

AFFCO New Zealand Ltd v Far North District Council (No 2)

The Planning Tribunal: His Honour Principal Planning Judge Sheppard, presiding; Mr P A Catchpole and Mr J R Dart.

18-22 October, 3-5 November; 2 February 1994

Decision A 6/94

Resource consents — Applications for consents — Proposal to establish abattoir in Rural 1 zone — Whether all necessary consents applied for — Consequences of failure to make all applications necessary for proposal — Resource Management Act 1991, ss 2(1), 9(4)(b), 14(3), 15, 107(1), 374(1)(b).

Practice and procedure — Resource consent applications — Identification of and application for all consents required for proposal — Provision of sufficient particulars — Resource Management Act 1991, ss 31(a), 88, 92, 96, 102, 103, 104, 270.

Effects — Trade competition — Submission that appellant using planning process to regulate competition contrary to s 104(3) — Requirement to have regard to effects on environment including social and economic conditions of people and communities — Extent to which trade competition effects may be taken into account — Resource Management Act 1991, ss 2(1), 5(2), 104(3).

The applicant, Northland Abattoir Ltd, had been granted various consents by the district and regional councils to establish a new abattoir at Mangakahia Road, about 1 km north-west of Tautoro and 7 km south of Kaikohe. The appellant, AFFCO New Zealand Ltd, owned a meatworks at Moerewa, 30 km away. It sought to have the councils' decisions cancelled and the consents overturned.

The proposed facility was intended to provide a full abattoir service for local trade killing of all classes and species of livestock for butchers and the supply of offal to butchers. No processing of meat was to take place on the site, but offal would be trimmed and packed for processing elsewhere. Depending on the rate and frequency of killing, about 17 people would be employed at the abattoir.

The site for the proposal formed part of a 136-hectare property which was the subject of long term leasing arrangements. Water for processing in the abattoir would be taken from an on-site bore, or if that was not available, from the Punakitere River. Solid waste from the abattoir was to be collected and removed each night. The blood would be processed in Auckland and the cattle

paunches would be taken for composting at a position on the farm surrounding the site. Sewage from the abattoir would be treated in a septic tank system and the effluent passed to treatment ponds. The solids were to be separated off in a settling tank and the liquid wastes would then be discharged into a series of anaerobic and aerobic ponds, and finally disposed of by way of spray irrigation onto the ground. Stormwater run-off was to be discharged into a tributary of the Punakitere River.

Under the relevant transitional district plan rural industries were conditional uses in the Rural 1 zone. The proposed abattoir was a rural industry as defined and accordingly the proposal required land-use consent as a discretionary activity. The abattoir, the proposed waste-water treatment system, and the irrigation of treated effluent were all activities for which resource consents were sought. Applications were also made to take water from a bore or from the Punakitere River and to discharge stormwater into the river. However the composting of solid wastes from the abattoir and the earthworks involved in the construction of the treatment ponds and building site were not referred to in the application for land-use consent.

There were four broad areas of the proposed operation from which gaseous substances would be discharged into the air: the abattoir itself, the waste-water treatment ponds, the spray irrigation of treated effluent, and the composting of solid wastes. It was necessary to consider whether resource consents were required for any of these activities as the applicant initially had submitted that they were not.

The principal grounds raised by the appellant for its appeal were first, that social and economic conditions of people and communities would be adversely affected by the loss of employment at the Moerewa works as a result of the livestock being killed at the applicant's abattoir instead; secondly, that the abattoir would threaten the only export sheep and lamb processing works in Northland, which would prejudice the interests of sheep farmers in the district; and thirdly, that the proposal would unnecessarily duplicate existing killing and processing resources at the appellant's Moerewa works. The heart of its case was that an effect of the abattoir would be that the appellant would have to terminate the employment of more people than the applicant could employ. The district council claimed that the appellant was not entitled to use the planning process to achieve regulation of trade competition.

The applicant had elected to continue with the present proceedings rather than make further applications based on more full designs. The appellant urged the Tribunal to allow its appeals, accepting that fresh applications could be brought.

Held (reserving decision on the appeals and allowing the applicant the opportunity to complete its case):

(1) The composting of solid wastes and the earthworks involved in the construction of the treatment ponds and building site required land-use consent. As the activities were not referred to in the land-use consent application, they were beyond the scope of the present application and could not be authorised in the proceedings. Further applications for resource consent would be required.

(2) Each of the areas of the proposed abattoir operation from which gaseous substances would be discharged into the air required resource consents as in each case there would be a discharge of contaminants from industrial or trade premises into air contrary to s 15(1)(c) of the Resource Management Act 1991. The discharges would not be so insignificant that they could be ignored under the principle *de minimis curat non lex*. It was irrelevant whether or not they could be discerned beyond the boundaries of the site.

(3) Good resource management practice requires that in general all the resource consents required for a project should be carefully identified from the outset, and applications for all them should be made at the same time so that they can be considered together or jointly. Similarly the Resource Management Act 1991 requires that the proposed activity the subject of the resource consent application be described with sufficient particularity to enable the various functions laid down in the Act to be performed.

