



STAFF REPORT

TO: Environment & Planning Committee

FROM: Mandy Bishop, Consent Planner

REFERENCE: RM040763

SUBJECT: **STEPHEN TATE – REPORT EP05/11/03** - Report prepared for 14 November 2005 Hearing.

Personal Background

My name is Mandy Bishop and I am a Consent Planner for the Tasman District Council. I graduated with first class honours from Massey University in 2002 with a Bachelor of Resource and Environmental Planning. I have approximately two years equivalent full time experience in resource consent processing for regional, district and unitary authorities. I am a graduate member of the New Zealand Planning Institute.

1. APPLICATION BRIEF

1.1 Proposal

To undertake the following activities associated with the operation of a eco-village community known as “Marahau Valley Farm Community”:

- **Application RM040763 - Land Use Consent:**
A retrospective consent is sought to increase the number of authorised dwellings on the property from five to eleven “residential situations” (the term “residential situation” is defined for the purpose of the application) to cater for the existing situation whereby twelve groups of buildings are used for residential activities. As part of this application, it is proposed that some of the existing buildings will be relocated on the property and there will be one conversion of a dwelling to a sleepout. All the buildings will comply with the permitted setback and height standards for the Rural 2 Zone of the proposed Tasman Resource Management Plan (PTRMP). The applicant seeks a term of ten years to give effect to the consent before it expires.

The application also seeks to 'use water that may not be potable' in terms of the PTRMP permitted or controlled activity standards for the Rural 1 and Rural 2 zones. The property is located in the Rural 1 and Rural 2 zones and partly within Land Disturbance Area 2.

- **Application RM050296 - Water Permit:**
To take up to 36 cubic metres of water per day from two unnamed streams on the western side of the property for domestic use and irrigation.

A 35 year term is sought for this consent.

- **Application RM050728 - Land Use Consent (Weir):**

To use, and erect to the extent necessary, an existing small weir structure (or weir structures, depending upon the interpretation of the nature of a "natural weir" located on one of the streams) on the bed of an unnamed stream(s) on the property for the purpose of enabling screened water supply intake pipe(s) to be located in a small pool in behind the weir(s).

This report addresses all three consents/permits although greater detail of applications RM050296 and RM050728 are found in the Consent Planner – Water's (Neil Tyson) report attached as Appendix 1. Aspects of Neil's report have been inserted in the main body to enable a complete assessment of aspects concerning the operation of the Marahau Valley Farm Community.

1.2 Location and Legal Description

The property is located at Marahau Valley Road, Marahau (see Appendix 2 attached).

The legal description of the land is Section 27 Square 9 District of Motueka (CT NL5c/273 and leasehold title 208595).

1.3 Zoning and Consent Requirements

The land is zoned Rural 1 and Rural 2 and is partly within the Land Disturbance Area 2 under the Proposed Tasman Resource Management Plan. This is considered to be an operative zoning (as there are no outstanding appeals of relevance to this proposal), so no analysis is given of the Transitional Plan provisions.

The application is considered to be a Discretionary Activity under the relevant rules of the Proposed Tasman Resource Management Plan in that:

- A total of eleven residential activities are proposed on the site;
- Eleven dwellings/residential situations are on a site that is less than 50 hectares;
- The drinking water may not meet the definition of "potable" for permitted/controlled standards for the dwellings/residential situations;
- The amount of water taken exceeds the maximum permitted quantity of water per day per property of five cubic metres per day; and
- The placement and use of the weir structure(s) in the beds of unnamed streams breaches Section 13(1)(a) of the Resource Management Act 1991 (as amended).

2. INTRODUCTION

2.1 Background

Appendix 3 summarises the Council history of the Marahau Valley Farm Community (MVFC) that was established in 1974. It also provides a summary from Council's Compliance Officer of his actions and findings. At the time of purchase of the lease there were approximately seven hectares in tobacco, the only habitable dwelling was rented out and the rest of the farm was in a state of neglect. In 1977 MVFC were granted a Specified Departure for the original dwelling plus three additional living units on the condition all buildings were brought up to standards by 30/10/77. The specified departure expired after five years and MVFC reapplied in 1982 for the continued use of the four dwellings and establish buildings associated with cottage craft industries. This was granted subject to there being no more than four dwellings, home businesses either use existing buildings or new buildings are not located on the more productive land and buildings were to comply with the Code of Ordinances.

