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**JURISDICTION** : TOWN PLANNING APPEAL TRIBUNAL

**STREAM** : DEVELOPMENT & RESOURCES

**ACT** : TOWN PLANNING AND DEVELOPMENT ACT  
1928 (WA)

**CITATION** : ST. IVES DEVELOPMENT PTY LTD and CITY OF  
MANDURAH [2003] WATPAT 5

**CORAM** : MR L A STEIN  
MS M WHITE

**HEARD** : 29 JULY, 1 AND 2 AUGUST 2002

**DELIVERED** : 26 MARCH 2003

**FILE NO/S** : APP 34 of 2002

**BETWEEN** : ST. IVES DEVELOPMENT PTY LTD  
Appellant

AND

CITY OF MANDURAH  
Respondent

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*Catchwords:*

Development - Topping Up Seasonal Wetland - Environmental Considerations -  
Precautionary Principle - Appeals - Jurisdiction - Council as owner not signing  
application for development

*Legislation:*

Nil

*Result:*

Appeal is allowed and the approval is to run for a period of 3 years from the date of this decision.

*Category:* B

**Representation:**

*Counsel:*

Appellant	:	Mr M Barker QC, with him Mr M Flint
Respondent	:	Mr D McLeod, with him Mr C Slarke

*Solicitors:*

Appellant	:	Phillips Fox
Respondent	:	McLeod & Co

**Case(s) referred to in decision(s):**

Bridgetown/Greenbushes Friends of the Forest Inc v Executive Director Of The Department of Conservation and Land Management (1997) 94 LGERA 380

Briggs v Corporation of City of Mt Gambier & Michielan (1982) 30 SASR 135

Claude Neon Ltd v Sydney City Council (1986) 61 LGRA 195

Danielle v Shire of Swan (1998) 20 WAR 16

GB&G Consolidated Pty Ltd v Melbourne and Metropolitan Board of Works [1972] VR 641; (1972) 27 LGRA 327

Hornsby Shire Council v Porter (1990) 19 NSWLR 716

Hunter Resources Ltd v Melville (1988) 164 CLR 234

Ironbridge Holding Pty Ltd, et al v Western Australian Planning Commission (Appeal No. 4 of 1996)

Pacesetter Homes Pty Ltd v State Planning Commission (1992) 84 LGERA 71

Shellharbour Municipal Council v Rovilo Pty Ltd (1989) 16 NSWLR 104; 68 LGRA 231 (NSWCA)

Sydney City Council v Claude Neon Ltd (1989) 15 NSWLR 724

Tuna Boat Owners Association of SA Inc v Development Assessment Commission And Another [2000] SASC 238; (2000) 110 LGERA 1

Victoria v The Commonwealth (1975) 134 CLR 81

Nil

**MR L A STEIN, MS M WHITE:**

- 1 This is an Appeal from the refusal of the Respondent of an application to commence development by changing the nature of a seasonally inundated or “ephemeral” wetland to a permanent water body on land more particularly described as:

“Part of Lot 123 Carnegie Place, Greenfields on Plan 6268,  
Certificate of Title Volume 2194 Folio 839.”
- 2 The wetland is approximately 2 ha and lies to the south west of the St Ives retirement village on Lot 123.
- 3 Rezoning to the Respondent’s Town Planning Scheme No. 1A and then Scheme No. 3 gave Lot 123 multiple zonings. The portion of the land containing the wetland is zoned “Conservation and Foreshore Reserve” under the *City of Mandurah District Town Planning Scheme No. 3* (**‘Scheme’**).
- 4 It was accepted by both parties that a change in the character of a water body by mechanical means is “development” for which planning approval must be sought on the Reserve. This is consistent with the decision in *Danielle v Shire of Swan* (1998) 20 WAR 16 that “development” encompasses a physical alteration that affects the amenity (including visual amenity) of a locality.

**Relevant History**

- 5 The Respondent granted planning approval dated 21 December 1999 for 120 retirement dwellings on Lot 123 subject to a condition (Condition 4) that read:

“The preparation of a Foreshore Management Plan to the satisfaction of the City of Mandurah, prior to the issuance of a building licence ...”
- 6 The Appellant submitted a Foreshore Management Plan that, amongst other matters, contained the proposal to create a permanent water body.
- 7 While that issue was being considered, the Appellant made application for planning approval to excavate a river oxbow that would have had the effect of creating a permanent wetland. In April 2001, the Council refused that application and this refusal was appealed to the Tribunal in Appeal No. 65 of 2001. The Tribunal has not determined that Appeal at the time of the hearing of this Appeal.

