

**AN INVESTIGATION INTO THE PERFORMANCE  
OF THE  
MARITIME TRANSPORT DIVISION OF THE MINISTRY OF TRANSPORT  
AND THE NORTHLAND REGIONAL COUNCIL  
IN RELATION TO THE MANAGEMENT OF MARINE DREDGINGS DISPOSAL  
AT PAIHIA, NORTHLAND**

*Office of the*  
**PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT**  
Te Kaitiaki Taiao a Te Whare Paremata

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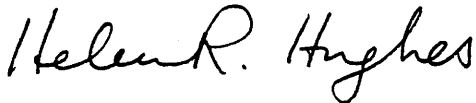
## **PREFACE**

I find that in relation to the management of marine dredgings disposal at Paihia in November 1989, the performance of the Maritime Transport Division of the Ministry of Transport was less than adequate.

The report identifies a number of generic problems with New Zealand's current system for disposal of marine dredgings. Proposals contained in the Resource Management Bill have the potential to eliminate many of these problems, providing appropriate administrative adjustments are made.

I consider it unfortunate that a dual permit system for the disposal of marine dredgings has been retained, given the aims of the resource management law reform exercise.

The Resource Management Bill does not adequately deal with the prevention and control of marine pollution. The Resource Management Act will need to be reviewed in the context of a parallel review of the Marine Pollution Act 1974 and the requirements of the Marine Pollution (MARPOL) Convention 73/78.

A handwritten signature in black ink, reading "Helen R. Hughes". The signature is written in a cursive, flowing style.

**Helen R Hughes**  
**Parliamentary Commissioner for the Environment**



## **1.0 INTRODUCTION**

### **1.1 Purpose**

This report presents the findings and conclusions of an investigation into the performance of the Maritime Transport Division of the Ministry of Transport and the Northland Regional Council in relation to the management of dredgings disposal at Paihia, Northland.

A number of generic problems are identified with respect to the operation of New Zealand's system for managing the disposal of marine dredgings; recommendations are aimed at improving the system.

### **1.2 Reason for investigation**

The investigation was undertaken in response to a complaint from the Bay of Islands Branch of the Maruia Society. The Society wrote to me expressing its concern about the procedures followed by Maritime Transport leading up to the granting of a dumping permit under the Marine Pollution Act 1974 and the (alleged) failure of the Northland Regional Council to uphold the water right requirements of the Water and Soil Conservation Act 1967. [Appendix I].

### **1.3 Authority for investigation**

The investigation has been undertaken in terms of s.16(1)(b) of the Environment Act 1986 which mandates the Parliamentary Commissioner for the Environment to examine the effectiveness of the environmental planning and management carried out by public authorities and to advise them of any action considered desirable.

### **1.4 Background**

On 11 May 1989, the (then) Northland Harbour Board wrote to the Northland Regional Council stating that it was proposing to undertake maintenance dredging of the channel to the wharf at Paihia and that it understood that a dumping permit under the Marine Pollution Act 1974 and a water right under the Water and Soil Conservation Act 1967 would be required.

On 1 June 1989, the Northland Harbour Board's engineering consultants presented the Board with cost estimates for proposed extensions to the Paihia Wharf. It was proposed that both the approach channel and the area alongside the new facilities be dredged, the dredgings taken by barge to the Opuha wharf, loaded onto trucks and dumped *onshore*.

On 28 August 1989 Blue Boats NZ Ltd applied to Maritime Transport for a permit to dump *at sea*, indicating that it proposed to use a hopper barge to dispose of 10,000 m<sup>3</sup> of sand, shell and mud at a point "approximately 12 miles from the Paihia Wharf area".

On 18 September 1989 Blue Boats NZ Ltd informed Maritime Transport that, further to discussions with the Northland Regional Council, it now sought to amend the dump site location to a point 12 miles NNE of Redhead on Okahu Island, being the north-eastern point of the Urupukapuka Island Group. The Company advised that the dumping site was outside the Northland Regional Council's jurisdiction and that, consequently, a water right would not be required.

On the same day, a Special Committee of the Northland Harbour Board considered tenders for the Paihia dredging work. There were 5 tenders, Blue Boats being the lowest. The next lowest tender involved a proposal for land disposal of dredgings. The Committee was informed that Blue Boats Ltd had applied for a dumping permit which was expected to be granted by Maritime Transport within the next few days and that, for a specified additional cost, the Company was prepared to dump the dredgings outside the 12 mile limit where a water right was not required. The Committee was informed that if a water right was applied for this would take three months and the project would not proceed that year. The Committee subsequently recommended to the Board that the Blue Boats tender be accepted.

On 19 September 1989, Maritime Transport asked Blue Boats to supply the latitude and longitude of the intended dumping site. Maritime Transport stated that it understood another tenderer had prepared an alternative dumping site on land and requested that Blue Boats supply an explanation as to why a land-based site could not be used.

On the same day, Blue Boats responded that it had made no assessment of the practical availability of alternative land based disposal as it (the Company) specialized in dredging and dumping at sea.

On 20 September 1989, Maritime Transport granted the dumping permit to Blue Boats.

In a letter received by Maritime Transport on 27 September 1989 the Department of Conservation indicated that it preferred land disposal, that a water right was required and that a full environmental impact assessment should be prepared as part of the water right process.

On 17 October 1989 Maritime Transport advised Blue Boats that, in future, the fact that it specialises in dredging and dumping at sea may not be sufficient justification for granting it a dumping permit.

On 20 October 1989 the Bay of Islands Branch of the Maruia Society wrote to Maritime Transport asking why a dumping permit had been issued in the absence of a water right, what assessment of likely environmental impacts had been carried out, and how Maritime Transport intended to enforce the terms of the dumping permit.

On 25 October 1989 Maritime Transport advised the Maruia Society that the Northland Regional Council had indicated that the dump site was in fact 12 nautical miles from the coastline, that it had sought advice from the Department of Conservation, MAF Fisheries, and the NZ Oceanographic Institute on environmental impacts and that it was willing to investigate any reported breach of any of the conditions on the dumping permit.

On 27 October 1989 the Maruia Society complained to the Northland Regional Council about what it considered to be illegal dumping i.e. dumping *inside* the 12 mile limit without a water right.

On 3 November 1989 the Maruia Society wrote to Maritime Transport expressing surprise that the latter had not plotted the position of the dump site prior to issuing the permit.

On 7 November 1989 Maritime Transport responded to the Society, stressing that it had received verbal advice from both the applicant and a member of the staff of the Northland Regional Council that the location was outside the Council's jurisdiction. Further, the applicant had subsequently confirmed that advice in writing.

On 10 November 1989, the Northland Regional Council wrote to Maritime Transport enquiring as to why the application for the permit had not been referred to the Regional Council for comment. The Council stated that, as a result of an agreement reached in 1987, it understood that dumping permits would be issued only within the context of water rights.

