

**GISBORNE DISTRICT COUNCIL**  
**ENVIRONMENTAL MANAGEMENT**  
**A SYSTEMS AND PROCESSES REVIEW**

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

**December 1990**

## **Review Team Members**

Bill Armstrong MSc  
Jennifer Boshier BE(Chem)  
Marion Sanson BA, LLB

## **Typing**

Nicola Kerlake

## **Acknowledgements**

The Commissioner wishes to thank the Gisborne District Council, agencies and individuals whose advice greatly assisted this inquiry.

Parliamentary Commissioner for the Environment  
PO Box 10-241  
Wellington

**ISBN 0-908804-19-9**

## PREFACE

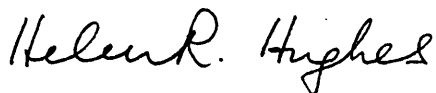
The Gisborne District Council was established in November 1989 as part of the local government reorganisation. It is the only unitary authority in New Zealand. It possesses the functions, duties and powers of *both* a district and a regional council. There has been no other organisation for the Council to model itself on or to look to for advice.

Any new organisation takes time to settle down, to come to terms with new functions and to devise structures best suited to its particular needs. This is particularly so for the Gisborne District Council because of its unique status. There is no doubt the Council will continue to evolve.

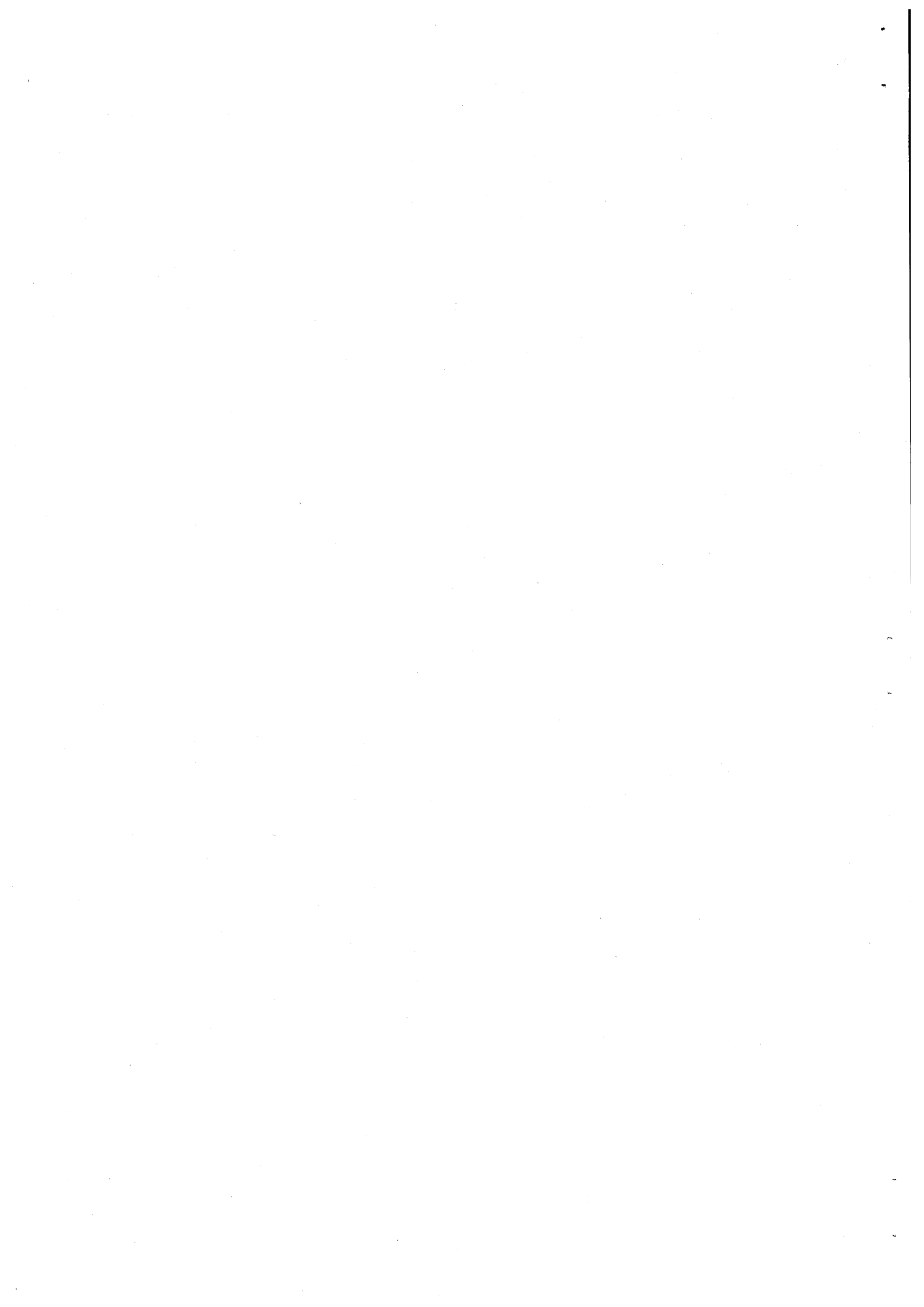
I believe that the Gisborne District Council has made a great deal of progress in developing a sound basis for the satisfactory operation of a unitary authority. However, my investigation has identified a number of matters which need to be addressed by Council with a view to improving the capacity of the unitary system to deliver sound environmental management.

The problems experienced by the Gisborne District Council stemmed partly from the inappropriateness of some of the advice given to Council in setting up its organisational structure. This confirms the need to provide well thought out advice on the transition from one structure to another.

It is my hope that this review will assist the Council and any other local government body contemplating becoming a unitary authority.



Helen R Hughes  
Parliamentary Commissioner for the Environment



## **CONTENTS**

### **Executive Summary**

#### **1.0 INTRODUCTION**

1.1	Purpose of report	1
1.2	Authority for investigation	1
1.3	Background	1
1.4	Terms of reference	3
1.5	Approach and methodology	4

#### **2.0 THE AIMS AND PRINCIPLES OF LOCAL GOVERNMENT REFORM**

2.1	Key concepts	5
2.2	The unitary authority concept	6

#### **3.0 SYSTEM ADOPTED BY THE GISBORNE DISTRICT COUNCIL**

3.1	Structure and delegations	8
3.2	Consent procedures	9

#### **4.0 CAPACITY OF THE GISBORNE DISTRICT COUNCIL SYSTEM TO DELIVER SOUND ENVIRONMENTAL MANAGEMENT**

4.1	Preamble	10
4.2	Orientation of Council	10
4.3	Role of full Council	11
4.4	Organisational structure and decision-making processes	15
4.4.1	Policy and Finance Committee	
4.4.2	Environment & Planning Committee	
4.4.3	Hearings Committee	
4.4.4	Special committees	
4.4.5	Engineering & Works Committee	
4.4.6	Relationship between committees and departments	
4.5	Membership of committees	19
4.6	Quality of advice received	19

<b>5.0</b>	<b>TRANSPARENCY OF DECISION MAKING AND ACCOUNTABILITY OF DECISION MAKERS</b>	
5.1	Preamble	20
5.2	Clarity of objectives and mechanism for resolving conflict	20
5.3	Separation of regulatory and other functions	21
5.4	Specification of responsibilities/accountability relationships	23
	5.4.1 Political versus managerial accountability	
	5.4.2 Delegation	
5.5	Public participation	25
<b>6.0</b>	<b>POSSIBLE MODELS FOR DECISION MAKING</b>	<b>26</b>
<b>7.0</b>	<b>CONCLUSION</b>	<b>27</b>
	<b>REFERENCES</b>	<b>29</b>
	<b>APPENDICES</b>	

## EXECUTIVE SUMMARY

Gisborne District Council is New Zealand's only unitary authority.

This report presents the results of a review of the system of structures and processes put in place by the Government and by the Gisborne District Council to manage the allocation, use and preservation of natural and physical resources in the Gisborne District.

Two fundamental questions have been addressed viz, is the system of committees and processes adopted by the Gisborne District Council:-

- (a) *capable* of delivering sound environmental management
- (b) such that the public can see how decisions are made and decision makers are *able* to be held to account

The Gisborne District Council system was based on a conscientious interpretation of the requirements of the Local Government Act 1974. This report recommends some change to the system in order to improve its capacity to deliver sound environmental management. These include giving greater emphasis to resource management responsibilities, modifying the respective roles of Council and its committees, and effecting some changes to the organisational structure.

There appears to be no fundamental reason why a unitary authority cannot deliver adequate environmental management. There is potential for efficiency gains. There are some potential weaknesses in a unitary authority system. However, a unitary authority can work, provided:

- \* a high degree of separation between regulatory and service delivery functions is achieved;
- \* mechanisms for the resolution of conflict between regulatory objectives and service delivery objectives are developed;
- \* both regulatory objectives and service delivery objectives are clearly specified.

## **IMPROVING THE CAPACITY OF THE SYSTEM TO DELIVER SOUND ENVIRONMENTAL MANAGEMENT**

### **ORIENTATION OF COUNCIL**

The Gisborne District Council is a territorial authority with both district and regional functions. It is a single authority. There is a danger that it could be perceived as sometimes acting in the capacity of a district council and sometimes in the capacity of a regional council. The important distinction is between service delivery and regulatory functions, not whether a particular activity is 'district' or 'regional' in origin.

The Council has major resource management responsibilities under current and proposed legislation. These responsibilities do not appear to be adequately reflected in the Council's mission statement and goals in its first Annual Plan.

#### **Recommendations**

- 1 That Council review its current and imminent resource management responsibilities and examine attitudes, plans and priorities in light of that review. (section 4.2)
- 2 That Council place greater emphasis on its resource management responsibilities through its mission statement, goals, work programmes and staff appointments. (section 4.2)

### **POLICY MAKING**

Policy making should be a function of the full Council rather than being delegated to Council committees. Policy determinations should include the results or outcomes sought, the method of achieving those results, public expenditure priorities and resolution of conflict between service delivery and regulatory objectives. Regional and district plans, having a major policy component, should be ratified by full Council.

The absence of adequate policy guidance in the case of water classification appears to be the root cause of many of the problems that the Council subsequently experienced.

#### **Recommendation**

- 3 That Council revoke existing policy delegations but make it clear, in the Delegation Manual, that the servicing and regulatory committees of Council have a vital role to play in policy *formulation* and *advice* to Council. (section 4.3)

## **CONFLICT RESOLUTION**

A high potential for conflict between service delivery objectives and regulatory objectives, together with the absence of rights of internal appeal, mean that it is particularly important for a unitary authority to have a mechanism for the clear and proper resolution of conflict.

### **Recommendation**

- 4 That the Council give priority to the development of a well defined, and publicly explained, mechanism for the resolution of conflict between service delivery and regulatory objectives. (section 4.3)

## **LEGAL ADVICE**

The existence of separate streams of legal advice to the service delivery and regulatory arms of Council may be counter-productive in terms of the potential to exacerbate conflict within Council and to add to costs.

### **Recommendation**

- 5 That Council consider retaining the services of a single legal advisor who would be available to the committees of Council, when required. (section 4.3)

## **NAME CHANGE FOR ENVIRONMENT AND PLANNING COMMITTEE**

Council, as a whole, has a role as environmental manager with its environmental management responsibilities spread across the full spectrum of its operation.

There may be self-perception and public perception advantages in renaming the Environment and Planning Committee the Planning and Regulatory Committee.

### **Recommendation**

- 6 That Council consider renaming the Environment and Planning Committee the Planning and Regulatory Committee. (section 4.4.2)

## **ROLE OF (PROPOSED) PLANNING & REGULATORY COMMITTEE**

Under present and proposed legislation, Council has a major public policy making role in relation to the management of the region's natural and physical resources. It is important that priority be given to putting in place the regulatory framework (plans, policies, bylaws) against which all development proposals, including service delivery, can be assessed. It is appropriate that this work be delegated to the Planning and Regulatory Committee. Currently, the Environment and Planning Committee does not appear to have the authority to hear and decide consent applications - an important component of regulation.

### **Recommendations**

- 7 That, where the law permits it, the Planning and Regulatory Committee be delegated the ability to hear and decide and attach conditions to consents. (section 4.4.2)
- 8 That, pursuant to Council policy, all consent applications be referred directly to the Planning and Regulatory Committee for action. (section 4.4.2)

## **HEARINGS COMMITTEE**

It is inappropriate for the hearings committee to be set up, as it currently is, outside the auspices of the Council's regulatory arm. The Council's regulatory responsibilities relate to environmental protection and enhancement. The regulatory arm should have the authority to regulate in that context. The Hearings Subcommittee would hear all consent applications where Council is not the applicant. This would comprise the bulk of consent applications.

### **Recommendation**

- 9 That Council establish the Hearings Committee as a *subcommittee* of the Planning & Regulatory Committee, also with the delegated ability to hear and determine. (section 4.4.3)

## **SPECIAL COMMITTEES**

On those relatively few occasions when Council is seeking consents from itself, or hearing objections to its own planning scheme, a special committee or tribunal should be set up with an independent chairperson. A special committee should be established for each occasion and given an appropriate delegation.

### **Recommendations**

- 10 That, when Council is applying to itself for a consent, a special committee be established to hear the application. (section 4.4.4)
- 11 That any special committee or tribunal include some members of the Planning & Regulatory Committee and that it be serviced by staff of the Planning & Regulatory Department. (section 4.4.4)

### **ORGANISATIONAL STRUCTURE**

The relationship between Council, its committees and departments is complicated and potentially confusing to an outsider.

