

<b>Date:</b>	5/10/2021	<b>Application Number:</b>	DW-2020-105049-02
<b>Reporting Planner:</b>	Todd Whittaker	<b>Site Visit on:</b>	17/02/2020 17/02/2020

<b>Applicant:</b>	Eastland Port
<b>Property Address:</b>	Crawford Road, Kaiti
<b>Legal Description:</b>	Lot 4 DP 412947, Lot 1 DP 1998 and Lot 1 DP 3238
<b>District Plan:</b>	Te Papa Tipu Taunaki o Te Tairāwhiti – Tairāwhiti Resource Management Plan
<b>Zoning:</b>	Port Management B Zone (log yard site)
<b>Overlays:</b>	<ul style="list-style-type: none"> <li>• Port Coastal Management Area (Inner Harbour)</li> <li>• Historic and Cultural Heritage: Archaeological Site Buffer (100m) and Heritage Alert Overlay;</li> <li>• Land Management: Land 1 Overlay.</li> </ul>
<b>Activity Status:</b>	Discretionary
<b>Proposal:</b>	Proposed changes to the conditions imposed on the existing discharge consent (DW2011-105049-00) from the Upper Log Yard. The proposed changes seek to refine and adopt amendments to the monitoring conditions based on the results and operational experience with the management of the discharge to date.

## Report To Delegated Authority for decision

### SUMMARY

The section 127 application by Eastland Port Limited (EPL) seeks changes to the existing conditions of an approved discharge consent for the Upper Log Yard. The original discharge consent was granted following a publicly notified process and Commissioner hearing in 2013.

The original application requested changes to nine (9) of the sixteen (16) discharge permit conditions. Eastland Port are also proposing to add a new condition that enables changes, with the approval of the Council, to be made to the sediment and water quality monitoring programme parameters over the fifteen (15) year term of the discharge permit. This proposal is intended to provide Eastland Port with flexibility to modify the programme, where consistent compliance across several related parameters is achieved, and/or new recognised testing guidelines or standards are adopted.

The application has a Discretionary Activity status in accordance with section 127 of the Act and the provisions of the Tairāwhiti Resource Management Plan.

The application was processed on a limited notification basis in September 2020 with submissions closing on 20 October 2020. Two submissions were received. One submission was from Hauora Tairāwhiti which was a neutral submission but with comments around the need to ensure appropriate conditions to manage the quality of any discharge. The second submission was from The Tairāwhiti Rock Lobster Industry Association. This supported the application. None of the submitters sought to be heard.

Since the close of submissions Council has been liaising with Eastland Port over the nature of the conditions and how these can be framed to ensure that there are no adverse effects on the stream and coastal environment and also to align the consent conditions with other discharges consents which are held by Eastland Port.

Agreement has been reached on the conditions and as there are no outstanding consenting issues and no parties who wish to be heard, then it is recommended that the S.127 application is granted subject to the agreed conditions. This decision can be made under delegated authority without a hearing pursuant to section 100 of the RMA 1991.

### **SUMMARY RECOMMENDATION**

That the Consents Manager

- 1. receive the report, and**
- 2. Grant consent to the application for changes to the conditions imposed on the existing discharge consent (DW2011-105049-00) from the Upper Log Yard in accordance with Section 104 and 127 of the Resource Management Act 1991.**



Todd Whittaker  
**Consultant Planner**

*Recommendation Approved:*



Sarah Hunter  
**Consents Manager**

## 1.0 INTRODUCTION

### 1.1 Proposal

The S.127 application by Eastland Port seeks consent to amend and modify conditions on the existing discharge consent from the Upper Log Yard. The application includes monitoring data and assessment of the discharge as required to be reported under the terms of the existing consent.

Eastland Port consider that some of the consent conditions contain inaccuracies or are ambiguous and require a range of relatively minor corrections and improvements. They also consider that some of the monitoring conditions are inconsistent with those in place for other log yards at the port.

Additionally, following an Eastland Port review of water quality parameters requiring assessment of resin acids concentration in juvenile crayfish flesh (condition 33) found it to be very difficult to implement and unlikely to produce any meaningful data.

Over the last four years Eastland Port has trialled a chemical coagulation and flocculation system, which has improved the overall quality of the stormwater discharge from the site. The coagulation/flocculation system, which is now fully operational, has been successful in removing a greater proportion of fine particulate matter, which is a characteristic of log yard runoff. It has also led to reduced concentrations of suspended solids in the stormwater discharge. The same coagulation/flocculation system is also proposed to be used in the Wharfside log yard that is currently being redeveloped in accordance with resource consents issued by the Council in February 2017. The resource consents for the Wharfside log yard were issued on the basis of the coagulation/flocculation system pilot trials at the Upper log yard being successful.

Eastland Port commenced water quality monitoring in November 2015, that being the first sampling undertaken following the commissioning of the Upper log yard redevelopment and stormwater management system. Now in September 2019, there is an extensive base of data for the Upper log yard stormwater discharge, and stream and inner harbour receiving environment. Monitoring of twenty-six (26) parameters has been undertaken, which is in excess of the eighteen (18) parameters required under the discharge permit. On the basis of this new information, Eastland Port has prepared an application to formally seek changes to some of the discharge permit conditions. These are directed at clarifying and/or refining some of the water and sediment quality monitoring conditions, including adding some additional water quality parameters, and deleting the crayfish flesh testing condition.

More specifically the changes proposed as part of the original application are as follows:

Existing Condition	Eastland Port proposed amendment and commentary	Eastland Port Proposed Wording Change to Conditions
Condition 24 Water Quality Monitoring Programme	The proposed change to Condition 24 is a consequential amendment, resulting from the proposed change to Condition 27. As outlined, the water quality monitoring programme is to be based around parameter 'limits', but also with reference to some parameters that are only of an 'indicator' nature. This distinction is on the basis that where the science around a 'limit' is not clear and related to a national or international standard or publication, then the term 'indicator' should be used.	<i>The consent holder shall carry out water quality monitoring to check compliance with <b>the water quality parameter compliance limits and to monitor associated indicator values</b>, as specified in condition 27. This monitoring shall be conducted in a rain event resulting in a discharge from the treatment system. For periods when insufficient rainfall precludes the taking of water samples, the monitoring required by this condition shall be undertaken at the next available opportunity.</i>
Condition 25 Monitoring Frequency and Review	It is proposed that the need for further monitoring be decided after the significance of any 'exceedance' has been assessed and then reported to the Council. There are likely to be situations where the 'exceedance' is very small and of no 'effects' consequence.	<i>The monitoring required by Condition 24 shall be undertaken once every three months for the first two years of the commencement of the activity, and thereafter once annually. However, if at any such time 100% compliance <b>of any parameter limit</b> is not achieved, <b>the Council may request additional</b> three monthly monitoring <del>shall resume</del> until compliance is achieved for two consecutive monitoring occasions for any exceedance that has the potential to create more than minor effects on water quality and ecology. <b>The Council may also request additional monitoring of any indicator value if a trend is reported that is likely to give rise to any adverse ecological or water quality effect of a minor or more nature.</b></i>
Condition 26 Water Quality Sampling Sites	The wording of the first sentence of Clause (iii) is ambiguous, as it appears to suggest that the sampling point is 20m below the mixing zone, rather than at the mixing zone edge 20m below the discharge. This matter is to be made clearer by an amendment,	<p>Water quality samples shall be taken at:</p> <ul style="list-style-type: none"> <li>(i) The logyard catchment pit prior to the stormwater treatment system (Site 1- Appendix 1),</li> <li>(ii) The discharge outlet from the stormwater treatment system (Site 2).</li> <li>(iii) The Kopuawahakapata Stream <del>20-m downstream of the</del> mixing zone <b>boundary 20m downstream of the discharge point</b> (Site 3- Appendix 1). The mixing zone is defined as the <b>area of the stream outlet of the treated discharge pipe outlet in the Kopuawahakapata Stream and</b> up to 20m downstream of the treated discharge pipe outlet.</li> <li>(iv) The Kopuawahakapata Stream immediately upstream of the western outlet discharge (Site 4 - Appendix 1).</li> <li>(v) The Inner Harbour within 20m of the Kopuawahakapata Stream outlet into the Inner harbour (Site 5- Appendix 1).</li> </ul> <p>The locations of the sampling sites are depicted on the Plan in Appendix 1 attached to these conditions.</p>
Condition 27 Water Quality parameter limits and Indicator values	Condition 27 includes a table that identifies the water quality parameters that are to be regularly tested, and the 'compliance limits' against which the results are to be compared.	<i>The samples are to be analysed for the following parameters and compared against the 'limits' <b>which are to be used to assess compliance and 'indicators' (which are not compliance based)</b> as shown:</i>

	Eastland Port proposes that, where meaningful and credible compliance limits cannot be established based on a review of scientific literature, then 'indicator values' are to be used instead.	[Specific changes to parameters are provided in the application report].
Condition 28 Water Colour and Clarity monitoring	Changes are proposed to clarify the implementation of the condition and to reflect the monitoring regime which has been accepted by Council.	The consent holder shall <b>establish a terms of reference</b> within six months of the granting of consent, to determine a methodology to assess, and <del>compliance reference limit to meet the section 1071(d) Resource Management Act colour requirements,</del> <b>change in the colour or visual clarity of the receiving waters, in order to avoid any conspicuous change after reasonable mixing,</b> to the satisfaction of the consent authority.
Condition 30 Non-compliant Monitoring Results	Minor changes are proposed to clarify the mean and implementation of the condition.	If a sampling result outlined in Condition 27 shows a <b>compliance</b> parameter limit ( <b>trigger level</b> ) is exceeded <del>at Site 3, at the applicable compliance point,</del> the consent authority is to be immediately notified and the result of the water sampling shall be forwarded to the consent authority by the end of the next working day following receipt. Another sample shall be taken for the failed parameter test at the next available time that there is sufficient runoff to enable sampling to occur, unless otherwise directed by the consent authority"  This condition shall not apply if the variable also exceeds the trigger value at Site 4 (upstream <b>of the discharge</b> ) by the same or similar value or greater".
Condition 32 Whole Effluent Toxicity Testing of Selected Marine Species	Eastland Port consider there is value in ongoing WET testing at five yearly intervals, the first of which would fall late in 2021. The condition is proposed to be amended to effectively require this.  Eastland Port has concerns with some of the Condition 32 wording. A few minor changes are proposed to represent current best practice, in relation to WET testing.	Whole Effluent Toxicity Test (WETT) - The consent holder shall undertake whole effluent toxicity testing (WETT) of the discharge from the stormwater treatment devices ( <b>Site 2</b> ). The design of the WETT investigation shall be prepared by a suitably qualified ecologist and submitted to the consent authority within three months of discharging from the stormwater treatment device to meet S107(1)(g) RMA requirements ( <b>that is, after reasonable mixing, to avoid any significant adverse effects on aquatic life</b> ). The investigation shall <del>include a baseline survey prior to the commencement of discharges authorised by this consent and a follow up investigation shall</del> be completed within one year of the commencement of discharging from the stormwater treatment devices. The investigation shall include, but not be limited to: <ul style="list-style-type: none"> <li>• Using <del>two</del> species <b>from at least two phylogenetic groups for the WETT i.e. early life stages of mussel and oxipods</b></li> <li>• The WETT shall be undertaken on a sample collected from the discharge of the stormwater treatment device, and from a sample collected from the Kopuawahakapata Stream 20m downstream of the discharge. Both samples shall be collected during a rain event and at a time when the treatment devices <del>are is</del> discharging. Seawater unaffected by log yard runoff shall be collected and used as a control.</li> <li>• Reporting on the potential effects of the discharge based on the results and in the context of dilution provided by the stream and harbour, <b>and</b></li> </ul>

