*
 - (iii) *a regional policy statement or proposed regional policy statement;*
 - (iv) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.*
- (3) *A consent authority must not –*
- (a) *have regard to trade competition when considering an application;*
 - (b) *when considering an application, have regard to any effect on a person who has given written approval to the application;*
 - (c) *grant a resource consent contrary to –*
 - (i) *section 107 or section 107A or section 217;*
 - (ii) *an Order in Council in force under section 152;*
 - (iii) *any regulations*
 - (d) *grant a resource consent if the application should have been publicly notified and was not.”*

“104B Determination of applications for discretionary or non-complying activities - After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

- (a) *may grant or refuse the application; and*
- (b) *if it grants the application, may impose conditions under section 108.”*

8.2 Planning Instruments

Section 5 of the RMA provides that the purpose of the RMA is to promote the sustainable management of natural and physical resources to enable people to provide for their social, economic and cultural wellbeing. The following planning

instruments and documents are relevant to, and have been considered for this application:

Regional Planning Instruments

(a) The Bay of Plenty Regional Policy Statement 1999

The policies of the RPS relevant to this application have been taken into account in proposed mitigating measures and consent conditions. In particular, the following policies are considered to be relevant to this application:

- Policy 5.3.2(b)(ii): To recognise and provide for the role of Tangata whenua as kaitiaki of their resource, where appropriate.
- Policy 5.3.3(b)(iii): To encourage all parties undertaking resource use, development and protection activities to consult others who may be affected.
- Policy 6.3.1(b)(viii) To manage the use and development of land resources in a way which enables people and communities to provide for their social, economic and cultural wellbeing.
- Policy 8.3.1(b)(ii): To improve the quality of the region's water resource by avoiding, remedying or mitigating the adverse effects of diffuse and point source discharges of contaminants onto or into land or into water.
- Policy 8.3.1(b)(v): To avoid, remedy or mitigate the potential adverse effects on water quality due to the inappropriate location and management of activities.
- Policy 8.3.1(b)(vi): To avoid, remedy or mitigate any adverse effects of water related activities on water quality.
- Policy 13.3.1(b)(v): To promote the efficient use and development of existing and future infrastructure and utility networks.
- Policy 13.3.1(b)(vi): To avoid or reduce the adverse effects on the environment, relating to the use and development of the built environment and the construction, operation, and decommissioning of physical resources and infrastructure.
- Policy 16.3.1(b)(v) To avoid, remedy or mitigate any adverse effects of inappropriate subdivision, use and development on natural character, habitats and ecosystems.

The relevant iwi who holds statutory acknowledgement over the area has been consulted and their comments are provided for by the proposed consent conditions. The only party whom it was considered are affected (Rangitaiki 28B22

Trust) were notified of the application made a submission which is considered in this report. Proposed methodologies and consent conditions will ensure that adverse effects on the receiving environment will be no more than minor. The proposal will also provide for the social and economic wellbeing of people by decreasing the risk of flooding.

The proposed activities are consistent with the policies of the Regional Policy Statement.

(b) The Operative Bay of Plenty Regional Water and Land Plan 2008

Policies relevant to this application have been taken into account in proposed mitigating measures and consent conditions.

The relevant rules to this application are:

Rule 30A Restricted discretionary – discharge of stormwater to surface water

The discharge of stormwater to surface water, or to land where the discharge enters surface water, where the rate of discharge is greater than 125 litres per second for a 10 minute duration 10% AEP storm event (10 year return period storm) is a restricted discretionary activity subject to the following standards and terms:

- (a) The suspended solids concentration of the discharge shall not be greater than 150g/m³, except where a 10 minute duration 10% AEP storm event (10 year return period storm) is exceeded.
- (b) The discharge shall be substantially free of grease, oil, scums and foam.
- (c) The discharge shall not contain any stormwater from a timber preservation site, timber treatment site, or a site where chemically treated timber is stored.
- (d) The discharge shall not cause or induce erosion to the bed or banks of any surface waterbody, or to land, where the erosion is persistent or requires active erosion control measures to bring it under control. Erosion includes:
 - (i) Instability of land or the banks of the surface waterbody.
 - (ii) Scour to the bed of the surface waterbody.
 - (iii) Damage to the margins or banks of the surface waterbody.
- (e) The discharge shall not cause nor contribute to flooding or ponding on any land or property owned or occupied by another person.
- (f) The discharge shall not contain hazardous substances, or substances that are toxic to aquatic ecosystems (as measured relative to the ANZECC Guidelines for Fresh and Marine Water Quality, 2000).
- (g) The discharge shall not contain any wastes (including, but not limited to, wastewater or condensates) from a trade or industrial process.

- (h) The discharge shall not cause a conspicuous change in the colour of the receiving waters.
- (i) Where the discharge is to a part of a receiving waterbody that is classified as Water Supply, the discharge shall not contain any substance that renders the water unsuitable for treatment (equivalent to coagulation, filtration, disinfection and micro-filtration) for human consumption.

