



Report of the

**Controller and
Auditor-General**

Tumuaki o te Mana Arotake

on

**Thames Coromandel
District Council:
Actions Relating to
a Sewerage Scheme for
Cooks Beach and Ferry Landing**

June 2001

ISBN 0 477 02878 0

Foreword

This report sets out the results of a review we undertook following receipt of a complaint about certain actions of the Thames Coromandel District Council.

The complaint related to the Council's decision that the most appropriate form of sewerage system to service properties at Cooks Beach and Ferry Landing was a reticulated scheme.

This was a policy decision by the Council, and we note in the report that it is not our role to determine whether a local authority has made the correct policy decision.

We did conclude, however, that (because of the lack of cost benefit information) it is difficult for the Council to demonstrate that the reticulation option is indeed the best use of ratepayers' funds.

Other issues covered in the report include:

- the manner in which the Council resolved to undertake the sewerage reticulation;
- implications of acting over a period when certain relevant legislative requirements were being repealed and new legislative requirements were coming into force; and
- whether the views of ratepayers on the sewerage options were adequately sought.

We believe that other local authorities will find the discussion of the issues dealt with in this report helpful when faced with making similar decisions.

K B Brady
Deputy Controller and Auditor-General

21 June 2001

Contents

	<i>Page</i>
1 The Complaint	5
2 Background	7
3 Our Findings	8
The sewage management debate	8
When did TCDC decide to proceed with the reticulation option?	8
The September 1996 resolutions	8
Our view of the September 1996 resolutions	9
The February 1999 resolution	10
Our view of the February 1999 resolution	10
The significance of the timing of TCDC's decision	10
The Local Authorities Loans Act 1956	10
Part VIIA of the Local Government Act 1974	12
Was TCDC required to undertake a cost benefit study before its decision?	13
Were the views of ratepayers on the different options adequately sought by TCDC?	14
Can TCDC demonstrate that reticulation represents the best use of ratepayers' funds?	16
Appendix – History of the Sewerage Issue	18

1 – The Complaint

- 101 In March 2000 the Cooks Beach & Ferry Landing Ratepayers Association Inc (the Ratepayers Association) complained to the Audit Office about actions taken by the Thames Coromandel District Council (TCDC). The basis of the complaint concerns TCDC's decision to build a reticulated sewerage scheme for the Cooks Beach and Ferry Landing area. The scheme is estimated to cost \$10.6 million (GST-included).¹
- 102 The Ratepayers Association does not agree with TCDC's decision to reticulate Cooks Beach and Ferry Landing. It believes that a less expensive wastewater disposal option would be suitable for the area; that is, a system of upgraded septic tanks, known as on-site disposal. The Ratepayers Association has obtained a quotation of \$4.4 million (GST-included), from a company specialising in wastewater solutions, to implement an upgraded on-site system for the properties at Cooks Beach and Ferry Landing.
- 103 TCDC has had the Ratepayers Association's quotation reviewed, and this review indicates that the cost of the on-site option proposed would be closer to \$6.7 million (GST-included).
- 104 We have not attempted to form a view on the reasonableness of either TCDC's figure or the Ratepayers Association's figure. However, when comparing the costs of the two schemes, it is important to bear in mind the different capacities of the schemes.
- 105 Our understanding is that the reticulated scheme would have a capacity to service 1306 properties. That number would include the existing 650-odd properties in the area plus the 250 properties being developed in a new subdivision. The remainder of the scheme's capacity would be available to cater for future development in the area.
- 106 In contrast, the upgraded on-site disposal option would improve sewage disposal only for existing properties in the area. This option would not apply to the 250 properties in the new subdivision, which are to be serviced by a reticulated system installed by the developer.
- 107 Our summary of the essence of the Ratepayers Association's complaint is that:
- TCDC has not sought the views of ratepayers on which option they would prefer and, hence, TCDC does not know whether it has made a decision which has the support of ratepayers of Cooks Beach and Ferry Landing, who have to pay for the scheme.

¹ Based on the advice provided to ratepayers by TCDC in its Draft Funding Policy document, circulated to ratepayers in July/September 2000.

- TCDC cannot demonstrate that a reticulated sewerage scheme represents the best use of ratepayer funds.

108 In order to investigate the complaint, we:

- reviewed documentation relating to the history of sewerage schemes at Cooks Beach and Ferry Landing – which we obtained from ratepayers, TCDC and Environment Waikato;
- interviewed a range of staff and elected members at TCDC; and
- interviewed representatives from the Ratepayers Association.

2 – Background

- 201 The small seaside communities of Cooks Beach and Ferry Landing are located on the eastern side of the Coromandel Peninsula. Cooks Beach is a low-lying, sandy area. Ferry Landing is a hilly, rocky area at the north-western end of Cooks Beach.
- 202 Cooks Beach and Ferry Landing are primarily holiday locations, and, as such, have a low permanent occupancy. Of the 650 or so existing residential and commercial properties in the area, approximately 100 are used by permanent residents. The remainder are used infrequently by absentee owners for holiday purposes.
- 203 All of the properties, including two camping grounds, currently have septic tanks installed. 82% of the properties are located at Cooks Beach.
- 204 At the eastern end of Cooks Beach is a new subdivision of approximately 250 lots, developed by a private company, Cooks Beach Developments Limited (CBDL). The developer has installed a reticulated sewerage system to service this subdivision. The sewage from this subdivision is reticulated to a treatment plant, previously owned by Cooks Beach Utilities Limited (CBUL), which comprises aerated lagoons and effluent irrigation systems.
- 205 TCDC confirmed in February 1999 that it would proceed with a reticulated wastewater system for the Cooks Beach community. It then entered into a contract with CBDL and CBUL in December 1999 for the treatment plant to be expanded and ownership of the expanded plant to be transferred to TCDC, at a cost of \$2.65 million (GST-inclusive).
- 206 TCDC now owns the treatment plant and proposes to reticulate the properties which are currently served by septic tanks, with the reticulation system to be connected to the treatment plant.