		<ul style="list-style-type: none"> <li>• <b>Repeated at approximately five yearly intervals, i.e. following the first test in 2016, then again in 2021, 2026 and so on.</b></li> </ul> <p>A report describing each investigation shall be provided to the Manager within four months of completion. <b>This report shall include an assessment of whether the Section 107 (1 (g) requirements are met and if not what further investigation, if any, is being proposed by the consent holder.</b></p>
Condition 33 Crayfish Flesh Survey for Resin Acids	Eastland Port seeks the deletion of Condition 33 in its entirety as the condition does not fully prescribe the nature of the intended programme. Also, Eastland Port investigations found that the scientific basis of the requirement was unclear, and no such testing had been reported as being carried out in New Zealand, and it appears overseas to.	Condition Proposed to be deleted.
Condition 34 Testing for Resins Acids in Seabed Sediments	Changes are proposed to the second paragraph of the condition, which prescribes the nature of the investigations, along with ongoing testing that is not clearly dealt with in the current consent conditions.	<p>The consent holder shall undertake an investigation to assess the concentration of logyard contaminants in the Inner Harbour compared to a control site.</p> <p>The design of the investigation shall be prepared by a suitably qualified ecologist and submitted to the Manager within three months prior to commencement of discharging from the stormwater treatment devices. The investigation shall include a baseline survey prior to the commencement of discharges authorised by this consent and a follow-up investigation shall be completed within 12 months from commencement of discharging from the stormwater treatment devices.</p> <p>The investigation shall include but not be limited to:</p> <ul style="list-style-type: none"> <li>• Sampling <del>a minimum of six replicate samples from harbour sediments from the Inner Harbour at a site about 20-30m from the stream confluence with the Harbour, and from a control site in the Outer Harbour three sites in the inner harbour and one site in the outer Harbour, as shown in plan ## below. Two of the inner Harbour sites are to be within 30m from the stream confluence with the Harbour. Three Eastland Port replicate samples are to be collected and composited for analysis at each site.</del></li> <li>• Analysing the samples for total resin acids, including (but not limited to) dehydroabietic acid. Reporting on the potential effects of the discharge based on the results, including a comparison of samples from the 'impact' site with those from the 'control' site.</li> </ul> <p>A report describing the investigation shall be provided to the Manager within four months of completing the investigations."</p> <p><b>The consent holder shall undertake an annual survey in 2020, 2023 and 2026 with the pipe dredge method used in the first survey reported in March 2016.</b></p>
Proposed Additional Review Condition	The Discharge Permit has a 35-year term and monitoring is required for its entire duration. However, there is no explicit provision for Eastland Port to seek changes to the	<p>New condition 37.</p> <p><b>The consent holder may, as part of any sediment or water quality monitoring report submitted to the Council, request changes to any 'trigger value' or 'indicator range' that is referenced to a plan, standard</b></p>

	<p>programme, other than through a formal Section 127 application. There are limitations in the current approach because, as noted earlier, a number of the parameters required to be monitored are similar and have little or no 'trigger' or 'guideline' values associated with them. Also, some of them are referenced to plans, standards and other publications that are regularly reviewed and provision should be made for this to be simply reflected in the monitoring programme.</p>	<p><b><i>or guideline that has been subsequently revised, updated or replaced. Changes can also be requested by the consent holder where a new guideline has been proposed in a recognised scientific publication.</i></b></p>
<p>Proposed Changes to the Environmental Management Plan</p>	<p>General Condition 5 of the consents requires that the EMP be reviewed yearly for the first two years of the redeveloped Upper logyard operations, and thereafter every 5 years. On this basis the current January 2015 EMP should have been reviewed in January 2016 and January 2017.</p> <p>This review work has been delayed because of the investigations being carried out initially into the coagulant/flocculation plant facilities and more recently the use of an anti-foaming agent. Also, time has been spent on preparing the subject section 127 application material and associated investigations into some of the uncertain and poorly documented monitoring requirements.</p>	<p><i>No change to the consent condition required.</i></p>

## 2.0 SUBJECT SITE AND LOCAL ENVIRONMENT

The Upper Log Yard is mainly used for log storage and contains an ancillary landscaped noise bund along the roadside, along with vehicle access and manoeuvring areas, lighting, security fence, stormwater drainage and treatment system, and other facilities. All of the Upper logyard, vehicle access and manoeuvring areas are sealed.

The land to the northeast is residential and zoned 'General Residential' in the TRMP. The land on the opposite (northern) side of Crawford Rd is owned by Eastland Port, partially developed and has a 'Port Management B' zoning. The land to the south is reserve owned by the Council and has a 'Historic Reserve' zoning.

The Kopuawhakatapa Stream generally separates the port managed land in the Crawford Rd area from the residential areas further to the north with the exception of the houses adjoining Crawford Road and off the Parau Street cul-de-sac. The last section of the stream in the Hirini St area is culverted before discharging into the marina located in the CMA.

The log yard site, Kopuawhakatapa Stream and monitoring points are show in **Figure 1**.



**Figure 1: Site Location and Monitoring Points (Source: Application material)**

### 3.0 TAIRAWHITI RESOURCE MANAGEMENT PLAN

The Tairāwhiti Resource Management Plan (Tairāwhiti Plan) is the primary planning instrument affecting the assessment of the application.

The original Council decision records that the stormwater discharge to the stream was required under Rule 6.5.3 of the former Regional Discharges Plan and it was assessed accordingly as a Discretionary Activity. This rule is now Clause 13 in Rule 6.2.3 – Rules for Point Source Discharges in the TRMP.

Rule 6.2.3 (13) effectively deems all point source liquid discharges to land or water, not provided for in another rule in the plan (clause a) and where four other requirements are met (clauses b-e) to be discretionary activities.

The wider rule (6.2.3) provides for stormwater discharges to a public stormwater network, along with some temporary construction related stormwater discharges as permitted activities. There are no other rules that generally provide for stormwater discharges to land or water bodies, other than Clause 13 mentioned above.

The existing stormwater discharge complies with Clauses (b) – (e) in Rule 6.2.3(13). The Stream is not identified in the plan as an Outstanding Waterbody in Schedule (Clause b refers). It is also not used as a source of a community drinking water supply (Clause c). The discharge does not exceed or not meet any TRMP water quality objectives, limits or targets (Clause d). The discharge is not to a 'degraded waterbody' as that term is defined in Part B (page 24) of the TRMP.

Rule 6.5.3 does not contain any particular assessment criteria for liquid discharge permit applications of a discretionary activity nature. The explanatory note attached to the rule states that such applications will be assessed against the RMA and the TRMP objectives and policies.

Overall, the application for the discharge has a **Discretionary Activity** status under S.127 of the Act and the provisions of the Tairāwhiti Plan.

### 2.0 LIMITED NOTIFICATION

The S.127 application was processed on a limited notification basis. Notification was provided to the following parties;

- Ngati Oneone - given the provisions of Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
  
- Ngai Tamahaua hapu (Herewini) }
- Ngati Oneone (Tupara-Katene) } Given high cultural significance of the
- Rongowhakaata Iwi; and } port area including both land based
- Te Whanau a Kai. } sites and the coastal /port basin water
  
- All submitters from the original notified application.

As set out above, two submissions were received as part of the notification process. One submission was from Hauora Tairāwhiti The Tairawhiti Rock Lobster Industry Association. These are attached as **Appendix 1** to this report.

### 3.0 STATUTORY PROVISIONS

When considering applications for resource consent and any submissions received, the Consent Authority must have regard to any actual and potential effect on the environment. An assessment of the application under section 104 and section 127 of the Act is provided below.

### 4.0 SECTION 104(1)A – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

The following assessment of effects has been adopted and modified from the notification report. The assessment addresses all the relevant effects identified in relation to the proposed activity.

An important aspect of this assessment is that Eastland Port already have a discharge consent and therefore the effects and nature of the discharge have already been duly considered, assessed and determined as part of the existing consent.

The scope of assessment of the current application therefore acknowledges and accepts that this discharge is part of the existing consented baseline and the effects of the S.127 application and changes to consent conditions is focussed on any changes in the scope or nature of the discharge as provided for in the original consent.

Effects Considered	Comment
Water Quality and Ecology	<p>The proposed changes to conditions focus on the nature of monitoring conditions and also provide assessment around the monitoring data obtained to date and the introduction of coagulant to help remove discharge particles and anti-foaming agents.</p> <p>It is also noted the source of the stormwater discharge, being the yard and hardstand areas of the upper log yard, is not changing however improvements to the treatment process has been adopted with the addition of coagulant and flocculants to improve the quality of the discharge.</p> <p>Council has commissioned independent and expert assessment on the proposed changes. While this review has identified further options for the monitoring regime, the overall assessment of ecological effects and water quality is that these will be minor and that there is merit in reviewing the nature and parameters set out in the monitoring conditions.</p> <p>The S.127 application seek specific changes to the conditions regarding WETT testing and in particular condition 33 regarding the methodology for a crayfish flesh survey.</p> <p>Council has presented feedback and alternative wording on specific wording within the conditions to provide further clarity around the scope of the conditions and how the monitoring and reporting shall be undertaken. This includes additional monitoring requirements to ensure that a more complete set of data can be collated and used to inform the reporting to Council.</p> <p>The final set of agreed conditions following a collaborative process between the Applicant's advisors and the Council's regulatory team is set out in Schedule 1.</p>
Cultural values	<p>The original application was subject to submissions from local iwi and hapu concerned about the cultural values of the area including the coastal basin and also the health and well-being of the coastal marine area including the juvenile crayfish habitat. The submissions and evidence to the hearing included specific commentary and assessment on the consent conditions.</p>

	<p>Clearly, there is an expectation from parties to a hearing that any final conditions will be upheld and complied with. As such, it was appropriate to allow all parties from the original hearing the opportunity to be part of the current S.127 process. No submissions were received in terms of cultural values.</p> <p>It is also noted that Eastland Port has established effective and on-going processes through the Te Tai Uru Consultative group to discuss consenting and resource management issues.</p> <p>Given that the source of the discharge is not proposed to change, and that the application is limited to the most appropriate methodology to monitor the conditions, it is considered that any adverse effects will be within the scope of the original consent and will be minor.</p> <p>Eastland Port has engaged with tangata whenua over the current application and is also involved with tangata whenua on other consent applications and processes to consult with tangata whenua through the settlement on appeals associated with the Wharf 6 and Wharf 7 upgrade. Eastland Port has indicated that they will continue with this consultation process and have requested service of the application to the affected iwi and hapu.</p>
Coastal Waters and values	<p>The S.127 does not involve any works or discharge directly to the CMA. There are conditions on the existing discharge consent for the monitoring of the discharge on coastal ecology and the Applicant is seeking some amendment on the monitoring and report methodology. The application has and changes to the consent conditions have been externally reviewed and the final conditions in terms of the WETT testing, compliance parameters and reporting methodology have been agreed to ensure that the conditions are effective and fit for purpose.</p> <p>It is considered that the amended conditions of consent will ensure that any adverse effects on the coastal waters and values are less than minor. It is also noted that the discharge is to the port basin and this is a highly modified environment.</p>
Positive Effects	<p>The Applicant has identified implementation issues with the scope and nature of the conditions in relation to the monitoring and report of this discharge. The S.127 seeks to address these matters by providing a more robust and effective methodology for the monitoring and reporting of the discharge.</p>

## Effects Summary

It is considered that the adverse effects on the environment will be minor. The S.127 application provides amendments to the conditions around the monitoring parameters and the way in which the monitoring reports are prepared, analysed and submitted to Council. The discharge is already consented and the proposed changes are not considered to present any additional scope or material change in the adverse effects of the discharge on the environment.