#### **Recommendations**

- 12 That Council review its current organisational structure, including delegations, with the aim of clarifying responsibilities, relationships between committees and departments, and achieving better separation (see also recommendation 15). (section 4.4.6).
- 13 That the organisational structure be depicted diagrammatically in the 1991/92 Annual Plan so that the public can see the relationship between the full Council, its committees and departments. (section 4.4.6)

### **TRANSPARENCY AND ACCOUNTABILITY**

#### **CLARITY OF OBJECTIVES**

The Local Government Act 1974 imposes a requirement on Council to ensure that clear objectives are established for each of its activities and policies. This requirement applies to new issues, as they arise, as well as to established plans.

#### **Recommendation**

- 14 That when new issues or problems arise, Council first clarify the result or outcome it is seeking and, second, how best to achieve that result. Regulation is only one option. (section 5.2)

## SEPARATION OF THE REGULATORY FUNCTION FROM OTHER FUNCTIONS

The Local Government Act 1974 places a requirement on local authorities to ensure that as far as practicable, its regulatory functions are separated from other functions and that this is reflected in committee and management structures. Separation of regulatory and service delivery functions is particularly important in a unitary authority.

### Recommendation

- 15 That with the aim of strengthening separation between service delivery and regulatory functions, Council consider restructuring committees along the lines suggested in fig 2 of this report. (section 5.3)

The proposed Services Committee and the proposed Planning & Regulatory Committee should not be given "lives of their own". Committees of Council have no status to exercise appeal rights against each other or against the decisions of Council. They are part of the one legal entity.

Similarly, as a consequence of there being only a single authority in the area, the objection/appeal rights normally available to a district council under the Town & Country Planning Act 1977 or the Water and Soil Conservation Act 1967 do not exist.

### Recommendation

- 16 That in the event of conflict between the district and regional planning sections of the Planning & Regulatory Department, the matter be referred to the Planning & Regulatory Committee for resolution. (section 5.3)

The Engineering & Works Committee and the Environment & Planning Committee currently have overlapping membership. To achieve a high degree of separation it would be desirable for the membership of these committees to be separate.

### Recommendation

- 17 That the membership of the proposed Services and Planning & Regulatory committees be kept separate. (section 5.3)

## SPECIFICATION OF RESPONSIBILITIES/ACCOUNTABILITY RELATIONSHIPS

There is an important distinction between *political* and *managerial* accountability. The distinction, at a central government level, is normally explained in terms of politicians being accountable for outcomes (results) and managers being accountable for outputs (activity objectives). Although the distinctions are not so clear for local government, it is important that councillors are aware of what they are accountable for and what management is accountable for.

### **Recommendation**

- 18 That the Council make a clear distinction between political accountability and managerial accountability through its reporting arrangements, delegations and staff contracts. (section 5.4.1)

The Delegation Manual is the means by which accountability relationships within the Council are formalized. There is a balance to be struck between the desirability of delegation (in the interests of effectiveness and efficiency and 'separation') and the consequent perception or reality of diminished political accountability. It is suggested that in order to restore the balance referred to above, Council should:-

- \* make it clear that the role of policy making resides with full Council;
- \* play a strong role in setting objectives and monitoring progress towards their attainment;
- \* strengthen managerial accountability.

### **PUBLIC PARTICIPATION**

Public participation is one way of improving the transparency of decision making.

### **Recommendation**

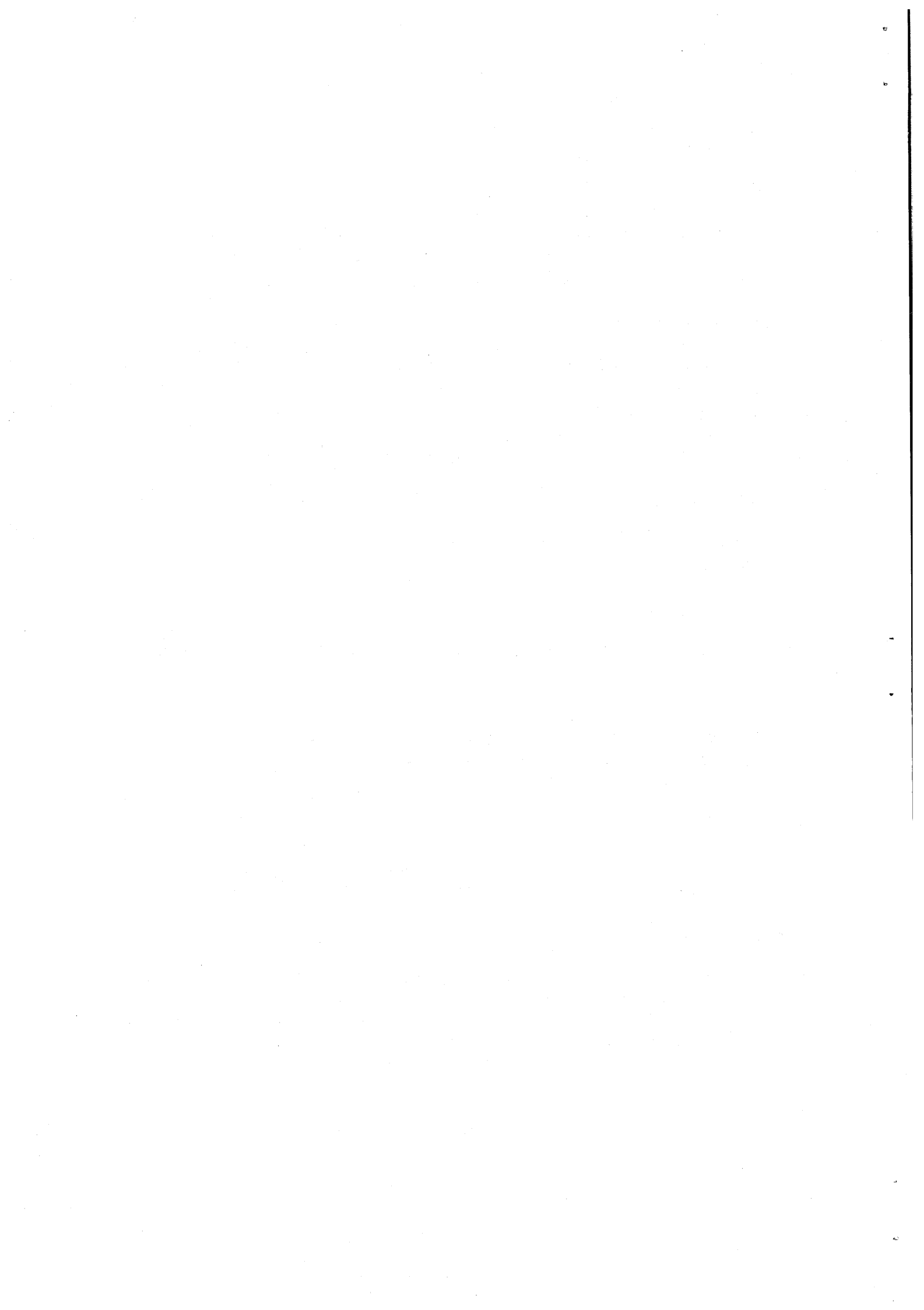
- 19 That where there are important public priorities to be determined, Council seek public input either formally through the "special consultative procedure" or through less formal means. (section 5.5)

### **DELEGATION**

The Water and Soil Conservation Act 1967 and the Town and Country Planning Act 1977 place significant constraints on the ability of councils to delegate decision making.

### **Recommendation**

- 20 That the Minister for the Environment ensure that current constraints on the ability of councils to delegate decision making to special committees and/or commissioners be removed in the proposed resource management legislation. (section 6.0)



## **1.0 INTRODUCTION**

### **1.1 Purpose of report**

This report presents the results of an investigation by the Parliamentary Commissioner for the Environment into the structures and processes put in place by Government and by the Gisborne District Council to manage the allocation, use and preservation of natural and physical resources in the Gisborne District.

### **1.2 Authority for investigation**

The authority for this investigation derives from s.16 of the Environment Act 1986 which, inter alia, mandates the Parliamentary Commissioner for the Environment to review the system of agencies and processes established by Government to manage the allocation, use, and preservation of natural and physical resources and to report the results of any such review to the House of Representatives and to any other bodies or persons as the Commissioner considers appropriate.

The role of the Commissioner, generally, is to act as an *independent* auditor of the performance of public authorities with environmental management responsibilities in New Zealand.

### **1.3 Background**

In July 1990 the Gisborne District Council, concerned about problems it had experienced in the pursuit of a water classification for Poverty Bay coastal waters, invited me to conduct an independent review of the Council's actions.

An outline of relevant events and information, leading up to the preparation of this report, follows:-

In June 1987, the East Cape Catchment Board and Regional Water Board, after canvassing public opinion, adopted a preliminary classification of Poverty Bay and coastal waters pursuant to s.26D of the Water and Soil Conservation Act 1967. This initiative followed public pressure to address the problems of visible slicks in the Bay and solids (plastic, fatballs and other sewage litter) being washed up on beaches.

The (then) Gisborne City Council lodged an objection to the preliminary classification. The Council had been discharging comminuted sewage under an existing use right and it considered that the SD water quality classification proposed for the City outfall area would necessitate expensive treatment facilities beyond the capacity of the City to provide, given other priorities for capital expenditure.

On 1 November 1989, local government reorganisation resulted in the dissolution of the East Cape Catchment Board, the Gisborne City Council and 14 other local authorities - and the creation in their place of a "unitary" authority, the Gisborne District Council,

with the functions, duties and powers of both a territorial authority and a regional council. [Local Government (Gisborne Region) Reorganisation Order 1989, NZ Gazette No.99, 13 June 1989].

The Council received extensive advice from consultants on organisational structure and delegations appropriate to the requirements of the Local Government Act 1974 and other legislation. To separate regulatory functions from other functions, separate Environment & Planning and Engineering & Works committees were established. Council also prepared and made public a Delegation Manual setting out its approach and philosophy to delegation and the rules to govern it.

Soon after its establishment, the Council decided to proceed with the hearing of public objections and submissions on the preliminary water classification promulgated by the East Cape Catchment Board. Environment and Planning Department staff held meetings with the principal objectors with the aim of resolving some of the issues raised. An alternative mechanism of relying on the granting of water rights with conditions to effect water quality improvement over time was also canvassed. This mechanism was rejected partly because the parties were unsure of the interpretation of s.21(3A) of the Water and Soil Conservation Act 1967 and partly because Council interpreted the requirements of the Local Government Act 1974, s.223C, to mean that the special committee route was the best means of conducting the matter in an open and transparent way.

The Council set up a Special Committee of three persons independent of Council to conduct the hearing and decided, in advance, to adopt the Committee's recommendations.

The Council authorized legal counsel and staff of Engineering & Works to present an objection [on behalf of the Gisborne District Council], but also authorised counsel and staff of Environment & Planning to appear in support of the preliminary classification. In essence, Engineering & Works pursued the objection of the previous Gisborne City Council and Environment & Planning supported the classification proposed by the previous catchment board. Engineering & Works submitted to the special committee that the proposed SD classification would require expensive secondary treatment (stated to be of the order of \$24 million) which ratepayers could not afford and that, in any event, the Council had other priorities for public expenditure. Environment & Planning, on the other hand, submitted that SD represented an appropriate water quality goal to aim for and that such a goal had the support of the public.

In May 1990, the Special Committee delivered its decision. In essence, it agreed with the submissions of Engineering & Works viz that because of the high cost of secondary treatment and the debatable additional benefits (over and above proposed milliscreening) to be had from such treatment, the SD classification was "not reasonably attainable".

The Council adopted the recommendations of the Special Committee as the final classification and, at the same time, purported to reserve unto its Environment & Planning and Works & Engineering Committees the right of appeal.

In July 1990, staff of the Works & Engineering Department presented a strategy document for sewerage reticulation and disposal in Gisborne City, to the Works & Engineering Committee. The document stated that second stage *primary* treatment (primary sedimentation and flotation) would be sufficient to meet an SD classification at a cost of only \$2 million (cf the \$24 million for *secondary* treatment, suggested at the hearing.) Later, the Committee was further advised that while it was hoped that extended primary treatment would achieve SD, this was by no means certain.

On 12 July 1990, counsel for the Environment & Planning Committee lodged a notice of appeal as the Gisborne District Council against the Council's final classification on the grounds that the decision was, inter alia, contrary to accepted principles of water conservation and to the weight of evidence presented at the Special Committee hearing. The Committee's main concern was that the outfall standard (SE) stipulated in the final classification would make it difficult, if not impossible, to set water right conditions designed to achieve an improvement in water quality.

On 10 August 1990, counsel for Engineering & Works lodged a notice of support for the final classification and intention to appear as the Gisborne District Council, requesting that the Planning Tribunal make an order that the Council (in its capacity as the Environment & Planning Division) (a) lacks jurisdiction and is *unable to appeal* its own decision on the classification; and (b) should defend the final classification against all appellants i.e. appear as a respondent.

On 13 August 1990 the Department of Justice, Tribunals Division, wrote to counsel for Environment & Planning indicating that if the appellant and the respondent are the same authority, the Tribunal would decline jurisdiction.