Environment Bay of Plenty retains discretion over the following matters:

- (a) Management and maintenance of the stormwater system to achieve the standards and terms.
- (b) Measures to avoid, remedy or mitigate the adverse effects of the stormwater discharge on:
 - (i) Erosion or land instability.
 - (ii) Water quality.
 - (iii) Flooding of land owned or occupied by another person.
 - (iv) Aquatic ecosystems, indigenous flora and fauna, and the migration of fish species.
 - (v) Users of the waterbody, including recreational use.
 - (vi) Sites of significance to tangata whenua.
- (c) The administrative charges under section 36 of the RMA.
- (d) Monitoring requirements.

Rule 71 Discretionary – Activity in the beds of streams, rivers and lakes

The:

- (a) Use, erection, reconstruction, placement, alteration, extension, removal, or demolition of any structure or part of any structure in, on, under, or over the bed of a stream, river or lake that is not permitted by Rule 51 to 64 (inclusive) by a rule in this plan, or a controlled activity, or a discretionary (restricted) activity under this plan,
- (b) Excavation, drilling, tunnelling or other disturbances to the bed of a stream, river or lake that is not permitted by Rule 51 to 70 (inclusive), by a rule in this plan, or a controlled activity, or a discretionary (restricted) activity under this plan, and excluding gravel extraction,
- (c) Introduction of planting of any plant or any part of any plant in, on, or under the bed of a stream, river or lake that is not permitted by Rule 67 by a rule in this plan,
- (d) Disturbance, removal, damage or destruction of any plant or any part of any plant in, on, or under the bed of a stream, river or lake that is not permitted by Rule 68 by a rule in this plan,

- (e) Deposition of any substance in, on, or under the bed of a stream, river or lake,
- (f) Reclamation or drainage of the bed of a stream, river or lake that is not permitted by Rule 66, is a discretionary activity.

The most relevant policies are outlined below:

Policy 20: To assess effects of proposed development activities on the cultural and historic values and sites of water, land and geothermal resource in consultation with tangata whenua.

Policy 21: To manage land and water resources in the Bay of Plenty within an integrated catchment management framework to:

- (b) Maintain or improve water quality in streams and rivers to meet their Water Qualification Classification.
- (h) Understand the effects of changing land cover and land use practices on water flows and levels in rivers, streams, lakes.
- (i) Promote and encourage the adoption of sustainable land management practices that are appropriate to the environmental characteristics and limitation of the site to:
 - i. Protect the soil and avoid, remedy or mitigate the adverse effects of erosion.
 - ii. Avoid, remedy or mitigate adverse effects on water quality in the receiving environment.

Policy 38: Discharges of contaminants to water are to comply with the following requirements:

(b) Rivers and streams.

(ii) Discharges to rivers and streams are to:

- Meet the water quality classification of the stream or river after reasonable mixing.

Policy 47: To avoid, remedy or mitigate the adverse effects of discharges of water to water on:

- Flooding.
- Any relevant Maori cultural values.
- Stability of the beds and banks of the receiving waterbody.
- Ecological values.

Policy 48: To encourage, as appropriate, discharge activities to comply with current best engineering practices and best practicable options to avoid or mitigate adverse effects on the environment so that the requirements of this regional plan and other Environment Bay of

Plenty requirements are met. Best engineering practices are relevant where the scale, intensity and potential adverse effects require such engineering practices.

Policy 51 To require the appropriate management of stormwater quality, including:

(b) The use of best practicable options.

Policy 54 To require stormwater discharge rates and volumes, and stormwater discharge outlet structures, to be designed and managed to avoid or mitigate erosion and scour.

Policy 82 All new activities in the beds of streams, rivers and lakes, reconstruction of existing structures, re-planting of plants, and existing activities upon renewal of consents, are required to comply with the following:

(a) Stability of Banks and Beds of Waterbodies.

(b) Water quality.

(c) Water and Flood Flows.

(d) Natural character, landscape values, Maori cultural values.

Issues raised by tangata whenua have been taken into consideration. Adverse effects on water quality will be short-term or no more than minor. Erosion protection will mitigate erosion effects on the banks and the bed of the waterbody.

The proposed activity is consistent with the policies of the Water and Land Plan.

8.3 **Other Matters relating to the grant of discharge permits**

Section 105 of the RMA lists additional matters that a consent authority must have regard to when considering applications for discharge permits to do something that would contravene section 15 of the RMA.

Section 107(1) of the RMA places restrictions on the grant of resource consents for the discharge of contaminants onto or into land, where those contaminants may enter water.

9. **Part 2 of the RMA**

Consideration of an application under section 104 of the RMA is subject to Part 2. "Subject to" gives primacy to Part 2 and is an overriding guide when applying the provisions of the RMA.