On 13 November 1989, the Maruia Society wrote to the Parliamentary Commissioner for the Environment expressing concern about the procedures that had been followed by Maritime Transport leading up to the granting of a dumping permit and a (perceived) lack of action by the Northland Regional Council in relation to its responsibilities under the Water and Soil Conservation Act 1967. The Society suggested that there could be a conflict of interest within the Council given that the dredging had been initiated by the Harbour Board but the functions, duties and powers of the Board had been taken over by the Council on 1 November 1989, consequent to local government reform.

On the same day, the Society wrote to the General Manager of the Northland Regional Council requesting that the Council initiate prosecution proceedings against the "illegal" discharge of dredgings spoil.

On 14 November 1989 the Department of Conservation, in a letter to the Northland Regional Council, noted that the initial proposal for structures and dredging approval outlined by the Harbour Board's consultants had proposed *land disposal* for dredgings and it was on this basis that the Department recommended approval of the application.

On 16 November 1989, Maritime Transport, in response to the Regional Council's letter of 10 November (above), stated that it had been informed by Blue Boats NZ Ltd that the Council was being consulted with regard to the issue of obtaining a water right and ... "as we have no involvement in this process we did not have any need to pursue this matter ... it was your guidance that resulted in the location of the dumping site being decided on".

### **1.5 Approach**

For the purposes of this investigation, the effectiveness of the environmental planning and management undertaken by Maritime Transport and by the Northland Regional Council has been assessed in terms of whether or not the actions of these bodies have been consistent with their statutory and non-statutory responsibilities.

Specific information was sought and received from Maritime Transport, Northland Regional Council and the Ministry for the Environment (Appendix II). The Department of Conservation and MAF Fisheries also provided advice.



## **2.0 CURRENT REGULATORY REGIME FOR THE DISPOSAL OF MARINE DREDGINGS**

### **2.1 Role of the Ministry of Transport**

The Maritime Transport Division of the Ministry of Transport administers the Marine Pollution Act 1974. Under this Act it is an offence to dump or incinerate waste or other matter at sea without a permit. The Act applies to marine waters out to the 200 mile limit.

Section 22B of the Act provides for the Minister to issue permits for the dumping of waste and section 24 sets out various matters to be taken into account when an application is being considered. Conditions may be attached to permits.

The Ministry also has responsibilities for environmental impact assessment under the Government's Environmental Protection and Enhancement Procedures.

### **2.2 Role of regional councils**

Regional councils have responsibility, under section 21 of the Water and Soil Conservation Act 1967, for the control of discharges of wastes to natural water. Control extends to the 12 mile limit and is exercised through the water right process.

### **2.3 Role of the Department of Conservation**

The Department of Conservation has no direct statutory involvement in the management of marine dredgings disposal. There is an administrative arrangement between the Ministry of Transport and the Department whereby the latter is to be consulted when any new applications and/or annual re-permitting of existing dump sites are being considered.

### **2.4 Role of MAF Fisheries**

MAF Fisheries has a statutory role in regard to pollution of marine waters under section 84 of the Fisheries Act 1983. This section makes it unlawful to detrimentally affect any fish or aquatic life through the discharge of any substance to New Zealand fisheries waters.

### 3.0 THE EFFECTIVENESS OF MARITIME TRANSPORT

#### 3.1 Was adequate consideration given to land-based disposal sites, before a permit was issued for marine disposal?

New Zealand is a signatory to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972, commonly referred to as the "London Dumping Convention". Annex III of the Convention contains provisions to be considered in the issue of dumping permits, including the practical availability of alternative land based methods of disposal. This requirement is given effect by section 24.C.1 of the Marine Pollution Act 1974.

At Paihia, at least one of the unsuccessful tenderers proposed land disposal of dredgings and the Department of Conservation had identified potential land disposal sites at Opuia and Puketone. It is apparent, from Maritime Transport's response to my queries, that in this instance no assessment was made of the "practical availability" of alternative land sites before a permit was issued. Maritime Transport explains this by reference to its understanding that the disposal of the material at a land-based site was not an alternative for the applicant i.e. for Blue Boats, which specializes in marine disposal. I find this explanation most unsatisfactory. If the London Dumping Convention is to be implemented and full and proper effect given to section 24.C.4 of the Marine Pollution Act 1974, then clearly the question of the availability of land-based sites needs to be addressed *when tenders are being considered*. Maritime Transport has indicated that harbour boards and port companies are "well aware" of the Ministry of Transport's responsibilities and of the requirements of the London Dumping Convention. That may be so but, in the present instance, the Harbour Board opted for marine disposal notwithstanding a relatively small price differential between the two disposal methods. It is up to the Ministry to ensure that the requirements of the Convention and the Act are upheld.

#### Recommendation

1. That Maritime Transport make it clear to regional councils and port companies that adequate consideration needs to be given to the practical availability of land based disposal sites during the tendering round and that failure to adopt this approach could result in permit applications for marine disposal being declined.

At Paihia, the Harbour Board's desire to get on with the job may have influenced its choice of tenderer and hence of disposal method. The Special Committee was informed that Blue Boats had applied for a dumping permit which was "expected to be granted by Maritime Transport within the next few days" and that the need for a water right, involving a 3 month delay, could be obviated by dumping outside the 12 mile limit. Maritime Transport has advised me that it was not aware that the tendering process had not been completed.

### Recommendation

2. That, in future, Maritime Transport delay the processing of applications for dumping permits until a decision has been made on the successful tender.

It is desirable, for accountability reasons, that when a regional council or port company is the instigator of a dredging programme, it (and not the successful tenderer) is the holder of the dumping permit. Under the Marine Pollution Act 1974, however, anyone can apply for a dumping permit.

### Recommendation

3. That Maritime Transport make it clear to regional councils and port companies that it *expects* them to apply for any dumping permits required for the disposal of marine dredgings from their own works.

### Recommendation

4. That Maritime Transport not issue a permit for the marine disposal of dredgings until it has satisfied itself that the "practical availability" of land-based options has been adequately considered and discounted during the tendering round.

### 3.2 Did Maritime Transport adequately implement requirements for environmental impact assessment before issuing a permit?

Maritime Transport has a general responsibility under the Government's Environmental Protection and Enhancement Procedures, (EP&EP) to apply a process of environmental impact assessment, including consideration of options, to applications for dumping permits under the Marine Pollution Act 1974. Further, it has a specific responsibility under section 24 of the Marine Pollution Act to consider the characteristics of the material being disposed of, the dumping site and the possible effects on amenities, marine life and other uses of the sea. The list of matter to be "taken into account" is quite extensive (Appendix III).