## 5.0 SECTION 104(1)(B) – RELEVANT PROVISIONS

### 5.1 Tairāwhiti Resource Management Plan – Part B Regional Policy Statement

The Regional Policy Statement outlines the regionally significant issues for Gisborne and these include requirements for the Coastal Environment, with the following sections considered of most relevance to the proposal:

<b>Regional Policy Statement – Tangata Whenua</b>	
<b>B1.2.1 Objective</b>	
1. To take into account the principles of the Treaty of Waitangi in the exercise of functions and powers under the Act.	
<b>B1.2.2 Policies</b>	
1. <b>The Kawanatanga Principle</b> To recognise that the Gisborne District Council's (delegated) right to manage natural and physical resources (kawanatanga) is exercised subject to the protection of rangatiratanga.	
2. <b>The Rangatiratanga Principle</b> To endeavour to uphold, within the limits of the RMA, the rangatiratanga rights of iwi o Tairāwhiti. Policies and plans shall, as far as possible, be consistent with Māori values and preferences for management of their resources.	
3. <b>The Partnership Principle</b> To actively promote and develop greater partnership between Council and iwi o Tairāwhiti in the management of the district's natural and physical resources by exercising the utmost good faith, co-operation, reasonable compromise, flexibility and responsiveness.	
4. <b>The Active Protection Principle</b> To actively protect the manataiao and taonga of iwi o Tairāwhiti by identifying and protecting, in a manner appropriate to the values of iwi, those natural and physical resources of significance to iwi.	
5. To take account of the guarantee of rangatiratanga and its relationship with kawanatanga in resource management planning.	
<b>B1.3.1 Objective</b>	
1. To have particular regard to the concept of kaitiakitanga when managing the use, development and protection of natural and physical resources, in a way which accommodates the views of individual iwi and hapu.	
<b>B1.3.2 Policies</b>	
1. To consult with iwi and hapu on an individual basis to determine how kaitiakitanga can be recognised and integrated in the management of the use, development and protection of natural and physical resources in the Gisborne district.	
2. To recognise and provide for the role and mana of kaitiaki as resource managers or guardians of local resources.	
3. To encourage applicants for resource consents to consult with tangata whenua.	
4. To take account any relevant planning document/s recognised by the appropriate iwi, hapu or marae	
<b>B1.4.2 Objectives</b>	
1. To promote, where practicable, the preservation and protection of sites of value to Māori.	
2. To recognise and provide for the relationship of Māori with their culture, traditions, ancestral lands, and other resources.	
<b>B1.4.3 Policies</b>	
1. To recognise that each iwi, hapu and marae has its own priorities and preference for the management of resources and to respect those priorities and preferences within the limits of the Act.	
2. To give consideration to appointing to a hearing committee or a panel of independent commissioners considering a resource management issue involving values important to Māori, a commissioner or commissioners with expertise in Māoritanga, including kawa (protocol) and kaitiakitanga. Any commissioner so appointed should have sufficient expertise to address issues of sensitivity to tangata whenua.	
3. To ensure that the Māori language and Māori place names are recognised in the exercise of any of Council's functions, powers and duties under the Act.	
4. To establish with tangata whenua a consultation network with the constituent iwi, hapu and marae of the Gisborne district who have mana whenua in the district. This is for the purpose of establishing processes and protocols to enable full and effective participation in resource management processes.	
<b>B1.5 Tangata Whenua and Freshwater – He Taonga Tuki Iho</b>	<b>[Recognition of Statutory Acknowledgements]</b>

The original hearing and decision on the discharge application provided assessment of the cultural and heritage values associated with the Kopuawhaka Stream and the wider environment. The discharge consent was granted subject to monitoring parameters including assessment of species within the coastal basin.

While amendments to the monitoring and reporting requirements have been proposed, the overall direction and outcomes in terms of protection of aquatic species and habitats has been maintained.

<p><b>Regional Policy Statement – Coastal Environment</b></p>
<p><b>B4.2.1 Objectives</b></p> <ol style="list-style-type: none"> <li>1. <i>Management of the coastal environment that is integrated across the boundaries of the coastal marine and inland areas and between agencies, organisations and the tangata whenua.</i></li> </ol>
<p><b>B4.2.2 Policies</b></p> <ol style="list-style-type: none"> <li>1. <i>Part C3 of the Tairāwhiti Plan shall contain objectives and policies for the whole of the Coastal Environment and ensure their implementation through other regional and district provisions where appropriate.</i></li> <li>2. <i>To consult closely with Māori when developing and implementing plans affecting the coast, and when considering resource consents which raise issues of concern to Māori who are recognised as kaitiaki of the area.</i></li> <li>3. <i>To ensure close liaison and a good working relationship between Council and other authorities concerned with the management of the coastal environment.</i></li> <li>4. <i>To recognise and maintain, in as natural a condition as possible, the dynamic, complex and inter- dependent nature of natural and physical resources in the coastal environment.</i></li> </ol>
<p><b>B4.7.1 Objectives</b></p> <ol style="list-style-type: none"> <li>1. <i>Improvement of the water quality in the rivers and streams draining Gisborne city and the near shore waters of Poverty Bay, where appropriate.</i></li> <li>2. <i>Recognition of the mauri of coastal waters and restoration of mauri of degraded coastal waters.</i></li> </ol>
<p><b>B4.7.2 Policies</b></p> <ol style="list-style-type: none"> <li>1. <i>To develop and implement a range of land management measures that improve the coastal water quality by reducing sediment entering coastal environments.</i></li> <li>2. <i>To promote the beneficial outcomes of more sensitive management of coastal riparian margins and, where appropriate, to protect or enhance coastal riparian vegetation.</i></li> <li>3. <i>To reduce contaminant levels in urban stormwater discharges.</i></li> <li>4. <i>To establish, maintain and, where appropriate, enhance water quality standards for the coastal environment of Poverty Bay.</i></li> <li>5. <i>To improve the standard of treatment of Gisborne city sewage.</i></li> <li>6. <i>To take into account cultural and spiritual values, and the mauri of water, when defining minimum water quality standards, considering waste treatment options, and processing applications for water and discharge permits.</i></li> <li>7. <i>To implement a risk-based management regime for the region's coastal waters which recognises that receiving waters have varying degrees of sensitivity</i></li> <li>8. <i>To provide for the maintenance and future development of essential public services such as network utility operations, where these activities meet section 5(2)(a)(b)&amp;(c) of the RMA.</i></li> </ol>

The existing consent and discharge do not provide for any direct discharge to the CMA or port basin. The discharge is a point source discharge to the Kopuawhakapata Stream however this then discharges into the port basin approximately 700m downstream of the discharge point.

The existing consent conditions include specific conditions associated with marine species and habitats (Conditions 32 and 33) and therefore there is a relationship between the CMA and coastal environment and the downstream effects of the discharge.

Based on the external and technical advice received, I am satisfied that the amendments to the conditions will maintain appropriate water quality standards and the discharge will not adversely affect coastal waters or habitats.

<b>Regional Policy Statement – Point Source Discharges</b>
<p><b>B4.8.1 Objective</b></p> <p>1. To avoid, mitigate or remedy the adverse effects of point-source discharges on receiving waters.</p>
<p><b>B4.8.2 Policies</b></p> <p><b>Protection of Existing or Potential Future Uses</b></p> <p>1. To endeavour to ensure that the effects of any contaminants contained in point-source discharges are such that they:</p> <ul style="list-style-type: none"> <li>a) do not unduly impact on the receiving environment; and</li> <li>b) do not reduce, after reasonable mixing, the quality of the receiving water below any standards established in any plan for that water.</li> </ul> <p><b>Matters to be taken into account when Assessing Discharge Proposals</b></p> <p>2) When considering proposals or applications to discharge contaminants directly to water, matters to be taken into account include:</p> <ul style="list-style-type: none"> <li>a) the total contaminant load of the effluent [composition/flow rate];</li> <li>b) the assimilative capacity [including available dilution and dispersal] of the water body and existing water quality;</li> <li>c) the need to safeguard the life-support capacity of the water body;</li> <li>d) actual or potential uses of the water body and the degree to which the needs of other water users are or may be compromised;</li> <li>e) scenic, aesthetic, amenity and recreational values including fisheries values and the habitat of trout and indigenous fish;</li> <li>f) allowance for a reasonable mixing zone;</li> <li>g) the potential for bio-accumulative or synergistic effects;</li> <li>h) the actual or potential risk to human and animal health from the discharge;</li> <li>i) measures to reduce the quantity of contaminants to be discharged;</li> <li>j) the cultural and spiritual values of tangata whenua, and</li> <li>k) the use of the best practicable option for the treatment and disposal of contaminants, which in the case of human sewage wastewater, may include the use of land disposal or wetland treatment.</li> </ul> <p><b>Minimising the risk of contaminating coastal water bodies as a result of spills of toxic or hazardous substances</b></p> <ul style="list-style-type: none"> <li>1. To ensure that contingency plans and other measures to reduce the risk and possible effects of any spill event are adopted at all sites where potential contaminants are gathered for storage or disposal.</li> <li>2. To identify areas where urban stormwater is having unacceptable effects on natural water, and to develop the management systems necessary to overcome these problems.</li> </ul>

The S.127 does not propose any changes to the source or constituent make-up of the discharge however the treatment process has been upgraded with the additional processes of coagulants and flocculants to remove contaminants. The S.127 application and final conditions which have been collaboratively developed with Council will ensure that the adverse effects of the discharge are mitigated and remedied and it is considered that the change of consent conditions will more effectively provide for the appropriate monitoring and reporting on the discharge.

<b>Regional Policy Statement and Regional Plan – Freshwater</b>
<p><b>B6.2.1 Objectives</b></p> <ul style="list-style-type: none"> <li>1. Land and freshwater is sustainably managed in a way that safeguards the life-supporting capacity of freshwater, including ecosystem processes and indigenous species, and the health of people and communities.</li> <li>2. The quality of freshwater is maintained and is improved where it is degraded or does not meet the relevant objectives for the freshwater unit.</li> <li>3. Lakes, rivers, wetlands and their margins are managed in a way that: <ul style="list-style-type: none"> <li>a) Preserves their natural character and protects them from inappropriate subdivision, use and development; and</li> </ul> </li> </ul>