Part 2 of the RMA sets out its purpose, which is to promote the sustainable management of natural and physical resources, and in sections 6, 7 and 8 sets out

matters that consent authorities should consider when exercising their functions under the RMA.

9.1 **Section 5 – Purpose and Principles**

Sustainable management of natural and physical resources includes managing in a way or at a rate which enables people and communities to provide for their social, economic and cultural well-being. In assessing the effects of activities on the well-being of people and communities, both positive and adverse effects can be considered.

Overall, and provided that the proposed activities are undertaken in accordance with the consent conditions, the proposal meets the sustainable management purpose of the RMA.

9.2 **Section 6 – Matters of national importance**

The following issues are considered to be the most relevant:

Section 6(a) The preservation of the natural character of the coastal environment (including the coastal marine area), lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;

Section 6(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;

The creation of the pump station and installation of the discharge pipes will have a no more than minor effect on the natural character of the Whakatane River. The pump station will be underground and the area is already highly modified by the flood protection bank and existing outlet structures.

Section 6(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers;

The structures will not affect public access to the river.

Section 6(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;

9.3 **Section 7 – Other Matters**

The other matters to which Environment Bay of Plenty must have particular regard in relation to managing the use, development, and protection of natural and physical resources are listed in section 7 of the RMA. The matters of relevance to this application include:

- Section 7(a) Kaitiakitanga;
- Section 7(aa) The ethic of stewardship;

The discharge activity associated with this application enters the Whakatane River. The Whakatane River is the subject to a Statutory Acknowledgement by Ngati Awa. The applicant has consulted with Ngati Awa, and the iwi subsequently agreed that the application need not be notified to them.

- Section 7(b) Efficient use and development of natural and physical resources;
- Section 7(c) Maintenance and enhancement of amenity values;
- Section 7(d) Intrinsic values of ecosystems;
- Section 7(f) Maintenance and enhancement of the quality of the environment.

Following assessment of potential adverse effects it is considered that the proposal and proposed mitigating measures will have no more than minor effects on the Whakatane River amenity values, the quality and intrinsic values of the environment or natural and physical resources.

The Hearings Committee therefore consider that the proposal is consistent with the purpose and principles of the Resource Management Act, 1991.

9.3 **Section 8 – Principles of the Treaty of Waitangi**

Section 8 of the RMA requires the consent authority to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) when considering applications for resource consent. The two key principles that are of relevance to this application are active protection of Maori interests and consultation. The Applicant undertook consultation with various iwi groups prior to, and after, submitting their application.

10. **Assessment of Environmental Effects**

An Assessment of Environmental Effects was prepared by the Applicant. This identified that the main effects of approving the application included, but were not limited to:

The proposal may have potential effects on stormwater quality, flooding, erosion and scour at the outlet and adverse effects on the receiving wetland area. To assess any effects the application has been the subject of a variety of expert reviews as follows:

10.1 **Discharge Water Quality**

The Whakatane River is recognised within the Regional Water and Land Plan as having Contact Recreation Water Quality. This means that any discharge of contaminants to a water body with this classification shall not alter the quality of the water beyond a series of standards, after reasonable mixing of the discharge with the receiving water. The discharge to the Whakatane River will occur during times of flood and storm event, when the water quality within the river will be significantly altered and the river will not be in use for contact recreation.

The application has been the subject to a review by Environment Bay of Plenty's Contaminated Site expert Mr Paul Futter. The applicant was required to undertake investigations to confirm that the pump station would not be constructed in a location where it would disturb and mobilise contaminated material.

Senior Scientist Stephen Park has also reviewed the application. As there will be no disturbance of contaminated sites Mr Park has recommended that standard conditions should be imposed in terms of the stormwater quality and associated monitoring to effectively avoid, remedy or mitigate any adverse environmental effects of the proposed discharge. Standard consent conditions for stormwater discharge have been included with the proposed consent conditions.

10.2 **Flooding**

The proposal aims to mitigate current flooding issues in the catchment and as such will have a positive effect on flooding.

However, it is proposed to carry out works at a stopbank which is part of a flood protection scheme. Therefore, the application has been assessed by the Regional Council Rivers and Drainage Operations Section in terms of potential impacts on the flood protection scheme. A Bylaw Authority has been issued by Rivers and Drainage Section, authorising the disturbance of the stopbank associated with the proposal.

10.3 **Engineering Appropriateness including Erosion and Scour**

Mr Steve Everitt (Chartered Professional Engineer) has reviewed the application and following amendments to the proposal (provided for with the proposed consent conditions) Mr Everitt considers the effects of the proposal in relation to his area of expertise to be effectively avoided, remedied or mitigated. Specifically the final proposal suitably addresses erosion and scour protection, construction methodology, pump station operation and maintenance, impacts and risk on the flood protection scheme, discharge pipe dimensions and placement.