After receiving the decision the MVFC advised Council there were now five dwellings on-site. After some discussions MVFC appeared before Council and this new dwelling was considered a workers accommodation replacing a substandard building that was to be used as a shed or demolished within six months of the new building being completed. This explains how the five authorised dwellings as described in this proposal were established.

Since the granting of the fifth dwelling in 1983, Council issued ten building permits/consents for a kitchen, wood burners or heaters, sheds, garages, glasshouse, sleepout, reinstatement of an addition to a dwelling, extension of a dwelling and a yurt. These have been issued without addressing resource consent issues where required.

Following a complaint in December 2002 the Council informed MVFC that resource consent was required to address the expanded situation, the current discharges were not permitted activities that required upgrading and an independent builders report was required to ensure existing buildings were brought up to standard. Two draft resource consent applications, three formal applications and numerous requests for further information and objections to these information requests have culminated in the current limited notified application.

Since December 2002 Council has also received a number of complaints concerning MVFC's illegal activities and complaints regarding Council's inaction in addressing these issues. An abatement notice was served on MVFC regarding the number of dwellings and domestic wastewater discharge in March of this year. This notice was withdrawn on 28 October 2005 to await the outcome of this Hearing. Depending on the Hearing decision Council's Compliance team will seek an enforcement order to address any illegal structures if applicable.

2.2 The Setting

The 33.776 hectare site is located at the end of the formed and sealed Marahau valley road amongst mixed land uses ranging from grazing, tree crops and other productive uses and home businesses. The Marahau River runs through the property at the northern end and has generally flat land on either side. A little more than half of the site towards the southern aspect is hillside or sloping land with some flatter areas used for residential activities.

The property is used for residential purposes as well as organic pasture, orchards and vegetable gardens, bee keeping and regenerating forests have been assisted by large amounts of tree plantings. Many of the residents work in the local Marahau community where accommodation is limited for employees. Due to the topography and isolation of the site much of the MVFC can only be seen from one off-site dwelling on the Hollingworth's property.

3. NOTIFICATION AND SUBMISSIONS

Limited Notification of the application occurred on 15 September 2005.

Four submissions were received, three requesting to be heard.

J & A Hollingworth (Abel Tasman Deer Farm Ltd)

Opposes the application due to the proposal, as submitted, has not sufficiently avoided, remedied or mitigation potentially adverse impacts on the rural character and amenity of this environment (including visual impacts, ensuring the composting toilets comply with permitted standards and the increase in occupancy over summer months by house buses) and the concern over exactly what will arise as a consequence of the approval of a consent that allows 11 residential situations, each having a collection of buildings, being an extension beyond the five workers units previously approved. The Hollingworths' disagree with claims made in the History and Philosophy of Marahau Valley Farm Community of land transformation, no adverse effects from the homes and willingness to comply with local government guidelines when there is a long history of illegal works and activities. In addition, very careful consideration should be given to what is intended in the way of "family" accommodation and how many occupants are intended in that regard.

They wish to be heard in support of their submission.

Nelson Marlborough District Health Board

NMDHB has neither opposed or supported the application and has made recommendations that the MVFC water supply be registered as a Community Drinking Water Supply and comply with relevant provisions of DWSNZ including on-going maintenance of the supply and the development of a Public Health Risk Management Plan.

They wish to be heard in support of their submission.

Wakatu Incorporation

Supported the application particularly the upgrading of the existing dwellings and wastewater systems to comply with Council requirements and the Building Act. They recommend appropriate monitoring conditions to ensure on-going compliance.

They wish to be heard in support of their submission.