(4) Consent authorities must have regard to any actual and potential effects of allowing the activity, including the effects of the proposal on people and communities and the social and economic conditions which affect them, though not taking into account the effects of trade competition on trade competitors. It is generally appropriate for consent authorities to have regard to effects of trade competition on other than trade creditors.

(5) Potentially there might be adverse effects on the economic and social well-being of people and communities from the establishment of the proposed abattoir, but these could not be permitted to influence the decision on the present appeals. The appellant's claim that an effect of the applicant's abattoir would be that the appellant would have to terminate the employment of more people than the applicant would employ depends on an assessment of the quantities of livestock that might be diverted to the applicant's abattoir. Any finding on the extent of the diversion would be little better than speculation, and an unworthy basis for deciding the present appeals. Because there could be no finding that the proposed abattoir would deprive the Moerewa works of any particular proportion of its budgeted supply of sheep and lambs, there was no basis for concluding that the export sheep and lamb chain would be threatened. The submission that the proposed abattoir would involve duplication of plant could not be taken into account as it was an effect of trade competition on the appellant, a trade competitor of the applicant.

(6) There was nothing in the policies and objectives of the transitional district plan that would be inconsistent with granting land-use consent for the abattoir. There were no rules in the transitional regional plan or in the proposed regional policy statement that would apply to the activities under consideration. In terms of Part II, the proposed abattoir would promote the sustainable management of natural and physical resources, though aspects of the proposal would require modification.

(7) It would be more efficient to allow the applicant the opportunity to complete the presentation of its case before the Tribunal rather than to require it to repeat the process of applications and primary hearings, with the possibility of further appeals. The substance of the proposal was before the Tribunal, and although further design detail may be needed before the

Tribunal could reach a final decision on the merits, no one would be prejudiced if that detail was provided to the Tribunal direct, rather than in the context of fresh applications.

Observation

The Resource Management Act 1991 has been in force for over two years. Those involved have had sufficient time to learn of the practice to be expected. The practice is not entirely new, though the more systematic decision-making process required by the Resource Management Act needs full conformity to it. It is time that applicants and their advisers were conforming to the practice, and that primary consent authorities were insisting on provision of full plans and other details from the start, and refraining from notifying and assessing applications, let alone hearing or considering them, until all the necessary information is provided.

Cases considered

AFFCO New Zealand Ltd v Far North District (Decision A 30/90)

Te Aroha Air Quality Protection Appeal Group v Waikato Region (No 2) (1993) 2 NZRMA 574

Turner v Allison [1971] NZLR 833; 4 NZTPA 104

Appeals under s 120 of the Resource Management Act 1991.

J K MacRae for the appellant

A Ray and (on 22 October) *D R James* for the Far North District Council

P W Mahood (on 18-22 October) and *R M Bell* (on 3-8 November) for the Northland Regional Council

H Rapata for the applicant

The decision of the Tribunal was delivered by His Honour Judge Sheppard.

INTERIM DECISION

These appeals arise from a proposal by Northland Abattoir Ltd (the applicant) for a new abattoir at Mangakahia Road, about 1 km north-west of Tautoro, and some 7 km south of Kaikohe. AFFCO New Zealand Ltd (the appellant) owns a meatworks at Moerewa, some 30 km away. It appealed against decisions of the district and regional councils granting land-use consent, consent to take water from a bore or from the Punakitere River, and a discharge permit for spray irrigation of treated effluent. By its appeals, the appellant sought that the decisions be cancelled and the consents sought refused.

By consent, both appeals and both applications were heard together.

The Proposal

The proposal is for a facility for killing a variety of livestock namely goats, pigs, sheep and cattle. Initially there would be three and a half killing days per week, but consent was sought on the basis of building up to five killing days per week. The purpose of the facility is to provide a full abattoir service for

local trade killing of all classes and species of livestock for butchers, and the supply of all offal to butchers.

The main abattoir would occupy a two-storey building about 55 m long and having a maximum height of 11.4 m. That building would accommodate slaughtering, chiller and load-out facilities. There would be an ancillary office and amenities building, stockyards and holding pens, parking areas, driveways and turning areas, and wastewater treatment ponds. There would be a 750-kilowatt boiler fired by LPG or diesel to provide hot water for the abattoir. The total complex would occupy an area of about 4 ha. There would be no processing of meat on the site, but offal would be trimmed and packed for processing elsewhere. The estimated cost of the abattoir is \$2.2 million.

The site forms part of a property comprising about 136 ha, and the applicant has a provisional agreement to lease the whole property for a term of 20 years with a right of renewal on the basis that the owners would farm the rest of the property and would put aside sufficient area for holding paddocks for the abattoir.

Initially, the abattoir would kill up to 185 head of cattle, 160 pigs, and 850 lambs, sheep and goats per week. There was some difference about the number of people who would be employed but we find that at that rate of killing and with killing at three and a half days per week about 17 people (including six part-time workers) would be employed at the abattoir.

Water for processing in the abattoir would be taken from a bore on the site, or if that is not available, from the Punakitere River. Solid waste from the abattoir would be collected in bins and removed each night by contractors. Blood would be removed to Auckland for processing. The contents of cattle paunches would be taken for composting at a position on the farm adjacent to the irrigation area referred to shortly. Sewage from the abattoir would be treated in a septic tank system and the effluent passed to the treatment ponds.