<p>b) <i>Maintains or enhances their amenity values.</i></p> <p>4. <i>Scheduled waterbodies and their margins, and the significant values of both outstanding waterbodies and wetlands, are protected or enhanced to provide for their values.</i></p> <p>5. <i>Freshwater is available, within limits, to meet the present and future needs of communities to support the social, cultural and economic wellbeing of the region.</i></p> <p>6. <i>To manage the allocation and use of freshwater so as to:</i></p> <p>a) <i>Avoid over-allocation and phase out any existing over-allocation; and</i></p> <p>b) <i>Improve and maximise the efficient allocation and use of freshwater, and ensure it is reasonable for its intended use.</i></p> <p>7. <i>The interactions between land, land use and development, freshwater, and the coastal environment and associated ecosystems are recognised and provided for through the integrated management of freshwater and coastal water resources to maintain or improve their values.</i></p> <p>8. <i>Freshwater accounting systems are established, and research and monitoring is undertaken that improves the understanding and sustainable management of freshwater resources, including the potential impact of climate change.</i></p> <p>9. <i>The planning and management of the region's freshwater resources is undertaken in a way that recognises the kaitiaki role of iwi and hapū and ensures that their values and interests are reflected in the decision-making process.</i></p> <p>10. <i>The mauri of waterbodies is recognised and provided for and action is taken to restore the mauri of degraded waters.</i></p> <p>11. <i>Mana whenua values, matauranga and tikanga are reflected in resource management processes and decision making.</i></p> <p>12. <i>The stewardship role of landowners, water users communities and mana whenua is recognised and provided for through a collaborative approach to freshwater planning, management and monitoring.</i></p>
<p><b>B6.2.2 Policies</b></p> <p>1. <i>Council will work actively to engage and collaborate with all relevant stakeholders in the planning, management and monitoring of freshwater resources.</i></p> <p>2. <i>Collaborate with iwi and hapū to recognise their kaitiaki role and identify their freshwater values and priorities, including the development of cultural assessment frameworks for mauri and other freshwater values.</i></p> <p>3. <i>Have regard to the freshwater issues and outcomes identified in iwi and hapu planning documents, statutory acknowledgements and governance and partnership agreements.</i></p> <p>4. <i>Through catchment planning processes, work collaboratively with local communities including iwi and hapu, landowners, resource users and other stakeholder interests to:</i></p> <p>a) <i>Identify freshwater values;</i></p> <p>b) <i>Identify outstanding and regionally significant waterbodies and their significant values for the inclusion in the relevant schedules;</i></p> <p>c) <i>Develop catchment objectives and methods, including limits and rules, that provide for the values;</i></p> <p>d) <i>Improve the quality of degraded freshwater bodies; and</i></p> <p>e) <i>Develop and implement non-regulatory projects and methods that help achieve catchment objectives.</i></p>
<p><b>B6.2.6 Integrated Management Policies</b></p> <p>2. <i>Manage the use of land and freshwater so that coastal water quality and ecosystems are maintained or improved where degraded.</i></p> <p>9. <i>In addition to measures to avoid, remedy or mitigate adverse environmental effects, consider the use of:</i></p> <p>a) <i>Biodiversity Offsets in circumstances where there are ecologically significant residual adverse effects; and/or</i></p> <p>b) <i>Any proposed environmental compensation or other measures that will result in positive environmental effects.</i></p>

The original application and discharge application provided a comprehensive assessment of the effects of the discharge and the specific values for the Kopuawhakapata Stream. The current S.127 application has provided further assessment of the discharge based on monitoring and reporting data which has been collated to date and the limited notification process also provided stakeholders and the original submitters an opportunity to be part of the assessment process.

It is considered that the changes to the conditions will provide a more effective and appropriate set of monitoring parameters and reporting steps to ensure that the effects of the discharge are minor.

**Regional Plan Provisions C6 Freshwater**

**C6.2.1 – General Water Quality Policies**

1. *When considering any application for a discharge the consent authority must have regard to the following matters:*
  - a) *The extent to which the discharge would avoid contamination that will have an adverse effect on the life-supporting capacity of fresh water including on any ecosystem associated with fresh water and*
  - b) *The extent to which it is feasible and dependable that any more than minor adverse effect on fresh water, and on any ecosystem associated with fresh water, resulting from the discharge would be avoided.*
2. *When considering any application for a discharge the consent authority must have regard to the following matters:*
  - a) *The extent to which the discharge would avoid contamination that will have an adverse effect on the health of people and communities as affected by their secondary contact with fresh water; and*
  - b) *The extent to which it is feasible and dependable that any more than minor adverse effect on the health of people and communities as affected by their secondary contact with fresh water resulting from the discharge would be avoided.*
3. *This policy applies to the following discharges (including a diffuse discharge by any person or animal):*
  - a) *A new discharge or*
  - b) *A change or increase in any discharge – of any contaminant into fresh water, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering fresh water.*

**C6.2.2 – Policies for Point Source Discharges**

1. *That there are no direct discharges to surface waterbodies, or to land where it can flow directly into a waterbody or to groundwater of:*
  - a) *Untreated sewage, wastewater (except as a result of extreme weather related overflows where these are being reduced over time); or*
2. *Manage point source discharges to land and water so that the existing ecosystem functions within the Region's waterbodies are maintained and that:*
  - a) *Point source discharges to:*
    - (i) *Regionally Significant Wetlands identified in Schedule G17;*
    - (ii) *Outstanding Waterbodies identified in Schedule G18;*
    - (iii) *Areas above community drinking water supply intakes;*
    - (iv) *Degraded waterbodies where the discharge is of contaminants which cause the waterbody to be degraded;*
  - b) *Point source discharges are avoided to sensitive waterbodies or to land where it can directly enter water within Aquatic Ecosystem Waterbodies identified in Schedule G15, Significant Recreation Areas identified in Schedule G19 or freshwater bodies discharging within 100m of Marine Areas of Coastal Significance identified in Schedule G22, only occur if this will not impact on the values for which those waterbodies are scheduled;*
  - c) *The mauri of waterbodies is retained, and where degraded are improved.*
6. *Where a water quality objective is not being met or a limit/target has been exceeded or the waterbody, including coastal waters, is identified as degraded:*
  - a) *Targets, methods and timeframes for improvements in water quality will be identified through the catchment planning process;*
  - b) *Ongoing monitoring will be undertaken to track the progress in water quality improvement;*
  - c) *New discharges and renewals of existing discharge consents will be managed to:*
    - i. *Assist the improvement of water quality in the receiving waterbody and met the relevant water quality targets; and/or*
    - ii. *Better achieve the relevant water quality objective(s) for the receiving waterbody;*
  - d) *No discharge consents for new point source discharges of contaminants of concern will be issued unless the contaminants of concern are reduced to a concentration that maintains or improves water quality after reasonable mixing;*
  - e) *As existing discharge consents are renewed additional requirements for avoidance of contamination, recovery of contaminants, treatment, or alternative disposal methods will be required unless treatment reduces the contaminants of concern to a concentration that maintains or improves water quality after reasonable mixing; and*
  - f) *Where a section 128 review of conditions of an existing discharge consent is undertaken additional conditions aimed at bringing the waterbody back within the limit, or to better achieve the freshwater quality objectives, may be placed on the consent.*
7. *When waterbodies are identified in a catchment as degraded due to:*

- a) *Bacterial contaminants, wastewater discharges will be required to improve the quality of the discharge and/or reduce the volume of the discharge in order to meet the relevant freshwater objective as quickly as practicable; and*
  - b) *Stormwater contaminants, stormwater discharges will be required to improve the quality of the discharge and/or reduce the volume of the discharge in order to meet the relevant freshwater objective as quickly as practicable.*
8. *When considering applications to discharge contaminants directly to land or water, assessment criteria are:*
- a) *The total contaminant load of the discharge [composition/flow rate] and how the water quality will be maintained within the limits for the waterbody, in a manner consistent with achieving the objectives;*
  - b) *The proposed treatment methods and the likelihood of this being the Best Practicable Option for the contaminants;*
  - c) *The need to provide for a high standard of pre-discharge treatment for Scheduled waterbodies and where water quality limits for a waterbody have been exceeded or are likely to be exceeded, or water quality objectives are not met;*
  - d) *The actual or potential impact on any values of scheduled waterbodies;*
  - e) *The assimilative capacity and an allowance for reasonable mixing in the waterbody;*
  - f) *The need to safeguard the life-supporting capacity of the waterbody;*
  - g) *The potential for bio-accumulative or synergistic effects;*
  - h) *The actual or potential risk to human and animal health from the discharge;*
  - i) *The measures to reduce the quantity of contaminants to be discharged;*
  - j) *The mauri of the receiving waterbody and any other values placed on the site by tangata whenua;*
  - k) *The need to avoid exacerbation of flooding risk;*
  - l) *The need to avoid erosion of the banks or bed or land instability at or downstream of the discharge point.*
9. *Discharges of untreated sewage from the reticulated infrastructure network shall be managed to:*
- a) *Minimise the frequency of these discharges; and*
  - b) *Achieve performance of an overflow occurrence of no more than 50% probability in any given year;*
  - c) *Issue discharge permits for no longer than 5 years except where there is evidence from past performance to demonstrate that wastewater overflow events can reliably achieve the performance standard in clause b. above.*

It is important to note that the current application is only seeking changes to the consent conditions of an existing discharge. Therefore, a consented baseline exists and the S.127 application is not seeking consent for a new discharge.

The S.127 application has also been assessed in terms of the monitoring data that has been prepared and submitted to date which is helpful in understanding that actual effects of the discharge on the Kopuawhakapata Stream and coastal habitats and ecological values.

Based on the technical assessment provided by Eastland Port and the independent reviews and technical input the Council has received, I am satisfied that the changes to the conditions will provide a more effective and appropriate set of monitoring parameters and reporting steps to ensure that the effects of the discharge are minor.

<b>D1.2 Coastal Management Areas</b>	
<b>DP1 Port Coastal Management Area</b>	
<b>DP1.3 Objectives</b>	<b>DP1.4 Policies</b>
1. <i>Provision made, in the Port Coastal Management Area, for activities related to the use of vessels, and the transport of goods by vessels or storage of cargo or fuel products prior to distribution, for which a permanent location in the coastal environment is an operational</i>	1. <i>In the exercise of any function, power or duty under the Act, a consent authority will give particular regard to the need to provide for activities related to the use and service of vessels, the storage and distribution of cargo and petroleum products, and Port infrastructure for which a location in the coastal environment is an operational necessity, within Port Coastal Management Areas.</i>

<p>necessity.</p> <p>2. Port-related activities, including those which provide the port of Gisborne with the means to carry out all of its operations and services in appropriate areas within the Port Coastal Management Area.</p> <p>3. Adverse effects on the environment arising from the lawful operation of vessels and services within the Port Coastal Management Area are avoided, remedied or mitigated to the fullest extent practicable, recognising that the preservation of natural character is a matter of national importance while promoting the sustainable management of natural and physical resources.</p>	
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<b>DP2 Port Management Zone</b>	
<p><b>DP2.3.1 Management of Port Objectives</b></p> <p>1. Enable continued operation and development of the Port Management zones, recognising the importance of the Port as a major regional transport facility.</p> <p>2. Recognise or provide for the operational needs of the Port while ensuring adverse effects of Port activities are avoided, remedied or mitigated.</p>	<p><b>DP2.4.1 Management of Port Policies</b></p> <p>1. Provide for Port and non Port-related activities within the Port zone provided that:</p> <ul style="list-style-type: none"> <li>• non Port-related activities do not have an adverse effect on the operation of the Port</li> <li>• the effects of Port and non Port-related activities on the environment can be avoided, remedied or mitigated</li> <li>• non Port-related activities do not have any adverse effect on the sustainability of the city centre, particularly the area zoned Inner Commercial.</li> </ul> <p>2. In respect of residential areas surrounding the Port Management zone ensure that:</p> <ul style="list-style-type: none"> <li>• an adequate level of screening either by means of fencing or landscaping or a combination of both is provided to at least maintain the existing level of amenity</li> <li>• the effects of noise on residential properties are avoided, remedied or mitigated primarily through the acoustic treatment of new dwellings, alterations or additions to habitable rooms of existing dwellings where this is necessary and appropriate.</li> </ul>

The above objectives and policies seek to provide context in terms of ensuring that port operational and logistics requirements are able to be carried out while ensuring that appropriate environmental standards are maintained.

## **5.2 NPS and NES Freshwater (2020)**

The notification decision for the S.127 application was made after the notification of the NPS and NES for Freshwater and therefore the new national policy direction and standards are relevant to the assessment of the S.127 application in accordance with Section 43B(7) of the RMA.

The objectives and policies of key relevance from the NPS-Freshwater are as follows:

<i>Objective 1</i>	<i>The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:  (a) first, the health and well-being of water bodies and freshwater ecosystems (b) second, the health needs of people (such as drinking water) (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.</i>
<i>Policy 1</i>	<i>Freshwater is managed in a way that gives effect to Te mana o te Wai.</i>
<i>Policy 2</i>	<i>Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.</i>
<i>Policy 9</i>	<i>The habitats of indigenous freshwater species are protected</i>
<i>Policy 12</i>	<i>The national target (as set out in Appendix 3) for water quality improvement is achieved.</i>
<i>Policy 13</i>	<i>The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.</i>
<i>Policy 14</i>	<i>Information (including monitoring data) about the state of water bodies and freshwater ecosystems, and the challenges to their health and well-being, is regularly reported on and published.</i>

While the objective and policies are relevant to the application, it is also significant that the scope and nature of the S.127 is only seeking amendments to the monitoring parameters and reporting regime to ensure that the data and methodology is effective and fit for purpose.