It is apparent that, in the case of Paihia, Maritime Transport did not undertake, or require the applicant to undertake, other than a very shallow assessment of the likely impacts. The information provided by the applicant was less than adequate to satisfy the requirements of EP&EP and the Act. For example, on the application form under the heading '*detailed description of the material to be dumped and its properties*' is the entry

"sand, shell and sea-mud". In the letter accompanying the application, the applicant stated that "our investigations confirm that the quantity to be dumped will not be detrimental to fishing, particularly as it is approximately 80 m deep at this point". No mention is made of the nature of these investigations or the scientific authority for the conclusion. In a letter dated 19 September 1989 to MAF Fisheries North, Blue Boats Ltd provided an 'outline assessment of potential effects' as follows - "with a tidal current of between 7 and 9 knots and (being) outside the area of the continental shelf, the effect would be minimal". Again, no reference was made to the scientific basis for such a conclusion.

In my view, the information required on the application form for a marine dumping permit is inadequate in terms of the Ministry's responsibilities under the EP & EP and the Marine Pollution Act. For example, the form does not require reference to the options available, a description of the proposed dumping site or even a preliminary assessment of the likely effects of dumping.

### **Recommendation**

5. That Maritime Transport upgrade the information requirements on the application form for a marine dumping permit in accordance with its responsibilities under the Government's Environmental Protection and Enhancement Procedures and the Marine Pollution Act 1974.

Maritime Transport informs me that it relies on reporting agencies such as the New Zealand Oceanographic Institute, MAF Fisheries and the Department of Conservation to assess many of the environmental impacts because it has neither the expertise nor the resources available to do this in-house. However, given the nature of the input from reporting agencies in the Paihia case, one would have to seriously question the efficacy of this arrangement. The NZ Oceanographic Institute's response was that "on the basis of available oceanographic data, we have no objections to the application". MAF Fisheries advised Maritime Transport in writing, five days after the permit was issued, that the outline assessment (referred to above) was "acceptable, given the characteristics of the site". The Department of Conservation's response to Maritime Transport's request for comments was received seven days after Maritime Transport granted the permit.

The situation is most unsatisfactory. Reporting agencies would find the proposal difficult, if not impossible, to respond to given the dearth of information supplied by the applicant. Indeed it is surprising that, in this instance, the NZ Oceanographic Institute and MAF Fisheries did not comment on the superficial nature of the applicant's assessment. In my view, the applicant should be required to provide an environmental impact assessment in terms of the criteria set out in section 24 of the Marine Pollution Act 1974 and the role of reporting agencies should be to assist Maritime Transport to evaluate the proposal in light of the assessment - not undertake the assessment themselves. It is clearly inappropriate for Maritime Transport to issue a permit before it has received a written response from all of its reporting agencies.

### 3.3 Did Maritime Transport consult with the public or interest groups before issuing the dumping permit?

Maritime Transport made no attempt to contact local interest groups (e.g. fishing/environmental groups) before issuing the permit. Under the Marine Pollution Act there is no requirement for public consultation. This seems to be somewhat at variance with sections 24.C.1 and 3 of the Act which require that possible effects on amenities and other uses of the sea be taken into account.

Notwithstanding the lack of provision for public participation in the Marine Pollution Act, I believe it is an implicit requirement of the EP & EP that some form of public consultation takes place when the Crown is considering whether or not to authorize an activity with the potential to have significant impact on wider community values. In most cases (dump sites *within* the 12 mile limit) there would be opportunity for public input via the water right process.

### Recommendation

6. That Maritime Transport seek public comment on applications to dispose of dredgings or other waste *outside* the 12 mile limit.

### 3.4 Did Maritime Transport check the precise position of the dumping site prior to issuing the dumping permit?

The application form for the dumping permit requires specification of the latitude and longitude of the proposed dumping site, to the nearest one tenth of a minute. In the present instance, latitude and longitude co-ordinates were not shown on the application forms submitted by Blue Boats. Instead, a navigational chart was provided showing the general area applied for. Consequently, reporting agencies were asked to comment without knowledge of the precise location of the proposed site. [It was in fact one of the reporting agencies which advised Maritime Transport that the latitude and longitude had not been identified on the application form.]

Latitude and longitude co-ordinates were eventually supplied to Maritime Transport and the reporting agencies two days before the dumping permit was issued.

Having received the co-ordinates, Maritime Transport did not plot the dumping position on a map prior to issuing the permit. It proceeded on the understanding that the position was outside the 12 mile limit. Consequently, Maritime Transport was not in a position to advise the Northland Regional Council and the applicant that, contrary to their understanding, a water right would be required if dumping was to take place at that location (see section 4.1).

## **Recommendation**

7. That, in future, Maritime Transport fix the precise location of a proposed dump site on an appropriate map and send copies of this map (with the application) to reporting agencies and other interested parties.

### **3.5 Is Maritime Transport in a position to ensure that the conditions or the dumping permit are adequately enforced?**

The dumping permit contains no provision for independent supervision or periodic inspection of dumping operations.

Maritime Transport informs me that it is neither required nor resourced to monitor the dumping process. It is heavily reliant on the expertise and integrity of the captain of the dredge for compliance with the terms of the permit. It also relies on "input" from other sources including local authorities and public interest groups.

When a dumping permit has been completed, the licensee is required to file an "acknowledgement" return with Maritime Transport certifying the date of completion, the total quantity dumped, and that dumping occurred at the location specified in the permit.

### **3.6 Does Maritime Transport undertake or require any monitoring of the effects of marine disposal of dredgings?**

The Marine Pollution Act does not provide explicitly for the monitoring of the impacts of dumping, although monitoring is arguably an implicit requirement for established dump sites if section 24 requirements are to be adequately implemented.

Dumping permits currently contain no requirements for the monitoring of the physical and biological effects of dumping.

Maritime Transport informs me that, for established dump sites, the principal monitoring mechanisms are bathymetric surveys. These provide some indication of sediment build up, reflecting a concern for navigation. Maritime Transport does not undertake or require routine monitoring of the biological effects of dumping.

#### 4.0 THE EFFECTIVENESS OF THE NORTHLAND REGIONAL COUNCIL

Under section 21 of the Water and Soil Conservation Act 1967, a water right is needed for the discharge of waste into natural water.

Prior to 1987 regional water boards did not pursue the water right requirements for marine dredgings disposal.

In 1987, following the so-called Brown's Island Incident in the Hauraki Gulf, a meeting of interested parties including the Ministry of Transport, the NZ Catchment Authorities Association, the Harbour Boards Association, MAF Fisheries and the Department of Conservation agreed that, as from 1989, all dredging programmes undertaken within territorial limits would require a water right in addition to a dumping permit. Unlike the Marine Pollution Act, the Water and Soil Conservation Act provides for public participation through submissions and objections. It was agreed that the water right procedure was the best way of identifying a suitable site and attaching appropriate conditions to the waste discharge.

Notwithstanding the above, the disposal of dredgings at Paihia took place in the absence of a water right.

#### 4.1 Did the Northland Regional Council exercise due diligence with respect to upholding the water right requirements of the Water and Soil Conservation Act 1967?