In October 1990, Council resolved to seek a consent order for an SD standard at its outfall and to defend this position, if needed, at appeal.

#### 1.4 Terms of reference

The terms of reference agreed between myself and the Gisborne District Council, were as follows:

To:-

- review the system of committees and processes put in place by the Gisborne District Council to manage the allocation, use and preservation of natural resources, with particular reference to the water classification of the Poverty Bay waters.

- identify any generic issues relating to the transparency of local government decision making and in particular to any special circumstances of a unitary authority when carrying out its environmental management responsibilities.
- provide advice on remedial actions as appropriate, to assist in future environmental management.

### **1.5 Approach and methodology**

Having regard for the terms of reference, the objectives of the Environment Act 1986, and my constitutional role as an officer of Parliament, two fundamental and related questions were addressed. Namely, is the system of committees and processes adopted by the Gisborne District Council:

- (a) *capable* of delivering sound environmental management;
- (b) such that decision making is *transparent* and hence decision makers *able* to be held to account by the public.

These questions were considered in the context of the principles underlying local government reform and the directives contained in consequent amendments to the Local Government Act 1974.

During the course of the review discussions were held with councillors and staff of the Gisborne District Council. Relevant documents, provided by the Council on request, were reviewed. Discussions were also held with officials of the Ministry for the Environment, the Department of Internal Affairs (Local Government Division) the Chairman of the Local Government Commission, and with various other persons with relevant expertise.

The Commissioner presented her response to Councillors at a meeting of the Gisborne District Council on 22 November 1990. A wide-ranging discussion which involved both Councillors and staff ensued. The Chairman of the Local Government Commission who had been invited also took part in this discussion. Council made no formal resolutions in respect to receiving the Commissioner's recommendations at that meeting. Council's initial response is included in Appendix IV of this report. Council has advised the Commissioner that action on some recommendations has already been taken.

## 2.0 THE AIMS AND PRINCIPLES OF LOCAL GOVERNMENT REFORM

The principles underlying the recent reform of local government in New Zealand, with ensuing statutory provisions, are summarized in Table 1.

The reform sought to deliver a local government sector which is:-

- more efficient and effective
- more attuned and responsive to community needs
- more autonomous, with increased flexibility of operation
- more accountable for its actions or inactions

Such aims are consistent with the objectives of the Environment Act 1986 which promotes more effective environmental management and improved accountability of environmental managers. The aims of local government reform may be reinforced by enactment of the Resource Management Bill.

### 2.1 Key concepts

The most important principles of local government reform are:-

#### **Devolution**

Devolution has been defined as the *transfer* of power, authority and responsibility from a national to a sub-national level.<sup>1</sup> Local government reform was predicated, to some extent, on the belief that it is desirable that there be a transfer of certain functional responsibilities from central to local government.

#### **Efficiency and effectiveness**

To prepare the way for significant devolution, it was considered necessary to strengthen local government. That is, to make it more efficient and effective. Government endeavoured to achieve this by a number of means including a substantial reduction in the number of local government units [reorganisation], rationalization of existing responsibilities and by giving Councils greater freedom of operation including extensive powers of delegation.

#### **Accountability**

Accountability is the process whereby organisations and individuals are answerable for their performance. A constitutional corollary of significant devolution is that the accountability of local authorities, to their constituencies, needs to be strengthened.

TABLE 1 THE AIMS AND PRINCIPLES UNDERLYING LOCAL GOVERNMENT REFORM 1988-89 (Compiled from various sources)

**Aims/Principles**

The desirability of:

<ul style="list-style-type: none"> <li>• Enhanced <u>efficiency</u> and <u>effectiveness</u> in the use of limited resources</li> </ul>	<p>— Reduction in number of authorities (reorganisation)</p> <p>Extensive powers of <u>delegation</u> to committees and subcommittees (s.114Q) and to members and officers of Council (s.715), subject to maintenance of a register of delegations</p>
<ul style="list-style-type: none"> <li>• Local government being <u>more attentive</u> and <u>responsive</u> to the needs of the community and these being met in the most appropriate and effective manner</li> </ul>	<p>— Requirement for local authorities to produce an <u>annual plan</u> at the beginning of each financial year, setting out intended significant policies and objectives, the nature and scope of intended activities, performance targets, indicative costs and sources of funds (s.223D). The plan is to be prepared in accordance with a <u>special consultative procedure</u>, providing opportunity for community input. Such procedures also apply to other proposals (s.716A).</p> <p>Local authorities required to ensure that communities and, where appropriate, central government are adequately informed about their activities (s.223C(f))</p>
<ul style="list-style-type: none"> <li>• <u>Increased autonomy</u> and <u>flexibility</u> of operation</li> </ul>	<p>— A range of "permissive" powers in the Local Government Act [complemented by permissive provisions in Resource Management Bill]</p>
<ul style="list-style-type: none"> <li>• <u>Improved accountability</u>, including: politicians being <u>accountable</u> to the electorate for the overall performance of the authority, including the achievement of goals and objectives (= <u>outcomes</u>)</li> </ul>	<p>— Requirement for every local authority to produce an <u>end of year report</u> to the public assessing the <u>performance</u> of the authority against the policies, objectives, activities, performance targets, indicative costs and funding sources specified in the annual plan (s.223E). Also required to regularly measure performance against stated objectives and to ensure that performance is measurable by others (s.223C(e))</p>
<p><u>Managers</u> being accountable to politicians for the achievement of activity objectives (<u>outputs</u>) relevant to the pursuit of the outcomes sought by politicians</p>	<p>— Chief executive or senior executive officers to be responsible for the effective and efficient management of the <u>activities</u> of the local authority (s.119D)</p>
<p><u>Clear</u> specification of <u>objectives</u>, particularly where council has a range of potentially conflicting functions e.g. policy regulations, service delivery, commercial operations</p>	<p>— Requirement for local authorities to ensure that clear objectives are established for each of its activities and policies (s.223C(b))</p>
<p><u>Tradeoffs</u> between conflicting objectives being made in an explicit and <u>transparent</u> manner so that decisions are comprehensible to the community and so that those affected can adequately exercise accountability</p>	<p>— Requirement for every local authority to conduct its affairs in a manner which is comprehensible and open to the public (s.223C(a)), ensure that conflicting objectives and conflicts of interest are resolved in a clear and proper manner (s.223C(c)), ensure that so far as practicable its regulatory functions are separated from other functions (s.223C(d)) and that it adopts a management structure which reflects and reinforces the clear separation of regulatory functions from other functions and facilitates the explicit resolution of conflicting objectives (s.223C(h))</p>
<p>Where practicable, commercial enterprises should be separated out</p>	<p>— Provision for establishment of Local Authority Trading Enterprises (LATES) and divestment of undertakings (Part XXXIV)</p>

## Transparency

The concept of "transparency" is based on the premise that in order to be able to hold elected representatives to account for their decision making, the electorate has to be *able to see* how decisions are taken - what objectives were being pursued, what factors were considered relevant, and how trade-offs were made.

## Separation

The separation of functions (e.g. regulation from service delivery) is intended to lead to more focused advice (from known sources) and a more rigorous examination of proposed actions with explicit and open tradeoffs<sup>2</sup> within Council. Separation is aimed at improving both the transparency and the quality of decision making.

### 2.2 The unitary authority concept

The Government and the Local Government Commission concurred that, in the interests of achieving adequate separation between regulatory and service delivery functions, there should be separate regional and district councils where-ever possible [the responsibilities of regional councils relate *primarily* but not exclusively to regulatory functions; similarly, the responsibilities of district councils relate primarily but not exclusively to service delivery]. Accordingly, the provisions to be observed by the Commission in preparing final reorganisation schemes contained a presumption against the creation of a single district (and therefore "unitary" authorities with regional and territorial functions) where this could be avoided.<sup>3</sup>

In only one case, Gisborne, was a single district identified and this resulted from unanimous local agreement within the area.

Section 37N of the Local Government Amendment Act (No.2) 1989, provides for the creation of "single districts", as follows:-

"37N. Single district - Where, pursuant to an Order in Council giving effect to a final reorganisation scheme prepared by the Local Government Commission ..... provision has been made for a single authority to exercise the functions, duties, and powers of both a regional council and a territorial authority ..... that single authority shall be deemed to be both a regional council and a territorial authority, and the provisions of this Act and of any other Act shall, with all necessary modifications, apply to the district of that single authority as if that district were both -

- (a) A region; and
- (b) The district of a territorial authority."

There is a common perception that the Gisborne District Council is a "two-headed" being, sometimes acting in the capacity of a regional council and sometimes in the capacity of a district council - even to the extent of one pursuing the other to court.

The interpretation of section 37N is crucial. Discussions have been held with the Department of Internal Affairs and with the Chairman of the Local Government Commission. The intention was to create one authority - a single legal entity - with both district and regional functions. Under the provisions to be observed by the Commission, this authority had to be either a territorial authority or a regional council; there was no provision for a new class of local authority to be known as a unitary authority. The Commission chose to constitute the Gisborne District Council as a territorial authority in the final reorganisation scheme<sup>4</sup> because it was considered desirable, in the interests of cohesiveness, for the new council to have a mayor elected at large. This contrasts with regional councils where the chairperson is elected by councillors.

### 3.0 SYSTEM ADOPTED BY THE GISBORNE DISTRICT COUNCIL

#### 3.1 Structure and delegations

The Gisborne District Council consists of a Mayor elected at large and 16 elected councillors drawn from 11 wards within the region. The Council has established 11 committees, with delegated authority to consider and deal with matters relating to their responsibilities. Four of the committees are mandatory<sup>4</sup> and have functions related to either transitional arrangements or to legislation other than the Local Government Act 1974.

Staff have been organised into an administrative structure which comprises six functional departments, each with a manager.

The organisational structure shown in Figure 1 has been drawn up with reference to the Council's Annual Plan 1990/91 and the Delegation Manual. The Council, as a whole, has adopted a *mission* statement, a statement of *purpose* and a statement of 7 council *goals (outcomes)*. Each department has a statement of purpose and goals determined by Council and a corresponding statement of *activity objectives (outputs)* agreed between the Council and the Chief Executive Officer.<sup>5</sup>

The roles of and relationships between the Council, its committees and staff are set out in the Delegation Manual. The overall philosophy is to encourage a delegation of decision making to the lowest competent level<sup>6</sup>. The roles of the main committees are summarized as follows:-

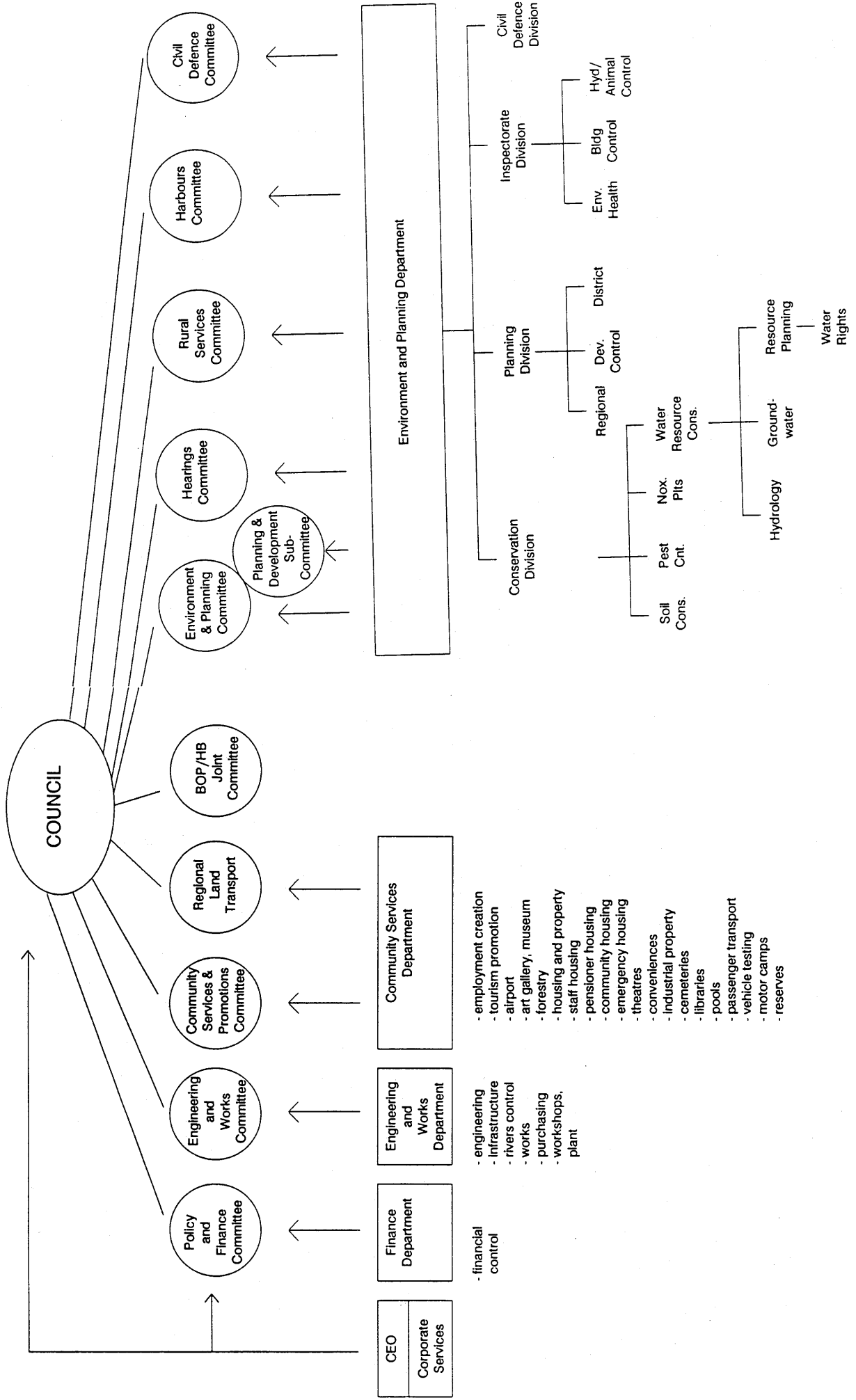
The Policy and Finance Committee has, inter alia, delegated authority to deal with *policy matters* not clearly within the scope of a functional committee, specified financial policy, oversight of Council's corporate structure, monitoring performance and co-ordination of the Annual Plan and Performance Report.