If the original consent application was assessed under the NPS-Freshwater, then it is possible that a different outcome in terms of the decision and/or conditions may have been reached given that the NPS-Freshwater now prioritises the health of the river over social and economic well-being. However, the existing consent has been duly granted and Eastland Port have a legitimate right as a consent holder to rely and give effect to the discharge.

I am satisfied therefore that the scope and nature of amendments sought in the S.127 application are consistent with the NPS-Freshwater taking into account the existing discharge consent. I am also satisfied that iwi and hapu have had the opportunity to participate in the assessment and decision making process through the notification process for both the original discharge application and also the S.127 application.

### **5.3 NZ Coastal Policy Statement (2010)**

The NZ Coastal Policy Statement (NZCPS) is a national policy statement and therefore has significance in terms of Section 104 of the RMA.

It is notable that the coastal provisions of the TRMP were amalgamated into the combined document from the previous Proposed Regional Coastal Plan. The Proposed Plan was first formulated in the mid 1990s and referred to the earlier 1994 version of the NZCPS. As such, it is my opinion, that an assessment of the more recent NZCPS is required.

As discussed above, the discharge is not directly to the coastal environment. The S.127 application includes amendments to the conditions for monitoring of marine species and as such, the provisions of the NZCPS are relevant to the application.

As discussed above, the S.127 application is primarily focussed on the monitoring parameters and how this is reported and presented to Council. Eastland Port has identified technical issues with the methodology for WETT testing including the use of crayfish flesh survey. This position and assessment has been subject to an independent peer review and also to technical input from Council staff. It is concluded that the detailed methodology for WETT testing and the crayfish flesh survey as provided in the original discharge consent will not provide appropriate or reliable scientific measures to monitor the discharge. Alternative procedures are therefore proposed to ensure that the monitoring regime is effective and can be undertaken using effective and acceptable scientific methods. These methods will ensure that the effects of the discharge on the coastal environment are quantified and monitored within prescribed environmental limits.

#### **5.4 Marine and Coastal Area (Takutai Moana) Act 2011**

The Marine and Coastal (Takutai Moana) Act 2011 requires that any party wishing to conduct works in the Coastal Marine Area (CMA) must notify and seek the views of any organisation that has applied for customary marine title in that area.

The original discharge and the S.127 application to amend the conditions do not involve any works or discharge directly to the CMA.

## **6.0 OTHER STATUTORY PROVISIONS**

### **Part 2**

The assessment of applications is subject to the statutory provisions of the Resource Management Act 1991 (RMA). The Court of Appeal Decision (the Davidson decision<sup>1</sup>) has established the appropriate framework in which to assess resource consent applications. This was necessary given that S.104 makes the assessment of applications subject to Part 2 however other High Court decisions had brought into question the relevance of Part 2 when the national, regional and district policies and plans are all required to give effect to Part 2. The Davidson decision now establishes that Part 2 can be considered however this is only appropriate when there are deficiencies in the planning instruments and their alignment to Part 2.

Section 5 describes the purpose of the Act:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*
  - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
  - (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
  - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

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<sup>1</sup> *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

Section 6 describes matters of national importance to be recognised and provided for. Matters relevant to this proposal include:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

### Comment

The natural character of the riparian margin and coastal environment at this site is heavily modified. The original discharge application carefully assessed the nature of the receiving environment including the coastal area and waters and the consent was granted subject to comprehensive conditions for the treatment of the discharge and the monitoring of the discharge within quantitative environmental limits.

The S.127 application has identified a number of implementation issues associated with the monitoring parameters and reporting regime and is seeking to amend these conditions to ensure that the conditions are aligned with proven scientific methods and practice.

The application and conditions have been subject to technical input and review and a revised set of conditions have been developed within the scope of the original S.127 application. Subject to these new conditions, it is considered that the adverse effects of the discharge will be minor and that the

Section 7 describes other matters that are relevant. In relation to this proposal these matters include:

- (a) *Kaitiakitanga*
- (b) *the efficient use and development of natural and physical resources:*
- (c) *the maintenance and enhancement of amenity values:*
- (f) *maintenance and enhancement of the quality of the environment :*

### Comment

The Section 7 matters have been taken into account with the assessment of the original discharge application and has been revisited as part of the current S.127 application. The port is a strategic infrastructure asset that supports the Gisborne community and it is acknowledged that it is both necessary and appropriate to allow the port to operate as a transport and logistics hub and strategic infrastructure asset in an efficient manner. However, this does not in any way suggest or equate to Eastland Port having special status to breach appropriate environmental standards. In my opinion, the changes to the consent conditions as provided in Schedule 1 will improve the effectiveness of the monitoring and reporting regime while maintaining appropriate environmental standards for the quality of the discharge and the effects on the receiving environment.

Section 8 requires that the principles of the Treaty of Waitangi be taken into account.

Having regard to the above assessment, it is concluded that the proposal is consistent with the principles (section 6 – 8) of the Resource Management Act 1991.

Overall, the application is considered to meet the relevant provisions of Part 2 of the RMA as the proposal achieves the purpose (section 5) of the RMA, being sustainable management of natural and physical resources.

## Section 107 and 105

Section 107 of the RMA states:

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

### Comment

The relevant matters in section 107 above have been taken into account as part of the original assessment and decision on the discharge and have been revisited as part of this S.127 application.

It is considered that the proposed conditions which have been proposed by Eastland Port and which have been further refined through the application process are consistent with S.107 and also with Section 105 of the RMA.

## 7.0 RECOMMENDATION

The above assessment has concluded that any actual and potential effects of the proposal are acceptable and the proposal is consistent with the relevant objectives and policies of the Tairāwhiti Resource Management Plan and all other matters. The S.127 application and changes to the existing consent conditions meets the purpose and principles of Part 2 of the Resource Management Act. Therefore, subject to the conditions listed within the decision to be served under section 113 of the RMA, resource consent for the proposal can be **granted**.

**Reporting Planner**

**Todd Whittaker**  
**Consultant Planner**



Date: 5 October 2021

Peer Reviewer and Decision  
Sarah Hunter



**Consents Manager**

Date: 6 October 2021

# **Recommended Conditions of Consent as amended by the S.127 Application**

**Resource Consent No: DW-2020-105049-02**

Schedule 1 provides the amended conditions with track change annotations.

Schedule 2 provides the amended conditions clean version.

Schedule 3 provides a plan of monitoring sites (condition 34)

**Resource Consent No: DW-2020-105049-02**  
**Schedule 1**  
**Conditions (Track Change Copy)**

**Stormwater Discharge to the Kopuawhakatapa Stream being DW-2011-105049-02**

**THAT**

Pursuant to Sections 107, 104, 127 and 104B of the Resource Management Act 1991 consent is granted for a duration of 35 years for the replacement and or upgrade of a stormwater pipe in the bed of the Kopuawhakatapa Stream and for a duration of 15 years to discharge treated stormwater from the Log yard to the Kopuawhakatapa Stream within Lot 4 DP 412947, Lot 1 DP 1998 and Lot 1 DP3238 at or about the point defined as NZTM BG43 2037845 5707441.

1. General Conditions 1-20 as relevant to the activities authorised by this consent.
  
21. Notwithstanding the general responsibility imposed by the other conditions of this consent, if for any reason (accidental or otherwise) wastes or discharges associated with the consent holders operation but not authorised by this consent or otherwise under the Resource Management Act 1991 escape to natural water the consent holder shall:
  - (a) As soon as practicable commence mitigation procedures to limit or prevent any adverse effects to any downstream waterways. All such actions are to be logged so that a complete record of actions will be available to the consent authority on request.
  - (b) Notify the consent authority within 24 hours upon first becoming aware of the escape.
  - (c) Report in writing to the consent authority 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 stop the consent authority from pursuing further legal options.

22. The discharge shall not cause any more than minor erosion at or downstream of the discharge point.
  
23. The consent holder shall visually inspect the stormwater treatment system weekly from the date of granting of this consent to ascertain that the treatment system is maintained in good working order and that no unauthorised discharge from the site is occurring. Should an unauthorised discharge be occurring that is more than minor the Kopuawhakatapa Stream downstream of the mixing zone shall be assessed for all of the following:
  - Production of any conspicuous colour change;
  - Any conspicuous floatable or suspended materials;
  - Scums or foams;
  - Any emission of objectionable odour.

The mixing zone shall be defined as 20 metres downstream from the point of the discharge. Should any of the above characteristics be detected the consent holder shall:

- (i) Inspect the Log yard, storm water treatment system and associated infrastructure to determine whether the above effects are caused by a discharge from the activity and if so identify the possible cause and
- (ii) Identify those steps required to rectify the effects.

Then liaise with the consent authority and provide the following information:

- The extent of the apparent effects;
- The inferred cause of the apparent effects;
- The means the consent holder proposes to rectify the situation relative to the nature of the effect;
- Any monitoring to be undertaken;
- Frequency of reporting on rectifying the situation.

This procedure shall remain in place until all measures to avoid, remedy or mitigate the adverse effects of any more than minor unauthorised discharges have been completed to the satisfaction of the consent authority.

- (iii) Implement the steps required to rectify the effects.

#### Advice Note

For the avoidance of doubt this condition does not apply to any discharge specifically authorised by this consent,

24. The consent holder shall carry out water quality monitoring to check compliance with **water quality** parameter **compliance** limits **and to monitor associated indicator values** as specified in condition 27. This monitoring shall be conducted in a rain event (**which means while the discharge is active and shall be either during or immediately after a rain event**) resulting in a discharge from the treatment system. For periods when insufficient rainfall precludes the taking of water samples, the monitoring required by this condition shall be undertaken at the next available opportunity.
25. The monitoring required by condition 24 shall be undertaken once every three months for the first two years of the commencement of the activity and thereafter once annually. However, if at any such time 100% compliance **of any parameter limit** is not achieved **the Council may require additional** three monthly monitoring **shall resume** until compliance is achieved for two consecutive monitoring occasions. **The Council may also request additional monitoring of any indicator value if a trend is reported that is likely to give rise to any adverse ecological or water quality effect of a minor or more nature.**

The consent holder shall undertake quarterly monitoring and analysis of the following subset of parameters;

- Chemical Oxygen Demand,
- Total Organic Carbon,
- Total Suspended Solids,
- Volatile Suspended Solids,
- **Dissolved Aluminium**, and
- Total Tannins

**The quarterly monitoring and analysis shall be reported annually.**

26. Water Quality samples shall be taken at:
- (i) The Log yard catchment pit prior to the storm water treatment system (Site 1 - **Schedule 3**).
  - (ii) The discharge outlet from the storm water treatment system (Site 2 **Schedule 3**).
  - (iii) The Kopuawhakatapa Stream ~~20 metres downstream of the~~ mixing zone **boundary 20m downstream of the discharge point** (Site 3 - **Schedule 3**). The mixing zone is defined **as the area of the stream outlet of the treated discharge pipe outlet in the Kopuawhakatapa Stream and** up to 20 metres downstream from the treated discharge pipe outlet.
  - (iv) The Kopuawhakatapa Stream immediately upstream of the western outlet discharge (Site 4 - **Schedule 3**).
  - (v) The Inner Harbour within 20 metres of the Kopuawhakatapa Stream outlet into the Inner Harbour (Site 5 - **Schedule 3**).