The design of the wastewater treatment system has been based on an estimated production of about 400 m³ per week initially (from the initial killing rate mentioned above) rising to 800 m³ per week at full capacity of the abattoir.

The liquid wastes from the abattoir would pass in a pipe to where they would be screened and then to a settling tank (with a retention time of one hour) where gross solids would settle out and fat would float to the surface. The solids would be removed from that tank by manual skimming and drainage. The wastes would then be combined with wastewater from the stockyards and discharged into an anaerobic pond measuring 15 m by 15 m by 3 m, which would effectively hold 10 days' effluent at a rate of 400 m³ per week. The outflow from the anaerobic pond would flow to an aerobic pond measuring 45 m by 45 m by 1.5 m, which would have 48 days' storage. The outflow from the aerobic pond would go to a third pond measuring 70 m by 70 m by 2 m having a capacity of 10,000 m³, which would be capable of holding at least 100 days' effluent at 400 m³ per week. The capacity of the final holding pond would need to be increased if the rate of wastewater production increases.

The site for the treatment ponds comprises topsoil overlaid on basalt rock with lenses of clay in low-lying areas. Additional clay, for lining the ponds as well as for bunding, would be required to form the ponds.

Water from the third (holding) pond would be pumped to an area on the farm where it would be disposed of by spray irrigation on the ground. The

irrigation area would initially comprise 16 ha although it is anticipated that a larger area may be needed in the long term. Leachate from the composting of solid wastes would be drained to the treatment ponds. Stormwater from roofs, roadways and parking areas would be drained to discharge to a tributary of the Punakitere River.

[The primary decisions of the consent authorities and the conditions imposed on the consents they granted were detailed.]

The applicant did not appeal against any of those decisions, and may be taken to have accepted the conditions imposed.

Planning instruments

Transitional regional plan

Of the instruments which, by s 368, are included in the deemed regional plan for Northland, the only one which is relevant to this case is a former notice under s 34(2) of the Soil Conservation and Rivers Control Amendment Act 1959 by which consent is required for earthworks exceeding 2,000 m³ pa.

Proposed regional policy statement

By public notice given on 11 October 1993 the regional council proposed a regional policy statement for Northland. The statement contains a number of objectives and policies relating to soil conservation and land management, biodiversity and ecosystems and transport. It records a general policy of maintaining minimum flow regimes in rivers and streams so that not less than 75 per cent of the best available estimate of the natural one-in-five-year low flow at any point on any river or stream is reserved as a minimum residual flow, and that not less than 50 per cent of the flow above that low flow be retained in stream. In respect of discharges, the statement has an objective of avoiding, remedying or mitigating adverse effects of discharges of contaminants on the traditional, cultural and spiritual values of water held by the tangata whenua.

Northland regional planning scheme

Because there is now a proposed regional policy statement in respect of the Northland region, by s 367(2) the councils are no longer required to have regard to the principal section of the Northland regional planning scheme which had been approved under s 24 of the Town and Country Planning Act 1977.

Transitional district plan

In respect of the part of the Far North district in which the abattoir site is located, the relevant transitional district plan is the former Bay of Islands County district scheme which had been prepared under the Town and Country Planning Act 1977, was publicly notified in February 1988, adopted in November 1992 and made operative in December 1992.

That plan expresses an objective of minimising intervention in the use and development of rural land, and a policy of "maximum flexibility in rural production options". It also contains an objective of fostering the service, employment and productive potential of industry, and states policies for attaining that objective. None of the policies questions the appropriateness of establishing industry in rural areas.

By the transitional district plan, the abattoir site is zoned Rural 1 (General), which is the principal rural zone in that scheme. Nearly all the land in the vicinity of the site is also in the Rural 1 zone.

The zone statement for the Rural 1 zone states that the zone “provides for a diverse range of permitted rural land uses with controls on uses only introduced where the operation may detrimentally affect the amenities of the neighbourhood, traffic, safety, environmental qualities or any other aspect of the local environment”. Rural industries are conditional uses in the zone, and are therefore, by s 374(1)(b), discretionary activities under the Resource Management Act 1991. The district plan contains general criteria for assessing conditional uses and also specific criteria for assessing rural industries in the Rural 1 zone. The general criteria are broadly stated. The specific criteria are arranged as site criteria and performance criteria. The site criteria are access, water supply, effluent disposal, labour force, size limitation, land quality, wetlands and wildlife habitats and natural environment. The performance criteria are stormwater and waste disposal, noise, air pollution, glare, hazardous substances, loading and parking, landscaping, and smell.

Resource consents required

Land-use consent

As mentioned, the transitional district plan prescribes that rural industries are conditional uses in the Rural 1 zone. A rural industry is defined by ord 201 (which has become a rule of the transitional district plan) as follows:

Rural industry means any industry for the processing of agricultural products and the servicing of the agricultural sector, and includes packhouse and coolstore facilities, but excludes timber processing facilities.