8       The Appellant submitted a report to the Respondent prepared by Acacia Springs Environmental suggesting options for creating the permanent water body. The City indicated its position that it preferred the wetland be preserved in its natural state.

9       At a meeting of 12 December 2001, the Council finally endorsed the Foreshore Management Plan subject to the removal of references to:

          “the artificial topping up of the wetland.”

10      The application, the subject of this Appeal, was made 9 days thereafter and attempts to carry forward the Foreshore Management Plan as submitted by the Appellant. The application stated:

          “It is proposed to manage the drying out of the wetland by controlled pumping of river water into the wetland. Pumping will be undertaken on occasions over the summer when extended periods of very low tides and higher evaporation would otherwise cause the wetland to dry out.”

11      The proposal provides for a small 150mm pipeline constructed across the foreshore to the River. The foreshore land is owned by the Council.

12      The Respondent refused planning consent for the following five reasons:

          “(i) the proposed permanent wetland would potentially enable blue-green algal blooms within the Serpentine River to enter into and accumulate within the permanent wetland area further compounding an existing problem;

          (ii) the potential increase in algal bloom associated with a permanent water body could adversely impact on public amenity and health in the surrounding area;

          (iii) the existing seasonal wetland eco-system is an integral part of a complicated support system that impacts locally and regionally. Any artificial modifications to this system will unbalance the equilibrium and severely compromise the conservation, ecological and recreational value of the area;

          (iv) creating a permanent water body will not necessarily reduce the mosquito problem of the area. Effective rehabilitation of the area (eg. keeping cars and motor bikes off the marshes) will provide a more effective

solution to reducing mosquito problem than creating a permanent water body;

- (v) the overall intent of the conservation and foreshore reserve is considered to be focused on preserving natural environment systems for the benefit of the wider community.”

### **Pump on Adjoining Land**

13 It is proposed that the pipeline be placed on land owned by the Respondent. Mr McLeod, Counsel for the Respondent, raised the argument in the course of the proceedings that, by cl.7.2.1 of the Scheme, the consent of the City is necessary for the application to be made, as it is the owner of land upon which the application depends.

14 The Tribunal was taken by surprise by this argument: the ground was not contained in the reasons for refusal nor in the Statement by Respondent. In his opening, Mr McLeod indicated that notice had only been given “very recently” to the Respondent. The Tribunal can only indicate its disapproval of the practice of raising matters of substance for the first time immediately prior to or in the course of a hearing but, as the matter is one upon which the jurisdiction of the Tribunal depends, the issue must be resolved.

15 Clause 7.2.1 of the Scheme states:

“Every application for planning approval shall be made in the form prescribed by Council. The application form shall be signed by the owner of land and shall be accompanied by such plans and other information as is required by the Scheme.”

16 In support of his proposition, Mr McLeod cited the decision of Murray J in *Pacesetter Homes Pty Ltd v State Planning Commission* (1992) 84 LGERA 71 in which an invalidity was created by failing to obtain the consent of the Crown to an application for subdivision that included Crown land.

17 In *Pacesetter*, his Honour stated that the problem was the Commission could not be asked to approve a plan of subdivision of which the owner was entirely ignorant. In the course of his judgment, his Honour cited *GB&G Consolidated Pty Ltd v Melbourne and Metropolitan Board of Works* [1972] VR 641; (1972) 27 LGRA 327, where the owners knew of the application but failed to sign the appropriate form. In that case, the

Supreme Court of Victoria found the application valid without the signatures because the owner did in fact concur in the application and therefore the breach was technical.

18 In *Pacesetter*, his Honour states (p.84):

“In general terms, and in this case in particular, it seems to me to be important that an owner should not be deprived of its capacity to object to the subdivision or to express views about the conditions upon which the State Planning Commission should grant approval.”

19 The consent of the owner need not be on the form itself. Consent by letter, for example, would suffice. This is because the common law requires “substantial compliance” with a form: *Hunter Resources Ltd v Melville* (1988) 164 CLR 234; Stephen J in *Victoria v The Commonwealth* (1975) 134 CLR 81. The degree of compliance has been said in *Pacesetter* to turn upon the effect of non compliance. As pointed out, strict compliance with a form will be required where the public is affected by non-compliance, as when a development is not advertised for objections (as in *Briggs v Corporation of City of Mt Gambier & Michielan* (1982) 30 SASR 135) or notice of building plans makes them available for comment (*Hornsby Shire Council v Porter* (1990) 19 NSWLR 716).