The Environment and Planning Committee has authority for the administration of all statutes related to the environment, resource management and land use [but not for hearings, see Hearings Committee below] and the *establishment* of *policies* and *objectives* relating to environmental improvement.

The Engineering and Works Committee has delegated authority, inter alia, for *establishing priorities* and drafting programmes for all engineering works and activities and overseeing projects.

The Hearings Committee has authority to conduct *all* hearings under the Town and Country Planning Act 1977, the Soil Conservation and Rivers Control Act 1941, and other resource management statutes. It is delegated authority to the maximum extent available to it under the legislation and is to *hear* and *determine* whenever possible.

FIG. 1 ORGANISATIONAL STRUCTURE OF GISBORNE DISTRICT COUNCIL\*



\* Interpreted from Gisborne District Council Annual Plan 1990/91 and from the Delegation Manual

The Planning & Development Executive Subcommittee of the Environment & Planning Committee has the power to *act* on all applications for consent or approval where the applicant or objector does not have the right to appear and be heard by the Council, under specified sections of the Town & Country Planning Act 1977 and the Local Government Act 1974.

The Community Services & Promotion Committee has authority to *establish* and *review policy goals* and objectives in relation to the provision of a range of specified community services and facilities e.g. libraries, motor camps, airport, tourist promotion, employment.

The Rural Services Committee has authority to *establish* and monitor *policy goals* in the area of agricultural pest destruction and noxious plant control. (The establishment of this committee is required by the reorganisation scheme<sup>4</sup>).

Council's senior management staff are delegated various authorities to enter into contracts and commitments and to undertake specified financial management activities on behalf of Council. The manager of the Environment & Planning Department is delegated authorities in relation to inspection, planning and resource management.

### 3.2 Consent procedures

Consent applications are dealt with either by the Hearings Committee or the Planning & Development Executive Subcommittee of the Environment & Planning Committee in accordance with the above delegations, or by the full Council where the law prevents delegation e.g. water right decisions. Council may set up special tribunals or committees to hear and make recommendations to Council, as it did in the case of the water classification hearing.

#### **4.0 CAPACITY OF THE GISBORNE DISTRICT COUNCIL SYSTEM TO DELIVER SOUND ENVIRONMENTAL MANAGEMENT**

##### **4.1 Preamble**

The capacity of a local authority to deliver sound environmental management is potentially influenced by a number of factors, including:-

- its awareness of the extent and significance of its responsibilities
- the attitudes and perceptions of councillors
- the organisational structure and administrative arrangements adopted
- the resources available
- the quality of advice received

On the basis of my analysis of the water classification experience and my assessment of the Gisborne District Council's Annual Plan, organisational structure and delegations, a number of issues have been identified which I believe need to be considered in more depth by Council with a view to improving its performance as environmental manager. These issues are discussed under the following headings.

##### **4.2 Orientation of Council**

The Annual Plan<sup>5</sup> reflects the way in which Council has positioned itself relative to its statutory responsibilities.

The mission statement is the means by which Council identifies what business it is in. The Gisborne District Council's mission statement in its first Annual Plan is:-

"To provide and manage at a sustainable level physical, cultural and community services reflecting regional needs for present and future generations."

The mission statement appears to be service-orientated and makes no reference to the Council's substantial environmental management responsibilities. Similarly, the Council's goals, while making reference to service delivery (goal 5), make no direct reference to the outcomes sought for environmental management. In this regard, some of the goals specified for the Environment & Planning Department (p 14 of Annual Plan) could be brought forward as goals of the full Council.

While it is clear that the Gisborne District Council retains a vital service delivery role under the Local Government Act 1974, it is equally clear that as a unitary authority the Council possesses major environmental management responsibilities under the Town and

Country Planning Act 1977, the Water and Soil Conservation Act 1967 and other statutes. The latter will be consolidated and reinforced under proposed resource management legislation.

Resource management is essentially a regulatory activity. There is no wish to downgrade the importance of the service delivery function but it is worth noting that if aspects of service delivery are to be carried out by Local Authority Trading Enterprises (LATEs) or private enterprise, policy making and regulation will be the core business of the Council.

Further to the comments in section 2.2 of this report about the unitary authority concept, I believe it is inappropriate for the Council to perceive itself as sometimes acting in the capacity of a district council and sometimes in the capacity of a regional council. It is also inappropriate for the Council's district responsibilities to be simply equated with service delivery or its regional responsibilities to be equated with environmental management. Although many of its environmental management responsibilities derive from possession of the functions, duties and powers of a regional council, the Council nevertheless has a significant environmental management responsibility arising from its duty to prepare a district plan.

The Council is a single authority. It is charged with exercising a diverse range of service delivery and regulatory responsibilities within the area it administers. While it is important for Council to be aware of its 'district' and 'regional' responsibilities under various pieces of legislation, I believe that the *primary concern* for councillors and staff in any given situation should be whether a proposed action involves the Council exercising its service delivery or regulatory function, or both, and the implications of this for the decision making process. The importance of making a clear distinction between service delivery and regulation is discussed in section 5.3.

## RECOMMENDATIONS

- 1 That Council review its current and imminent resource management responsibilities and examine attitudes, plans and priorities in light of that review.
- 2 That Council place greater emphasis on its resource management responsibilities through its mission statement, goals, work programmes and staff appointments.

### 4.3 Role of full Council

Council's Delegation Manual<sup>6</sup> variously delegates authority to committees to "deal with policy matters", to "establish policies" and to "establish priorities" (section 3.1). I do not support such delegations.

In my view, the role of full Council is to determine policy. Such determinations could include:

- the results or outcomes sought
- methods of achieving those results
- public expenditure priorities or
- resolution of conflict between service delivery and regulatory objectives.

The policy function is the means by which the Council exercises its leadership role. All councillors are accountable for policy. There is, I believe, an important distinction between policy determination and policy formulation/advice. The latter is a legitimate role for committees of Council.

### RECOMMENDATION

- 3 That Council revoke existing policy delegations but make it clear, in the Delegation Manual, that the servicing and regulatory committees of Council have a vital role to play in policy *formulation* and *advice* to Council.

In the water classification issue, Council did not address the types of policy determinations referred to above. Council considered that the setting up of a special committee with independent membership to hear evidence, coupled with a prior resolution to adopt the recommendations of the committee, would be the most transparent way of proceeding.

The Council clearly acted with the best of intentions but it is apparent [with the benefit of hindsight] that its failure to clarify its policy on the water classification issue *as a new authority* lies at the heart of the predicament that it subsequently found itself in. There were several unfortunate consequences:-

- \* It led to confusion in the public arena as to precisely what the Council's position is on the issue of water classification. I understand that all councillors wish to see an improvement in water quality in the Bay, yet no such outcome has been stipulated in the Annual Plan.
- \* The Council did not consider options for achieving its aims. Water classification and associated regulatory activity is only one way of achieving an improvement in water quality.
- \* A public perception of disunity within the new authority was created when the Engineering & Works Department was permitted to pursue the objection of the previous Gisborne City Council and the Environment & Planning Department to appear in support of the preliminary classification promulgated by the previous East Cape Catchment Board.

- \* The debate about the desired outcome, the standard of treatment that the City could afford, and the Council's priorities for works expenditure, effectively took place between staff, in front of the Special Committee. Staff of the two arms of Council expressed opposing views as to whether or not it is *in the public interest* to improve existing water quality<sup>7</sup>. These are matters for political determination.
- \* The Special Committee was placed in the position of having to deliberate on policy issues which arguably should have been resolved politically prior to the hearing e.g. the question of whether or not the City could afford the cost of treating its effluent to a standard commensurate with discharge to SD waters.
- \* The regulatory arm of Council, the Environment & Planning Committee, was effectively disenfranchised from the decision-making process to the extent that, following adoption of the final classification by the Council, the committee felt that it had no other option than to lodge an appeal against the Council's decision.
- \* In resolving to adopt the recommendations of the Special Committee, the Council purported to reserve unto its Engineering & Works and Environment & Planning Committees the right of appeal against the decisions it had taken. However, the advice that I have received is that a committee of Council has no separate status in law to appeal against the decision of Council or the decision of another committee of Council. A committee of Council is part of the Council which is the legal entity. A Council, in respect to a matter within its jurisdiction, can only appear as a *respondent* in front of the Planning Tribunal. The question of whether or not the service or regulatory arms of a unitary authority *should* have the status to appeal decisions is discussed in section 5.3.
- \* The net result of the above has been the generation of a considerable amount of public confusion and work for legal counsel representing the respective committees of Council.

In order to effect improvements to decision-making processes, Council should be alert to situations where there is a need to make a policy determination relating to outcomes sought, priorities or resolution of conflict between servicing and regulatory objectives. Such matters should not be left to staff or (non-elected) tribunals.

Given a high potential for conflict between servicing and regulatory objectives (because of the *combination* of district and regional functions), and the lack of a right of appeal by the arms of Council, it seems particularly important for a unitary authority to have a well defined mechanism for the open resolution of internal conflict. There is a premium on "getting it right" up front.

## RECOMMENDATION

- 4 That the Council give priority to the development of a well defined, and publicly explained, mechanism for the resolution of conflict between service delivery and regulatory objectives.

A possible mechanism to resolve conflicting objectives would be for Council to call for reports from its servicing and regulatory arms, identify the key areas of conflict, request that facts be checked or that more information be provided, and make the necessary policy determinations. Sometimes this would lead to the servicing arm not pursuing an application or not making a submission because to do so would be contrary to Council policy. On other occasions, Council policies would be such that the servicing arm could proceed with an application for a permit and present evidence in pursuit of particular conditions on a permit.

I would encourage Council to see itself as a kind of "cabinet" (exercising policy and financial control) with three reporting agencies (Finance, Engineering & Works, Environment & Planning) available to it when there is a need to address conflicting objectives or to determine priorities. Both the reports and the reasons for subsequent decisions should be a matter of public record.

A note of caution. When the Council is *applying to itself* for a consent it is important, in order to avoid any suggestion of predetermination, that it take care not to make policy that goes to the heart of the matter. For example, it would not state what water classification it preferred *before* a hearing aimed at determining precisely that issue. Under such circumstances, policy determinations should be restricted to clarifying Council's intentions (e.g. a water quality improvement) and priorities for the benefit of both staff (who may be preparing evidence) and those conducting the hearing. The inclusion of "independents" on the hearings panel would further reduce the likelihood of a charge of predetermination (section 4.4.4).

An issue that needs to be addressed by Council is whether or not it is desirable for committees of Council to have separate legal representation. Such an arrangement seems to be at odds with the Council and its committees being a single entity. It may also be counter-productive in terms of the potential to exacerbate conflict within Council and to add to costs. It may - in the interests of consistency, unity and cost-effectiveness - be better for Council to retain the services of a single legal advisor who would be available to any of the committees of Council when required. This would not preclude Council seeking a second opinion and/or specialist legal advice if this was considered appropriate.

## RECOMMENDATION

- 5 That Council consider retaining the services of a single legal advisor who would be available to the committees of Council, when required.

#### 4.4 Organisational structure and decision-making processes

This section examines how the committee and departmental structure and delegations adopted by Council (section 3.0) could affect the quality of decision making. The related question of how these same structures and processes affect accountability is discussed in section 5.0 of this report.

##### 4.4.1 Policy and Finance Committee

I have already stated my view that the full Council should retain responsibility for the making of policy. Existing delegations to *decide* policy, explicit or inferred, should be revoked.

Council could retain a Finance Committee for the purpose of giving detailed consideration to financial matters including the financial implications of policy options.

##### 4.4.2 Environment and Planning Committee

The Environment & Planning Committee and its corresponding department constitute the nucleus of the "regulatory" arm of Council. While it is true that the Committee is primarily concerned with environmental management, there could be public perception advantages in renaming this committee the Planning & Regulatory Committee. Use of the word "environment" to describe it implies a narrow concept of environment, or worse, carries the implication that environmental protection is somehow at odds with service delivery. On the contrary, service delivery frequently plays a major role in environmental protection and, in this regard, I believe it would be preferable for the full Council to see itself as "environmental manager" with its environmental management activities spread across the full spectrum of its operation. I note that the National Transition Committee preferred the phrase 'planning and regulatory' to describe this committee.<sup>8</sup>

#### RECOMMENDATION

- 6 That Council consider renaming the Environment & Planning Committee the Planning & Regulatory Committee.