10.4 **Wetland and Biodiversity**

The discharge pipe is located on the river side of the stopbank system and is adjacent to an area identified as the Whakatane River Estuary, identified as a Significant Natural Area (number 25) in the Whakatane District.

To assess the effects of the application on this identified Significant Natural Area including wetland areas and biodiversity, the application has been forwarded for comment to Environment Bay of Plenty's Environmental Scientist, specialising in wetlands, Ms Nancy Willems.

As a result of the assessment undertaken by Ms Willems it is not considered that the effects of the application on the identified Significant Natural Area will have a more than minor effect. Ms Willems considers that the application adequately

addresses potential effects in terms of her area of expertise. Ms Willems recommends consent conditions in terms of stabilisation of disturbed areas, weed control and disturbance minimisation. These have been included with the proposed consent.

The Department of Conservation have also been consulted extensively by the applicant in terms of potential effects on the proposal on their interests, including Significant Natural Areas in close proximity to the proposal. The Department have provided written approval for the application.

10.5 Temporary Effects

Other potential effects, including sediment discharge during construction works, public access, dust nuisance etc. have also been considered. These effects will be temporary and can be effectively mitigated by the proposed methods and consent conditions.

The overall effects of the application are considered no more than minor, based on the assessments of the material provided in support of the application and recommendations by the various experts.

11. Site Visit and Hearing

The Hearing Committee, accompanied by Environment Bay of Plenty consents staff and two representatives from Carter Holt Harvey Limited, conducted a site visit on 20 May 2010, at the conclusion of the Consent Hearing.

12. Bay of Plenty Regional Council Officer's Report

12.1 **Ms Helen Greagh**, Senior Consents Officer for the Bay of Plenty Regional Council, introduced the issues of this consent to the Hearings Committee. She noted that the issue of access is not a Resource Management Act issue, and as such is outside the jurisdiction of this hearing. She stated that Carter Holt Harvey needed to resolve this issue, and that the Bay of Plenty Regional Council can neither check nor enforce this.

Ms Greagh also tabled a revised draft conditions document. She noted that:

- (a) Recommended Condition 6.4 had been replaced by Advise Note 8;
- (b) Recommended Condition 5.2 was slightly amended;
- (c) The Term of the Consent was amended to expire 30 April 2045.

12.2 **Ms Christin Atchinson**, Consents Officer for the Bay of Plenty Regional Council, tabled the Bay of Plenty Regional Council Officer's Report, which was taken as read. Ms Atchinson then guided the Hearings Committee through the revised Draft Recommended Conditions.

13. Applicant's Submissions

13.1 **Mr Graham Millar** made submissions on behalf of the Applicant. Mr Millar was supported by Mr Mark Tito. Both Mr Millar and Mr Tito are employed by the Rank Group, of which Carter Holt Harvey Limited (the Applicant) is a wholly owned subsidiary.

Mr Millar gave a background to the application, noting that in about 1986, Whakatane Board Mills Limited (subsequently becoming part of Carter Holt Harvey Limited) entered into a lease with the trustees owning the land at Keepa Road, Whakatane. He stated that the purpose was to establish a landfill on the land to provide for the disposal of some of the waste streams arising from the operation of the Whakatane Mill. The lease had a provision for renewal, with the current lease dated 19 May 1997, having once been varied on 7 May 1999. Mr Millar, when questioned by the Hearings Panel, confirmed that there is no lease currently in operation.

Mr Millar advised that in 1986, Carter Holt Harvey, as the occupier of the land in accordance with the lease, along with the trustees of the time, were granted a land-use consent from the Whakatane District Council authorising the landfill. From the outset, he stated, the conditions of this consent included provisions relating to the management of the storm water, including the construction of a storm water pump station. Mr Millar further noted that the provisions of the lease relating to operating the landfill have now expired and the landfill operation has ceased.

Mr Millar noted that between 2005 and 2008, the location and capacity of the pump station were determined, with the trustees being party to this process. He advised that the pump station has not yet been constructed, and that an Environment Court Consent Order, dated 15 December 2008, now requires Carter Holt Harvey to construct a discharge structure. Mr Millar stated that, in addition, Carter Holt Harvey considers that under the lease the construction of the pump station is its responsibility.

Mr Millar advised that currently the storm water from the relevant catchment areas collects on the land used for the landfill. He said it is discharged by gravity flow to the Whakatane River, via a wetland area, by means of a culvert through the stopbank. He noted that the stopbank and culvert are owned and operated by the Bay of Plenty Regional Council. He explained that it was intended that this system would remain in place to cater for non-storm conditions. He said that the proposed pump station and associated outlet would only be used during high flow periods, as a result of storm events.

Mr Millar maintained that the environmental effects of the proposed discharge are considered minor, as storm water is already flowing to the Whakatane River. He said that the pump station would merely increase the rate of flow during storm events.