We find that the proposed abattoir is a rural industry within that definition, and hold that the proposal requires land-use consent as a discretionary activity. That is evidently how the applicant and the district council treated the proposal. The applicant had applied to the Far North District Council for land-use consent, and in these proceedings it pursued that application.

By the transitional district plan, storage of more than 20 tonnes of LPG requires land-use consent. However the applicant does not propose to store more than 20 tonnes of LPG, so consent is not required in that respect.

The wastewater treatment system was described in the application, and as a land use it is part of the discretionary activity for which land-use consent was applied for. Similarly, the irrigation of treated effluent on grazing pasture is also a land-use activity that was included in the application for land-use consent.

However, the proposed composting of solid wastes from the abattoir was not referred to in the application for land-use consent. We find that it is a use of land in terms of s 9(4)(b), being a deposit of substances on land, and being part of a rural industry, and not being part of normal farming activity, it is a discretionary activity and requires land-use consent. As that activity was not referred to in the land-use consent application in any way, it is beyond the scope of the application and cannot be authorised in these proceedings. A further application for resource consent in that respect will be required.

Taking of water

The applicant proposes to take up to a total of 200 m³ per day of water from a bore on the site, being in the catchment of the Punakitere River, or from the Punakitere River itself. That taking is not expressly allowed by a rule in a regional plan or otherwise by s 14(3), so resource consent is required. The applicant's applications to the regional council for resource consent to do so are identified as applications 4951 and 4952 respectively.

The Tribunal was informed that groundwater from the bore is preferred by the applicant because it is likely to have better quality and to require less treatment. The application to take water from the river was made in case the permit to take groundwater is declined, or in case that resource proves inadequate. The applicant has drilled and tested the discharge from a bore on the site.

Discharge to ground

Because the transitional regional plan contains no provisions by which the discharge of treated effluent to ground by spray irrigation is allowed, resource consent for that discharge is required by s 15. The applicant has applied to the Northland Regional Council for a discharge permit to discharge up to 200 m³ per day to ground accordingly, that application being identified as No 4953.

Discharge to water

The applicant proposes that stormwater runoff from the abattoir roofs, roadways and carparks be discharged to an intermittently-flowing unnamed tributary of the Punakitere River at two points. The design maximum rate of runoff from roofed areas for a one-in-ten-year storm of ten minutes' duration is 58 litres per second, and from all roadways and carparks, it is 86 litres per second, a total of 144 litres per second. No treatment is proposed.

Again the discharge is not allowed by the transitional regional plan, so a discharge permit is required by s 15. The applicant has applied to the Northland Regional Council for a permit, and that application is identified as No 4954. The receiving waters are not in the Bay of Islands catchment, but run to the Hokianga Harbour, and are not classified waters.

Discharge to air

Initially the applicant submitted that it did not need resource consent to discharge contaminants from the abattoir or from the wastewater treatment ponds into air. The relevant provision is s 15(1), the material passages of which read:

- (1) No person may discharge any— . . .
- (c) Contaminant from any industrial or trade premises into air; or . . .
unless the discharge is expressly allowed by a rule of a regional plan, a resource consent or regulations.

The term "contaminant" is defined in s 2(1) as follows:

- "Contaminant" includes any substance (including gases . . .) . . . that either by itself or in combination with the same, similar, or other substances . . . — . . .
- (b) When discharged . . . into air, changes or is likely to change the physical, chemical, or biological condition of the . . . air . . . into which it is discharged.

The term “industrial or trade premises” is defined in the same subsection as follows:

“Industrial or trade premises” means —

- (a) Any premises used for any industrial or trade purposes; or
- (b) Any premises used for the storage, transfer, treatment or disposal of waste materials or for other waste management purposes or used for composting organic materials; or
- (c) Any other premises from which a contaminant is discharged in connection with any industrial or trade process —

and includes any factory farm; but does not include any production land.

There are four broad areas of the proposed abattoir operation from which gaseous substances would be discharged into air: the abattoir itself, the wastewater treatment ponds, the spray irrigation of treated effluent, and the composting of solid wastes. None of those discharges would be expressly allowed by a rule of the transitional regional plan or by regulations. It is necessary therefore to consider whether any of them requires resource consent as a discharge of contaminant from industrial or trade premises into air.

We find that in each case the discharge would be from industrial or trade premises as defined. We find that from the abattoir itself there would be discharged into air methane gas and carbon dioxide from paunch contents, and hydrogen sulphide from intestines. From the wastewater treatment ponds carbon dioxide, methane and nitrogen gases would be discharged. From the composting operation there would be discharges of carbon monoxide, nitrogen and carbon dioxide. However, there was not evidence on which we could find any discharge of contaminants into air from the spray irrigation.

We find that the gases referred to from the other three classes of activity would be contaminants within the defined meaning of that term. On the face of it discharge permits are required, but no applications have been made. Evidently the applicant had not turned its mind to the possibility that resource consent would be required; nor had the regional council. It was contended that the contaminants would not be detectable beyond the boundaries of the site and that as the activities are within the scope of the application for consent to an abattoir, separate discharge permits are not needed.