The location of the five sampling sites are depicted on the plan in **Schedule 3** attached to these consent conditions.

27. The samples are to be analysed for the following parameters and compared against the 'limits' (**which are to be used to assess compliance**) and 'indicator values' (**which are not compliance based**) as shown in the following table:

<b>Parameters subject to compliance 'limits'</b>			
<b>Discharge Parameter</b>	<b>Limit</b>		<b>Trigger Level Reference</b>
	<b>Note compliance limits are at Site 3 as depicted on the plan as attached to this consent unless otherwise stated</b>		
	<b>Trigger Level for Compliance Purposes</b>	<b>Sampling Locations</b>	
pH	6.7 to 8.5 -log (H+)	Sites 2, 3, 4 and 5	Tairāwhiti Resource Management Plan SC Water Classification Standard in Method C3.10(4)
Temperature	The natural water temperature shall not be changed by more than 30C above the background temperature at Site 4	Site 2, 3, 4 and 5	Resource Management Act Schedule 3 Clause (1) – Class AE Waters Managed for Aquatic Ecosystem Purposes
Total Suspended Solids (TSS)	100 g/m <sup>3</sup> above the background site g/m <sup>3</sup> concentration at Site 4	Site 2, 3, 4 and 5	Matawhero (Dunstan Road) Cargo Yard Discharge Permit DW-2010-104235-00 - Condition 17
Total Petroleum Hydrocarbons (TPH)	15 g/m <sup>3</sup> (at Site 2)	Site 2	Resource Management (Marine Pollution) Regulations 1998: Regulation 9(1)(c) which allows oils (or any mixture containing oil) to be discharged from ships at a concentration of up to 15 g/m <sup>3</sup> .
Dissolved Oxygen	Not less than 4 mg/l at Site 3 or not less than background (Site 4) where this is less than 4mg/l	Sites 2, 3, 4 and 5	Tairāwhiti Resource Management Plan SC Water Classification
Dissolved Copper <sup>1</sup>	0.0025g/m <sup>3</sup> as average of the four most recent consecutive quarterly results <sup>3</sup>	Sites 2, 3, 4 and 5	ANZECC 2000(see note 1 below) Table 3.4.1 for the freshwater environment at the 80% species protection level
Dissolved Zinc <sup>1</sup>	0.031g/m <sup>3</sup> as average of the four most recent consecutive quarterly results <sup>3</sup>	Sites 2, 3, 4 and 5	ANZECC 2000 see note 1 below) Table 3.4.1 for the freshwater environment at the 80% species protection level
Dissolved Aluminium	0.150g/m <sup>3</sup> as average of the four most recent consecutive quarterly results <sup>3</sup>	Sites 3 and 4	ANZECC 2000 see note 1 below) Table 3.4.1 for the freshwater environment at the 80% species protection level.
Total Phenols	0.72g/m <sup>3</sup> 1.2 g/m <sup>3</sup>	Sites 2, 3, 4 and 5	ANZECC 2000 see note 1 below) Table 3.4.1 for the freshwater environment at the 80% species protection level

<b>Parameters subject to 'indicator values'</b>			
<b>Discharge Parameter</b>	<b>Indicator</b>		<b>Value Reference/Comment</b>
	<b>Guideline Level for Reporting (No Compliance Limit)</b>	<b>Sample Locations</b>	
<b>Biochemical oxygen demand (BOD5)</b>	<b>20g/m3</b>		
<b>Chemical Oxygen Demand</b>	<b>604 g/m3</b>	<b>Sites 2 and 3</b>	<b>Assessment of Log Runoff in Alberta. Results of Monitoring Programme 1996-1998. S McDougall. Southern Region, Approvals Group, Alberta Environment. June 2002.</b>
<b>Total Organic Carbon</b>	<b>244 g/m3</b>	<b>Sites 2 and 3</b>	<b>Assessment of Log Runoff in Alberta. Results of Monitoring Programme 1996-1998. S McDougall. Southern Region, Approvals Group, Alberta Environment. June 2002.</b>
<b>Volatile Suspended Solid*s</b>	<b>To be monitored No compliance limit Not specified</b>	<b>Site 2, 3, 4 and 5</b>	<b>None known</b>
<b>Settleable Solids3</b>	<b>3g/m3</b>	<b>Site 2, 3, 4 and 5</b>	<b>None known</b>
<b>Total Nitrogen</b>	<b>0.4g/m3 0.614g/m3 To be monitored No limit</b>	<b>Site 2, 3, 4 and 5</b>	<b>None known-ANZECC 2000 Table 3.3.10 for lowland stream for 'slightly disturbed ecosystems' Measured as a composite of Total Kjeldahl Nitrogen (TKN) and total oxidised nitrogen (NOxN=nitrate plus nitrite)</b>
<b>Soluble Inorganic nitrogen(SIN)</b>	<b>0.464 g/m3</b>	<b>Site 2, 3, 4 and 5</b>	<b>ANZECC 2000 Table 3.3.10 for lowland stream for 'slightly disturbed ecosystems'. SIN is a calculated value from the sum of nitrate, nitrite and ammonia</b>
<b>Total copper, zinc and aluminium</b>	<b>Not specified</b>	<b>Copper and Zinc (sites 2,3,4 and 5) Aluminium (Sites 3 and 4)</b>	<b>For comparison with dissolved metal data and assessment of metals in a particulate phase</b>
<b>Total Tannins</b>	<b>Indicative parameter 5 g/m3</b>	<b>Site 2, 3, 4 and 5</b>	<b>Figure provided by K Hamill in evidence citing Bailey HC, Eelphrick JR, Potter A, Konasewich D, Zak JB 1999. Causes of Toxicity in Stormwater Runoff from Sawmills, environmental Toxicity &amp; Chemistry: 8 (7): 1485-1491</b>
<b>Dehydroabi etic Acid (DHA)</b>	<b>0.025 g/m3 Not specified</b>	<b>Site 2, 3,4 and 5</b>	<b>None known relevant</b>

Total Resin Acids	1.0 g/m <sup>3</sup>	Site 2, 3, 4 and 5	Figure provided by K Hamill in hearing evidence citing Tian F, Wilkins AL, Healy TA 1999. Extractives in Storm Run-off from a Major Timber Port, Tauranga, New Zealand. Journal of Marine Environmental Engineering 5: 85-105
Visual Clarity and Colour	Absorbance at 440nm	Sites 3 and 4	Assessed by comparing relative values of TSS and Absorbance above and below discharge. Agreed with Council December 2015
Hardness	To be monitored No compliance limit <b>Not specified</b>	Site 2, 3 and 4	
* 1 - 2 - 3 - 1, 2	<p><b>Only required for samples from Sites 1, 2 and 3</b>  [Based on a 1 hour test (standard method of testing)]  <del>Incremental increase above background as sampled at site 4</del> All to apply as an average over a calendar year</p> <p>Updated ANZECC in 2018 Default Guideline Values (DGV): same numerical value for this level of protection (refer <a href="http://www.waterquality.gov.au/anz-guidelines/guideline-values/default/water-quality-toxicants/search">http://www.waterquality.gov.au/anz-guidelines/guideline-values/default/water-quality-toxicants/search</a>)</p>		

#### Advice Note

Note that **several of the** GDC **stormwater discharge parameter** limits are based on **the** recommended 80% level of **freshwater** protection trigger values (Page 3.1-10) **in the** Australian and New Zealand Guidelines for Freshwater and Marine Water Quality version October 2000 & as recommended in the review report **on the application** provided by Cawthron Institute to Gisborne District Council Water Resources Section 12 April 2013).

28. The consent holder shall ~~establish a terms of reference~~ within six months of the granting of this consent to determine a methodology **to assess and compliance limit to meet the Section 107(1) (d) Resource Management Act colour requirements change in the colour or visual clarity of the receiving waters in order to avoid any conspicuous change after reasonable mixing** to the satisfaction of the consent authority.
29. Sample analysis results as outlined in condition 27 shall be provided to the Consent Authority no later than 21 working days after the sample collection has occurred.
30. **Sample analysis results as outlined in Condition 27 shall be:**
  - (a) **Provided to the Consent Authority no later than 21 working days after the sample collection has occurred, or where results have not been received from the analyst within this period, results shall be provided to the Consent Authority within 5 working days of receipt of results.**
  - (b) **Presented in a triennial (three yearly) report provided by 30 June each reporting year, that contains a detailed analysis of stormwater and receiving water monitoring and treatment performance, including but not limited to:**
    - i) **checks to assure monitoring data quality;**
    - ii) **identification of data spikes, step changes and other anomalies, and their potential significance and causes;**
    - iii) **comparison of results with the trigger levels and indicator values specified in Condition 27.**
    - iv) **an analysis of relationships between stormwater and receiving water quality, and, as appropriate, relationships among monitoring variables to identify**

**causal linkages and processes of relevance to the determination of treatment performance and discharge effects;**

- v) identification and comment on any temporal trends in discharge and receiving water quality, both within the annual period and compared to previous years, including comment on the potential environmental implications of those trends;**
- vi) details of any works undertaken or proposed to improve performance of the treatment system, and timeframes for any future work proposed.**

31. If a sampling result outlined in condition 27 shows a **compliance** parameter limit (**trigger level**) is exceeded ~~at Site 3,~~ **at the applicable compliance point**, the consent authority is to be immediately notified and the results of the water sampling shall be forwarded in writing to the Consent Authority by the end of the next working day following receipt. Another 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 consent authority.

This condition shall not apply if the variable also exceeds the trigger value at site 4 (upstream **of the discharge**) by the same or similar value or greater.

The Consent holder shall also:

- (a) Immediately inspect the Log yard, storm water treatment system and culverts for any non-compliance, and;
  - (b) If the second sample results also exceed that parameter limit, the Log yard, storm water treatment system and culverts are to be re-inspected immediately for any signs of the possible cause of non-compliance. The consent holder shall then liaise with the Consent Authority and provide the following information:
    - (i) The extent of the non-compliance;
    - (ii) The inferred cause of the non-compliance;
    - (iii) Steps taken to rectify the non-compliance and any proposed further steps.
  - (c) If the second sample results also exceed that parameter limit then a third sample shall be taken and analysed for that limit, the next time a rain event results in a discharge from the treatment system.
  - (d) If the third sample results also exceeds any of the parameter limits in condition 27 then this consent is deemed to be breached.
32. All sampling and analysis required to meet the conditions of this consent shall be carried out to IANZ standard or equivalent and procedures shall be in accordance with Standard Methods for the examination of water and wastewater prepared and published jointly by the American Public Health Association, American Water Works Association, Water Pollution Control Federation (Twentieth edition 1998 supplement or newer edition)

~~32. Whole Effluent Toxicity Test (WETT) – The consent holder shall undertake whole effluent toxicity testing (WETT) on the discharge from the stormwater treatment devices (The design of the WETT investigation shall be prepared by a suitably qualified ecologist and submitted to the Consent Authority within three months of discharging from the stormwater treatment device to meet S107(1)(g) RMA requirements. The investigation shall include a baseline survey prior to the commencement of discharges authorised by this consent and a follow up investigation shall be completed within one year of the commencement of discharging from the stormwater treatment devices. The investigation shall include but not be limited to:~~

- ~~• Using two species for the WETT i.e. early life stage of mussel and oxipods.~~
- ~~• The WETT shall be undertaken on a sample collected from the discharge of the stormwater treatment device, and from a sample collected from the Kopuawhakatapa Stream 20m downstream of the discharge. Both samples~~

shall be collected during a rain event and at a time when the treatment devices are discharging. Seawater unaffected by log yard runoff shall be collected and used as a control.

- Reporting on the potential effects of the discharge based on the results and in the context of dilution provided by the stream and harbour,

A report describing the investigation shall be provided to the Manager within four months of completing the investigation.