Mr Millar then commented on the submissions from the landowners, the Trustees of Rangitaiki 28B22 Trust. He said that they oppose the application on the grounds that Carter Holt Harvey has no right of access across to the land. He said that Carter Holt Harvey's position is that the lease imposes on it an obligation to fulfil the conditions of the land-use consent, including the obligation to construct the pump station. Mr Millar commented that, apart from their attendance at the pre-hearing meeting, as reported in the appendix to the Officer's Report, the trustees have not engaged in the process.

Mr Millar further commented that "Carter Holt Harvey believes the staff report represents a balanced view of this matter". He noted that Carter Holt Harvey believes that it has both obligations and rights under the existing lease, and that no further lease is required.

14. Submissions by affected parties

Bay of Plenty Regional Council received just one written submission, from Mr Brian Simpson, representing the trustees of Rangitaiki 28B22 Trust. Mr Simpson indicated that he wished to be heard, but did not appear before the Hearing.

14.1 Rangitaiki 28B22 Trust

In its written submission, Mr Simpson, on behalf of the trustees, stated that he was opposed to the application. He asked that negotiations with the owners of the land must take place prior to the granting of a resource consent. He maintained that consent of the owners of the land is necessary in order to access the site, and in order to install or erect a structure on privately owned land.

15. Determination

15.1 Procedural Matters

The Hearing Committee noted that while the Submitter, Mr Brian Simpson, did not turn up to the hearing, the Committee recognised that it was none-the-less obliged to consider his written submission.

The Hearings Committee was satisfied that the submitter had been given notice of the Hearing, was sent a copy of the Hearing Agenda but did not exercise his right to be heard.

15.2 Type of Consent

The Hearings Committee was satisfied that the proposed activity was considered to have minor adverse environmental effects therefore, the application was limited notified under Section 94(1) RMA 1991.

15.3 Identify relevant Statutory Tests

The Hearings Committee accepted the statutory analysis provided by Council staff in their report and was satisfied that there was no evidence presented to dispute that.

15.4 Effects

The Hearings Committee was satisfied with the following responses to concerns raised:

- (a) That the construction of the pipe going through the stop bank would be managed through the bylaw authority that was approved by the Rivers and Drainage department;
- (b) That the timing of works would be addressed through section 6 the Draft Conditions;
- (c) That there would only be one pipe, not three pipes as originally proposed in the application. (Refer to Schedule 1 – BOPRC Plan No. RC65604/5);
- (d) That the wetland would mitigate any contaminants;
- (e) That it was not considered a high risk catchment, and that it would be unlikely to breach or exceed the limit on total discharge.

16. Matters of Contention and Main Findings of Fact

It is unnecessary to specifically list the matters of contention or the main findings of fact as they are clearly covered in the body of the decision and summarised in the Reasons for Our Decision.

17. Determination

The Hearing Committee grants consent 65604 to place, use and maintain a discharge pipe, including the construction of associated erosion protection; and to discharge stormwater to the Whakatane River, subject to attached conditions.

The main reason for this decision is the positive effects that remitting of flooding will have on the environment. The Committee considers that any adverse effects are appropriately avoided, remedied and/or mitigated.

The Hearings Committee considered the environmental effects of both the construction and the discharge of storm water. It noted the risks associated with the construction requirement to breach the stopbank, including the risk associated with the timing of the work. The Hearings Committee was satisfied that these risks

had been mitigated by the applicant to ensure that the effects would be no more than minor.

The Hearing Committee notes that the granting of a consent does not authorise access to the land. Access is not a Resource Management Act issue, and therefore has not been considered by the Committee.

The Hearings Committee was satisfied that the Draft Conditions provided certainty and that the review of conditions enabled Council to address any issues that may arise during the course of the consent.

The Hearing Committee has decided to agree with the revised Environment Bay of Plenty Officer's recommendation for a 35 year consent term, in recognition of the continued positive environmental effects, combined with a recognition of the substantive infrastructural costs associated with the proposed storm water disposal.

18. Reasons for the Decision

Section 105 of the RMA lists additional matters that a consent authority must have regard to when considering applications for discharge permits to do something that would contravene section 15 of the RMA.

The Applicant produced no evidence that it has given consideration to alternative treatment options, as per the requirement in Section 105(1)(c) of the RMA. However the Hearings Committee recognises that this discharge option is a requirement of a consent condition previously granted by the Environment Court, and that there is no other possibility as to method of discharge, nor an alternative receiving environment.

The Hearing Committee is satisfied that this proposal is the best option for the receiving environment.

Pursuant to Section 113 of the Act, the Hearing Committee has determined that the following are reasons for this decision:

- (a) The consent provides for the operation of "best practice" to place, use and maintain a discharge pipe, including the construction of associated erosion protection; and to discharge stormwater to the Whakatane River. It, therefore, provides for the purpose of the Act stated in Section 5, viz the promotion of sustainable development of natural and physical resources, and enables people and communities to provide for their well-being and their health and safety.
- (b) The effects will be mitigated by conditions of consent and overall the effects on the environment of the consent will be less than minor. .