The (then) Manager of the Northland Regional Council, Mr R W Cathcart informs me that he initially advised the Northland Harbour Board that water rights would be required for dumping. He later advised the Manager of Blue Boats (NZ) Ltd, Mr Lloyd, that if he wished to avoid the need for a water right, he would need to dump the dredgings beyond the 12 mile limit i.e. beyond the jurisdiction of the Council. He agreed with Mr Lloyd that a point 12 miles beyond Okahu Island would be appropriate *providing this point was beyond the 12 mile limit*. Mr Cathcart subsequently discovered that the dump site authorized by Maritime Transport was approximately 1.5 km inside the territorial sea.

Having examined relevant correspondence, I believe there was a genuine misunderstanding between the Council and Blue Boats. Having received the advice referred to above, from the Council, Blue Boats then advised Maritime Transport that the point referred to was acceptable to the Council and that a water right would not be required, omitting to add the vital qualifier (in italics, above).

That Blue Boats acted in good faith is demonstrated by a letter it wrote to Mr Cathcart on 18 September, thanking him for his suggestions and providing him with the latitude and longitude of the proposed (new) dumping site.

The Northland Regional Council was clearly under the impression that the intention was to dump the wastes outside the 12 mile limit, avoiding the necessity for a water right. The Council was also aware that Maritime Transport had been advised of this intention. Given the nature of the 1987 agreement referred to above, I believe it was reasonable for the Council to assume that Maritime Transport would fix the precise location of the dumping site on a nautical chart and that it would be notified if the site fell inside the 12 mile limit.

**4.2 Did the Northland Regional Council act reasonably in not pursuing a prosecution when it discovered that dumping was taking place without a water right?**

Mr Cathcart has advised me that he has delegated authority to initiate a prosecution on behalf of the Council. He did not pursue this course of action because he believed (a) it would be difficult to secure a prosecution when Blue Boats had a dumping permit, and (b) the Council would have difficulty providing factual evidence/fixing the point of discharge. I have difficulty with the former reason; possession of a permit under the Marine Pollution Act in no way negates the requirement for a water right under the Water and Soil Conservation Act. I find the second reason more convincing. I think it is also relevant that Blue Boats sought the Regional Council's advice and thereafter acted in good faith.



## 5.0 CO-ORDINATION OF CONSENTS

Under the 1987 agreement referred to above it was proposed that, in order to avoid the preparation of two sets of documents, the environmental information presented in support of a water right application would address the matters referred to in section 24 of the Marine Pollution Act.

It was further proposed that the water right application would be decided *before* the Ministry of Transport processed the dumping permit application. This seemed logical because many of the matters referred to in section 24 are best addressed in the context of public submissions and there would seem to be little purpose in the Ministry processing a permit application if the applicant was unable to obtain a water right. However, it appears that confusion persists over the sequence of events and the precise nature of responsibilities. Maritime Transport has informed me that it does not wait for a water right to be issued prior to issuing a dumping permit and that, after consulting reporting agencies, it makes a decision "based on the navigational implications and comments received". It appears, from this, that Maritime Transport has adopted the position that two consents are required and that environmental considerations will be dealt with during the water right process. There are three problems with this approach. First, the Minister of Transport still has a statutory responsibility to consider environmental impacts in terms of the extensive criteria set out in section 24 of the Marine Pollution Act. Second, Maritime Transport has administrative responsibility for the application of EP & EP to decisions on permits. Third, if no water right is required (e.g. a site outside the 12 mile limit) environmental effects may not be adequately addressed.

The Resource Management Bill holds out the prospect of better co-ordination (section 6.2).

## 6.0 FUTURE MANAGEMENT OF MARINE DUMPING

### 6.1 Preamble

It was initially proposed by officials, and accepted by the Government, that procedures for the dumping of waste at sea be incorporated into the new coastal management regime under the proposed Resource Management Act. One way of achieving this would have been to make regional councils responsible for the control of marine dumping within territorial waters and to remove the requirement for a marine dumping permit under the Marine Pollution Act within territorial waters. (It would also have been necessary to devise legal or administrative arrangements requiring regional councils to consult with Maritime Transport on the navigational implications of dumping proposals.)

This course of action was not pursued. I understand that the Ministry for the Environment anticipated difficulties integrating the provisions of the Marine Pollution Act (which necessarily reflect the *precise* requirements of international conventions, including the London Dumping Convention) with the scheme of the Resource Management Act, in the time available to law drafters.

The current proposal is for retention of a dual permit system. A "coastal permit" will be required from regional councils in terms of clause 74 and 75 of the Resource Management Bill and the Ministry of Transport will continue to be responsible for issuing dumping permits under section 22B of the Marine Pollution Act 1974. The regional council and the Minister will *both* be required, by law, to consider the environmental effects of the same dumping operation. I believe that retention of a dual permit system is unfortunate given the problems that have been experienced with the existing system and the aims of resource management law reform (avoidance of duplication, decentralization where practicable).

In my view, the dual permit system proposed should be seen as an interim measure pending a review of the Marine Pollution Act.

### Recommendation

8. That the Minister for the Environment and the Minister of Transport assign priority to a review of the Marine Pollution Act 1974 and to consequent changes to the Resource Management Act.

Notwithstanding the unwieldiness of a two-permit system, it would appear that the proposed new regime has the potential to eliminate many of the problems that have been experienced with the current system, *providing appropriate administrative adjustments are made* (below).

## 6.2 Planning and co-ordination

The reported back Resource Management Bill (at p.547) together with Supplementary Order Paper No.77 amends section 22.B.7 of the Marine Pollution Act to the effect that no permit issued under that Act is to be contrary to a regional plan or resource consent. This suggests that regional councils will play the lead role in the control of marine dumping. Councils, through their mandatory coastal plan, will be able to identify sites where dumping is prohibited, permitted as of right, or subject to a resource consent. The Minister of Transport will have to consider a coastal plan and/or wait for a decision on a coastal permit application before he or she issues a dumping permit.

### Recommendation

9. That the Minister of Transport *not* issue a dumping permit under the Marine Pollution Act until *after* a coastal permit has been granted by the regional council under the Resource Management Act.

## 6.3 Public participation

Unlike the Marine Pollution Act 1974, the proposed Resource Management Act will provide opportunity for public participation in the formulation of plans and the hearing of consents.

## 6.4 Environmental assessment

The requirement for regional councils to consider the *effects* of any plan or proposed actions [(clause 75(4)(b) of the Resource Management Bill], provides a clear mandate for councils to request that an applicant provide environmental information of the type specified in section 24 of the Marine Pollution Act. Impact assessment will take place within a planning context, with opportunity for public input.

### Recommendation

10. That regional councils take into account the assessment criteria set out in section 24 of the Marine Pollution Act when formulating plans for marine waste disposal and when processing applications for coastal permits for marine dumping.