33. **Whole Effluent Toxicity Test (WETT)** - The consent holder shall commission whole effluent toxicity testing (WETT) on the discharge from the stormwater treatment devices (Site 2) to be carried out by a recognised toxicological laboratory. The design of the WETT investigation shall be prepared by a suitably qualified environmental toxicologist and submitted to the Consent Authority within three months of the S.127 decision granted on 6 October 2021 to meet S107(1)(g) RMA requirements (*that is after reasonable mixing to avoid significant adverse effects on aquatic ecology*).

The investigation shall include a baseline survey prior to the commencement of discharges authorised by this consent and a follow up investigation shall include but not be limited to:

- Assessment of the toxicity of the treated stormwater discharge on the ecology of the receiving environment and particularly on juvenile crayfish. Three species shall be selected covering native species of different phylogenetic levels.
- The WETT shall be undertaken on a sample collected from the discharge of the stormwater treatment device, and from a sample collected from the Kopuawhaka Stream 20m downstream of the discharge. Both samples shall be collected during a rain event and at a time when the treatment devices are discharging. Seawater unaffected by log yard runoff shall be collected and used as a control.
- Reporting on the potential effects of the discharge based on the results and in the context of dilution provided by the stream and harbour, and
- The WETT shall be repeated at approximately five yearly intervals, i.e. following the first test in 2016, then again in 2021, 2026 and so on.

A report describing the investigation shall be provided to the Manager within four months of completing the investigation. This report shall include an assessment of whether the Section 107 (1) (g) requirements are met and if not what further investigation, if any, is being proposed by the consent holder.

ADVICE NOTE: The base line survey has already been completed. Three representative species shall be selected for the WETT. Juvenile crayfish (*Jasus edwardsii*) should be used if toxicologists advise there is an appropriate test and availability of test animals.

- ~~33. **Rocklobster flesh survey** - The consent holder shall undertake an investigation to assess the potential bioaccumulation of resin acids in rock lobster within the Inner Harbour compared with an appropriate control site. The design of the investigation shall be prepared by a suitably qualified ecologist and submitted to the Manager within three months prior to the commencement of discharging from the stormwater treatment devices with reference to S107(1)(g) RMA requirements. The investigation shall include a baseline survey prior to the commencement of discharges authorised by this consent, and a follow up survey undertaken shall be completed within one year following the commencement of discharging from the stormwater treatment devices. The investigation shall include, but not be limited to:~~

- ~~• Sampling the flesh from a minimum of five lobster from the harbour and from a nearby control site out of the harbour unaffected by logyard runoff.~~
- ~~• Analysing the samples for total resin acids including dehydroabiestic acid.~~
- ~~• In the case of the follow up survey, reporting on the potential effects of the discharge based on lobster flesh quality by comparing the results of samples from the harbour with those from the control site.~~

~~A report describing each investigation shall be provided to the Manager within four months of completion.~~

34. Sediment investigation - The consent holder shall undertake an investigation to assess the concentration of log yard runoff contaminants in the Inner Harbour compared to an appropriate control site.

The design of the investigation shall be prepared by a suitably qualified ecologist and submitted to the Manager within three months prior to the commencement of discharging from the stormwater treatment devices. The investigation shall include a baseline survey prior to the commencement of discharges authorised by this consent, and a follow-up investigation shall be completed within 12 months from the commencement of discharging from the stormwater treatment devices. The investigation shall include but not be limited to:

- Sampling ~~a minimum of six replicate samples from harbour sediments from the Inner Harbour at a site about 20-30m from the stream confluence with the Harbour and from a control site in the Outer Harbour three sites in the inner harbour and one site in the outer Harbour, as shown in plan no. AA1146 Eastland Port Sediment Sampling Sites, dated 28/05/2021 refer Schedule 4. Two of the inner Harbour sites are to be within 30m from the stream confluence with the Harbour. Three replicate samples are to be collected and composited for analysis at each site.~~
- Analysing the samples for total resin acids including (but not limited to) dehydroabiestic acid.
- Reporting on the potential effects of the discharge based on the results, including a comparison of samples from the 'impact site' with those from the control site.

A report describing the investigation shall be provided to the Manager within four months of completing the investigation.

**The consent holder shall undertake the survey in on a 5 yearly basis and to coincide with the survey conditions for the wharfside log yard.**

35. The consent holder shall complete the Log yard pavement sealing programme over the three hectare Log yard area within two years from the date of granting this consent.
36. Subsequent to rainfall events exceeding the 90 percentile storm, the, stormwater catchment pits, yard drainage and culverts shall be inspected and reinstated if necessary, to achieve the same level of stormwater treatment to that which existed prior to the rain event.
37. All work carried out within public land or on public infrastructure shall be in accordance with the Gisborne District Council Engineering Code of Practice.
38. **The consent holder may, as part of any sediment or water quality monitoring report submitted to the Council, request changes to any parameter limit or 'indicator range value' that is referenced to a plan, standard or guideline that has been subsequently revised, updated or replaced. Changes can also be requested by the consent holder**

where a new guideline has been proposed in a recognised scientific publication. They can also be requested where the stormwater quality monitoring data from the Upper logyard or other Eastland Port logyards demonstrates that a change is appropriate and the adverse effects of the discharge on the stream will continue to be of a no more than minor nature.

**Resource Consent No: DW-2020-105049-02**  
**Schedule 2**  
**Conditions (Clean Copy)**

**Stormwater Discharge to the Kopuwhakapata Stream being DW-2011-105049-02**

**THAT**

Pursuant to Sections 107, 104, 127 and 104B of the Resource Management Act 1991 consent is granted for a duration of 35 years for the replacement and or upgrade of a stormwater pipe in the bed of the Kopuwhakapata Stream and for a duration of 15 years to discharge treated stormwater from the Log yard to the Kopuwhakapata Stream within Lot 4 DP 412947, Lot 1 DP 1998 and Lot 1 DP3238 at or about the point defined as NZTM BG43 2037845 5707441.

1. General Conditions 1-20 as relevant to the activities authorised by this consent.
21. Notwithstanding the general responsibility imposed by the other conditions of this consent, if for any reason (accidental or otherwise) wastes or discharges associated with the consent holders operation but not authorised by this consent or otherwise under the Resource Management Act 1991 escape to natural water the consent holder shall:
  - (a) As soon as practicable commence mitigation procedures to limit or prevent any adverse effects to any downstream waterways. All such actions are to be logged so that a complete record of actions will be available to the consent authority on request.
  - (b) Notify the consent authority within 24 hours upon first becoming aware of the escape.
  - (c) Report in writing to the consent authority 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 stop the consent authority from pursuing further legal options.

22. The discharge shall not cause any more than minor erosion at or downstream of the discharge point.
23. The consent holder shall visually inspect the stormwater treatment system weekly from the date of granting of this consent to ascertain that the treatment system is maintained in good working order and that no unauthorised discharge from the site is occurring. Should an unauthorised discharge be occurring that is more than minor the Kopuwhakapata Stream downstream of the mixing zone shall be assessed for all of the following:
  - Production of any conspicuous colour change;
  - Any conspicuous floatable or suspended materials;
  - Scums or foams;
  - Any emission of objectionable odour.

The mixing zone shall be defined as 20 metres downstream from the point of the discharge. Should any of the above characteristics be detected the consent holder shall:

- (iv) Inspect the Log yard, storm water treatment system and associated infrastructure to determine whether the above effects are caused by a discharge from the activity and if so identify the possible cause and
- (v) Identify those steps required to rectify the effects.

Then liaise with the consent authority and provide the following information:

- The extent of the apparent effects;
- The inferred cause of the apparent effects;
- The means the consent holder proposes to rectify the situation relative to the nature of the effect;
- Any monitoring to be undertaken;
- Frequency of reporting on rectifying the situation.

This procedure shall remain in place until all measures to avoid, remedy or mitigate the adverse effects of any more than minor unauthorised discharges have been completed to the satisfaction of the consent authority.

- (vi) Implement the steps required to rectify the effects.

#### Advice Note

For the avoidance of doubt this condition does not apply to any discharge specifically authorised by this consent,

- 24. The consent holder shall carry out water quality monitoring to check compliance with water quality parameter compliance limits and to monitor associated indicator values as specified in condition 27. This monitoring shall be conducted in a rain event (which means while the discharge is active and shall be either during or immediately after a rain event) resulting in a discharge from the treatment system. For periods when insufficient rainfall precludes the taking of water samples, the monitoring required by this condition shall be undertaken at the next available opportunity.
- 25. The monitoring required by condition 24 shall be undertaken once every three months for the first two years of the commencement of the activity and thereafter once annually. However, if at any such time 100% compliance of any parameter limit is not achieved the Council may require additional three monthly monitoring until compliance is achieved for two consecutive monitoring occasions. The Council may also request additional monitoring of any indicator value if a trend is reported that is likely to give rise to any adverse ecological or water quality effect of a minor or more nature.

The consent holder shall undertake quarterly monitoring and analysis of the following subset of parameters;

- Chemical Oxygen Demand,
- Total Organic Carbon,
- Total Suspended Solids,
- Volatile Suspended Solids,
- Dissolved Aluminium, and
- Total Tannins

The quarterly monitoring and analysis shall be reported annually.

26. Water Quality samples shall be taken at:
- (i) The Log yard catchment pit prior to the storm water treatment system (Site 1 - Schedule 3).
  - (ii) The discharge outlet from the storm water treatment system (Site 2 Schedule 3).
  - (iii) The Kopuawhakatapa Stream mixing zone *boundary 20m downstream of the discharge point* (Site 3 - Schedule 3). The mixing zone is defined as *the area of the stream up to 20 metres downstream from the treated discharge pipe outlet*.
  - (iv) The Kopuawhakatapa Stream immediately upstream of the western outlet discharge (Site 4 - Schedule 3).
  - (v) The Inner Harbour within 20 metres of the Kopuawhakatapa Stream outlet into the Inner Harbour (Site 5 - Schedule 3).

The location of the five sampling sites are depicted on the plan in Schedule 3 attached to these consent conditions.