- (c) The terms of the consent and conditions have had regard for relevant matters listed in Section 7 of the Act:

- “ (a) *Kaitiakitanga:*
(aa) *The ethic of stewardship:*
(b) *The efficient use and development of natural and physical resources:*
(c) *The maintenance and enhancement of amenity values;*
(d) *Intrinsic values of ecosystems;*
(f) *The maintenance and enhancement of the quality of the environment.*

The Hearing Committee has noted that the Applicant conducted substantive consultation with the appropriate local Iwi authorities, none of whom made formal submission to the applications.

- (e) The Hearing Committee considered the application of Section 8 of the Act and concluded that there were no issues that affected this application.
- (f) The Hearing Committee is satisfied that granting of consent is not inconsistent with the provisions of the Regional Planning instruments, including the operative Regional Policy Statement or the Regional Water and Land Plan, subject to constraints and conditions to mitigate adverse effects on the environment.

19 Summary

Having read all of the submissions received, listened to all of the evidence presented, and considered the various requirements of the Act and the national and regional statutory documents we are satisfied that the potential adverse effects of placing, using and maintaining a discharge pipe, including the construction of associated erosion protection; and to discharging stormwater to the Whakatane River can be adequately avoided, remedied or mitigated.

The hearing was adjourned at 10.10am to allow the Committee to complete a site inspection, and to come back to the parties to seek further information, if required, when forming the consent conditions. The hearing was closed when deliberations ended at 12.10pm on 20 May 2010.

Signed and dated this 24th day of May 2010

Andrew von Dadelszen
Chairman of Hearing Committee

Bay of Plenty Regional Council

Resource Consent

Under the Resource Management Act 1991, the **Bay of Plenty Regional Council**, by a decision dated 20 May 2010, **Hereby Grants** to:

CARTER HOLT HARVEY LIMITED

A resource consent;

- (a) Under Section 13(1)(a) of the Resource Management Act, 1991 (RMA) and Rule 71 of the Regional Water and Land Plan to undertake a discretionary activity being to **place, use and maintain a discharge pipe and associated erosion protection structures on the bed of the Whakatane River**; and
- (b) Under Section 13(1)(b) of the RMA and Rule 71 of the Regional Water and Land Plan to undertake a discretionary activity being to **temporarily disturb the bed of the Whakatane River to allow for the placement and maintenance of a discharge pipe and associated erosion protection structures**; and
- (c) Under Section 15(1)(a) of the RMA and Rule 30A of the Regional Water and Land Plan to undertake a restricted discretionary activity being to **discharge stormwater to the Whakatane River**.

Subject to the following conditions:

1 Purpose

For the purpose of authorising the discharge of stormwater to the Whakatane River and the placement, use and maintenance of associated discharge structures and erosion protection.

2 Location

Whakatane River Bank, adjacent to 2 Keepa Road, Whakatane, as shown on Tonkin & Taylor plan entitled *Proposed Pump Station: Site Location and Drawing Schedule*, Drawing No. 851200-001, Rev. 1 and referenced as B.O.P.R.C. Plan No. 65604/1.

3 Map Reference

At or about map reference NZMS 260 W15:5935-5333.

4 Legal Description

Crown Land.

5 Notifying the Regional Council of Works

5.1 The consent holder shall notify the Regional Council, in writing, no less than five working days prior to the start of works under this consent. Notification at this time shall include details of who is responsible for on site management and compliance with consent conditions (see Advice Note 3).

5.2 Within 30 working days of completion of construction works authorised under this consent, the consent holder shall submit a certificate signed by a Chartered Professional Engineer with expertise in geotechnical engineering to certify that the works have been undertaken in accordance with good engineering practice (see Advice Notes 3 and 7); conditions 6.2 and 6.3; and the following plans:

- Tonkin & Taylor plan entitled *Proposed Pump Station Site Layout Plan*, Drawing No. 851200-101, Rev. 1 and referenced as B.O.P.R.C. Plan No. 65604/2; and
- Tonkin & Taylor plan entitled *Proposed Pump Station: Pump Station Layout Plan*, Drawing No. 851200-102, Rev. 1 and referenced as B.O.P.R.C. Plan No. 65604/3; and
- Tonkin & Taylor plan entitled *Proposed Pump Station: Pump Station Longsection*, Drawing No. 851200-103, Rev. 2 and referenced as B.O.P.R.C. Plan No. 65604/4; and
- Tonkin & Taylor plan entitled *Proposed Pump Station: Outlet Pipe Energy Dissipation Structure Details*, Drawing No. 851200-401, Rev. 3 and referenced as B.O.P.R.C. Plan No. 65604/5; and
- Any other plan that has received written approval by the Chief Executive of the Regional Council or delegate.