20 In *Sydney City Council v Claude Neon Ltd* (1989) 15 NSWLR 724, (1989 68 LGRA 231, *Claude Neon Ltd v Sydney City Council* (1986) 61 LGRA 195 and *Shellharbour Municipal Council v Rovilo Pty Ltd* (1989) 16 NSWLR 104; 68 LGRA 231 (NSWCA), the proposition was advanced that if a proposed development over council owned land is one which, on its merits, ought to be granted development consent, the council ought to give its consent to the making of the development application and failure to do so simply for the purpose of frustrating the right of the applicant to obtain the required development consent is an abuse of power.

21 In New South Wales, the Land and Environment Court has (by s.39(2) of the *Land and Environment Court Act*): “functions and discretions which the person or body whose decision is the subject of the appeal had in respect of the matter the subject of the appeal.” It was therefore held in these cases that the Court could provide the consent. There is no equivalent provision in the Western Australian *Town Planning and Development Act 1928* and this Tribunal cannot provide the missing consent.

- 22 The New South Wales decisions, however, provide a more relevant point for resolving the issue before the Tribunal. If a Council consents to an application, it impliedly has given consent as owner because of the principle recited in the *Claude Neon* decision that a council can impliedly exercise two powers when all it purports to do is to exercise one power. This reasoning is consistent with *Pacesetter* because it allows the Council, who is aware of the application that includes it as owner, to decide whether it will, by consenting to the application, acquiesce to the use of its land that is proposed.
- 23 Conversely, by refusing the application, the Council has refused the consent to the use of the land for that purpose. However, by being aware of the application as it affects its land, it is not necessary that it gives consent as owner.
- 24 Mr Barker put the argument that the application was not expressly for the use of the adjoining Council land but was solely for the development of the land owned by the Appellant. He stated, in closing, that “we have to get other approval.” His conclusion is correct because in refusing the application, the consent to use the Council land is not given. If the Tribunal allows the Appeal, that consent must be obtained.
- 25 For the reasons given, the Appeal does not lack competence because the Council did not sign the application.

### **Purpose of the Permanent Water Body**

- 26 Mr Fitzgerald, the founding director of the St Ives Group, gave evidence as to the purpose of pumping water into the seasonally inundated wetland. He emphasised the close physical relationship of the wetland to the retirement community and consequent desire to maximise the visual amenity and recreation possibilities. The communal facility overlooks the wetland and the importance of its location adjoining the River is emphasised by a specific resident fund for the upkeep of the external environment. He states:

“The wetland currently dries up during extended periods of low tide and in the warmer weather the drying salt panne becomes unsightly and produces unpleasant odours.

The existing area is degraded with wheel tracks, excavations and debris and is readily accessible by the public, vehicles and pets.”



- 27 He explained the general idea for bringing water to the dry panne during periods of very low tides and high evaporation. The introduced water would not completely inundate the panne area but would only compensate for that evaporation. The technical proposal is to pump water to a maximum depth of 252mm AHD (approximately 9.9" of water) into the central area of the salt panne to prevent it drying out completely. He stated:

“The river will be connected to the wetland 33% of the time with a level control at 0.125m AHD .... The lowering tide will leave water trapped behind the controlling sill at 0.125m AHD with a maximum wetted area of 25,000m<sup>2</sup>.”

- 28 Pumping water to provide an improved condition for adjoining residents would seem, on the reasoning of Mr Fitzgerald, to be of benefit to the amenity of the immediate locality. However, the Respondent based its case on health hazards arising from the proposal and also on pure environmental grounds to do with the eco-system of the wetland.
- 29 Environmental harm and town planning consequences are often separate issues and the Tribunal must consider, independently of the possible town planning issue, the environmental consequences of the permanent water body.