Under present and proposed resource management legislation, Council has a major public policy making role in relation to the stewardship of the region's natural and physical resources.

I believe that Council will need to give high priority to putting in place the requisite regulatory framework (plans, policies, bylaws) against which all development proposals, including service delivery, can be assessed. It is appropriate that this work be delegated to the Planning & Regulatory Committee and that the Council forge a strong relationship with this Committee. Regional and district plans, having a major policy component, will need to be ratified by full Council.

The KMPG Peat Marwick report 1988 noted:-

"There is a strongly held view on behalf of Councillors that the Council must be involved not only in protecting but also in enhancing the environment. This implies that the organisation must be structured in such a way as to give *prominence* to the establishment of goals, objectives and policies for the environment area".<sup>9</sup>

It has been suggested that Council adjust its mission statement and goals to give greater emphasis to its environmental management responsibilities (section 4.2). The water classification experience would suggest that certain procedural adjustments may also be necessary. It would seem reasonable to have expected the Council to pass objections/submissions on the preliminary classification to its regulatory arm for hearing and determination. There was apparently a suggestion that the Council did not have the ability to delegate a final decision on water classification. However, the advice that I have received on s.16 of the Water and Soil Conservation Act 1967 suggests that there is no such constraint. The constraint applies only to water right decisions and general authorisations.

Currently the Delegation Manual does not give the Environment & Planning Committee the delegated authority to hear and decide consent applications. Such authority is instead vested in a separate Hearings Committee. In other words, the committee with responsibility for planning and regulation does not have the ability to undertake activities which might be considered essential components of "regulation". I have considered the argument that this arrangement is warranted because it is desirable to have a separate "neutral" body (i.e. the Hearings Committee) to adjudicate between the service delivery and the regulatory arms of council. It is difficult to reconcile this argument with the fact that 6 out of 7 members of the Hearings Committee are members of the Environment & Planning Committee. Further, the argument seems to be based on the premise that committees of Council should have a "life of their own" and that conflicting objectives should be resolved in a quasi-judicial forum, not by Council. I do not favour this approach for a unitary authority, for reasons discussed elsewhere in this report (section 5.3).

## RECOMMENDATION

- 7 That, where the law permits it, the Planning & Regulatory Committee be delegated the ability to hear and decide applications and attach conditions to consents.

In the first instance, all consent applications are made to Council. Where Council is not the applicant, I believe Council should have a policy of referring (these) applications directly to the Planning and Regulatory Committee who will decide how the applications are dealt with.

## RECOMMENDATION

- 8 That, pursuant to Council policy, all consent applications be referred directly to the Planning & Regulatory Committee for action.

### 4.4.3 Hearings Committee

Further to the above, I suggest that Council should establish the Hearings Committee as a *subcommittee* of the Planning & Regulatory Committee. A Hearings Subcommittee would hear all consent applications where Council is not the applicant. This would comprise the bulk of the consent applications made to Council. The Subcommittee should be given a clear role through delegation either to hear and determine an application or to hear and recommend. In the few situations where the legislation does not permit delegation, e.g. water right decisions, the Hearings Subcommittee could recommend direct to the full Council. Following passage of the Resource Management Act, constraints on delegation may no longer be a factor preventing either the Planning & Regulatory Committee or its Hearings Subcommittee making a decision on consent applications.

I am aware of the argument that neither the Planning & Regulatory Committee or a Hearings Subcommittee would be sufficiently independent ("it has an environmental agenda") to hear and decide, and that any such arrangement could result in the servicing arm of Council being relatively disadvantaged. However, the Council's regulatory (i.e. statutory) responsibilities relate to environmental protection and enhancement. I believe that the regulatory arm should have the authority to regulate in that context.

The issue is not one of status or relative advantage. The two arms of Council have different functions. The Planning & Regulatory Committee or its Hearings Subcommittee would have a legal duty to act quasi judicially - to conduct a fair and impartial hearing and to decide matters on the basis of the evidence before it. The question of bias would not arise unless it could be demonstrated, in court, that the hearing body had not acted judicially.

## RECOMMENDATION

- 9 That Council establish the Hearings Committee as a *subcommittee* of the Planning & Regulatory Committee, also with the delegated ability to hear and determine.

### 4.4.4 Special committees

When Council is seeking consents from itself or hearing objections to its own planning scheme, I believe Council should set up a special committee or tribunal. A special committee would be established on each occasion with its own terms of reference; it could be delegated to either report back or to decide as appropriate to the circumstances. The committee should have, at least, an independent chairperson

preferably qualified in law or planning. It is for Council to decide the membership of a special committee, but in my view there is a case for including members of the Planning & Regulatory Committee on a special committee and any such committee being serviced by staff of that department.

The proposed resource management legislation may provide an option to special committees viz the appointment of a Commissioner or Commissioners who may or may not be councillors. The Planning & Regulatory Committee and any other Committee would have the right of audience before a special committee or Commissioner(s).

## RECOMMENDATIONS

- 10 That, where Council is applying to itself for a consent, a special committee be established to hear the application.
- 11 That any special committee or tribunal include some members of the Planning & Regulatory Committee and that it be serviced by staff of the Planning & Regulatory Department.

### 4.4.5 Engineering and Works Committee

The Engineering & Works Committee is responsible for all engineering and rivers control works and public works infrastructure. The Committee and its department are variously referred to as the Council's "operational" or "servicing" arms. Yet it is apparent that there are many "servicing" activities undertaken by Council which fall outside the purview of the Engineering & Works Committee. The relationship between the Engineering & Works Committee and other servicing committees of Council (e.g. Rural Services, Community Services & Promotion) seems to be that when the latter identify in principle the need to undertake engineering and works activities, they refer the project to the Engineering & Works Committee which establishes priorities, seeks consents and oversees the project.

It is recommended that the Council give more thought to the relationship between the Engineering & Works Committee and other committees of Council with service delivery responsibilities. It is clear that the activities of the former cannot simply be equated with "service delivery" and that there is a case for a committee of council to take the "wide view" of service delivery, including operational aspects.

### 4.4.6 Relationship between committees and departments

The current committee and departmental structure of Council is shown in Figure 1, section 3.1.

The relationship between committees and departments is by no means clear. There are some significant discrepancies between the responsibilities of committees set out in the Delegation Manual and the purpose and goals of corresponding departments set out in

the Annual Plan. Further, service-orientated committees appear to possess some regulatory functions and are currently serviced by the regulatory department.

The observations above, and in previous sections of this chapter, have led to the conclusion that the Council needs to review its current organisational structure, including delegations, with the aim of clarifying responsibilities, relationships and decision-making processes. It is suggested that this could be achieved, with minimal disruption, along the lines suggested in figure 2, section 5.3.

## **RECOMMENDATIONS**

- 12 That the Council review its current organisational structure, including delegations, with the aim of clarifying responsibilities, relationships between committees and departments, and achieving better separation (see also recommendation 15).
- 13 That the organisational structure be depicted diagrammatically in the 1991/92 Annual Plan so that the public can see the relationship between the full Council, its committees and departments.

### **4.5 Membership of committees**

The membership of committees relates to the question of 'separation' which is discussed in section 5.3 of this report. Suffice it to note here that dual membership of committees can lead to conflicting responsibilities and consequently to inappropriate tradeoffs.

### **4.6 Quality of advice**

The quality of advice received is obviously an important factor in the performance of Council as environmental manager. In my assessment some of the advice received by Council during the water classification exercise has been of variable quality. For example, the estimated cost of meeting a particular water quality standard has ranged from \$24 million to \$2 million. There has also been some confusion over the purpose of a classification and the issues relevant to a classification as opposed to those relevant to a water right (Appendix I).

I would urge Council to critically appraise all advice and to compare the advice received from different sources. Where conflicting advice is received, the critical points of difference should be pinpointed and pursued.

## **5.0 TRANSPARENCY OF DECISION MAKING AND ACCOUNTABILITY OF DECISION MAKERS**

### **5.1 Preamble**

Part XHIA of the Local Government Amendment [No.2] Act 1989 contains the Accountability and Accounting requirements for local government, including the rules governing how local authorities are to conduct their affairs [s.223C], the requirement for an annual plan [s.223D] and annual performance report (s.223 E).

The intention is to improve the transparency\* of decision-making and to ensure that local authorities are able to be held to account for their performance by their electors (\* refer section 2.1 for definition).

This chapter examines aspects of the Gisborne District Council's organisational structure and decision-making processes, against the requirements of the Local Government Act 1974.

### **5.2 Clarity of objectives and mechanism for resolving conflict between objectives**

Sub-sections 223C (1)(b) and (c) of the Act impose a requirement on all local authorities to ensure that *clear objectives* are established for each of their activities and policies and that any conflict between objectives be resolved in a *clear* and *proper* manner.

Reference has been made in section 4.3 to the Council's apparent failure to clarify objective(s) in relation to water classification and the consequences of this.

The 1990/91 Annual Plan is a commendable first attempt to establish directions for a new organisation. Prior to the publication of the next plan there will be a need for Council to review department goals (outcomes) and activity objectives (outputs) with the aim of making them more precise and ensuring that there is a strong relationship between the two. Where possible, activity objectives should be achieved by a specified time to enhance performance measurement.

When an issue or problem first arises, it is essential that Council clearly define the result or outcome it is seeking. The next step is to determine how best to achieve that result.

### **RECOMMENDATION**

- 14 That when new issues or problems arise, Council first clarify the result or outcome it is seeking and, second, how best to achieve that result. Regulation is only one option.

The development of a mechanism for resolving conflict between competing objectives, adequate to meet the 'clear' and 'proper' criteria should be given priority by Council. Some suggestions have been made in section 4.3. of this report.

### 5.3 Separation of regulatory and other functions

Sub-sections 223C(1)(d), (g), (h) of the Local Government Amendment [No.2] Act 1989 place requirements on local authorities to ensure that as far as practicable their regulatory functions are separated from other functions and this is reflected in both committee and management structures. A legal interpretation of these requirements is contained in Appendix III.

Separation of conflicting functions is a key principle of local government reform and resource management law reform (section 2.1). The aim is to enhance the performance of local authorities by avoiding the 'capture' of decision making by one set of interests [within councils] and by improving the transparency of decision making.

The types of functions undertaken by local authorities include:- policy, regulatory/planning, operational/service delivery, advocacy, trading, technical information, corporate [Appendix II]. The only *legal* requirement is for regulatory functions to be separated from others. The extent to which other functions need to be separated is debatable. The size of a council and the scope of its responsibilities seem to be relevant considerations. "The Guide to Separation of Regulatory Functions", published by the Ministry for the Environment<sup>2</sup>, suggests that at a minimum the committee structure should separate service delivery, regulatory and corporate activities.

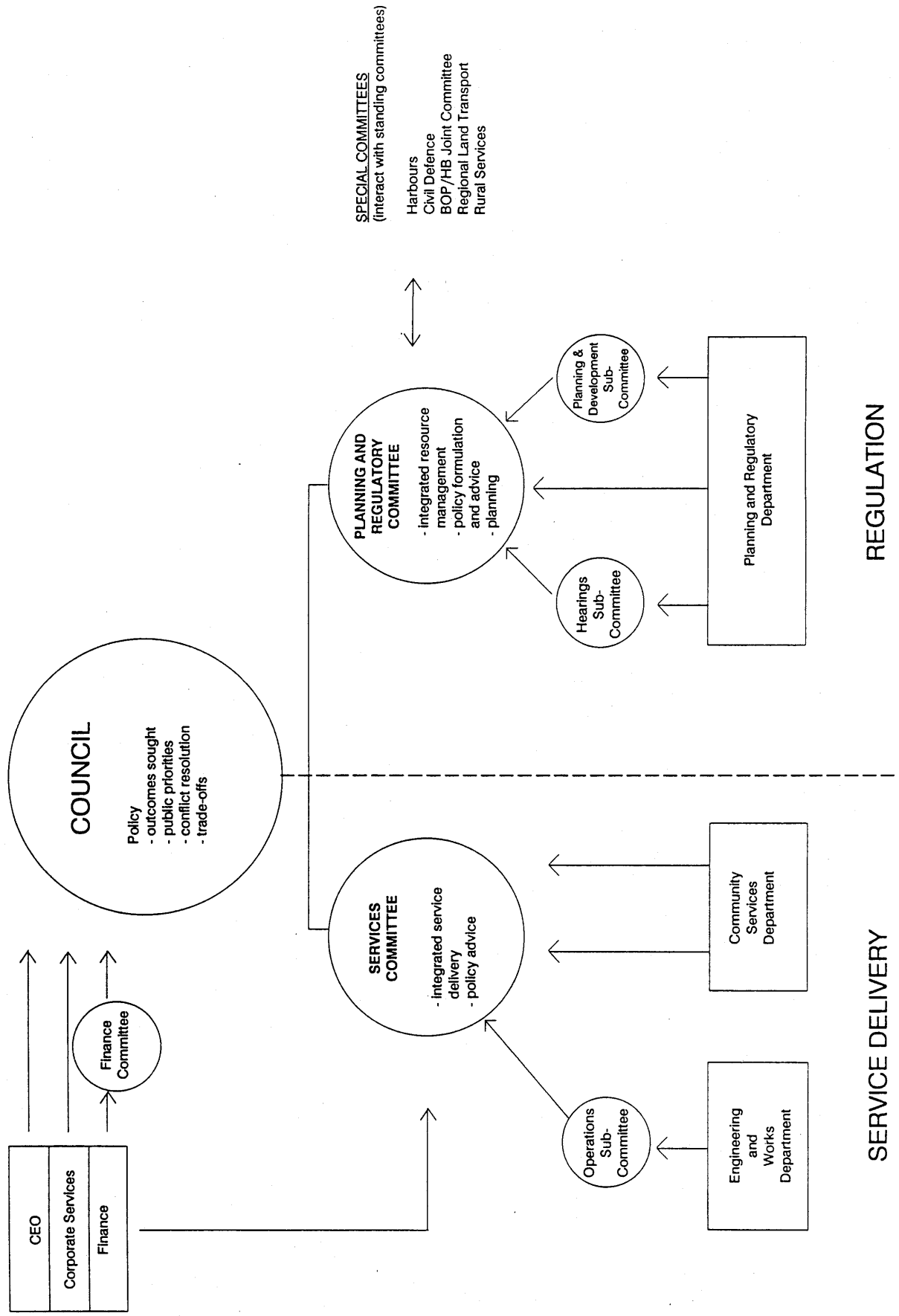
A unitary authority has a diverse range of service delivery and regulatory responsibilities arising from its possession of the functions, duties and powers of both a district council and a regional council. Consequently, there is considerable potential for conflict between servicing and regulatory objectives. This suggests a need for clear separation of functions within a unitary authority.