3 – Our Findings

The sewage management debate

- 301 TCDC intends to build a reticulated sewerage system to service the communities of Cooks Beach and Ferry Landing. The decision to build a reticulated system follows at least two decades of intense debate over how to improve sewage treatment and disposal.
- 302 In the course of the debate three main options for wastewater disposal have been discussed:
- upgrade existing septic tanks with modern “on-site” systems;
 - install a reticulated system that connects all properties to a treatment and disposal plant; or
 - “do nothing”.
- 303 A considerable amount of confusion and ambiguity surrounds the key decisions made by TCDC that have resulted in the decision to build a reticulated sewerage scheme to service the Cooks Beach and Ferry Landing communities.

When did TCDC decide to proceed with the reticulation option?

- 304 TCDC maintains that its decision to proceed with the reticulation option was made in August/September 1996. However, when we began to investigate the Ratepayers Association’s complaint, we were surprised to find that the wording of TCDC’s resolutions at that time did not provide specifically for proceeding with the reticulation option.

The September 1996 resolutions

- 305 TCDC passed two key resolutions at its Ordinary Meeting on 11 September 1996 in relation to the sewage management debate:
3. *The Council record[s] its concern with the lapsing of the general authorisation for the present sewage arrangements at Cooks Beach/Ferry Landing along with the lack of progress toward an upgraded system and notes its reservations both administratively and technically as to the suitability of a comprehensive high-tech on-site solution for Cooks Beach/Ferry Landing.*
 4. *That Council accordingly withdraws its support for the further development of a managed on-site domestic wastewater disposal system for Cooks Beach/Ferry Landing.*
- 306 However, neither of these resolutions mentions the reticulation option as the favoured option.

307 When we raised the issue of the “missing” reticulation resolution with TCDC, TCDC acknowledged that the resolutions passed in September 1996 did not expressly state that TCDC had resolved to pursue the reticulation option.

308 Instead, TCDC told us that the decision to pursue the reticulation option *was an implicit part of the* [September 1996] *resolution[s]* and that all of the parties involved in the debate at that time accepted that the impact of the resolutions was that TCDC intended to pursue the reticulation option.

309 The Ratepayers Association does not agree that there was general acceptance that the impact of the September 1996 resolutions was a decision to proceed with reticulation. They say that they continued to make submissions to TCDC post-September 1996 on the basis that:

- both the reticulation option and the upgraded on-site option were technically and environmentally viable; and
- the preferred option should be chosen by the ratepayers, who ultimately were to pay for the scheme.

Our view of the September 1996 resolutions

310 We do not consider it appropriate for local authorities to make decisions “in the negative”. By this we mean that a resolution by a local authority to discard one option should not be taken as an implied resolution to pursue another option. We consider it essential for local authorities to ensure that key decisions – especially those made in the course of large capital projects – are clearly made and properly documented.

311 However, the documents that we have seen show that the Mercury Bay Community Board (the Community Board) and TCDC both interpreted the September 1996 resolutions to mean that the reticulation option had been chosen. On 27 September 1996, a Liaison Group, which had been set up to discuss sewage disposal options for the area, disbanded, presumably because it recognised that TCDC had decided on the reticulation option.²

312 This interpretation is supported by a letter to ratepayers from the Chairperson of the disbanded Liaison Group in October 1996. He noted that the Community Board was to begin to identify how a reticulated sewerage scheme could be provided and funded. Further, in a newsletter to ratepayers in April 1997, the Deputy Chief Executive Officer of TCDC, outlined the progress that the Community Board had made in planning and promoting a reticulated wastewater disposal scheme for Cooks Beach and Ferry Landing.

² A Liaison Group was formed in July 1995. Its members were TCDC councillors, TCDC staff, ratepayer representatives and a representative from CBDL. The Ratepayers Association says that it stopped attending meetings of the Liaison Group in early-1996, when it stopped receiving information as to when and where the meetings were to be held.

The February 1999 resolution

313 Our review of the documentation shows that TCDC did not expressly resolve to proceed with the reticulation option until its Ordinary Meeting on 24 February 1999. At that meeting, Councillor Hewlett moved a motion:

That the District Council policy decision of 11 September 1996 is binding and that a reticulated wastewater scheme for the Cooks Beach community is proceeded with.

This motion was carried.

314 TCDC maintains that the February 1999 resolution was not a new decision. It was merely the new Council accepting as binding upon it a decision understood to have been made by the previous Council in September 1996.

315 However, we heard contradictory evidence regarding the extent to which the new Council considered that it was entering into a new decision-making process on sewage management options for Cooks Beach and Ferry Landing.

Our view of the February 1999 resolution

316 Based on the totality of the evidence that we have seen, we conclude that the February 1999 resolution was not a new decision.

The significance of the timing of TCDC's decision

317 The timing of TCDC's decision to proceed with reticulation is significant because of the change in the legislative environment that occurred on 1 July 1998.

318 In short, if TCDC made its decision to proceed with the reticulation option prior to 1 July 1998 and decided to fund the scheme by way of a loan, then it was required to comply with the Local Authorities Loans Act 1956. If it made its decision after 1 July 1998, then it was required to undertake a cost benefit study in accordance with section 122C(1)(c) of the Local Government Act 1974.

319 We have concerns that, due to the way in which TCDC structured its decision-making, it was able to avoid complying with the requirements contained in both of these pieces of legislation.

The Local Authorities Loans Act 1956

320 Before 1 July 1998, the power of local authorities to borrow money was regulated by the Local Authorities Loans Act 1956 (the Loans Act).

321 In circumstances where a local authority wanted to raise a loan to pay for the construction of a public work (such as a reticulated sewerage scheme), section

34 of the Loans Act required it to raise a special loan pursuant to a special order. Before raising a special loan, the local authority was required to obtain the prior consent of ratepayers where:

- the Local Authorities Loans Board required it to obtain that consent; or
- not less than 15% of the electors of the district (or part of the district) demanded a poll; or
- it resolved to obtain prior consent; or
- where any other enactment required the consent of electors to be obtained.

322 In April 1995, TCDC resolved to conduct a loan poll to assess whether support existed for a reticulated sewerage scheme. The timing of this loan poll was to coincide with the October 1995 local authority elections, and was presumably planned this way to avoid the expense of holding a poll on a separate occasion.