We accept that there may be some discharges to air of contaminants which are so insignificant that they may be ignored under the principle *de minimis curat non lex*. However there is no evidence on which we could find that the discharges from the proposed abattoir treatment ponds and composting would be so insignificant. In our opinion it is not relevant that the contaminants may not be discernible beyond the boundaries of the site. As counsel for the appellant reminded us, there is no allowance for mixing in respect of the discharge of contaminants to air which may be compared with the provision for mixing in s 107(1) for the discharge of contaminants to water. That omission must have been deliberate and, as Mr MacRae pointed out, contaminants in the air within the site could affect natural resources within the site.

We therefore hold that resource consents in the nature of discharge permits are required for the discharges of contaminants into air from the abattoir, from the wastewater treatment ponds, and from the composting. No application for

consent to discharge into air has been made, and the topic is therefore beyond the scope of the present proceedings.

Earthworks

We find that earthworks involved in excavation of the treatment ponds, preparation of the building site, drives and paved areas would far exceed the threshold of 2,000 m³ in the deemed rule in the transitional regional plan that succeeds to the former s 34 notice. Resource consent is therefore required for those earthworks, but no application has been made. Again that consent is beyond the scope of the present proceedings. Counsel for the applicant accepted, in his address in reply, that an application would need to be made.

Summary

In summary the proposal requires the following resource consents for which applications are the subject of these proceedings: land-use consent for the abattoir, the wastewater treatment ponds and spray irrigation; consent to take water from the bore and from the Punakitere River; and discharge permits for the spray irrigation of treated effluent to ground and for the discharge of stormwater to the river. We hold that the proposal also requires the following resource consents which are beyond the scope of the present applications and which could not be granted in these proceedings as they stand: land-use consent for the composting of solid wastes from the abattoir; discharge permits for discharges into air of contaminants from the abattoir, from the wastewater treatment ponds and from the composting; and consent to the earthworks required to form the sites for the abattoir buildings, treatment ponds, driveways, manoeuvring and parking areas.

[Under s 230(5) of the Resource Management Amendment Act 1993, the application was to be considered as if the changes to ss 104 and 105 of the principal Act had not been made.]

Resource management practice

The Resource Management Act 1991 contemplates that where more than one resource consent is required for a proposal, applications for all the consents required should be made at about the same time. Indications of that may be found in the, provisions for joint hearings and decisions by primary consent authorities (see ss 102 and 103) and by this Tribunal (see s 270), and in references in the Act to integrated decision-making (see s 31(a) and s 88(4)(d)).

The value of integrated decision-making is apparent from the purpose of the Act and from the considerations stipulated by s 104. Unless all the effects, positive and negative, of a proposal are assessed together, the consideration of them required to make the ultimate judgment whether the consent should be granted or refused may be incomplete, and the balancing of them may be distorted. In that regard we adopt what was said in *Te Aroha Air Quality Protection Appeal Group v Waikato Regional Council (No 2)* (1993) 2 NZRMA 574 at 577.

Therefore good resource management practice requires that in general all the resource consents required for a project should be carefully identified from the outset, and applications for them all should be made so that they can be considered together or jointly. That is not entirely new. Similar practice was

expected by this Tribunal for proposals under the previous regimes, as is indicated by paras 4-6 of the Tribunal's former Practice Note issued in June 1985 [see (1985) 10 NZTPA 467, 468]. An indication of the practice expected under the Resource Management Act 1991 is contained in paras 4-6 of the Tribunal's Practice Note of 29 July 1992 [see (1992) 1 NZRMA 292].

The Resource Management Act 1991 has been in force now for over two years. Those involved have had sufficient time to learn of the practice to be expected. It is time that applicants and their advisers were conforming to that practice, and that primary consent authorities were insisting on conformity to it.

Similarly, the Resource Management Act 1991 contemplates that applications for resource consents be accompanied by particulars of the proposal which the consent would authorise. The indications of that are to be seen from a combination of several provisions. First there is the reference in s 88 to the application including an assessment of effects on the environment in detail corresponding with the scale and significance of the effects, and prepared in accordance with the Fourth Schedule; and the provision in the form prescribed for resource consent applications (Form 5 of the Schedule to the Resource Management (Forms) Regulations 1991 (SR 1991/170)) for the applicant to give a description of the activity to which the application relates. Then there is the provision of s 92 for a consent authority to require further information necessary to enable it to understand the nature of the activity and the effect it would have on the environment. Further there is the provision of s 96 for those making submissions about applications for resource consent to state reasons and the general nature of conditions sought. Then there is the duty imposed by s 104 on a consent authority to have regard to the effects of allowing the activity, and the power conferred by s 105 on a consent authority to impose conditions on a resource consent.

From those provisions we infer that it is intended that the proposed activity the subject of the resource consent application is to be described with sufficient particularity to enable those various functions to be performed. The proposed activity has to be described in detail sufficient to enable the effects of carrying it on to be assessed in the way described by the Fourth Schedule. The description is intended to include whatever information is required for a consent authority to understand its nature and the effects that it would have on the environment. The description is expected to be full enough that a would-be submitter could give reasons for a submission about it and state the general nature of conditions sought. The application needs to have such particulars that the consent authority would need to be able to have regard to the effects of allowing the activity, and to decide what conditions to impose to avoid, remedy or mitigate adverse effects without abdicating from its duty by postponing consideration of details or delegating them to officials. (The limits on delegation were authoritatively described in *Turner v Allison* [1971] NZLR 833; 4 NZTPA 104 (CA).)