6 Works

6.1 All works under this consent shall be located and constructed in accordance with information submitted with the application for this consent including plans as listed under condition 5.2 above.

6.2 Despite condition 6.1, erosion protection at the outlet shall be designed and constructed to effectively avoid erosion and scour during stormwater discharge and during a 100 year flood event.

6.3 Despite condition 6.1, design specifications for works at the stopbank shall be in accordance with Environment Bay of Plenty guidelines for "Filter Collars and Filter Drains around Conduits in Earth Dams 2006".

- 6.4 All works associated with the installation of the stormwater system under this consent shall be completed as soon as practicable possible following commencement.
- 6.5 Machinery shall be kept out of the Whakatane River wherever practicable.
- 6.6 No refuelling activities or fuel storage shall occur on the bed of the Whakatane River or within 20 metres of the Whakatane River. The consent holder shall employ methods to avoid or minimise any fuel spillage, including the provision of appropriate security and containment measures, where necessary.
- 6.7 All plant, machinery, equipment and construction materials associated with this consent shall be removed from the bed of the Whakatane River at the completion of works.
- 6.8 The consent holder shall, as far as practicable, reinstate the bed of the Whakatane River to its original contour at the completion of the works.
- 6.9 The consent holder shall ensure that works are carried out in a manner that minimises disturbance to the bed and banks of the Whakatane River by minimising machinery movement on the riverbed to the absolute necessary.
- 6.10 The consent holder shall ensure that all exposed areas of earth resulting from works associated with this consent are effectively stabilised by vegetative cover.
- 6.11 Stabilisation work required under condition 6.10 shall be completed by 31 May and no earthworks shall be undertaken during the period 1 June to 15 September (inclusive) of each year within the duration of this consent.
- 6.12 Any machinery, equipment and tyres in contact with the water body shall be cleaned prior to and after the use in the Whakatane River according to Biosecurity New Zealand's cleaning protocols or alternatively the use of machinery shall be restricted to a single water body (Advice Note 6).
- 6.13 All permanent structures authorised under this consent shall not impede public access to the Whakatane River except during construction and/or maintenance works, where restriction of access is necessary to ensure public health and safety.

7 Erosion and Sediment Control

- 7.1 All erosion and sediment controls shall be installed prior to the commencement of construction works.
- 7.2 Sediment controls shall be installed around the edge of the work site to ensure that sediment contaminated water does not discharge from the site.
- 7.3 The consent holder shall divert uncontaminated catchment runoff away from the area of works.

7.4 Unless otherwise specified in this consent, the consent holder shall ensure that all erosion and sediment controls comply with specifications set out in Environment Bay of Plenty Guideline No. 2001/03 - "Erosion and Sediment Control Guidelines for Land Disturbing Activities" or its successor.

7.5 The consent holder shall ensure that the erosion and sediment controls remain in place until such time as the site is fully stabilised to the satisfaction of the Chief Executive or delegate of the Regional Council.

8 Discharge Quantity

The maximum rate of stormwater discharged under this consent shall not exceed 1.04 cubic metres per second.

9 Discharge Quality

9.1 The concentration of total suspended solids (TSS) in the stormwater discharge at the outfall shall not exceed 150 grams per cubic metre at any time.

9.2 The concentration of total petroleum hydrocarbons (TPH) in the stormwater discharge at the outfall shall not exceed 15 grams per cubic metre at any time.

9.3 Stormwater discharged shall be substantially free of floatable solids, oil and grease.

9.4 The consent holder shall ensure that no discharge resulting from the exercise of this consent, shall result in any of the following; after reasonable mixing:

- The production of 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;
- Any significant adverse effects on aquatic life;
- The natural temperature of the water being changed by more than three degrees Celsius; and
- Aquatic organisms being rendered unsuitable for human consumption by the presence of contaminants.

10 Maintenance

10.1 The consent holder shall ensure that the erosion and sediment controls and associated erosion protection devices and dust controls are maintained in an effective capacity at all times during works and until the site is stabilised.

10.2 The consent holder shall ensure that, any necessary maintenance of erosion and sediment controls identified by inspection, or by Regional Council staff, is completed as soon as practicable.

- 10.3 The stormwater system and outfall shall be operated and maintained in good working order at all times, to the satisfaction of the Chief Executive of the Regional Council or delegate.
- 10.4 Any scour of the river bed resulting from either the presence of the stormwater outlet or the discharge from the outlet, shall be effectively stabilised.
- 10.5 The consent holder shall be responsible for weed control in the vicinity of any structures on the river bed authorised under this consent to an extent of up to 20 metres from the structure.