The consideration of environmental effects by regional councils does not absolve the Minister of Transport from his or her obligations under section 24 of the Marine Pollution Act. This suggests the need for an administrative arrangement between regional councils and Maritime Transport, whereby early agreement is reached on information needs so that the applicant is not put to the expense and inconvenience of preparing two different assessments.

**Recommendation**

11. That Maritime Transport enter into an administrative arrangement with regional councils whereby the necessity for the preparation of two different sets of environmental documentation, by applicants, is avoided.

The information requested from applicants should be commensurate with the scale and nature of the project. MAF Fisheries Auckland has pointed out that information needs are likely to be greater where nearshore disposal is proposed and/or quantities are significant and/or where there is a likelihood of contamination of dredged material.

**6.5 Consideration of land-based options**

Under the Resource Management Bill environmental impact assessments are to contain descriptions of any possible alternative locations or methods for undertaking the (proposed) activity [clause 75(5)(b), schedule 3A]. Regional councils will be obliged to consider whether or not practicable land-based alternatives exist for the disposal of dredgings as part of their general duty to minimize damage to the environment. Again, it is important that such options be considered in a planning context, with opportunity for public comment.

**6.6 Monitoring**

Under clause 93 of the Resource Management Bill, regional councils will be able to set conditions on consents requiring that specified monitoring activities take place and, under clause 34(2) of the Bill, councils will be required to monitor the exercise of the resource consents.

## **7.0 CONCLUSIONS**

### **7.1 Ministry of Transport**

In relation to the management of dredgings disposal at Paihia in November 1989, I find that the performance of the Maritime Transport Division of the Ministry of Transport was less than adequate in that it:-

- made no assessment of the practical availability of alternative land based sites as required by section 24.C.4 of the Marine Pollution Act 1974 (section 3.1);
- did not undertake, or require, an adequate process of environmental assessment in terms of its responsibilities under section 24 of the Marine Pollution Act 1974 or the Government's Environmental Protection and Enhancement Procedures (section 3.2);
- did not confirm the views of the Department of Conservation before issuing the dumping permit (section 3.2);
- did not consult with the public or public interest groups (section 3.3);
- did not ensure that the precise location of the proposed dumping site was specified on the application form distributed to reporting agencies (section 3.4);
- did not plot the dumping position on a map prior to issuing a permit and consequently was not in a position to advise either the applicant or the Northland Regional Council that, contrary to their understanding, the dumping position applied for was inside the 12 mile limit (section 3.4);

### **7.2 Northland Regional Council**

I find that the performance of the Northland Regional Council, with respect to its responsibilities under the Water and Soil Conservation Act 1967, was satisfactory in that the Council:-

- initially advised the Northland Harbour Board that a water right would be required for marine disposal of dredgings (section 4.1);
- later advised Blue Boats (NZ) Ltd that a water right would not be required provided the dumping site selected was outside the 12 mile limit (section 4.1);
- reasonably assumed that dumping was taking place outside the 12 mile limit, in accordance with Blue Boat's stated intention (section 4.1);
- did not prosecute because it could not prove that the discharge took place within the 12 mile limit (section 4.2);

### 7.3 Current System

The current system for managing marine waste disposal is seriously deficient in that:-

- the practical availability of alternative land-based disposal sites needs to be considered, as *part* of the process of selecting the successful tenderer, not after the successful tenderer has been chosen (section 3.1);
- the tenderer, and not the instigating harbour board or port company, is being licensed to dispose of dredgings (section 3.1);
- the application form for a marine dumping permit is inadequate in terms of the Minister of Transport's responsibilities under section 24 of the Marine Pollution Act and Maritime Transport's responsibilities under the Government's Environmental Protection and Enhancement Procedures (section 3.2);
- Maritime Transport, by its own admission, does not have adequate expertise or resources available in-house to deal with environmental matters (section 3.2);
- the efficacy of Maritime Transport's reporting agency system for assessing environmental impacts is in doubt (section 3.2);
- there is inadequate provision for public participation in permitting decisions, under the Marine Pollution Act (section 3.3);
- Maritime Transport is not required or resourced to enforce the conditions on dumping permits (section 3.5);
- Maritime Transport is not required or resourced to monitor the ecological effects of dumping (section 3.6);
- there is confusion over the respective roles of Maritime Transport and regional councils with respect to impact assessment and an apparent lack of co-ordination (section 5.0).

### 7.4 Future Management

The proposed new system for managing marine waste disposal, while not entirely satisfactory, has the potential to eliminate many of the problems experienced with the existing system viz those associated with inadequate planning/co-ordination, consideration of land-based options, public participation, impact assessment and monitoring), providing appropriate administrative adjustments are made (section 6.0).

## 8.0 RECOMMENDATIONS

1. That Maritime Transport make it clear to regional councils and port companies that adequate consideration needs to be given to the practical availability of land based disposal sites during the tendering round and that failure to adopt this approach could result in permit applications for marine disposal being declined (section 3.1);
2. That Maritime Transport delay the processing of applications for dumping permits until a decision has been made on the successful tenderer (section 3.1);
3. That Maritime Transport make it clear to regional councils and port companies that it *expects* them to apply for any dumping permits required for the disposal of marine dredgings from their own works (section 3.1);
4. That Maritime Transport not issue a permit for the marine disposal of dredgings until it has satisfied itself that the "practical availability" of land-based options has been adequately considered and discounted during the tendering round (section 3.1);
5. That Maritime Transport upgrade the information requirements on the application form for a marine dumping permit in accordance with its responsibilities under the Government's Environmental Protection and Enhancement Procedures and the Marine Pollution Act 1974 (section 3.2);
6. That Maritime Transport seek public comment on applications to dispose of dredgings or other waste outside the 12 mile limit (section 3.3);
7. That, in future, Maritime Transport fix the precise location of a proposed marine dump site on an appropriate map and send copies of this map (with the application) to reporting agencies and other interested parties (section 3.4);
8. That the Minister for the Environment and the Minister of Transport assign high priority to a review of the Marine Pollution Act 1974 and to consequent changes to the Resource Management Act (section 6.1);
9. That the Minister of Transport *not* issue a dumping permit under the Marine Pollution Act until *after* a coastal permit has been granted by the regional council under the Resource Management Act (section 6.2);
10. That regional councils take into account criteria set out in section 24 of the Marine Pollution Act when formulating plans for marine waste disposal and when processing applications for coastal permits for marine dumping (section 6.4);
11. That Maritime Transport enter into an administrative arrangement with regional councils whereby the necessity for the preparation of two different sets of environmental documentation, by the applicant, is avoided (section 6.4).