It is to be remembered that unlike corresponding legislation in England, the Resource Management Act makes no provision for outline approval, or approval in principle, the final permission to follow on subsequent presentation of more detailed plans. Under this Act, a consent authority is expected to make a final decision, and if resource consent is granted, to impose conditions that will enable the grantee to assess their full effect before deciding whether or not to exercise the consent.

In summary, good resource management practice requires that sufficient particulars are given with an application to enable those who might wish to make submissions on it to be able to assess the effects on the environment and on their own interests of the proposed activity. Advisers to consent authorities and would-be submitters should not themselves have to engage in detailed investigations to enable them to assess the effects. It is an applicant's responsibility to provide all the details and information about the proposal that are necessary to enable that to be done. The proposal and the supporting plans and other material deposited for public scrutiny at the consent authority's office should contain sufficient detail for those assessments to be made.

Again the practice is not new, though the more systematic decision-making process required by the Resource Management Act needs full conformity to it. It is time that applicants and their advisers were conforming to the practice, and that primary consent authorities were insisting on provision of full plans and other details from the start, and refraining from notifying and assessing applications, let alone hearing or considering them, until all the necessary information has been provided.

In this case the applicant answered points raised that the application had failed to specify design, size and location of the waste-water treatment system by stating that those details were unnecessary as they are well covered by the Meat Act and its regulations and would have to be submitted to the Ministry of Agriculture and Fisheries (MAF) for approval. We do not know the purpose of the MAF controls, but we accept that they would be designed to prevent transmission of disease, and to avoid contamination of food. The consideration by MAF of the proposal may indeed overlap in some respects with consideration of the design of the proposal in deciding resource consent applications. Yet the consent authorities under the Resource Management Act have their own responsibilities under that Act. They are not free to abdicate from them in favour of MAF officials. Despite the value and importance of MAF controls, consent authorities need to give their own consideration to the details of a proposal to enable them to assess its effects on the environment, and to consider whether the statutory purpose of sustainable management would be promoted.

On these appeals the presentation of the applicant's case left the Tribunal without a clear understanding of the proposal in several points of detail necessary to enable us to assess the effects on the environment. Following announcement to that effect, further plans were presented during the course of the appeal hearing, and without the appellant having had the opportunity to consider and obtain advice on them. The circumstances in which we decided, reluctantly, to continue with the appeal hearing were described in the oral decision given on 19 October 1993, the record of which is identified as Decision W 98/93. That decision should be read with the present decision. [That decision is reported earlier in this part.]

In the result, we cannot in these proceedings make a final decision to grant consent to the proposal without giving the other parties the opportunity to present submissions and evidence on the composite drawings and management plans presented on 19 October 1993; nor should we make a decision favourable to the applicant while there remains the need for resource consents which have not been obtained (or even applied for) and which are not before the Tribunal in these proceedings.

The applicant eventually understood that position and elected to proceed with the appeal hearing.

Effects on Moerewa

[Details as to the site and locality have been omitted.] The appellant is a cooperative company, with a principal business in meatworks, mainly for export meat. It has long had a meatworks at Moerewa (which is about 24 km east of Kaikohe), and has recently upgraded those works, constructing a modern efficient plant for killing and processing beef and sheep.

Three principal grounds of the appeal were first, that social and economic conditions of people and communities would be adversely affected by loss of employment at the Moerewa works as a result of livestock being killed at the applicant's abattoir instead; secondly, that the abattoir would threaten the only export sheep and lamb processing works in Northland, which would prejudice the interests of sheep farmers in the district; and thirdly, that the proposal would unnecessarily duplicate existing killing and processing resources at the appellant's Moerewa works.

The case in support of those grounds was based on the following five propositions. First, the appellant's new Moerewa works operates two chains, one for beef and one for lambs, mutton and bobby calves, and employs a total of 257 employees. As the Moerewa works is a full processing plant, it is more labour-intensive than slaughter-only plants like the proposed abattoir; so that every job offered at a slaughter-only plant would correspond to two jobs lost at Moerewa. The second proposition is that the lamb and mutton chain at Moerewa has a capacity of 1,400 head per day; that the 850 lambs, sheep and goats which the applicant hopes to kill on three-and-a-half days per week would represent about 27 per cent of the appellant's projected production; that the appellant's lamb and mutton chain is only marginally viable, and a loss of 15 per cent of the budgeted killing quantities would make it unprofitable so that it would have to close; that if the Moerewa lamb and mutton chain was closed, 60 jobs would be lost, and in addition, there would not be casual work for extra workers taken on in the bobby calf season.

Thirdly, the projected beef kill at the applicant's abattoir of 185 head per week represents about 6 per cent of the Moerewa beef capacity; and about half that number are likely to be stock that otherwise would have gone to the appellant's works; and that would cost further jobs at Moerewa.