### **Environmental Factors**

- 30 The primary environmental witness for the Appellant was Dr Deeley, a landscape ecologist with expertise in the ecological health of estuaries. He was, for four years, a principal environmental officer with the Waterways Commission, which is now the Water & Rivers Commission and his curriculum vitae indicates a sustained interest in water quality and estuarine processes.
- 31 The key witness for the Respondent was Mr Pond, the Programme Manager for Catchment & Waterways Management with the Water & Rivers Commission.
- 32 The environmental issues that relate to the wetland are complex and include the conservation status of the wetland, its use as a bird habitat, odours when it is dry, and algal bloom.
- 33 The natural state of the wetland has already been affected by a mosquito control programme and the Dawesville Channel. Dr Deeley explained a Health Department mosquito control program that led to the construction

of a small channel known as a “runnel” extending from the Serpentine River into the wetland. He stated that because of the regulation of control levels for the runnel:

“... the lower control level will mean that during extended periods of very low tide in the river, the wetland will dry out more regularly than before the runnel was completed.”

- 34 The conclusion that this wetland, known as “Riverside Gardens 100” could be altered by the runnel program was put forward by the Health Department and accepted by the Environmental Protection Authority during the development of the Health Department mosquito control strategy. To rationalise this interference with the natural state of the wetland, it was stated that this wetland was not of the highest level of conservation significance and therefore could be affected by runnels.
- 35 Dr Lindsay, an expert in mosquito born disease, gave evidence on behalf of the Respondent and expressed the view that the runnel system that allows greater tidal flushing of marshes should “not be seen as an excuse to allow further development in close proximity to tidal wetlands of high conservation significance.” The runnel program assessment by the EPA under an Environmental Assessment and Management Plan was not, in his view, an authoritative source of degrading the status or importance of this wetland.
- 36 In his witness statement, in a section referred to as “Recent Changes Influencing the Riverside Gardens 100 Wetland,” Dr Deeley assessed the impact of the Dawesville Channel and concluded that, although there was concern as to what might happen in the future, there was no immediate impact as the wetland was resilient in respect of hydrological changes. He did say that the increased tidal volume from the opening of the Dawesville Channel changed the breeding cycle for mosquitoes, which has led to the runnelling and the consequence of the wetland drying out more rapidly and more often over summer.
- 37 Dr Deeley stated that the pumping will not worsen the mosquito nuisance because mosquitoes are less of a problem in areas of shallow open water. Dr Lindsay concluded that the pumping may exacerbate the mosquito breeding problems because of an adverse impact on the runnelling program.
- 38 The Tribunal was unable to determine the effect of the proposal on the runnelling program. If there was a permanent water body, the runnel would have a role in the water level control of the water body as a form of

drain with water flowing back to the River. Dr Lindsay suggested that this might affect the physical integrity of the runnel through erosion. No scientific analysis of the effect on the runnel was conducted and the opinions of Dr Lindsay were qualified correctly because of this lack of information.

39 It was undisputed that the wetland was a habitat for birds. The impact on the wetland for birds by pumping water was explained away by Dr Deeley on the basis that the proposal would offer improvements and habitat value for species that feed on the macro-invertebrates that would remain. Mr Pond pointed to a lack of site-specific assessment as to what invertebrates are part of the food supply and therefore the benefits cannot be properly assessed.

40 The initial Foreshore Management Plan by Acacia Springs indicated that the EPA had concluded that the runnelling program had minimal impact on the faunal communities. In that Foreshore Management Plan it was argued that the wetland had low habitat value for wader birds when it dried out, a proposition that is self evident. Consequently, a permanent water body could only have greater value for waders and related species when similar habitats have dried out. Ms O'Malley, an Environmental Planning Officer for the Respondent, in listing the concerns as to the natural state of the wetland, did not give a negative view as to the effect on the habitat value of the wetland.

41 The wetland is not an international RAMSAR wetland nor is it listed in the Environmental Protection Authority (Swan Coastal Plain Lakes) Policy of 1992 that has the force of law. The wetland is listed as a conservation category wetland in Hill, et al "Wetlands of the Swan Coastal Plain Volume 2B." The work of Hill, et al should not be given status as a binding document because of the scale of mapping and its lack of site specific analysis. The use of Hill, et al in a policy statement by the Water and Rivers Commission should not be seen to elevate it to a higher status as the Commission is fundamentally concerned with hydrological issues and not environmental issues, except to the extent that they impact on the former. Bulletin 686 of the EPA is the guide to understanding the conservation status of a wetland. This wetland has not been assessed using the criteria of the Bulletin.