11 Discharge Monitoring

- 11.1 The consent holder shall collect a representative sample from the stormwater outlet prior to it entering the Whakatane River on a quarterly basis for the first four years that the discharge authorised under this consent occurs; one between the months of March and May (inclusive); one between the months of June and August (inclusive); one between the months of September and November (inclusive) and one between the months of December and February (inclusive).
- 11.2 The consent holder shall collect a representative sample from the stormwater outlet prior to it entering the Whakatane River on a half yearly basis after the first four years that the discharge occurs; one between the months of June and August (inclusive) and one between the months of December and February (inclusive).
- 11.3 The samples required by condition 11.1 and 11.2 shall be representative of the stormwater discharging from the outlet, and should be collected within the first 30 minutes of stormwater being discharged, where practicable.
- 11.4 The stormwater samples under condition 11.1 and 11.2 shall be analysed for the following constituents:
- pH.
 - Total suspended solids (TSS).
 - Total petroleum hydrocarbons (TPH).
- 11.5 Stormwater analyses under condition 11.4, shall be carried out as set out in the latest edition of “Standard Methods for the Examination of Water and Wastewater” – APHA – AWWA – WPCF, or such other method as proposed by the consent holder, and approved by the Chief Executive of the Regional Council or delegate. An IANZ registered laboratory shall carry out the analysis.
- 11.6 The results of the analyses under condition 11.4 and 11.5 shall be forwarded to the Regional Council within two weeks of receiving the results (see Advice Note 3).

12 Review of Conditions

- 12.1 The Regional Council may, within six months of the third, tenth, fifteenth, twentieth, twenty-fifth and thirtieth anniversary of the granting of this consent, serve notice on the consent holder under Section 128(1)(a)(ii) and/or (iii) of the Resource Management Act 1991 of its intention to review the conditions of this consent. The purpose of such a review is to assess the need for monitoring and treatment of storm water, including the best practicable option approach, and to impose monitoring and discharge control conditions relating to these discharges, if appropriate.
- 12.2 The Regional Council may, within six months of completion of any impact, environmental investigation or compliance report carried out by the Regional Council that shows there is an adverse effect on the environment as a result of the storm water discharge, serve notice on the consent holder under Section 128(1)(a)(i) and/or (iii) of the Resource Management Act 1991 of its intention to review the conditions of this consent.
- 12.3 The Bay of Plenty Regional Council may, upon receipt of application for comprehensive stormwater catchment consents relating to the area covered by this consent, serve notice on the consent holder under Section 128(1)(a)(i) and/or (iii) of the Resource Management Act 1991 of its intention to review the conditions of the consent. The purpose of such a review is to ensure consistency between the stormwater management under this consent and that of the comprehensive stormwater catchment consents.

13 Term of Consent

This consent shall expire on 30 April 2045.

14 Resource Management Charges

The consent holder shall pay the Bay of Plenty Regional Council such administrative charges as are fixed from time to time by the Regional Council in accordance with Section 36 of the Resource Management Act 1991.

- 15 **The Consent** hereby authorised is granted under the Resource Management Act 1991 and does not constitute an authority under any other Act, Regulation or Bylaw.

Advice Notes:

- 1 *This consent does not authorise the holder to modify or disturb any archaeological or historic sites within the area affected by this consent. Should any artifacts, bones or any other sites of archaeological or cultural significance be discovered within the area affected by this operation, written authorisation should be obtained from the Historic Places Trust before any damage, modification or destruction is undertaken.*

- 2 *The Regional Council is able to advise of contact details for the relevant iwi authority.*
- 3 *Reporting and notification required by consent shall be directed (in writing) to the Manager Pollution Prevention Manager, Environment Bay of Plenty, PO Box 364, Whakatane 3158 or fax 0800 368 329 or email notify@envbop.govt.nz, this notification shall include the consent number 65604.*
- 4 *The consent holder is responsible for ensuring that all contractors carrying out works under this consent are made aware of the relevant consent conditions, plans and associated documents.*
- 5 *The consent holder is advised that non-compliance with consent conditions may result in enforcement action against the consent holder and/or their contractors.*
- 6 *Cleaning of machinery, equipment and tyres under condition 6.12 will protect against the spread of aquatic pests. Cleaning according to cleaning protocols of Biosecurity New Zealand includes, but is not limited to, scrubbing or flushing with a decontamination solution. Alternatively machinery and tyres could be dried to the touch and then left dry for at least 48 hours before entering a different water body. If the use of machinery, equipment and tyres is restricted to a single water body no cleaning is necessary.*
- 7 *The geotechnical engineer is advised to also consider the design and placement of materials around the pipe and the potential for seepage where the pump station sits on the loose sand.*
- 8 *This consent does not authorise access to the Rangitaiki 28B22 Trust land for construction of the pump station and ongoing access for maintenance (as required by the conditions of this consent). It is the responsibility of the consent holder to ensure they have legal access to the land for these purposes prior to construction commencing.*

To place, use and maintain a discharge pipe, including the construction of associated erosion protection;
 and to discharge stormwater to the Whakatane River.
 20 May 2010

SCHEDULE 1

BOPRC PLAN No. RC 65604/5