**APPENDIX I**

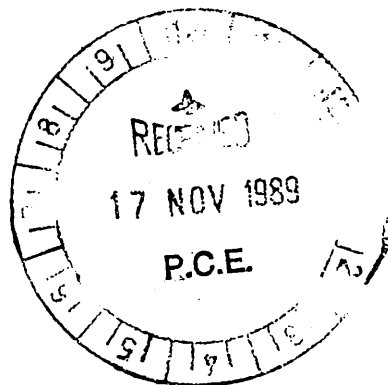
**LETTER OF COMPLAINT**



BAY OF ISLANDS BRANCH Box 63, Russell, Northland. (0885) 37-256.  
(Incorporating Guardians of the Bay)

13 November 1989

The Parliamentary Commissioner  
for the Environment  
Box 10-241  
The Terrace  
Wellington



Hello

#### DUMPING OF DREDGING SPOIL WITHOUT PERMIT

This branch is concerned about aspects of the dumping of dredging spoil from dredging occurring at Paihia.

Particular concern arises from (a) the procedures for granting a dumping permit approval by Maritime Transport and (b) the lack of action by the Northland Regional Council in accordance with their responsibilities under the Water and Soil Act.

#### The Dredging Operation.

The former Northland Harbour Board (now part of the Northland Regional Council) is enlarging the wharf at Paihia. As part of this work dredging producing a total 10 000 cu m. of spoil is currently occurring.

This dredging work has been contracted out to an Auckland company Blue Boats Ltd who are dumping the dredging spoil at a position approximately 1 mile within the outer limit of the territorial sea limit (ie within the the Northland Regional Council jurisdiction).

The Maritime Transport division of the Ministry of Transport have issued a dumping permit. No water right has been applied for or issued.

#### Actions of Maritime Transport.

Maritime Transport issues dumping permits. New Zealand is a signatory to the London Dumping Convention (Convention on the Prevention of marine Pollution by Dumping of Wastes and Other Matter 1972 ratified 20 April 1975) and those requirements need to be considered by Maritime Transport in issuing any dumping permit.

One of the requirements of this is that alternate land based sites must be fully considered and discounted before dumping at sea is permitted. In this case it appears that the reason that a permit was issued was that the company specialised in dumping at sea and that alternate land sites may not have received very exhaustive consideration.

There appears to have been no EIA required. Maritime Transport sought comment from MAF, DSIR, and DoC. Some information was supplied by the applicant (Blue Boats) on possible environmental effects- what was supplied to MAF was inaccurate and superficial.

No effort was made to contact local community, fishing or environmental groups for comment, nor was any EIA released for comment.

At no stage does it appear that Maritime Transport plotted the dumping position on a chart to check that the position was, as they had been informed, outside the territorial sea limit. This would have shown that it was not and that a water right would have been required .

Maritime Transport did not require an independent observer on the tug to ensure that the dumping actually occurs at the correct position or require any monitoring of the area where the dumping is occurring.

#### Actions of the Northland Regional Council

Initially Blue Boats proposed a dumping site closer to the coast. The Northland Regional Council advised that a water right would be required unless the dumping occurred outside the territorial sea limit and (incorrectly) suggested that a position 12 miles NNE of Okahu Island in the Bay of Islands would be outside their jurisdiction. The dumping site was changed to this position.

The Northland Regional Council were first informed (by myself by phone) on 18 September 1989 that the dumping position was within their jurisdiction.

Since then the dredging and dumping has continued, the Northern Advocate has reported that R W Cathcart esq then General Manager of the Northland Regional Council intended to recommend against either commencing prosecution proceedings or requiring a water right. And an undated letter has been sent to Maritime Transport by R W Cathcart esq (in his new position of NRC Manager Natural Resources) complaining that the NRC did not have the opportunity to comment on

this application (some of the correspondence attached shows that this claim is not quite accurate).

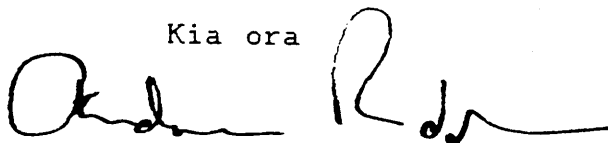
A further letter requesting prosecution proceedings has been sent by this branch (13 November).

The Northland Harbour Board who are enlarging the wharf facilities at Paihia and contracted the dredging merged with the Northland Regional Council on October 1 1989 giving rise to conflicts of interest within the organisation.

Copies of documents supporting the above statements are enclosed.

I look forward to your early reply

Kia ora



Andrew Riddell  
(secretary)



**APPENDIX II**

**QUESTIONS AND RESPONSES**

**Administrative arrangements/co-ordination**

- Q.1. It is understood that, as an outcome of a meeting in October 1987 there is an informal agreement that: (a) a water right is required for dumping of dredgings (b) Maritime Transport will consult with catchment authorities before issuing a permit (= sending the authority a copy of the application) and (c) that a dumping permit would not normally be issued until a water right had been sought and obtained. [I would be grateful if you could provide me with a copy of the final agreement.]

A: In October 1987, a meeting was held involving many organisations involved in considering applications for dumping and the issue of water rights. The procedure that was discussed and has been implemented in areas where Regional Water Boards required water rights to be obtained has been as follows.

- a) For capital dredging and the subsequent dumping of spoil at sea a dumping permit and water right would be required.
- b) For Maintenance dredging, authorities had until the 1990 year an exemption from applying for water rights. After that time, the Ministry would not be adverse to any requirement made by a Regional water Board/Catchment Board that a water right be obtained.

The Ministry has applied these requirements, supporting any requirement by a Regional Water Board/Catchment Board that a water right be obtained. In many areas, water rights are required.

The decision of whether or not a water right is required for the dumping of spoil at sea rests solely with the Regional Water Board/Catchment Board.

The practice has been for the Maritime Transport Division to seek comments of various reporting agencies (Department of Conservation, Regional Water Board/Catchment Board, Oceanographic Institute) and make a decision based on the navigational implications and comments received. The Division does not wait for a water right to be issued prior to issuing a dumping permit. If the Regional Water Board/Catchment Board requires a water right, the holder of the dumping permit is unable to exercise that permit without obtaining a water right. To do so would be breaching the water and soil legislation. Likewise, it is possible that a water right could be issued and a permit not be issued under the Marine Pollution Act. In such circumstances, to exercise the water right would be in breach of the Marine Pollution Act 1974.



Q.2. In this case, Maritime Transport did not formally consult the Northland Regional Council, in writing.

A: Maritime Transport did not refer a copy of the application to the Regional water Board in this case. The Ministry was aware that Mr Lloyd of Blue Boats Ltd was in contact with officers of the Catchment Board to ascertain the Boards responsibilities. The area chosen by the applicant is understood to have been chosen so as to be outside the jurisdiction of the Regional Water Board. Indeed we hold a letter on file from Blue Boats NZ Ltd addressed to the Northland Regional Council (Bob Cathcart) dated 18 September which states

"Thank you for your cooperation and suggestions pertaining to this dumping permit application.

The proposed dumping site is now 12 miles N.N.E. of the Urupukapuka's. The dumping site of which both parties are in agreement with."

Q.3. Maritime Transport did not wait for a water right to be issued because it had been informed by the applicant that the proposed dumping site was outside the 12 mile limit ie outside the jurisdiction of the Regional Council.