42 The wetland has also been mapped in the Serpentine River Management Plan Stage 1 Goegrup Lake to Barragup Bridge by the Water & Rivers Commission in 1998 as having high conservation value. There is no specific evidence of the details of this Plan but an examination of the map

attached to evidence of Mr Pond indicates it is based on Hill, et al. The Tribunal cannot form a conclusion as to the appropriate category to place the wetland in the absence of site specific analysis on the basis of Bulletin 686. It can conclude only that it is of value due to its attribute of an ephemeral wetland.

- 43 A wetland must be evaluated not only in terms of its attributes but also its functions. This wetland has no hydrological or ecological significance except as a setting for birds in an area where that function can be made up by other wetlands or is increased by the proposal. Dr Deeley indicated that this form of wetland was not unique as there are three other wetlands of the same form and vegetation type within a one kilometre radius and four other wetlands of the same form but a different vegetation type also within one kilometre.
- 44 Mr Pond speculated that the effect of permanent water might be to impact fringing vegetation and the water table. He attempted to justify the maintenance of the wetland in its current form by stating that the fringing melaleuca vegetation requires a drying cycle. That evidence was unclear and speculative.
- 45 As to possible algal contamination from pumping algal infested water into the salt panne, Dr Deeley pointed to several techniques that would be available to prevent that situation, such as pumping on incoming tides from deeper waters in the Serpentine River, filtering the water through sand filters or other media and allowing the wetland to dry out temporarily if algal blooms become a problem.
- 46 It is clear that the Serpentine River is, as Dr Deeley stated in cross-examination, in the “worst category” in respect of algal blooms. His view was that, in any event, once the algal rich water gets pumped into the wetland, the algal densities will decrease because of the shallowness of the water and its exposure as shallow water to ultra violet light. He stated:

“So what tends to happen is that when you have got a very, very shallow water body of 6-9 inches you don’t get much algal growth. When you have got a water body of a metre depth you get algal growth occurring slightly deeper than the 6 inches and then that gets mixed up into the surface so you can pick the algal cells up. But the algal cells don’t actually stay in the top 6 inches long enough for them to be affected by the UV. They tend to get mixed down deeper at 6-9 inches so that they are not affected.”

47 Mr Pond strongly disagreed with Dr Deeley's statement on the basis of his belief that algal growth can occur on the surface of the water in areas that are 6-10 inches deep. He stated:

“In fact, the Serpentine River gets about 15 kilometres of algal bloom on an annual basis and much of it is very shallow.”

48 Mr Pond concluded:

“There is no doubt in my mind that algae will grow, and grow quite veraciously, within the newly-created habitat of a permanent wetland body there.”

49 The conditions that would create that algal bloom, Mr Pond stated, would be the warm, nutrient-rich water from the River that contain algae at a high level of concentration depositing spores in the wetland. Most significantly, he stated categorically that the algae will grow in the shallow water. When asked by the Tribunal whether there was any scientific literature on the depth at which blue-green algae can grow, he stated that, although there is no scientific literature, this conclusion was borne out by the Water & Rivers Commission water quality monitoring and algal sampling in the Serpentine River. This monitoring and sampling found algae on the surface, not restricted to depths below 6 inches deep.

50 The key appears to be that during blue-green algal bloom periods the ocean water and River water are not stratified but often well mixed and, as Mr Pond said, you can get algae throughout the water column.

51 The Tribunal is unable to conclude whether there will be increased algal contamination during the period of pumping. It has no basis to determine whether algae survive in shallow water.

52 As to odours, Mr Pond disagreed with Dr Deeley's assessment that the inundation would produce less odours. Dr Deeley's evidence was based upon the view that the odour was coming from the last vestiges of aquatic invertebrates that were rotting in a small bit of remaining water. Mr Pond stated that having small amounts of water will lead to more creatures feeding in that area and that the rotting will be in the hydrogen sulphide and ammonia gases that create the smells from the decomposition of those creatures combined with the production of algae.

53 In response to Dr Deeley's suggestion that filtering might reduce the algae and thus the odour, Mr Pond stated that filtering will not get rid of all the

algae within the water because of the size of the algae. Mr Pond said that there will be ongoing algal problems under the proposed pumping regime and, other than letting the wetland dry out, he did not see any way of managing the impacts.

54 Dr Deeley is the more eminent of the two witnesses and his evidence was delivered in a way which was more precise and sophisticated. However, the opinion of Mr Pond was not diminished by cross-examination.