As already stated, the full Council should retain unto itself the policy making function. In addition to firmly establishing the Council's leadership role, and enhancing political accountability, this approach helps to avoid the "capture" (or dominance) of policy by either arm of council.

I believe that Council should make it clear, through the Delegation Manual, that the Planning & Regulatory Committee's role is to help *formulate* and *advise* on policy, not to *make* it. This activity is likely to find its strongest expression in the preparation of planning schemes.

The Gisborne District Council has achieved a degree of separation between service delivery and regulatory functions within its committee and management structure, but relationships are not always clear from the Delegation Manual and the 1990/91 Annual Plan. The relationships shown in Figure 1 (section 3.1) were interpreted from those sources. There is a case for a much stronger separation of service delivery and regulation, with an integrated perspective on both, along the lines shown in figure 2. The Council's committee and management structure would then reflect a strong tripartite separation of policy, service delivery and regulation:-

**FIG. 2 A possible model for modification of Gisborne District Council organisational structure to achieve stronger separation of service delivery and regulatory functions (compare with Fig. 1, Section 3.1)**



## POLICY

SERVICE DELIVERY

REGULATION

## RECOMMENDATION

- 15 That, with the aim of strengthening separation between service delivery and regulatory functions, Council consider restructuring committees along the lines suggested in figure 2 of this report.

The Engineering & Works Committee and associated department are often loosely referred to as the "servicing arm" of Council. Clearly they are more accurately referred to as the "operations" arm of council; operations is a subset of service delivery. There is a case for retention of a separate engineering and works or "operations" sub-committee to look after the "doing" component of service delivery. Under the model advanced, the services committee would take a wide view of service delivery and advise Council on priorities. It would also have responsibility for seeking permits on behalf of Council.

There is a perception, in some quarters, that the separation requirements of the Local Government Act 1974 should be pursued to the extent that the service delivery and regulatory arms of Council should effectively be given lives of their own, to pursue their own objectives. This type of thinking seems to underlie some of the advice which the Council has received in relation to delegations and to water classification. Committees of Council are not able to appeal against the Council or against each other. They are one and the same legal entity. However, the question remains as to whether or not the law should be changed in the interests of "transparency" to give the service delivery and regulatory arms of a unitary authority the right of appeal. However, ratepayers are unlikely to be impressed by the spectacle of the two arms of Council taking costly appeals against each other. More significantly, I believe that responsibility for the resolution of conflict between regulatory and service delivery functions lies with the Council, not with the courts (section 4.3).

A corollary of the Council being a single legal entity is that the rights of objection and appeal which would normally be available to a district and regional council against each other under, for example the Town & Country Planning Act 1977 or the Water & Soil Conservation Act 1967, are not exercisable. Again, this emphasises the need to develop administrative mechanisms for the clear and proper resolution of conflict.

In the event of conflict between the district and regional planning perspectives, the matter could be referred to the Planning & Regulatory Committee for resolution. It is a potential strength of unitary authorities that conflict between district and regional planning perspectives is able to be resolved in-house, without resort to litigation.

## RECOMMENDATION

- 16 That in the event of conflict between the district and regional planning sections of the Planning & Regulatory Department, the matter be referred to the Planning & Regulatory Committee for resolution.

Finally, on the question of separation, I note that the current Engineering & Works Committee and Environment & Planning Committee have overlapping membership. This may not be a problem in practice. However, I consider that from a public perception perspective it would be better for the membership of service delivery and regulatory committees to be quite separate [the Mayor, as an ex-officio member, provides the overview]. This would not preclude members of one committee attending the meetings of the other committee, without voting rights.

## RECOMMENDATION

- 17 That the membership of the proposed Services and Planning & Regulatory committees be kept separate.

### 5.4 Specification of responsibilities/accountability relationships

Accountability is the liability (obligation) to give an account of what one has done or not done.<sup>10</sup> Having set unambiguous objectives and having achieved adequate separation of functions, in the interests of transparency, it is essential that there be a clear understanding between the parties concerned [including the public] as to who is responsible for what and to whom.

#### 5.4.1 Political versus managerial accountability

There is an important distinction between political and managerial accountability. The former refers to the accountability of elected representatives for results (outcomes) to the electorate. The latter refers to accountability within an organisation of appointed managers for specified activity objectives (outputs), to elected representatives.<sup>11</sup>

Elected representatives are "called to account" through elections. Political accountability can only be achieved if there is adequate public disclosure of information relating to the actions of individual councillors and to the performance of the Council as a whole. Hence the requirement, in the Local Government Act, for local authorities to produce an annual plan (S223D) and end of year performance report (S223E) and to ensure that performance is measurable by others (Table 1). Thus the Annual Plan becomes the prime vehicle for setting the significant policies and objectives of the District Council and publicly disclosing these policies and objectives.

Accountability is enhanced through the ability of the Auditor-General and the Parliamentary Commissioner for the Environment to independently check the financial and environmental management performance of local authorities and to make their findings public.

The role of the Chief Executive Officer is to ensure that adequate information is provided for the Council's policy making function and to implement Council policy once it is decided. It is intended that managers be called to account through a process of performance review. Section 119D of the Local Government Act 1974 states that the Chief Executive Officer or Senior Executive Officer are to be responsible for the effective and efficient management of the activities of the local authority.

The statement by the Mayor on p.2 of the 1990/91 Annual Plan addresses accountability relationships and acknowledges that the Council still has some way to go in the refinement of objectives and performance standards.

I believe that the relationship between political accountability and managerial accountability needs to be given further consideration. I have reservations about simply stating that activity objectives are "commissioned" by the Council from the staff and for which the staff are accountable to Council. Whether or not activity objectives are achieved will determine performance and the Council is ultimately accountable for the performance of the organisation. My understanding of the annual plan and performance reporting requirement is that it is primarily for the purpose of enhancing *political* accountability. Section 223E of the Act makes it clear that the Council is to report, *inter alia*, on its *activities*. In other words the Act envisages that the Council itself is accountable for the achievement or non-achievement of its activity objectives to the extent that this impinges upon the performance of the organisation. The issue of managerial accountability for the "delivery" of activity objectives is a quite separate one, which is presumably to be dealt with by way of contract and performance review. This suggests that elected representatives [Council or its committees] should play a strong role in not only defining activity objectives but also in monitoring progress towards their achievement. The monitoring of policy implementation need not involve councillors in details of management.

## RECOMMENDATION

- 18 That the Council make a clear distinction between political accountability and managerial accountability through its reporting arrangements, delegations and staff contracts.

### 5.4.2 Delegation

The Delegation Manual is the means by which accountability relationships *within* the Council are formalized. Delegation involves the passing downwards [from Council] the authority for exercise of a duty or power and carries with it the responsibility to explain ones actions to the delegator. The aim of delegation is to improve effectiveness and efficiency by minimizing referrals back to Council or to committees of Council.

Under the Local Government Act 1974, local authorities have extensive powers of delegation to committees and subcommittees (s.114Q) and to officers of Council (s.715). The Gisborne District Council has chosen to make maximum use of its powers of delegation, the general philosophy being to delegate *decision making* to the lowest competent level.

I am aware of some disquiet amongst councillors concerning the extent of delegations adopted by the Council and understand that there is a proposal to review the Delegation Manual. When Council delegates to committees there may be a perception of diminished political accountability and this can be a very real concern in the case of delegations to staff.

I believe there is a *balance* to be struck between the desirability of delegation (in the interests of 'separation' as well as effectiveness and efficiency) and the consequent perception or reality of diminished political accountability. I consider that Council may have been too liberal in its delegations and suggest that the way to restore the balance is for Council to:-

- \* make it clear that the role of making substantive policy remains firmly with the full Council;
- \* play a strong role in setting objectives and monitoring progress towards their achievement;
- \* strengthen management accountability.

## 5.5 Public participation

Direct public involvement is one means of improving the transparency of decision making.

Council is required to conduct its business in a manner which is comprehensible and open to the public [s.223C(1)(a)] and to ensure that the community is adequately informed about its activities [s.223C(1)(f)]. The Act also makes provision for a "special consultative procedure" in relation to specified proposals, including the preparation of an annual plan [s.716A].

Public consultation on the annual plan helps to set desired objectives. Within this framework, further public participation can assist Council to establish priorities and a timetable for public expenditure on sewage collection, treatment and disposal of effluent. In larger metropolitan areas, this process has been separated into a number of stages each with some degree of public participation and independent advice. Such a programme ensures the public is fully aware of Council's policies, planning and design.

## RECOMMENDATION

- 19 That, where there are important public priorities to be determined, Council seek public input either formally through the "special consultative procedure" or through less formal means.

## 6.0 POSSIBLE MODELS FOR DECISION MAKING

In this section I comment briefly on the process followed by the Gisborne District Council for water classification and suggest alternative models for (a) the processing of water rights under current law and (b) planning applications under current law.

Figure 3 outlines the pathway followed for water classification. As discussed elsewhere in this report, it is possible, with the benefit of hindsight, to identify points at which "mistakes" were made viz (1) not adequately addressing the policy issues up front, (2) perpetuation of the old divisions between Gisborne City Council and the East Cape Catchment Board, in a different guise (3) not referring the matter to the Council's regulatory committee; establishment of a special committee without any representation from the Environment & Planning Committee; the decision to adopt the recommendations from the special committee *before* they were received; (4) Council purporting to reserve to its internal divisions the right of appeal when no such right existed (refer to figure 3 to identify points).

Under current law, Council does not have the ability to delegate water right decisions. Figure 4(a) suggests a process for when Council is the water right applicant. It is appropriate that Council establish a special tribunal with *some* independent members on it when it is applying for a major, or potentially contentious, water right. I consider that the tribunal should be chaired by an independent person (refer section 4.4.4). This advice applies to *any* tribunal or special committee set up by Council for the purpose of hearing its own applications. Figure 4(b) covers the most common situation, where the applicant is not Council. In this case there is no need for an independent perspective.

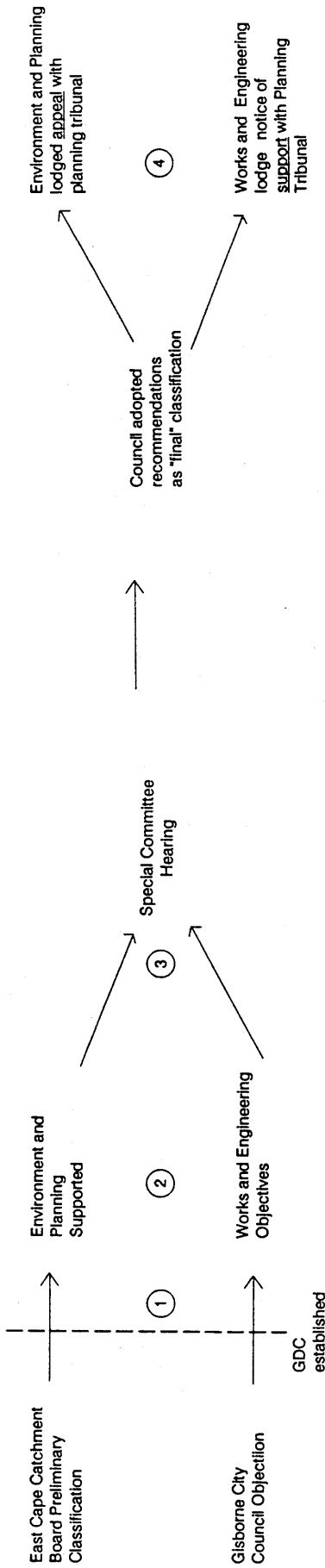
Figure 5(a) sets out a procedure for Council applications for planning consent, under the Town & Country Planning Act 1977. Notified applications could be referred to a Commissioner or to a special committee, again with an independent chairperson (refer section 4.4.4). Non-notified applications could be processed through the normal Planning & Development Subcommittee channel.