323 However, the Community Board objected to TCDC's plan to hold a loan poll. The Community Board had made a promise to the ratepayers of Cooks Beach and Ferry Landing that it would conduct a survey before committing to any policy for wastewater disposal for the area. The Community Board felt that if TCDC were to conduct a loan poll focusing on the reticulation option, TCDC would be indicating to the ratepayers that it favoured the reticulation option over the on-site option. Given that the Community Board had not yet held its promised survey of options, it did not want the ratepayers to think that TCDC already had a preference for reticulation.

324 Owing to the Community Board's objections, TCDC did not hold the loan poll. However, unfortunately for the ratepayers, the Community Board also did not hold its promised survey. The failure to conduct either the loan poll or the survey meant that ratepayers' views on the preferred option were not obtained. (The Ratepayers Association conducted its own survey in September 1995 – see footnote 7 associated with paragraph 351.)

325 We consider that, as there had been such a long and intense debate over the preferred option, TCDC would have been assisted in its decision-making if it had obtained the views of the community – whether through a loan poll or by a survey.

326 In early 1997, following the September 1996 resolutions, the Community Board resolved to proceed with the purchase of the treatment plant from CBDL and CBUL, and to defer construction of the reticulation system until July 1998.

327 The main reason behind this resolution appears to have been to avoid the obligation to hold a loan poll.³

³ Other issues of concern included: whether or not there should be a level of district-wide subsidy; inter-generational equity issues relating to how the scheme was to be funded; and limitations with the type of loan arrangements that could be put in place under the Loans Act.

328 At the time the 1997 resolution was passed, it was known that the Loans Act was going to be repealed with effect from 30 June 1998. By deferring construction until after that date and, more critically, by deferring the financing of the construction, TCDC removed the uncertainty of having to abide by the results of a loan poll.

Part VIIA of the Local Government Act 1974

329 Part VIIA of the Local Government Act 1974 (the Act) was inserted by section 3 of the Local Government Amendment Act (No. 3) 1996. The provisions of Part VIIA that are relevant for the purposes of this report came into effect on 1 July 1998.

330 The purpose of Part VIIA is to promote prudent, effective and efficient financial management by local authorities. We regard Part VIIA as of central importance to local government legislation because it is concerned with:

- providing councils with a framework and guidance to enhance their financial decision-making;
- assisting communities to participate in and make choices about the services, and the costs associated with the services, that they wish to receive from their councils; and
- providing information to communities to better enable them to hold their elected representatives to account for their decisions.⁴

331 Section 122C(1) appears in Part VIIA. It sets out a number of principles for prudent, effective and efficient financial management that local authorities are required to follow. Paragraph (c) of that section requires that the *benefits and costs of different options are to be assessed in ... making any decision with significant financial consequences (including a decision to take no action)*. This requirement is commonly referred as the requirement to do a cost benefit study.

332 The Society of Local Government Managers (SOLGM) has prepared a paper on cost benefit studies, entitled *Assessing Benefits and Costs for all Options – Good Practice in the Interpretation of Section 122C(1)(c) of the Local Government Act 1974*.

333 SOLGM's view is that:

- consideration of the benefits and costs of options is fundamental to good decision-making because it allows decision-makers an informed choice from a range of alternatives;
- decisions cannot comply with this principle unless decision-makers are aware of the options and their relative merits and drawbacks; and
- the formal preparation of this information ensures that the principle can be complied with and provides apparent evidence of compliance.

⁴ As discussed in our October 2000 report *Reviewing a Long-term Financial Strategy and Funding Policy – Experiences of the Early Nine*.

- 334 In our view, the extent to which formal presentation and analysis (including quantification) of options is required in a cost benefit study is a matter for each local authority to determine. Section 122I(1) of the Act leaves it up to the local authority to decide:
- the extent and detail of the information that it will consider;
 - the degree to which benefits and costs are to be quantified;
 - the extent to which different options are considered; and
 - the extent and nature of any written record of that consideration.
- 335 When deciding how it will undertake a cost benefit study, the local authority is required to have regard to:
- the principles of prudent, effective and efficient financial management;
 - the significance of the decision; and
 - the scale of the local authority's operations.
- 336 We consider that formal records of the consideration of options are desirable, because they ensure that quality decisions can be made and explained to the public.

Was TCDC required to undertake a cost benefit study before its decision?

- 337 The first time TCDC expressly resolved to proceed with the reticulation option was 24 February 1999, following the election of a new Council in October 1998.⁵ This resolution was passed after a series of briefings received by the new Council on Cooks Beach/Ferry Landing wastewater issues.
- 338 TCDC maintains that the February 1999 resolution was not a decision with significant financial consequences – but was merely an acknowledgement by the new Council that a decision made by the previous Council in September 1996 was binding.
- 339 There is no doubt that, if the new Council had resolved in February 1999 to revoke the previous Council's resolutions and pursue a different wastewater disposal option (e.g. an upgraded on-site system), this would have been a decision with significant financial consequences. Prior to making such a decision, the new Council would have been required to assess the costs and benefits of different options.
- 340 The new Council did not undertake a cost benefit study of the different options before passing its February 1999 resolution.
- 341 As noted earlier in this report, based on the totality of the evidence that we have seen, we consider that the previous Council made a decision to proceed with the reticulation option in September 1996. We accept TCDC's arguments

⁵ Six new councillors and a new Mayor were elected at the October 1998 local authority elections.

that the February 1999 resolution was merely confirmation by the new Council that it had decided not to undertake a review of the previous Council's decision.

- 342 Consequently, as the September 1996 decision pre-dated the enactment of section 122c(1)(c), TCDC was not required to undertake a cost benefit study at the time when that decision was made. TCDC was also not required to undertake a cost benefit study before passing the February 1999 resolution, because that resolution merely confirmed an earlier decision.
- 343 Nevertheless, in terms of best practice, we would expect a local authority to undertake a cost benefit study as part of the process of evaluating different options.
- 344 It is clear that, before September 1996, a great deal of information on the viability of different sewage management options had been gathered by TCDC, Environment Waikato, the Ratepayers Association, and other ratepayer groups. However, we have seen no evidence to show that TCDC undertook a cost benefit study prior to September 1996.
- 345 As we note later in this report, in the absence of a cost benefit study, it is difficult for TCDC to demonstrate to ratepayers that the reticulation option is better for the area than the upgraded on-site option.