55 The Tribunal must acknowledge that the intrinsic value of the wetland or its attributes, are not so easily devalued that mere substitution for another form of wetland is permissible without more. A letter from the late Dr Penn of the Water & Rivers Commission stated:

“The value of the wetland lies in its main habitat form as a shallow seasonal lagoon. Such habitats are quite productive and would support significant water bird and fish feeding in winter and spring, including migratory waders.”

56 Dr Penn stated that this form of wetland is:

“sadly one of the types most often destroyed or degraded by development. The present state of the lagoon renders it of high value as habitat and as representative of its type.”

57 The attributes of a wetland take on significance to the degree that they have a function. It is these functions which give it conservation value. A wetland can have a hydrological function in terms of water quantity, or quality by biofiltration. It can have biological functions in terms of production of organic matter and its export or as a habitat. It can have educational, social or recreational value. The nature of Bulletin 686 is to analyse the values of the wetland. Mere classification in Hill, et al is of no real consequence.

58 The conservation of a wetland as a “type” is not important with a small remnant wetland. The wetland is to be conserved because of its function derived from its attributes. In this case, the wetland has conservation value on some level because of its habitat capacity for birds. It appears logical that the habitat will not be lost by adding water when the panne is dry.

59 The impact of filling a wetland of a particular type, thereby changing its ecosystem at certain times of the year, is uncertain. The Tribunal cannot be clear on the effect on algal concentration, and odours.

## Conclusion

60 The Tribunal has previously endorsed the acceptance of the “precautionary principle:” that scientific uncertainty should give rise to caution in granting development approval that may cause environmental harm. The endorsement is in the decision of *Ironbridge Holding Pty Ltd, et al v Western Australian Planning Commission* (Appeal No. 4 of 1996) that reviewed the decisions prior to 1996. *Ironbridge* was appealed to the Supreme Court (1997) 93 LGRA 308 without any judicial comment on the use of that principle.

61 More recently, the Full Court of the Supreme Court of South Australia in *Tuna Boat Owners Association of SA Inc v Development Assessment Commission And Another* [2000] SASC 238; (2000) 110 LGERA 1, expressed the precautionary principle in this manner ([25], 6):

The precautionary principle means that measures to prevent or to forestall damage to the environment should not be postponed merely because of the lack of full scientific certainty as to the need for such measures. That is, when assessing a development proposal as to which a relevant authority has an incomplete understanding of the risks to the environment, it is appropriate to have regard to such risks, and especially long-term risks, when assessing the proposal even though it is not known that they will eventuate. Relevant risks include the risk of medium or longer term harm emerging as a result of consequences of the development that are not presently known. In such a case the risk of harm from impacts not presently known must be carefully evaluated. In other words, one should proceed with care when the environmental impacts of a proposal are not all known. It is appropriate to take measures that will forestall or prevent the risk of damage to the environment from impacts that are not presently known or not fully understood.

62 That case indicated that the precautionary principle is not a principle of law but rather sound commonsense. As the Tribunal has pointed out in several decisions, there is no onus on the Appellant on an Appeal, aside from an evidentiary onus. However, the precautionary principle creates an onus on the Appellant to prevent or offer a solution to the risk of damage from impacts that are not known or understood.

63 The Tribunal respectfully agrees with Templeman J in *Bridgetown/Greenbushes Friends of the Forest Inc v Executive Director Of The Department of Conservation and Land Management* (1997) 94

LGERA 380 following a statement by Wheeler J in an earlier phase of that litigation, that the precautionary principle (relevant there by legislation) does not require one specific course of action to the exclusion of others.

- 64 Accordingly, as a matter of commonsense, the Tribunal is not prepared to approve the development proposed unconditionally. The only way in which the scientific answers are to be found is after examination of the consequences of the pumping of water. The Tribunal finds as a matter of fact that there is no evidence that the effects of pumping on a short term basis are irreversible. Accordingly, pumping of water into the wetland on a trial basis is the approach best indicated. If there is algal bloom, it will not continue after a trial period, nor will odours. A trial period will allow the proposal to be assessed scientifically and will either support or deny continued operation.
- 65 The Tribunal allows the Appeal and the approval is to run for a period of three years from the date of this decision. At that time, the Appellant must reapply for approval if it desires, using the scientific knowledge that has been obtained to answer the unknowns the subject of this Appeal.