The Water and Soil Conservation Act 1967 and the Town and Country Planning Act 1977 place significant constraints on the ability of councils to delegate decision making. Figure 6 has been included to show that if such constraints were removed, the process of considering consent applications could be simplified. This could be achieved either by changes to present legislation or through the provisions of the proposed resource management legislation.

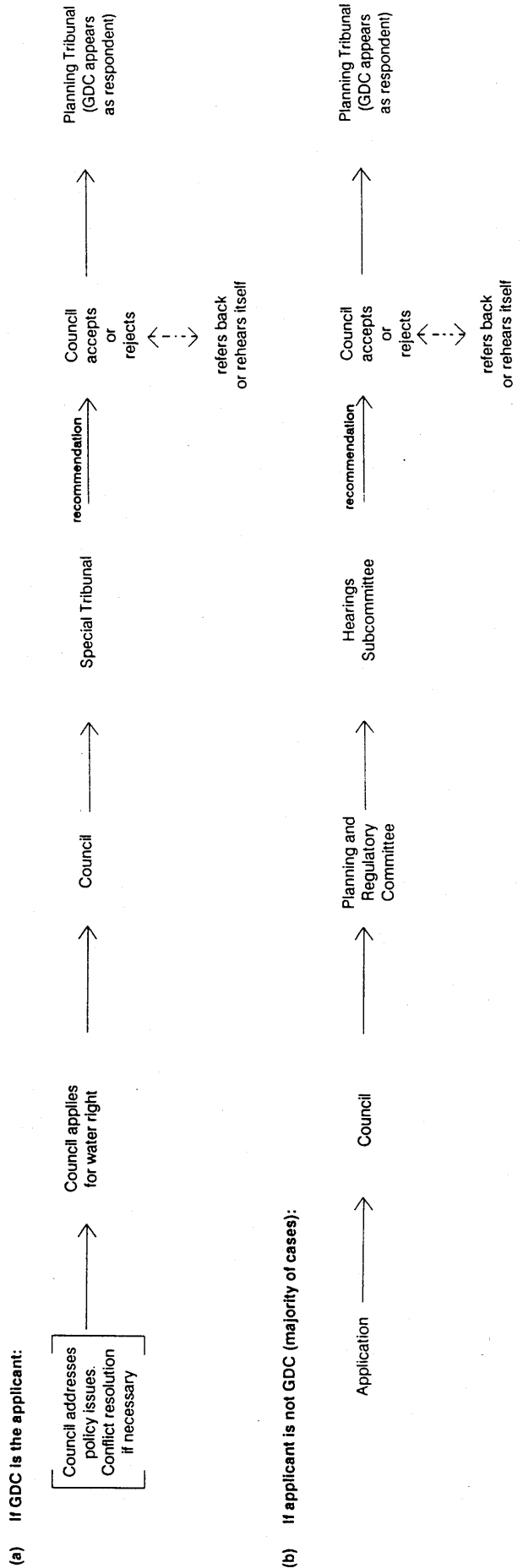
### RECOMMENDATION

- 20 That the Minister for the Environment ensure that current constraints on the ability of councils to delegate decision making to special committees and/or commissioners be removed in the proposed resource management legislation.

**FIG. 3 WATER CLASSIFICATION - Process followed by Gisborne District Council**

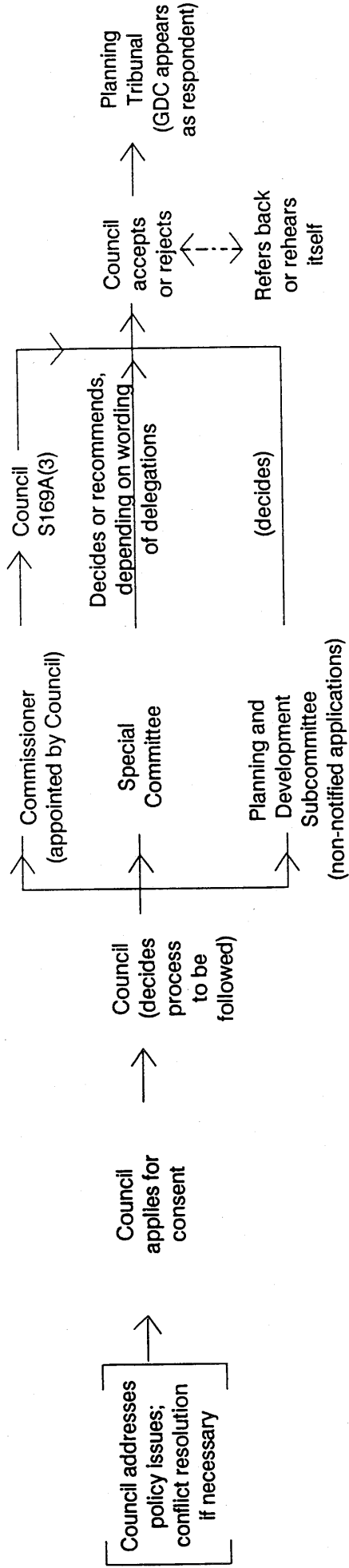


**FIG. 4 WATER RIGHTS (current law, constraints on delegation)**

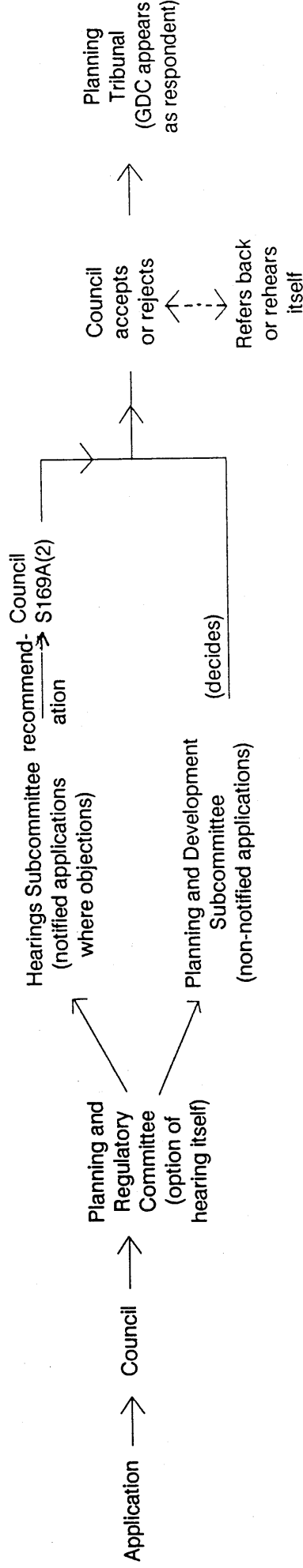


**FIG. 5 TOWN AND COUNTRY PLANNING CONSENT (current law, constraints on delegation)**

**a) If GDC is the applicant :**

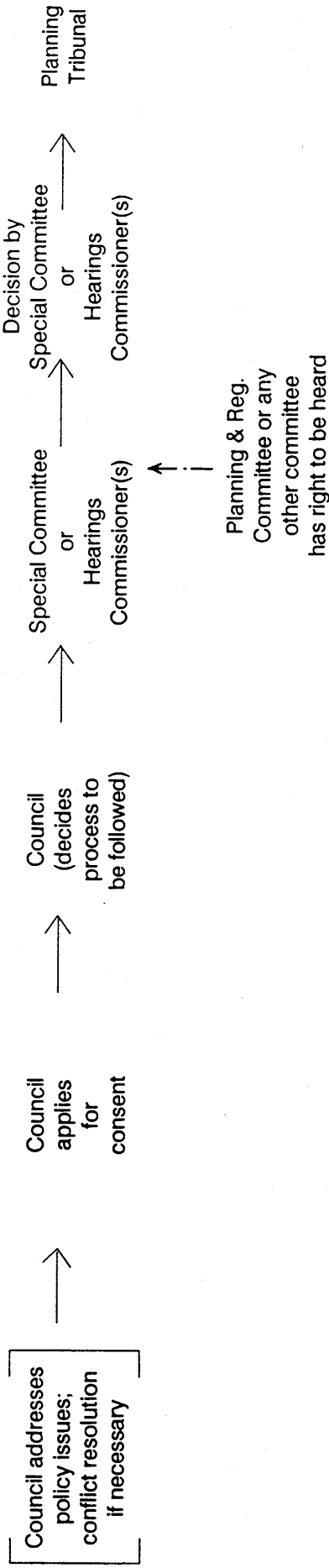


**(b) If applicant is not GDC (majority of cases):**



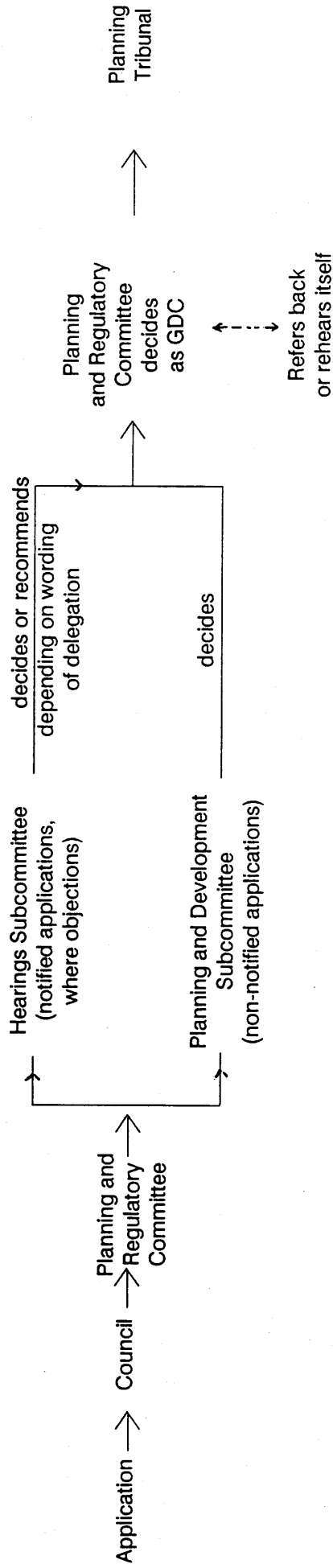
# FIG. 6 POSSIBLE CONSENT PROCESS, IF NO CONSTRAINTS ON DELEGATION

a) If GDC is the applicant:



Planning & Reg. Committee or any other committee has right to be heard

(b) If applicant is not GDC (majority of cases):



## 7.0 CONCLUSION

The capacity of the Gisborne District Council system to deliver sound environmental management could be improved by giving greater emphasis to resource management responsibilities, modifying the respective roles of Council and committees, effecting (specified) changes to the organisational structure and by making a number of other relatively minor adjustments.

The transparency of decision making could be improved and the accountability of decision makers strengthened through the clear specification of the results or outcomes sought, the development of appropriate mechanisms for the resolution of conflict between competing objectives, changes to the committee structure to achieve stronger separation between service delivery and regulatory activities, full separation of the membership of the (proposed) Services Committee and Planning & Regulatory Committee, the drawing of a clear distinction between political and managerial accountability, the revocation of policy making delegations and the fostering of public participation where appropriate.

Under section 37N of the Local Government Act 1974, a unitary authority should not be construed as being both a district council and a regional council. It is a single legal entity, with both district and regional functions. I believe that this observation has important organisational and operational implications.

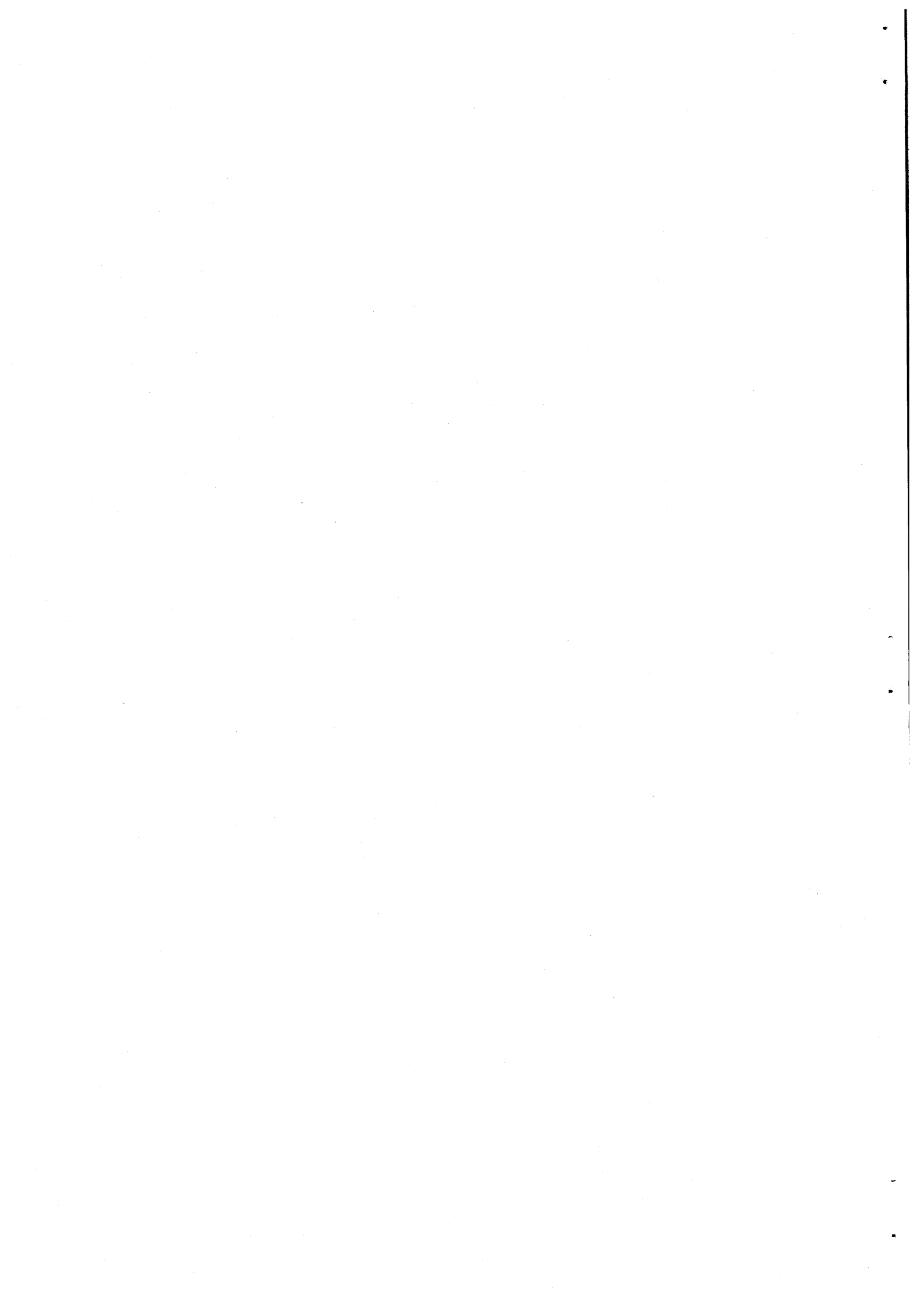
There appears to be no fundamental reason why a unitary authority arrangement cannot deliver adequate environmental management. However the multi-functional nature of this unit of government, and the high potential for conflict between regulatory and service delivery objectives place a premium on the clear specification of objectives, the development of mechanisms for the open resolution of conflict and the making of tradeoffs, and the achievement of a strong separation between regulatory and service delivery activities within the organisational structure. The separation of policy from regulatory and service delivery functions would also appear to be important in a unitary authority.