Were the views of ratepayers on the different options adequately sought by TCDC?

- 346 The Ratepayers Association considers that TCDC did not seek the views of ratepayers as to which option they would prefer. The Association says that it has taken every opportunity to make submissions to TCDC on the issue. However, it claims to have been "listened to, but not heard" on those occasions. It also contends that, before the September 1996 resolutions were passed, certain TCDC staff had decided that the area should be reticulated, and had closed their minds to other options.
- 347 We have not seen any evidence to indicate that TCDC failed to give fair and genuine consideration to the submissions it received. The fact that TCDC made a decision that the Ratepayers Association does not agree with is not, in our view, an indication that TCDC failed to hear what it had to say.⁶
- 348 With regard to the allegation concerning predetermination by TCDC staff, it is not possible for us to verify whether individual TCDC staff had closed their minds to the upgraded on-site option in early 1996.
- 349 From the documents that we have seen, it appears that the previous Council undertook considerable consultation with the community. When the new

⁶ See our December 1998 report *Public Consultation and Decision-making in Local Government*.

Council was elected in October 1998, and following receipt of a written request, it invited the Ratepayers Association to make a presentation to it on the sewerage issue.

- 350 In our view, both the previous Council and the current Council allowed the ratepayers to present arguments in favour of the on-site options. As the chronology in the Appendix on pages 18-33 of this report shows, TCDC also commissioned a number of reports on wastewater disposal options. It appears to us that both the previous Council and the current Council took steps to ensure that it understood the complex and lengthy technical arguments associated with these options.
- 351 However, we consider that the previous Council would have been assisted in its decision-making if it had ensured that the survey of ratepayers, promised by the Community Board, was carried out.⁷
- 352 During 1995, preparations were made to conduct a survey, and dates were notified to ratepayers as to when the survey was to be held. As part of these preparations, TCDC undertook to provide information on the costs of both options to ratepayers. However the Liaison Group, which had the task of recommending the arrangements for the survey, could not reach agreement on the information that would assist ratepayers in making a choice.
- 353 It appears to us that TCDC's commitment to hold the survey may have been overtaken by other events.
- 354 In July 1995, Cooks Beach Developments Limited (CBDL) advised the residents/ratepayers of Cooks Beach that it had made an offer to TCDC to expand the sewage treatment and disposal facility that it was building for the subdivision it was developing. When a Liaison Group was set up in July 1995, it included a representative from CBDL.
- 355 In October 1995, TCDC invited CBDL to make a formal offer for TCDC to buy the sewage treatment and disposal plant built by CBDL to service the new subdivision. TCDC's invitation was conditional on the survey indicating that the community was in favour of reticulation.
- 356 TCDC had indicated to ratepayers in December 1995 that the survey forms would be sent out in the week of 5-9 February 1996. When Councillor Birch expressed his view (in January 1996) that the proposed survey questions were flawed, and the decision to defer the survey was made, TCDC agreed that it

⁷ The Ratepayers Association carried out its own survey of Cooks Beach and Ferry Landing lot-owners in September 1995. It sent out 605 questionnaires and received 443 replies, a 73% response rate. Responses were sought to two alternative questions:

- Do you want to retain your on-site disposal system approved in principal [sic] by Environment Waikato at our Easter 1995 meeting?
 - Do you want reticulated sewerage and on-going development?
- 366 lot-owners (82.6%) preferred the on-site disposal system option, 66 lot-owners (14.9%) preferred the reticulation option, and 11 lot-owners (2.5%) were undecided.

would go ahead and complete negotiations with CBDL for the purchase of the headworks (the treatment ponds and associated equipment). The survey, once deferred, was not revived.

- 357 From a technical point of view, a strong case appears to have been presented for on-site treatment and disposal of sewage. However, TCDC appears to have balanced this strong case against the various environmental risks presented by on-site systems. TCDC had a number of concerns with the on-site option, including:
- the need to protect the water aquifer;
 - the impact of a growing population on the viability of on-site systems;
 - the suitability of on-site systems across the broad range of property types at both Cooks Beach and Ferry Landing;
 - the need for strong community support for an on-site system to be viable;
 - the ability of TCDC to enforce upgrading and management practices of on-site systems⁸; and
 - a belief that reticulation represented a “safer” option in terms of a system that TCDC could be confident would meet the desired environmental and other outcomes.
- 358 It is not our role to express an opinion on the best sewerage scheme for Cooks Beach and Ferry Landing. The Ratepayers Association agrees that either option – reticulation or upgraded on-site – if properly managed, would provide an environmentally sustainable wastewater disposal system for the area.

Can TCDC demonstrate that reticulation represents the best use of ratepayers’ funds?

- 359 The Ratepayers Association considers that TCDC cannot demonstrate that the reticulation option represents the best use of ratepayers’ funds. The basis of its argument is that:
- the expert hired by the Association has quoted a price of \$4.4 million (GST-included) to upgrade approximately 650 septic tanks; and
 - the reticulation option is expected to cost \$10.6 million (GST-included).
- 360 The Ratepayers Association sees the upgraded on-site disposal option as an environmentally acceptable solution, costing millions of dollars less than a reticulated system. As a result of TCDC’s decision to proceed with reticulation, the Ratepayers Association says that rates in the area will increase for individual ratepayers by up to \$2,000 per annum.
- 361 However, TCDC does not see reticulation and upgraded on-site as equivalent options. It considers that the environmental uncertainties and other issues associated with the on-site option are such that it is not a viable option.

⁸ TCDC was concerned that it did not have the power to create bylaws over aquifer and water quality issues.

- 362 The Local Government Act does not require local authorities to adopt the cheapest solution. Instead, local authorities are charged with prudent and effective decision-making – including weighing up competing policy issues.
- 363 It is not our role to determine whether a local authority has made the correct policy decision. Our focus is on the way in which the local authority has made its decision.
- 364 We conclude that – in the absence of up-to-date, formal documentation assessing the costs and benefits of the different sewage management options – it is difficult for TCDC to demonstrate that the reticulation option is indeed the best use of ratepayers’ funds.

Appendix

History of the Sewerage Issue

Debate over whether there should be upgraded on-site sewage disposal or a reticulated disposal system at Cooks Beach and Ferry Landing goes back many years, to the 1980s and earlier. The debate is characterised by extensive and conflicting technical advice.