A: See comments relating to this point in response to question 1 above. This office acted in the belief that the site chosen was outside the area in which the Regional Water Board/Catchment Board had jurisdiction. The Ministry did from time to time during the consideration of the application have telephone discussions with officers of the Regional Water Board/Catchment Board, the applicant and others that did not raise any concerns that indicated that the Regional Water Board/Catchment Board had responsibilities in the area under application.

#### Fixing of dumping position

Q.4. Maritime Transport did not check the (actual) dumping position prior to issuing the permit.

A: Correct. We took the position described as being outside the the 12 mile limit. We did check to make sure that the application related to an area at sea.

Q.5. The application form did not in fact show the latitude and longitude co-ordinates, as required (Part 9).

A: The application form did not show the latitude and longitude coordinates. However, the maps that accompanied the original application showed the area applied for.

Q. 6. The absence of such co-ordinates would have made it difficult, if not impossible, for the reporting agencies to provide constructive comment.

A: As mentioned in 5 above, the application forms were accompanied by a navigational chart that clearly showed the area applied for. Reporting agencies commented on the area specified.

Q. 7. Maritime Transport in fact (only) sought and obtained the latitude and longitude co-ordinates from Blue Boats NZ Ltd on 19 September 1989, two days before the dumping permit was issued.

A: The latitude and longitude coordinates were supplied by Blue Boats on 18 September. At the same time the applicant advised other reporting agencies and coordinated the responses of those bodies. The alteration of the area applied for was as a result of discussions between the Northland Regional Council and the applicant.

#### **Environmental impact assessment**

Q. 8. Notwithstanding MOT's responsibilities, under section 24 of the Marine Pollution Act and in terms of Government's Environmental Protection and Enhancement Procedures, a process of environmental impact assessment (involving consideration of options, impact predictions and opportunity for public comment) has not been incorporated in the permitting procedure.

A: The Ministry relies on reporting agencies to assess many of the areas of environmental impacts. There is neither the expertise or resources available to do this "in house". The Ministry assesses the information available and in the light of this information and the comments received, a decision on the application is made. In respect of the future see comments later in this letter.

Q. 9. Maritime Transport has no formal requirement to seek public comment on marine dumping proposals under the Marine Pollution Act, but it does seek advice from agencies such as MAF, DSIR, and DOC.

A: Correct. The Marine Pollution Act does not provide for public advertising etc. By administrative arrangement and agreement, the Ministry seeks advice from appropriate reporting agencies.

Q. 10. Marine Transport issued the permit before receiving the DOC response. The DOC response was received later than requested. Was DOC consulted verbally before the permit was issued?

A: The Ministry received comments from MAFFish, North on the application on 25 September and from the Department of Conservation on 27 September. The Maritime Transport Division was aware that the applicant was discussing the application with both departments. It was understood from conversations held with both MAF and DOC that any problems had been resolved with the applicant. No information was received that indicated that either department had any objection. In regard to DOC's comment regarding the need for a water right, this office was unaware of this necessity from discussions held with either DOC or Regional Council staff.

#### Alternative dumping sites

Q. 11. New Zealand is a signatory of the London Dumping Convention (MARPOL) which requires that alternative land based sites be fully considered and discounted before dumping at sea is permitted.

A: The applicant's operation only involved dredging and operation at sea. The applicant was a successful tenderer for the work involving the maintenance dredging and disposal of the material. The Ministry understands quite clearly that disposal of the material at a land-based site was not an alternative for the operator. The Ministry has written to Blue Boats NZ Ltd advising the company of the provisions of the alternative disposal method provisions of the London Dumping Convention and have advised that because the operators methods do not provide for alternative disposal sites on land will not be taken into account in future applications.

Q. 12. In this case, at least one other tenderer proposed an alternative dumping site on land and DOC identified land disposal sites at Opuia and Puketone. What are the criteria whereby Maritime Transport decides whether land based dumping sites are acceptable?

A: The Maritime Transport Division requires all operators to consider alternative sites. The difficulty with the Paihia application was that the applicant was a successful tenderer for the work. The Division took this into account when processing and making a decision on the application.

Q. 13. In a letter dated 7 November 1989 to Mr Riddell of the Maruia Society (ref 44/3/52), Maritime Transport stated that the issue of alternative land based disposal has been considered (as evidenced by a fax to Mr Lloyd of Blue Boats NZ Ltd) without saying how it was considered and why it was rejected. Could you please elaborate?

A: The operators method of work and equipment did not allow for the land based option to be considered. The matter of an alternative land-based dumping site was raised by the Ministry of Agriculture and Fisheries. Blue Boats NZ Ltd in a letter dated 19 September to MAF Auckland state  
"There has been no assessment made of the practical availability of alternative land based disposal of the spoil as this company specialises in dredging and dumping at sea"

Q. 14. The same letter goes on to indicate that Maritime Transport had received a reply from Mr Lloyd which "satisfied us to a large extent that for this applicant, alternative sites had been considered". I have examined a copy of Mr Lloyd's letter dated 19 September which enclosed a copy of a letter from Blue Boats to Ministry of Agriculture and Fisheries. The only reference to land based disposal that I can find is as follows:

"There has been no assessment made of the practical availability of alternative land based disposal of the spoil as this company specializes in dredging and dumping at sea"

From an administrative perspective, this does not amount to a satisfactory discounting of land based options. Would you please explain why MOT was satisfied that land based options had been adequately considered.

A: The reference to alternative sites in our letter to Maruia Society was intended to refer to alternative dumping sites at sea. The applicant had discussed alternative sites with the Ministry before the application was formally made. In those discussions the applicant was advised to choose an area that was outside an area of frequent use for recreational/commercial/or tourist boating and in an area where the material would be dispersed and have minimal impact on the environment.

Q.15. Has Marine Transport ever made it clear to harbour boards/port companies that preference should be given to tenderers with proposals for land based disposal? If not, what is the mechanism for giving practical effect to the MARPOL agreement? How does Marine Transport know if there has been a (rejected) proposal for land based disposal?

A: The Harbour Boards and Port Companies are well aware of the Ministry's responsibilities and are also aware of the requirements of the London Dumping Convention. The Division is aware of proposals involving dumping being considered unfavourably by those authorities in the past. We acknowledge that it may be timely to republicise this matter, however there are Resource Management Bill implications that will impact on the procedures (see below).

#### Party authorized to dump

Q. 16. Is it normally the case that the contractor rather than the proponent (harbour board/port company/local authority) applies for and receives a dumping permit?

A: Applications can be made by any person, company, authority etc. The permit is issued to the party responsible for dredging. This may be a company as in this case, harbour authority or other responsible body.

#### Monitoring/enforcement

Q. 17. I understand Marine Transport is neither required nor resourced to physically monitor dumping and, in this regard, it relies heavily on the expertise/integrity of the captain of the dredge.