Unlike the situation where there are separate district and regional councils within a region, and a high degree of service delivery/regulatory separation is achieved *between* organisations, a unitary authority is faced with having to achieve adequate separation *within* the organisation (in the interests of transparency) and at the same time resolve differences between service delivery and regulatory perspectives or between district and regional regulatory perspectives, *without resort to the courts*. I suggest that herein lies both a potential weakness and a potential strength of the unitary system. The emphasis is necessarily on the development of, and adherence to, appropriate administrative conventions to satisfy the requirements of the Act. If these are not developed or adhered to, there is clearly potential for poor outcomes and/or significant citizen dissatisfaction. On the other hand, if this can be achieved, I believe there is potential for efficiency gains in terms of time saved and reduced litigation.

The problems experienced by the Gisborne District Council stemmed partly from the inappropriateness of some of the advice given to Council in setting up its organisational structure. If there are any changes to be made to the present local government structure and other unitary authorities are formed, then there will be a need for advice on the transition from one structure to another. This advice could be provided by the Department of Internal Affairs (Local Government Division) and the Ministry for the Environment.

**REFERENCES**

- 1 NZ Institute of Public Administration (1988). Devolution and Accountability. Studies in Public Administration No.34. Eds John Martin and Jim Harper.
- 2 Ministry for the Environment (1989) Guide to Separation of Regulatory Functions. Resource Law Transition, Working Paper No.1.
- 3 Local Government Amendment Act (No.3) (1988). First Schedule, clause 6(2).
- 4 Local Government (Gisborne Region) Reorganisation Order 1989, NZ Gazette No.99, 13 June 1989.
- 5 Gisborne District Council (1990) Report to the Public Concerning the Council's Plans.
- 6 Gisborne District Council (1990) Delegation Manual.
- 7 Gisborne Herald 3 April 1990 and 5 April 1990.
- 8 National Transition Committee (1989). Guide to Separation of Regulatory Functions. Supplement to Transitional Guidelines, Local Government Reform, Part 2, 7.0 Accountability Mechanisms.
- 9 KMPG Peat Marwick 1988. Gisborne Regional Council Amalgamation, Organisation Review. Draft Final Report.
- 10 NZ Institute of Public Administration (1981). The Accountability of the Executive. Studies in Public Administration No.26. Ed by T M Berthold.
- 11 John Martin and Claudia Scott (1990). Accountability and Local Government Reform. Paper presented at NZ Local Government Association Conference, Dunedin.



## **APPENDICES**

## APPENDIX I

### WATER CLASSIFICATION

Water Classification is the setting of minimum water quality standards for long-term management purposes.

Past classifications tended to reflect existing water quality and as a consequence made extensive use of Class D and Class SD as basic standards. Such a philosophy tended to preserve the status quo and did not provide incentives for improving water quality.

Present classification philosophy looks toward long-term objectives in respect of water quality and in doing so recognises that classification must be taken in conjunction with Section 21(3A) and 21(3B) of the Water and Soil Conservation Act 1967.

In the case of marine waters the use of SB instead of SD not only reflects present day social and cultural values but also is either readily achievable or is presently being attained. Other standards can be used where appropriate.

The use of high background standards does not preclude the discharge of wastes or effluents into such waters. The provisions of Section 21(3A) make it quite clear that when granting a right a council must impose such terms and conditions to ensure that after allowing for reasonable mixing of the discharge with the receiving water the water quality standards are met. In other words an artificial SD zone would be set around the point of discharge in the conditions of the water right. Argument over the size of the mixing zone would be reserved for the water right hearing and not the water classification.

Section 21(3B) of the Water and Soil Conservation Act 1967 provides for the discharge of wastes which do not comply with conditions which would normally be imposed under Section 21(3A). Provided that the applicant had a long-term objective (through treatment) to improve effluent quality and eventually meet receiving water standards then a "temporary" right should apply through the use of Section 21(3B).

The fundamental philosophy therefore today is to set a high overall background standard over which is superimposed individual area standards through conditions in water rights. Disputes over water quality are then limited to areas involving individual water right applications and not water classification.

With regard to water classification high water quality should be maintained where practicable. Otherwise standards must be able to be reasonably obtained and maintained on a regular basis. For example SA waters should only be applied to open coastal waters remote from the influence of urbanisation.

**APPENDIX II****DEFINITION OF LOCAL AUTHORITY FUNCTIONS**

(Taken from Reference 2)

- \* Policy - where a Council is considering, in a fundamental way, what results it wants to achieve for its community and the various means or courses of action it might adopt to secure those results.
  
- \* Regulatory/planning - where the Council is making or administering rules which will influence people's behaviour. Planning is where rules are made in the context of a forward-looking set of ideas and policies for action: a plan.
  
- \* Advocacy/promotional - where the Council acts as an advocate for a particular activity (e.g., industrial development).
  
- \* Technical/information - where the Council prepares information or employs technical services (e.g., laboratory).
  
- \* Operational/service delivery - where the Council provides a particular social or physical service (e.g., pensioner housing or waste disposal).
  
- \* Trading - where Council carries out a business activity (this may also be a service delivery function).
  
- \* Corporate - where Council administers its internal activities, including internal policy making.

---

### APPENDIX III

## A LEGAL INTERPRETATION OF SEPARATION REQUIREMENTS UNDER THE LOCAL GOVERNMENT ACT (No. 2) 1989 [Taken from reference 2]

---

The starting point is the language of the Act, specifically section 223C of the Local Government Act 1974 as amended by the Local Government Act (No 2) 1989.

It is important to look at the words without the preconceived notions about what the section should say. If a Court ever has to deal with this section it will do so on the basis of the words used and not on the background knowledge which went into the formation of the section.

The section expresses strongly the mandatory nature of the direction. All must comply - "Every local authority ... shall, in conducting its affairs, ensure that - ...".

There is no room for argument on the opening phrase that a local authority need not comply with the directions because it is too small, runs as well without such directions, considers the directions as unnecessary or an unjustifiable expense etc.

The first three directions do not provide any dilution of this mandatory requirement. Business must be conducted in a comprehensible and open manner, clear objectives must be set and conflicting objectives must be resolved in a proper manner. Similar points can be made about paragraphs (e) and (f).

Paragraphs (d), (g) and (h) vary in that they do provide an out - *so far as is practicable*. It is these three paragraphs which relate to management structures and indicate that the regulatory functions should be separated from other functions. This separation is only mandatory in so far as it is practicable.

The decision of what is practicable will in the first instance be left to the local authority. It will be the local authority's decision of whether in the circumstances it is practicable for a committee which has regulatory functions to also be charged with non-regulatory functions.

To make such a decision the local authority must have in mind the administrative law rules that have been developed through the Courts. Of outstanding importance in this respect are the rules of natural justice, including the *audi alteram partem* rule. These rules have been established to ensure that a council acts without bias and the citizen gets a fair hearing. Other duties have recently been imposed, such as a duty to consult and a duty of fairness.

In a decision on 8 June 1989 by the Planning Tribunal, *Bible College of New Zealand and Others v Waitemata City Council* (A38/ 89), the Waitemata City Council was clearly told by the Tribunal that its failure to establish an independent committee to hear and consider objections was inappropriate. The Tribunal said -

"We do not accept the submission that the council acted quite properly in hearing and deciding the objections itself, rather than appointing an independent committee. A council ought scrupulously to separate its judicial role

in considering objections from considerations relating to its ownership of property, and bring independent minds to bear on the hearing of objections. *Lamont v Hawkes Bay County Council* (1981) 2 NZLR 442,457."

Later the Tribunal said -

"To avoid any suspicion of bias which might have been entertained arising out of those interests, the better practice would have been to appoint an independent committee. That is what is frequently done by other councils in such circumstances. It is, or ought to be, the normal practice."

It is clear when taking into account this recent pronouncement and the administrative law rules that a local authority is under a heavy burden to act in good faith. This is so without having regard to the Local Government Act. However, section 223C adds to this responsibility and clearly stresses the need for local authorities to act without "any suspicion of bias".

The result is that the local authority must turn its mind to the question of separating regulatory from non-regulatory functions. It is insufficient for it to follow the practice of the past and not give consideration to the statutorily imposed obligation to separate functions. When looking at the possibility of separation the local authority must look at not only the administrative law rules but this new section as a whole. It is clear from the wording of the section that separation should occur unless there is a reason why not. There is an assumption built into this section that separation should occur.

From this basis of both administrative law and the statute, the local authority will need to have a strong case before it can honestly say that it is not practicable to split the functions.

If a local authority does not act in the manner specified in the statute legal action may result. Any person who is not satisfied by a decision could claim that the local authority did not act properly in that there was not a division of functions. The ease of proving the case will depend on a number of factors. If there has clearly been no attempt to separate functions it will probably not be very difficult to show that a decision was not made by a legitimate body.

A finding of this nature could result in the Court ordering the local authority to reconsider the case in light of the Court's finding. The Court could impose its own decision. A writ of mandamus could be sought and made ordering the local authority to do particular things specified in the writ. Failure to observe the requirements of section 223C would also constitute grounds for review under the Judicature Amendment Act 1972. Orders for costs could be made.

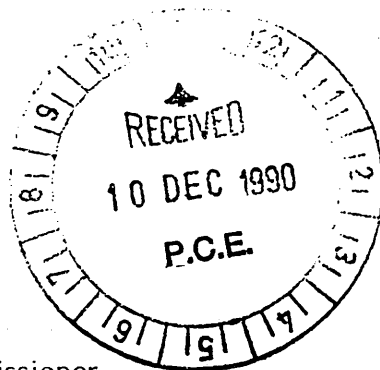
At the very least, Court processes would cost ratepayers money which could easily have been avoided had appropriate procedures been followed. The authorities concerned could find themselves embarrassed on several counts.



**GISBORNE**  
DISTRICT COUNCIL  
AND REGIONAL AUTHORITY

*OFFICE OF THE MAYOR*

6 December 1990



Mrs Helen R Hughes  
Parliamentary Commissioner  
for the Environment  
P O Box 10241  
WELLINGTON

Dear Mrs Hughes

Council is in receipt of your report responding to its request for a review of its structures and processes in relation to committee structure and environmental management.

Council has yet to fully consider the recommendations contained within the report, however I am in a position to convey its (the Councils) initial response.

I acknowledge on behalf of Council the considerable effort put in by yourself and your staff in researching the particular statutory requirements as they pertain to the Unitary Authority, recognising that the Gisborne District Council had made a great deal of progress towards the successful operation of a Unitary Authority.

Council will I believe have little difficulty in accepting and implementing the recommendations as outlined and to this end has already moved to adopt the suggestion of using a Special Committee to deal with an application by Council for a Water Right rather than deal with it through its own Hearings Committee process.

In addition a Code of Practice has been prepared for consideration by Council in conjunction with your report, from which it is envisaged the appropriate delegation changes will be made.

I must at this point acknowledge also the considerable and valuable advice sought and received from the Chairman of the Local Government Commission Sir Brian Elwood. Council has been fortunate to have had two streams of similar advice on the issues on which your comments were sought.

I look forward to being able to report to you in more detail once Council has finally considered the recommendations, however at this point it is important for you to appreciate the action already undertaken by Council.

Yours faithfully

W J CLARKE

Mayor

Gisborne District Council