We have summarised what we see to be the key documents and events in a chronology. The chronology has been prepared based on our review of documents provided to us by TCDC, Environment Waikato and the Ratepayers Association. Some entries in the chronology are taken from summaries (prepared by TCDC) of expert reports.

Exploration of options

- July 1977** The Hauraki Catchment Board adopted a General Authorisation (No. 14) (GA 14) permitting sewage effluent disposal into the ground, from septic tanks serving up to three toilets on domestic and commercial premises on one lot.
- July 1985** The Hauraki Catchment Board amended GA 14. The primary reason for the amendment was that the Board did not want to encourage the proliferation of private treatment facilities. Instead it sought to encourage good resource management by having treatment facilities under the control of the local authority, or having one collective facility under local authority control.
- August 1990** The Waikato Regional Council (WRC)⁹ advised TCDC that GA 14 would be withdrawn from the Cooks Beach area from 1 June 1995. WRC expected that a reticulated sewerage scheme would be installed by 1 June 1995, meaning that there would be no need to continue authorising discharges into the ground. WRC was concerned that the results of water quality surveys seemed to indicate that there was aquifer contamination by septic tank effluent.¹⁰
- July 1991** A WRC report outlined the technical feasibility of “on-site” sewage disposal. WRC found ordinary septic tanks to be technically unsuitable. The option of improved on-site soil absorption technology was seen as more expensive to install and maintain than a reticulation scheme. WRC also noted that

⁹ The legal name of Environment Waikato, and the name under which it operated at the time.

¹⁰ Drinking water for Cooks Beach is obtained from household bores sunk into the aquifer.

on-site soil absorption technology required large areas of land to ensure full treatment.

- August 1991** The Cooks Beach and Ferry Landing Working Party, a ratepayers group concerned about the proposed changes to sewage management, requested a review to examine alternative sewerage technology and the basis of the decision by WRC to withdraw GA 14 for septic tank discharge. TCDC agreed to commission two studies; one to review sewerage alternatives (the Tonkin & Taylor report) and the other to review groundwater contamination issues associated with on-site disposal (the Woodward Clyde report).
- October 1991** The Tonkin & Taylor report noted the existence of problems associated with on-site solutions compared to full reticulation. In a further review, Tonkin & Taylor suggested that an on-site approach was not a cost-effective solution when compared to reticulation.
- December 1991** The Woodward Clyde report on ground disposal of sewage at Cooks Beach concluded that:
- existing septic tanks were compromising public health and the withdrawal of the current General Authorisation was justified; and
 - a new General Authorisation for on-site systems was technically feasible, provided existing septic tanks were upgraded and a management programme was put in place to ensure that they were regularly maintained.
- February 1992** A working party of ratepayers conducted its own investigations into sewage management at Cooks Beach. The working party disagreed with the findings in the Tonkin & Taylor report and argued that the feasibility of on-site treatment/disposal based on modern on-site technology had been inadequately investigated.
- April 1992** TCDC commissioned a report from a consultant, Dr Ian Gunn, to give further consideration to whether on-site disposal systems would be appropriate for long-term use in Cooks Beach and Ferry Landing (the Gunn report). The Gunn report concluded that the sandy subsoil and site conditions at Cooks Beach were suited to the use of upgraded on-site systems. However, the steep and rocky conditions at Ferry Landing were unsuitable for long-term on-site effluent disposal.
- June 1992** TCDC had a further report prepared by Waste Technology NZ. This report stated:

Currently, in excess of 500 individual household bores access the aquifer. Contamination of the borewater is sporadic and localised at its occurrence, and is at a low level. The septic tank systems that are used in Cooks Beach are conventional systems – inadequately managed, inappropriate for Cooks Beach, and flawed and out-of-date in their design. Existing failures of such systems do not indicate a general unsuitability of septic tank systems; the soil conditions and hydrogeology at Cooks Beach are in fact very favourable for ground treatment/disposal.

Application of appropriate modern designs of septic tank soil absorption system as the standard for retrofitting existing installations and for new installations would provide long term, high standard sewage management for the Cooks Beach residential area.

The report recorded severe constraints on on-site systems in the Ferry Landing area. However, “cluster” or communal systems for the collection, treatment and disposal of septic tank effluent in this area (and other areas where soil conditions were more difficult) could provide a more economic approach.

July 1992

TCDC requested Tonkin & Taylor to estimate the per-lot capital and operating costs for on-site sewage disposal options. Tonkin & Taylor followed the approach of Dr Gunn and divided the Cooks Beach area into five broadly defined zones related to local ground conditions.

These are summarised as follows:

Zone	Recommended System	Capital Cost per lot	Annual Operating Cost per lot
Cooks Beach residential area	Upgraded on-site	\$5,500	\$90-100
Hardy Martin estate	Upgraded on-site	\$7,000 - \$9,000	\$90-120
Urban developed area	Upgraded on-site	\$7,000 - \$9,000	\$100-120
Ferry Landing	Long term on-site disposal not recommended	-	\$80-100
Other localities	Existing on-site OK, subject to maintenance and supervision	-	\$75-95

Commitment to Survey Ratepayers

September 1994 The Order Paper for the Ordinary Meeting of TCDC stated that:

The [Mercury Bay] Community Board has an outstanding commitment to the landowners of Cooks Beach/Ferry Landing that it will conduct a survey of opinion of landowners before committing any policy for [sewage] disposal for this area. The Board almost has sufficient information to present a full and objective review of both alternatives to the public.

The two alternatives are:

- 1) A communal fully reticulated sewerage system providing for off-site treatment and disposal of treated effluent.*
- 2) A local management standard for on-site disposal, approved by the Regional Council and supported by a District Bylaw for enforcement purposes.*

The two alternatives have markedly similar cost implications for the community overall, although the implications for individuals could vary markedly depending on the approach taken under the second alternative.

...

Reticulation options have an expected total cost between \$3.3 million and \$3.8 million. To upgrade the community to suitable on-site standards would cost something like ... [\$3.96 million]

...

The debate and discussion about sewerage options for these settlements has been lengthy, and not without acrimony from the parties on each "side".