Fourthly, the effect of the lost employment at Moerewa would be an annual net loss of wages of about \$854,000 and, applying employment multipliers, indicative results of the relative impacts of closure of the Moerewa chain are that there would be a loss of a further 44 jobs through production-induced flow-on effects (and a loss in wages after accounting for unemployment benefit of \$1.7 million); and a loss of a further additional 16 jobs as a result of consumption-induced effects (and a loss in wages from direct production-induced and consumption-induced effects after accounting for unemployment benefit of about \$2 million). Fifthly, the likely social effects of those losses would be borne not only by those made redundant and their immediate families and households, but also by the community itself through subsequent redundancies or under-employment as well as through cumulative and collective effects of unemployment on the social fabric of the community. The net loss of income after accounting for unemployment benefits would affect

the amount of cash available in the community, further depressing the local property market, further reducing local services, and increasing the demand on local caring groups and increasing social stress.

On the prejudice to sheep farmers in the district, it was established that there is no other export lamb processing operation in Northland.

The applicant did not accept that the livestock which it would kill would otherwise be killed at the appellant's works at Moerewa. It estimated that 75 per cent of its throughput would be stock that is not currently killed by the appellant, and it referred to an agreement it had with a wholesaler who would be supplying livestock and retailing the meat through its shops. The applicant did not accept that operation of its abattoir would cause the appellant to close its lamb and mutton chain, and asserted that there is a need for local competition for the appellant in Northland to provide a choice of service and costs.

The district council referred to AFFCO's case in previous Tribunal proceedings (*AFFCO New Zealand Ltd v Far North District Council* (Decision A 30/90, 8 June 1990)) and claimed that the appellant was not entitled to use the planning process to achieve regulation of trade competition, and that establishment of a further abattoir outside Northland could have potential for similar effects on the appellant as the present proposal is alleged to have. Counsel observed that with competition there must be some potential effect on a competitor's labour force.

We commence our consideration of this issue by quoting s 104(3) of the Act: "When considering an application for a resource consent a consent authority shall not take into account the effects of trade competition on trade competitors." We note that it is only the effect on trade competitors that is not to be taken into account. Apart from that, consent authorities are to have regard to any actual and potential effects of allowing the activity (s 104(1)). That would include effects on the environment, which is defined (by s 2(1)) to include people and communities and the social and economic conditions which affect them. The reference in the defined meaning of "sustainable management" in s 5(2) to managing resources in a way which enables people and communities to provide for their social and economic well-being supports the view that consent authorities should have regard to effects of proposals such as the present on social and economic conditions, though not taking into account effects of trade competition on trade competitors. We hold that it is generally appropriate for consent authorities to have regard to effects of trade competition on other than trade competitors.

So while we reject from consideration any effects of trade competition of allowing the abattoir proposal that are effects on the appellant, we address those effects on others, and in particular, on social and economic conditions of people and communities.

The heart of the appellant's case in that respect is that an effect of the applicant's abattoir would be that the appellant would have to terminate the employment of more people than the applicant would employ. That in turn depends on the applicant persuading suppliers of livestock for killing whom the appellant hopes will send the stock to its Moerewa works to send them to the proposed abattoir at Tautoro instead.

We accept that there are likely to be some of that undefined class of livestock suppliers who would do so (although no individual was called to

give direct evidence of an intention to that effect). Despite the urging of the parties for disparate estimates of the quantities of livestock that might be diverted to the applicant's abattoir, we do not consider that we have any sound basis for a judicial finding of the extent of the diversion. The amount of livestock killed by the applicant instead of by the appellant is likely to depend partly on relative prices and quality of service, partly on the success of relative marketing, and partly on personal influences such as suppliers' individual attitudes to the appellant and to the applicant. There may well be other factors of which we are unaware. Any finding that we might attempt would be little better than speculation, and an unworthy basis for deciding these appeals. If the applicant finally secures the required resource consents, raises the necessary funding, and establishes its abattoir, the resulting competition of animal killing facilities in mid-Northland is likely to advance in a general way the economic well-being of those involved in supplying livestock and in dealing in meat, and may also advance the economic well-being of the mid-Northland community.

The adverse effects on the economic well-being of any who lose jobs as a result of that competition would be regrettable, as would any consequential economic and social effects of numerous "lay-offs" on the local communities. However those effects would flow as much from the general economic conditions in the district, because there are no other jobs available for those laid off from the appellant's works. The management of an individual enterprise, even one as prominent as the appellant is in Moerewa, cannot sensibly be held responsible for those general conditions merely because, in efforts to survive as a business, it has converted an old-fashioned labour-intensive plan to a modern mechanised plant, and now employs many hundreds fewer than it did 10 years ago.

(These proceedings do not provide a forum for putting the appellant on trial for its management practices at its Moerewa plant over that period. The persistent efforts by the applicant's counsel to focus on those matters were regrettable.)

Because (for the reasons already given) we are not able to make a finding that the proposed abattoir would deprive the Moerewa works of any particular proportion of its budgeted supply of sheep and lambs, we have no basis for concluding that the export sheep and lamb chain would be threatened.

The third of the grounds advanced for the appellant in the present context is that the applicant's proposal would involve duplication of plant already provided by the appellant at its Moerewa works. We do not consider that we should take that into account in deciding this appeal. Our reason is that if the duplication of plant is a relevant effect of the proposal it is an effect (as defined) of trade competition on the appellant, which we find to be a trade competitor of the applicant. Taking such effects into account is forbidden by section 104(3).