27. The samples are to be analysed for the following parameters and compared against the 'limits' (*which are to be used to assess compliance*) and 'indicator values' (*which are not compliance based*) as shown in the following table:

<b>Parameters subject to compliance 'limits'</b>			
<b>Discharge Parameter</b>	<b>Limit</b>		<b>Trigger Level Reference</b>
	<b>Trigger Level for Compliance Purposes</b>	<b>Sampling Locations</b>	
pH	6.7 to 8.5 $-\log(H^+)$	Sites 2, 3, 4 and 5	Tairāwhiti Resource Management Plan SC Water Classification Standard in Method C3.10(4)
Temperature	The natural water temperature shall not be changed by more than 30C above the background temperature at Site 4	Site 2, 3, 4 and 5	Resource Management Act Schedule 3 Clause (1) – Class AE Waters Managed for Aquatic Ecosystem Purposes
Total Suspended Solids (TSS)	100 g/m <sup>3</sup> above the background g/m <sup>3</sup> concentration at Site 4	Site 2, 3, 4 and 5	Matawhero (Dunstan Road) Cargo Yard Discharge Permit DW-2010-104235-00 - Condition 17
Total Petroleum Hydrocarbons (TPH)	15 g/m <sup>3</sup> (at Site 2)	Site 2	Resource Management (Marine Pollution) Regulations 1998: Regulation 9(1)(c) which allows oils (or any mixture containing oil) to be discharged from ships at a concentration of up to 15 g/m <sup>3</sup> .
Dissolved Oxygen	Not less than 4 mg/l at Site 3	Sites 2, 3, 4 and 5	Tairāwhiti Resource Management Plan SC Water Classification
Dissolved Copper	0.0025g/m <sup>3</sup> as average of the four most recent consecutive quarterly results	Sites 2, 3, 4 and 5	ANZECC 2000 <i>see note 1 below</i> ) Table 3.4.1 for the freshwater environment at the 80% species protection level
Dissolved Zinc	0.031g/m <sup>3</sup> as average of the four most recent consecutive quarterly results	Sites 2, 3, 4 and 5	ANZECC 2000 <i>see note 1 below</i> ) Table 3.4.1 for the freshwater environment at the 80% species protection level
Dissolved Aluminium	0.150g/m <sup>3</sup> as average of the four most recent consecutive quarterly results <sup>3</sup>	Sites 3 and 4	ANZECC 2000 <i>see note 1 below</i> ) Table 3.4.1 for the freshwater environment at the 80% species protection level.
Total Phenols	1.2 g/m <sup>3</sup>	Sites 2, 3, 4 and 5	ANZECC 2000 <i>see note 1 below</i> ) Table 3.4.1 for the freshwater environment at the 80% species protection level

<b>Parameters subject to 'indicator values'</b>			
<b>Discharge Parameter</b>	<b>Indicator</b>		<b>Value Reference/Comment</b>
	<b>Guideline Level for Reporting (No Compliance Limit)</b>	<b>Sample Locations</b>	
Chemical Oxygen Demand	604 g/m <sup>3</sup>	Sites 2 and 3	Assessment of Log Runoff in Alberta. Results of Monitoring Programme 1996-1998. S McDougall. Southern Region, Approvals Group, Alberta Environment. June 2002.
Total Organic Carbon	244 g/m <sup>3</sup>	Sites 2 and 3	Assessment of Log Runoff in Alberta. Results of Monitoring Programme 1996-1998. S McDougall. Southern Region, Approvals Group, Alberta Environment. June 2002.
Volatile Suspended Solid*s	Not specified	Site 2, 3,	None known
Settleable Solids <sup>3</sup>	3g/m <sup>3</sup>	Site 2, 3, 4 and 5	None known
Total Nitrogen	0.614g/m <sup>3</sup>	Site 2, 3, 4 and 5	ANZECC 2000 Table 3.3.10 for lowland stream for 'slightly disturbed ecosystems' Measured as a composite of Total Kjeldahl Nitrogen (TKN) and total oxidised nitrogen (NO <sub>x</sub> N=nitrate plus nitrite)
Soluble Inorganic nitrogen(SIN)	0.464 g/m <sup>3</sup>	Site 2, 3, 4 and 5	ANZECC 2000 Table 3.3.10 for lowland stream for 'slightly disturbed ecosystems'. SIN is a calculated value from the sum of nitrate, nitrite and ammonia
Total copper, zinc and aluminium	Not specified	Copper and Zinc (sites 2,3,4 and 5) Aluminium (Sites 3 and 4)	For comparison with dissolved metal data and assessment of metals in a particulate phase
Total Tannins	5 g/m <sup>3</sup>	Site 2, 3, 4 and 5	Figure provided by K Hamill in evidence citing Bailey HC, Eelphrick JR, Potter A, Konasewich D, Zak JB 1999. Causes of Toxicity in Stormwater Runoff from Sawmills, environmental Toxicity & Chemistry: 8 (7): 1485-1491
Dehydroabi etic Acid (DHA)	Not specified	Site 2, 3,4 and 5	None relevant
Total Resin Acids	1.0 g/m <sup>3</sup>	Site 2, 3, 4 and 5	Figure provided by K Hamill in hearing evidence citing Tian F, Wilkins AL, Healy TA 1999. Extractives in Storm Run-off from a Major Timber Port, Tauranga, New Zealand. Journal of Marine Environmental Engineering 5: 85-105

Visual Clarity and Colour	Absorbance at 440nm	Sites 3 and 4	Assessed by comparing relative values of TSS and Absorbance above and below discharge. Agreed with Council December 2015
Hardness	Not specified	Site 2, 3 and 4	
1, 2 -	Updated ANZECC in 2018 Default Guideline Values (DGV): same numerical value for this level of protection (refer <a href="http://www.waterquality.gov.au/anz-guidelines/guideline-values/default/water-quality-toxicants/search">http://www.waterquality.gov.au/anz-guidelines/guideline-values/default/water-quality-toxicants/search</a> )		

### Advice Note

Note that several of the GDC stormwater discharge parameter limits are based on the recommended 80% level of freshwater protection trigger values (Page 3.1-10) in the Australian and New Zealand Guidelines for Freshwater and Marine Water Quality version October 2000 & as recommended in the review report on the application provided by Cawthron Institute to Gisborne District Council Water Resources Section 12 April 2013).

28. The consent holder shall within six months of the granting of this consent to determine a methodology to assess change in the colour or visual clarity of the receiving waters in order to avoid any conspicuous change after reasonable mixing to the satisfaction of the consent authority.
29. Sample analysis results as outlined in condition 27 shall be provided to the Consent Authority no later than 21 working days after the sample collection has occurred.
30. Sample analysis results as outlined in Condition 27 shall be:
  - (a) Provided to the Consent Authority no later than 21 working days after the sample collection has occurred, or where results have not been received from the analyst within this period, results shall be provided to the Consent Authority within 5 working days of receipt of results.
  - (b) Presented in a triennial (three yearly) report provided by 30 June each reporting year, that contains a detailed analysis of stormwater and receiving water monitoring and treatment performance, including but not limited to:
    - i) checks to assure monitoring data quality;
    - ii) identification of data spikes, step changes and other anomalies, and their potential significance and causes;
    - iii) comparison of results with the trigger levels and indicator values specified in Condition 27.
    - iv) an analysis of relationships between stormwater and receiving water quality, and, as appropriate, relationships among monitoring variables to identify causal linkages and processes of relevance to the determination of treatment performance and discharge effects;
    - v) identification and comment on any temporal trends in discharge and receiving water quality, both within the annual period and compared to previous years, including comment on the potential environmental implications of those trends;
    - vi) details of any works undertaken or proposed to improve performance of the treatment system, and timeframes for any future work proposed.

31. If a sampling result outlined in condition 27 shows a *compliance* parameter limit (*trigger level*) is exceeded at the applicable compliance point, the consent authority is to be immediately notified and the results of the water sampling shall be forwarded in writing to the Consent Authority by the end of the next working day following receipt. Another 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 consent authority.

This condition shall not apply if the variable also exceeds the trigger value at site 4 (upstream of the discharge) by the same or similar value or greater.

The Consent holder shall also:

- (a) Immediately inspect the Log yard, storm water treatment system and culverts for any non-compliance, and;
  - (b) If the second sample results also exceed that parameter limit, the Log yard, storm water treatment system and culverts are to be re-inspected immediately for any signs of the possible cause of non-compliance. The consent holder shall then liaise with the Consent Authority and provide the following information:
    - (i) The extent of the non-compliance;
    - (ii) The inferred cause of the non-compliance;
    - (iii) Steps taken to rectify the non-compliance and any proposed further steps.
  - (c) If the second sample results also exceed that parameter limit then a third sample shall be taken and analysed for that limit, the next time a rain event results in a discharge from the treatment system.
  - (d) If the third sample results also exceeds any of the parameter limits in condition 27 then this consent is deemed to be breached.
32. All sampling and analysis required to meet the conditions of this consent shall be carried out to IANZ standard or equivalent and procedures shall be in accordance with Standard Methods for the examination of water and wastewater prepared and published jointly by the American Public Health Association, American Water Works Association, Water Pollution Control Federation (Twentieth edition 1998 supplement or newer edition)
33. Whole Effluent Toxicity Test /WETT - The consent holder shall commission whole effluent toxicity testing (WETT) on the discharge from the stormwater treatment devices (Site 2) to be carried out by a recognised toxicological laboratory. The design of the WETT investigation shall be prepared by a suitably qualified environmental toxicologist and submitted to the Consent Authority within three months of the S.127 decision granted on 6 October 2021 to meet S107(1)(g) RMA requirements (*that is after reasonable mixing to avoid significant adverse effects on aquatic ecology*).

The investigation shall include a baseline survey prior to the commencement of discharges authorised by this consent and a follow up investigation shall include but not be limited to:

- Assessment of the toxicity of the treated stormwater discharge on the ecology of the receiving environment and particularly on juvenile crayfish. Three species shall be selected covering native species of different phylogenetic levels.
- The WETT shall be undertaken on a sample collected from the discharge of the stormwater treatment device, and from a sample collected from the Kopuawhakapata Stream 20m downstream of the discharge. Both samples shall be collected during a rain event and at a time when the treatment

devices are discharging. Seawater unaffected by log yard runoff shall be collected and used as a control.

- Reporting on the potential effects of the discharge based on the results and in the context of dilution provided by the stream and harbour, and
- The WETT shall be repeated at approximately five yearly intervals, i.e. following the first test in 2016, then again in 2021, 2026 and so on.

A report describing the investigation shall be provided to the Manager within four months of completing the investigation. This report shall include an assessment of whether the Section 107 (1) (g) requirements are met and if not what further investigation, if any, is being proposed by the consent holder.

ADVICE NOTE: The base line survey has already been completed. Three representative species shall be selected for the WETT. Juvenile crayfish (*Jasus edwardsii*) should be used if toxicologists advise there is an appropriate test and availability of test animals.

34. Sediment investigation - The consent holder shall undertake an investigation to assess the concentration of log yard runoff contaminants in the Inner Harbour compared to an appropriate control site.

The design of the investigation shall be prepared by a suitably qualified ecologist and submitted to the Manager within three months prior to the commencement of discharging from the stormwater treatment devices. The investigation shall include a baseline survey prior to the commencement of discharges authorised by this consent, and a follow-up investigation shall be completed within 12 months from the commencement of discharging from the stormwater treatment devices. The investigation shall include but not be limited to:

- Sampling three sites in the inner harbour and one site in the outer Harbour, as shown in plan no. AA1146 Eastland Port Sediment Sampling Sites, dated 28/05/2021 refer Schedule 4 . Two of the inner Harbour sites are to be within 30m from the stream confluence with the Harbour. Three replicate samples are to be collected and composited for analysis at each site.
- Analysing the samples for total resin acids including (but not limited to) dehydroabietic acid.
- Reporting on the potential effects of the discharge based on the results, including a comparison of samples from the 'impact site' with those from the control site.

A report describing the investigation shall be provided to the Manager within four months of completing the investigation.

The consent holder shall undertake the survey in on a 5 yearly basis and to coincide with the survey conditions for the wharfside log yard.

35. The consent holder shall complete the Log yard pavement sealing programme over the three hectare Log yard area within two years from the date of granting this consent.
36. Subsequent to rainfall events exceeding the 90 percentile storm, the, stormwater catchment pits, yard drainage and culverts shall be inspected and reinstated if necessary, to achieve the same level of stormwater treatment to that which existed prior to the rain event.

37. All work carried out within public land or on public infrastructure shall be in accordance with the Gisborne District Council Engineering Code of Practice.
38. The consent holder may, as part of any sediment or water quality monitoring report submitted to the Council, request changes to any parameter limit or 'indicator value' that is referenced to a plan, standard or guideline that has been subsequently revised, updated or replaced. Changes can also be requested by the consent holder where a new guideline has been proposed in a recognised scientific publication. They can also be requested where the stormwater quality monitoring data from the Upper logyard or other Eastland Port logyards demonstrates that a change is appropriate and the adverse effects of the discharge on the stream will continue to be of a no more than minor nature.

Resource Consent No: DW-2020-105049-02

Schedule 3

Condition 26 - Monitoring Sites



Resource Consent No: DW-2020-105049-02  
 Schedule 4

Condition 34 Monitoring Sites