The debate has established quite soundly that there are sustainable on-site disposal systems for many smaller urban properties, and has given a lead which will allow Council to address other areas of the district with drainage problems.

The Order Paper recommended that the Mercury Bay Community Board be encouraged to conduct a survey of landowners to confirm the system of sewage disposal favoured by the community. Following that survey, TCDC should encourage the Community Board to either immediately commission a loan poll *to give financial security to allow it to plan*

a reticulated sewerage system, or put in place the management structure necessary to support on-site management.

Certificate of Compliance issued

March 1995 Environment Waikato issued a Certificate of Compliance for a community-based protocol for the upgrading of on-site systems. The protocol had been prepared by the Ratepayers Association. The Certificate of Compliance required implementation of the on-site protocols to be started within two years.

Proposed loan poll

April 1995 TCDC resolved to conduct a loan poll under the Loans Act to assess whether support existed for a reticulated scheme. TCDC intended to hold this loan poll in conjunction with the October 1995 local body elections. However, the poll was not held – apparently because the Community Board was concerned that, in conducting a loan poll, TCDC would be indicating that it favoured the option the poll identified (i.e. the reticulation option).

Continuation of debate on the on-site option

June 1995 Informal discussions were held between the Mayor, the Chairperson and other members of the Community Board and senior TCDC staff in order to assist in determining the way forward. It was agreed to commission a review from a consultant contracted by Woodward Clyde to report on the extent of any adverse effects arising from the existing septic tanks at Cooks Beach and Ferry Landing. It was also agreed that the review would be used as the basis for determining any changes required in sewage disposal arrangements and water supply in the area, and that the review would be completed before carrying out any survey or loan poll of ratepayers.

CBDL letter to residents/ratepayers

7 July 1995 CBDL sent a newsletter to all residents/ratepayers of Cooks Beach. The newsletter advised that CBDL, which was developing a housing subdivision at Cooks Beach, had made an offer to TCDC. The offer was to expand the sewage treatment and disposal facility that CBDL was building for the subdivision, so that it would be capable of catering for the whole Cooks Beach and Ferry Landing area. TCDC would be responsible for providing local reticulation. The newsletter

went on to that say that CBDL was planning to hold meetings to obtain the views of the public on the proposal.

Formation of the Liaison Group and preparations for the survey

July 1995 A group of councillors, TCDC staff, ratepayer representatives and a representative from CBDL was formed to discuss sewage disposal options. This group became known as the "Liaison Group".

August 1995 At a meeting of the Liaison Group, a TCDC staff member on the Group undertook to obtain indicative costs of the on-site option.

August 1995 A Community Board newsletter to ratepayers described the purpose of the Liaison Group as *...to present fully and fairly the options available for ratepayers and residents.*

The newsletter stated that:

[an] environment consultant has been employed by the Council on behalf of the Liaison Group to assess the present risk to public health.

The Liaison Group is satisfied that technically these needs can be met either by a community reticulated disposal system or through an improved and managed on-site regime. Both options require study and understanding. The Liaison Group will consider problems in depth and will analyse as far as it can such issues as:

- *How much will a reticulated scheme cost?*
- *How much will it cost to upgrade an existing septic tank?*
- *What is the cost effect on individual properties of each option?*
- *How secure is the reticulated system?*
- *How secure is the on-site system?*
- *What are the implications of either choice for the development of the area?*

The newsletter described the process for consulting the community over the preferred option for sewage disposal. The process was to include an open day held by CBDL, and a public discussion organised by the Liaison Group. The survey forms were to be distributed to ratepayers on 29 November 1995 with the survey closing on 12 December 1995 for the analysis of results.

September 1995 The report of Woodward Clyde, assessing the extent of any adverse effects arising from the use of septic tanks at Cooks Beach and Ferry Landing, was presented to the Liaison Group. The minutes of the Liaison Group meeting record that:

The report from ... Woodward Clyde does not indicate widespread evidence of pollution from existing septic tanks. It does show some problems in isolated areas.

Invitation from TCDC to CBDL

12 October 1995 In a letter to CBDL, TCDC wrote:

Further to our discussions ... on Friday last 6 October, I would ask your Company to make a formal offer to the Council for the purchase of an operational sewerage headworks and disposal system.

The letter went on to detail TCDC requirements for the system, the number of properties to be serviced, and how costs were to be shared between TCDC and CBDL. The letter concluded with the statement that:

I would confirm that the Council can only conditionally accept any offer at this stage. The condition of acceptance will be that the Council resolves, following a survey of landowners in Cooks Beach/Ferry Landing, that a public reticulated sewerage treatment and disposal system be provided for this area.

This survey is expected to take place in December/January. The Council will consider the survey information in February and will confirm or withdraw from negotiations following that consideration.

Survey preparations continue

December 1995 In a newsletter to ratepayers, TCDC advised that the preparations for the survey were under way and that it expected the survey papers to be posted out in the week of 5-9 February 1996.

Deferral of survey

January 1996 At a meeting between the Mayor, the chairperson of the Community Board (Councillor Birch), the CEO of TCDC and the Deputy CEO, Councillor Birch (who was also a member of the Liaison Group) outlined his position on the survey. He expressed his view that the draft survey was a *nonsense, ambiguous, wordy document* which, if sent out, would come back to challenge TCDC.

In the light of Councillor Birch's position, it was agreed that the survey would be deferred and the ratepayers informed of this.

Environment Waikato Meeting

August 1996 At an Environment Waikato meeting, the Ratepayers Association made a presentation in support of the on-site option. The TCDC Mayor also made a presentation to the meeting.

Environment Waikato then recorded its concern with:

... the lapsing of the general authorisation for the present sewage arrangements, and the lack of progress toward an upgraded system, and notes its reservations both administratively and technically as to the suitability of a comprehensive on-site solution, and its requirements that any new on-site system must be suitable for the geography and geophysical setting of Cooks Beach and Ferry Landing and be environmentally sustainable.

The September 1996 resolutions

11 September 1996 At a TCDC meeting, representatives from parties in support of on-site systems and those in support of the reticulation option were heard by TCDC.