A: Yes. We also rely on input from other sources such as local authorities or other public groups. To date we have not received any evidence to show that the dumping occurred in contravention of the dumping permit.

Q. 18. The principle monitoring mechanisms are bathymetric surveys provided with each application (sediment build-up) and "acknowledgement" returns filed by the applicant, certifying the amount dumped and that it has been dumped at the location specified on the permit.

A: Yes. the permit holder is required to make a return specifying the amount of material dumped and when that dumping was completed. We understand that dumping was completed on 17 December 1989 and the amount dumped was 10000 cubic metres. To the best of our information, the dumping was carried out in accordance with the provisions of the dumping permit.

**Dumping location/need for water right**

Q. 1. It is understood that, contrary to past practise, there is now agreement amongst catchment authorities, that the marine disposal of dredgings does require a water right under the Water and Soil Conservation Act 1967.

A: We understand there is a "gentlemen's agreement" but it has not been widely circulated (we don't have a copy), and that dumping permits have been issued, at least in Wellington, without water rights.

Q.2. The Northland Regional Council (NRC) advised Blue Boats NZ Ltd that a dumping position 12 miles NNE of Okahu Island would be *outside* its jurisdiction, but it was subsequently discovered that this advice was incorrect.

A: Correct, to the extent that if the position quoted of 12 miles NNE of Okahu Island was beyond the limit of territorial sea it was beyond our jurisdiction. We have since discovered, on receipt of a copy of the permit from the Department of Conservation, Russell, on 2nd November 1989, that the authorised site is approx. 1.5Km inside the limit of territorial sea. We have no evidence that spoil was in fact dumped within the 12 mile limit.

Q. 3. Blue Boats NZ Ltd proceeded, in good faith, to indicate to Marine Transport that the proposed dumping position was outside the 12 mile limit and hence a water right was not required (ref letter of 18 September 1989 from Blue Boats to R W Cathcart, NRC).

A: Correct.

Q.4. It is NRC's view that, in any event, Marine Transport Division of MOT should have checked the dumping location on a marine chart and advised the Council that the proposed site was in fact inside the 12 mile limit.

A: Correct.

Q5. Mr Riddell of the Maruia Society informed the NRC on 18 September 1989 that the proposed dumping position was within its jurisdiction. If that is so, why didn't the NRC immediately indicate that a water right would be needed?

A: By this time the permit had been issued and the contract let.

Q6. On 10 November 1989, Mr Cathcart of NRC wrote to the Marine Division MOT asking why the application for a permit was not referred to the NRC for comment, making reference to a 1987 administrative agreement between officials. I haven't sighted the MOT's response, but I assume that MOT didn't do this because it had been informed that a water right wasn't required?

A: Correct - the Ministry of Transport was advised by Blue Boats - see reply attached.

#### Prosecution

Q.7. It is understood that NRC will not be pursuing a prosecution because of the difficulty of proving that the dumping is or was taking place inside the 12 mile limit ie the difficulty of fixing the site location. Has the Council in fact considered the question of prosecution?

A: The Council has not considered prosecution. I have delegated authority to pursue a prosecution. As a result of this inquiry I will report the matter to the Council. We have no factual evidence on which to base a prosecution.

Q. 8. It is understood that under proposals currently being developed by the Ministry for the Environment, the NRC would in the future have responsibility for issuing dumping permits. If NRC currently does not have the capacity to fix dumping locations, then how would it propose to monitor dumping operations in the future?

A: If we issue a consent, we would monitor and charge the consentee accordingly, as we do with water rights.

Q.9. Does the fact that Blue Boats NZ Ltd was given incorrect advice (2, above) have any bearing on the Council's attitude to prosecution?

A: I dispute that Blue Boats (NZ) Ltd., was given incorrect advice. The advice was that **if** the dumping site is beyond the limit of territorial sea, that is 12 miles, **then** it was outside the area requiring water

rights. Mr Lloyd then said that he would seek consent for a site 12 miles off Okahu Island, and I repeated that if this was 12 miles offshore it was outside our jurisdiction.

#### Future

Q.10. Do you have any suggestions for how dredgings disposal should be handled in future?

A: Dredging disposal will be adequately handled under the Resource Management Act 1990. In the interim, direct consultation between the permit issuing authority and other consent authorities would assist.



**APPENDIX III**

**SECTION 24 OF MARINE POLLUTION ACT 1974**

Section 24. **Criteria to govern dumping of waste and other matter into the sea**—The following matters are to be taken into account in establishing criteria for dumping waste and other matter into the sea:

*A. Characteristics and Composition of the Matter*—1. Total amount and average composition of matter dumped (for example, per year).

2. Form (for example, solid, sludge, liquid, or gaseous).

3. Properties: physical (for example, solubility and density), chemical and biochemical (for example, oxygen demand, nutrients), and biological (for example, presence of viruses, bacteria, yeasts, parasites).

4. Toxicity.

5. Persistence: physical, chemical, and biological.

6. Accumulation and biotransformation in biological materials or sediments.

7. Susceptibility to physical, chemical, and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.

8. Probability of production of taints or other changes reducing marketability of resources (fish, shellfish, etc.):

*B. Characteristics of Dumping Site and Method of Deposit*—

1. Location (for example, co-ordinates of the dumping area, depth, and distance from the coast), location in relation to other areas (for example, amenity areas, spawning, nursery, and fishing areas, and exploitable resources).

2. Rate of disposal per specific period (for example, quantity per day, per week, per month).

3. Methods of packaging and containment, if any.

4. Initial dilution achieved by proposed method of release.

5. Dispersal characteristics (for example, effects of currents, tides, and wind on horizontal transport and vertical mixing).

6. Water characteristics (for example, temperature, pH, salinity, stratification, oxygen indices of pollution—dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD)—nitrogen present in organic and mineral form, including ammonia, suspended matter, other nutrients, and productivity).

7. Bottom characteristics (for example, topography, geochemical and geological characteristics and biological productivity).

8. Existence and effects of other dumpings which have been made in the dumping area (for example, heavy metal background reading and organic carbon content).

9. In issuing a special permit, the issuing authority should consider whether an adequate scientific basis exists for assessing the consequences of such dumping, as outlined in this [section], taking into account seasonal variations:

C. *General Considerations and Conditions*—1. Possible effects on amenities (for example, presence of floating or stranded material, turbidity, objectionable odour, discoloration, and foaming).

2. Possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.

3. Possible effects on other uses of the sea (for example, impairment of water quality for industrial use, underwater corrosion of structures, interference with ship operations from

floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor, and protection of areas of special importance for scientific or conservation purposes).

4. The practical availability of alternative land-based methods of treatment, disposal, or elimination, or of treatment to render the matter less harmful for dumping at sea.

In item 9 of para. B the word "section" was substituted for the word "Schedule" by s. 6 of the Marine Pollution Amendment Act 1980.