In summary, although we recognise that potentially there might be adverse effects economic and social well-being of people and communities from the establishment of the proposed abattoir, for the reasons given we will not permit that potential to influence our decision on these appeals.

[The detailed consideration of the proposal in the light of the statutory criteria has been omitted.]

Consideration of Statutory Criteria

We have already considered the effects of allowing the activity in respect of each of the components of the proposal already discussed.

Of the matters listed in s 104(4), we have referred to the relevant rules of the transitional district plan which is applicable to the land-use consent required for the abattoir. By those rules, that use of land is a discretionary activity and we have addressed the various assessment criteria contained in the plan as they apply to that proposal.

In having regard to relevant policies and objectives of the plan, we note an objective of fostering the service, employment and productive potential of industry in references to proposals for industrial development opportunities in three localities in the district. In respect of resource use there is an objective of providing for versatility in rural land-use and policies of minimum controls to ensure maximum flexibility in rural production options and of protecting elite soils. There is a statement that land-use planning and water management need to be complementary when waste disposal is considered; and a statement of the paramount importance of conserving and protecting natural and valued features which contribute to the natural environment of the district.

We have found nothing in the policies and objectives of the transitional district plan that would be inconsistent with granting the land-use consent for the abattoir as indicated by application of the assessment criteria in the plan.

There are no rules in the transitional regional plan or in the proposed regional policy statement that would apply to the activities the subject of these proceedings; the proposed taking of water would not conflict with the proposed policy about maintaining minimum residual flow regimes in rivers, nor with the proposed objective about discharges of contaminants already mentioned.

Consideration of Part II is also required. In our judgment the proposed abattoir could only be found to promote the sustainable management (as defined) of natural and physical resources to the extent that we are able to conclude that the disposal of wastes from the abattoir into the environment would meet the objectives stated in paras (a), (b) and (c) of s 5(2). We have already indicated in detail various respects in which the evidence has not satisfied us. On the evidence we have heard, we accept that the proposed abattoir would enable people and communities to provide for the social, economic and cultural well-being (but at a cost to the social and economic well-being of other people and communities). We have not been satisfied that it would be practicable to construct the treatment ponds on the site so that the desired threshold of impermeability of 10^{-9} metres per second would be maintained in the long term; nor that the waste-water treatment plant as designed would have sufficient capacity to cope with the volume of waste-water from the abattoir, roofs and vehicle areas, and from the composting area; nor that the treatment plant, with intermittent loading and varying climatic conditions, would consistently operate without discharging unpleasant odours, and would produce effluent suitable for spray irrigation; nor that the proposed spray irrigation, including the size and trajectory of spray nozzles and delivery rates and pressures, would cope with the sloping ground of the irrigation area so as to provide even application of the effluent at varying elevations without ponding, without overland flow to waterways and without seepage through ground of relatively high permeability to groundwater. Nor are we satisfied that appropriately methodical investigations have been made

into possible alternative methods of treatment and disposal of waste-water. There is insufficient evidence about adverse effects on the environment of the systems for treating and disposing of waste-water and solid wastes from the abattoir to enable us to judge the extent to which the proposal would avoid, remedy or mitigate any adverse effects of the activities on the environment.

There are no other matters in Part II that appear to be applicable in the circumstances of this case.

Determination

In its submission to the primary consent authorities, and by its notice of appeal, the appellant had called in question the sufficiency of the design and definition of the proposed works. Despite that, the applicant elected to pursue its present applications rather than make further applications based on more full design. Furthermore, the applicant has not applied for all the resource consents required by the proposal. Those are the circumstances in which the appellant, understandably, urged the Tribunal to allow its appeals, accepting that fresh applications might be brought.

However we acknowledge that the substance of the proposal is already before the Tribunal, and although further design detail may be needed before the Tribunal could reach a final decision on the merits, no one would be prejudiced if that detail were provided to the Tribunal direct, rather than in the context of fresh applications. We consider that it would be more efficient to allow the applicant the opportunity to complete the presentation of its case before the Tribunal than to require it to repeat the process of applications and primary hearings, with the possibility that the matter would come before this Tribunal again on further appeals. However in giving the applicant the opportunity to complete its case we make two reservations. First it should not be assumed that the appeals will be disallowed and the necessary consents granted. We are not yet in a position to make that decision. Secondly other applicants should not presume that the Tribunal would offer similar indulgences for inadequately prepared proposals.

For those reasons the Tribunal intends to allow the applicant the opportunity to obtain the other resource consents required for its proposal; and the Tribunal will re-open the appeal hearing if within six months of the date of this decision the applicant gives notice that it has obtained the other consents required (or that they are the subject of appeals to this Tribunal); and that it is ready to present further evidence on which the Tribunal can assess the practicability of the treatment ponds being constructed and assess the likely effects on the environment of the waste-water treatment system, the spray irrigation, and the composting of solid wastes. The decision on the appeals is therefore further reserved. If the applicant does not give that notice within that period, the appeals will be disallowed.