TCDC then adopted a number of resolutions, the two key resolutions being:

3. *The Council record[s] its concern with the lapsing of the general authorisation for the present sewage arrangements at Cooks Beach/Ferry Landing along with the lack of progress toward an upgraded system and notes its reservations both administratively and technically as to the suitability of a comprehensive high-tech on-site solution for Cooks Beach/Ferry Landing.*
4. *That Council accordingly withdraws its support for the further development of a managed on-site domestic wastewater disposal system for Cooks Beach/Ferry Landing.*

Disbanding of the Liaison Group

27 September 1996 At its final meeting, the Liaison Group (minus the Ratepayers Association, who had not been informed of the time or place of meetings since January 1996) resolved that, in the light of the decisions of the TCDC effectively denying the further development of an on-site regime for Cooks Beach and Ferry Landing, and expressing no confidence in the development of this option, it was appropriate for the Liaison Group to be disbanded at 27 September 1996.

3 October 1996

In a letter to ratepayers, the Chairperson of the Liaison Group advised of the decisions made by TCDC and Environment Waikato to rule out further consideration of the on-site option. The Chairperson advised that the Community Board was:

... now faced with promoting a reticulated sewerage scheme for this community. It will begin the process of identifying how this is to be provided and funded at its October meetings.

Expiry of the Certificate of Compliance

March 1997

The Certificate of Compliance issued in March 1995 expired. The Group Manager, Resource Use, Environment Waikato, explained the reasons why it would not be extended as follows:

The Waikato Regional Council initially indicated that it would be satisfied with collectively managed on-site treatment and disposal if this could be unanimously agreed, applied and implemented to demonstrably high standards. A certificate of compliance was issued on that basis. After further investigation, the Regional Council has concluded that it does not have confidence in a collective on-site scheme because of the large number of properties involved, the difficult geological conditions and the diversity of commitment to such a scheme by individual property owners. In particular, the Regional Council does not support a community scheme which is not supported and implemented with the co-operation of the District Council which has primary responsibility for treatment and disposal services under the Building Act, the Health Act and the Local Government Act. Accordingly the certificate of compliance will expire on 24 March 1997 and cannot be renewed.

Planning for a reticulated scheme

April 1997

In a newsletter, TCDC updated ratepayers on progress made by the Community Board *in planning and promoting a reticulated wastewater disposal scheme for Cooks Beach and Ferry Landing.*

The newsletter stated:

The Mercury Bay Community Board is working on the provision of a reticulated wastewater disposal scheme. The Board has not signed off on any proposal. The position outlined in this newsletter is the proposal being developed by the Board, and the Board welcomes the views of its landowners on it.

...

The Proposal Under Consideration

1. *The Council will build a reticulated system which will collect wastewater from all properties from Ferry Landing and Cooks Beach and transmit this through a network of pumping lines and pump stations to an expanded Cooks Beach Developments treatment plant. ...*

8 April 1997

In a progress report written by the Deputy Chief Executive Officer of TCDC and considered by the Community Board, it was recognised that TCDC would need to promote a loan poll under the Loans Act in order to raise a loan to fund construction of the Cooks Beach wastewater scheme. With regard to promoting a poll, the progress report recorded:

At officer level we believe such a poll would be winnable. However, if we borrow under the loan poll rules ... we will be constrained by the borrowing and loan rules of the Act which makes borrowing expensive and add restrictive funding requirements.

[There] would also be some time constraints to get consultation, public notification and owner issues resolved before calling tenders.

The alternative – to delay construction until the Council has completed its funding review and created its borrowing and financing policies at 1 July 1998 was favoured by the District Council because:

- *Better financing and funding alternatives will be available within the new policies made under the 1996 legislation.*
- *A little more lead-in time to get planning right will be of assistance.*
- *The uncertainty of the poll process can be removed.*

Consequently, the Council resolved that it would:

- *Make available for the Community Board up to \$538,000 from its reserve accounts as an advance against the Cooks Beach wastewater funding in order that the Board can plan and provide for the deposit payable to Cooks Beach Utilities and the completion of design and construction preliminaries. Finance costs are inflation plus 1%.*
- *Support a deferment of construction until July 1998 at the earliest.*
- *Identify funding policies for this scheme (and any others) in its funding review.*

As a result of its deliberations on this paper, the Community Board resolved:

- *That the Board acknowledge that there are two views on this subject;*
- *That there is not unanimity on the reticulation of sewage at Cooks Beach;*
- *That the Board be open and transparent in working through the processes and that individuals are not excluded from this process;*
- *That the Board reconfirm its direction that a reticulated wastewater scheme be planned and promoted, and the construction be programmed for not earlier than 1 July 1998;*
- *That the Board accept the Council's offer, if needed, of finance towards preliminary costs including design and planning and deposits payable to Cooks Beach Utilities Limited;*
- *That the Board delegate authority to its subcommittee to complete an agreement as outlined in the preliminary notice of intention to agree with Cooks Beach Utilities Limited;*
- *That the Board delegate authority to its subcommittee to complete agreements with Cooks Beach Motor Camp and landowners in the business centre for connection to the service. The Board to recognise that a service to the Motor Camp before its 1997/98 summer season is a matter of necessity;*
- *That a newsletter be prepared for Cooks Beach/Ferry Landing landowners on progress to date.*

The continuing environmental debate

April 1997

A report by Dr Gunn was received by the Ratepayers Association, which had engaged him to assess the technical reports which provided the basis for the recommendations made by Environment Waikato and the decision by the TCDC to withdraw support from the on-site option.

Dr Gunn's April 1997 report concluded:

- (a) *The technical reports upon which Environment Waikato officers have relied to justify their reservations re the suitability of the on-site wastewater option for Cooks' Beach in fact give the opposite advice. They provide reassurance that the lower aquifer from which borewater supplies are drawn can be protected by upgrading on-site systems to modern practice, supplemented by other protective measures related to bore installation practices and controls.*

...

- (c) *Physical constraints to implementation of on-site upgrades have been detailed in the technical reports presented over recent time to both the Regional and District Councils. Identification of the constraints does not present an impediment to implementation of the on-site option; on the contrary they provide a sound basis for setting in place ... priorities for implementation of the Protocol upgrades.*

Parliamentary Commissioner for the Environment investigation

May 1997

The Parliamentary Commissioner for the Environment reported on his investigation into a complaint about the management by TCDC of the effluent disposal system at Cooks Beach and Ferry Landing. He wrote to TCDC and the Ratepayers Association stating:

As a result of inquiries made by my staff, I am satisfied that the reticulated system preferred by the Council poses no real threat to the natural environment provided it is properly engineered and managed. For this reason, I see no environmental need for the [Council] to review its decision to pursue the reticulated option.

Introduction of the cost benefit study requirement

1 July 1998

The Local Government Amendment Act (No. 3) 1996 repealed the Loans Act with effect from 1 July 1998.

From 1 July 1998 onwards, local authorities were required to comply with a new requirement under the Local Government Act – section 122C(1)(c) – which had been inserted by the Local Government Amendment Act (No. 3) 1996.

Section 122C(1)(c) requires that the *benefits and costs of different options are to be assessed* [by local authorities]... *in making any decision with significant financial consequences (including a decision to take no action).*

Local authority elections

October 1998

Local authority elections were held and a new Council was elected, bringing in a new Mayor and six new councillors.

The new Council

October/November
1998

Following receipt of a letter from the Ratepayers Association, TCDC wrote to the Association inviting it to make a presentation to the new Council on its concerns about the Cooks Beach and Ferry Landing sewerage issue. The presentation was to form part of the new Council's briefing on current issues. TCDC stated: *it is not the intent of the [Council] to debate or review the current proposal at this meeting.*

The February 1999 resolution

24 February 1999

The order paper for TCDC's Ordinary Meeting raised, as an issue to be discussed, the view of the Ratepayers Association that the previous Council had prematurely discounted the on-site option.

The Order Paper set out the steps that the Community Board would need to take if TCDC decided to revoke the September 1996 resolution. Those steps were:

- 1 *compile a revised management plan (protocols) to overcome the reservations held by Environment Waikato.*
- 2 *establish costs associated with the capital implementation and operation of a managed on-site methodology based on the revised management plan (protocols).*
- 3 *write off expenditure and liability incurred in pursuing the reticulation option.*

The Order Paper stated that if TCDC wanted to take this course of action:

[Prior] to embarking upon this process and incurring additional costs, it would be prudent to ascertain the community's level of support to pursue on-site methodology...

Resolution Revocation

In the event that the Council believe that there are justified grounds to include on-site methodology as a potential option, then a formal notice of intention to revoke or alter the previous Council's resolution of September 1996 is required. This notice of motion is required to be in accordance with Bylaw No.24 - Standing Orders Section 2.18.14. This notice of motion would then be formally considered by Council at its March 1999 ordinary meeting.

The minutes of the Ordinary Meeting record that TCDC was presented with a background briefing on the previous Council's resolution of September 1996 to withdraw support for on-site methodology as an option for wastewater collection, treatment and disposal.

The Minutes then record that Councillor Hewlett presented a verbal report to the meeting on behalf of the Community Board. After presenting his report, he then moved the following motion:

that the District Council policy decision of 11 September 1996 is binding and that a reticulated wastewater system for the Cooks Beach community is proceeded with.

This motion was carried.

15 April 1999

In a letter from the Mayor to a member of the Mercury Bay South Residents & Ratepayers Association Incorporated, the Mayor stated:

Unfortunately this Cooks Beach issue, as you well know, was never going to be easy to resolve. Essentially, what concluded this issue for the new Council was the "spontaneous motion" by Councillor Noel Hewlett and having the numbers to back him up.

Consideration of the Business Case

28 July 1999

At its Ordinary Meeting, TCDC considered the Ratepayers Association's submission on the draft Annual Plan. That submission included an estimate of the costs associated with upgrading on-site wastewater systems. The Ratepayers Association had requested that TCDC use the information to re-examine whether or not it should proceed with reticulation or on-site disposal.

The Chief Executive Officer of TCDC then spoke to the meeting. The Minutes record that he advised TCDC that a cost benefit analysis was not required in terms of the original September 1996 decision to proceed with reticulation. He noted that TCDC would need to consider, in relation to the Business Case for the project, whether or not the costs associated with proceeding with reticulation outweighed the benefits that would ultimately be derived from the system.

In response to the Ratepayers Association's submission, TCDC resolved to ask the Chief Executive Officer to write to the Association indicating that:

- *Council does not believe that the section 122(1)(c) requirement for a detailed cost benefit analysis applies to the original decision to implement a reticulated waste water system at Cooks Beach and Ferry Landing on the grounds that the initial decision was made prior to 1 July 1998;*
- *The relative costs and benefits associated with the proposed reticulated system will be considered when the final business case and project definition is approved by Council;*
- *Council will complete a more detailed review of how the reticulated system is to be funded when considering the project definition.*

The minutes record that TCDC then received and considered the Business Case for Cooks Beach/Ferry Landing Sewerage and the Cooks Beach Sewerage Reticulation Project Definition prepared by the Area Manager of the Mercury Bay Service Centre. The purpose of the Business Case, as stated on page 1 of the document, was:

...to obtain approval for the implementation/construction of Cooks Beach/Ferry Landing Community Sewerage Scheme.

The Project Objectives are as follows:

- To provide a reticulated community sewerage scheme capable of servicing all eligible properties within Cooks Beach/Ferry Landing areas (“Area of Benefit”)*
- To acquire by way of a “turnkey” contract a sewerage treatment plant and effluent disposal facility with the capacity to service all properties within the defined “Area of Benefit”.*

Environment Court decision

December 1999 The Environment Court heard an appeal by CBDL over discharge rights for the new reticulation system.

In its judgment, the Court stated at pages 4-5:

The total proposal is intended not only to service future population but also present population which has, in the past, relied on on-site septic tanks and ground soakage. At Cooks Beach the potable water supply comes from an aquifer beneath these tanks and there has been some concern about contamination of this ground water, particularly after flooding which can render septic tank systems inoperative. We do not intend to discuss that issue further save to say that the Ratepayers Association, the District Council and all others concerned

with this case are unanimous in accepting that something must be done to resolve the problems in this area. The Council pursuant to its statutory rights has opted for a reticulated system.

And at page 10:

The evidence ... forms a cohesive whole leading the Court to the conclusion that the [reticulation] proposal before us is a very carefully considered approach to wastewater disposal in this area.