K S Goodman

Opposed the application but did not oppose MVFC per se. Mr Goodman opposed the application on the basis of setting a precedent so that any one title may have eleven dwellings and potentially sleepouts, buses, caravans etc in addition to the eleven dwellings.

He did not wish to be heard in support of his submission.

Appendix 4 shows the location of submitters and written approvals gained prior to notification.

4. STATUTORY CONSIDERATIONS

4.1 Resource Management Act

Part II Matters

In considering an application for resource consent, Council must ensure that if granted, the proposal is consistent with the purpose and principles set out in Part II of the Act.

If consent is granted, the proposed eco-village must be deemed to represent the sustainable use and development of the land resource. The critical issue of this consent is the potential effect of the establishment and use of the residential situations on the surrounding rural environment.

These principles underpin all relevant Plans and Policy Statements, which provide more specific guidance for assessing this application.

Section 104

Subject to Part II matters, Council is required to have regard to those matters set out in Section 104. Of relevance to the assessment of this application, Council must have regard to:

- Any actual and potential effects of allowing the activity to go ahead (Section 104 (1) (a));
- Any relevant objectives and policies in the Tasman Regional Policy Statement and the Proposed Tasman Resource Management Plan (Section 104 (1) (b));
- Any other relevant and reasonably necessary matter(s) to determine the consent (Section (1) (c)).

In respect of Section 104 (1) (b), the Proposed Tasman Resource Management Plan is now considered to be the dominant planning document, given its progress through the public submission and decision-making process.

Section 104B sets out the framework for granting or declining consent based on the status of an activity as set out in the relevant Plan.

4.2 Tasman Regional Policy Statement

The Regional Policy Statement seeks to achieve the sustainable management of land and water body resources including the promotion of the efficiency of water use. Objectives and policies of the Policy Statement clearly articulate the importance of protecting land resources from inappropriate land use and development.

Because the Proposed Tasman Resource Management Plan was developed to be consistent with the Regional Policy Statement, it is considered that an assessment under the Proposed Plan will satisfy an assessment against Policy Statement principles.

4.3 Tasman Resource Management Plan

The most relevant Objectives and Policies are contained in: Chapter 5 'Site Amenity Effects', Chapter 7 'Rural Environment Effects', Chapter 11 'Land Transport Effects' Chapter 12 'Land Disturbance Effects' and Chapter 30 'Taking, Using, Damming and Diverting Water'. These chapters articulate Council's key objectives: To ensure character and amenity values are maintained or enhanced and to reduce the risk of damage and sedimentation resulting from land disturbance.

The most relevant Rules which follow from these imperatives are contained in Chapter 16.2 "Transport (Access Parking and Traffic)", Chapters 17.4 & 17.5 "Rural 1 & 2 Zone Rules", Chapter 18.6 "Rules for Land Disturbance Area 2" and Chapter 31.1 "Water Take, Diversion or Use".

Details of the assessment of the proposed activity in terms of these matters is set out in the chapters following.

5. ASSESSMENT

In accordance with Section 104 of the Resource Management Act, Council must consider the actual and potential effects on the environment of allowing the activity, have regard for any relevant objectives, policies, rules, and consider any other matters relevant and reasonably necessary to determine the application.

5.1 Assessment of Environmental Effects

Pursuant to Section 104 (1) (a) of the Resource Management Act, the following effects assessment has been set out.

Permitted Baseline

Section 104(2) gives a consent authority the ability to disregard adverse effects on the environment of activities that the Plan permits, if it so wishes. This is the “permitted baseline” and can provide a yardstick for the effects that otherwise might arise.

Buildings that are not used as dwellings are potentially permitted by the Plan subject to rules regarding maximum building coverage (2000 square metres for this property), setbacks from boundaries and watercourses and height. Note that dwellings, greenhouses and hail canopies are exempt from coverage calculations. Clearly there could be a proliferation of buildings and greenhouses with associated visual effects on this property as of right as long as their use also complied with permitted activity standards.

The Plan does not specify a maximum number of people that can occupy a dwelling nor limit the size of dwellings in Rural 1 and 2 zoned properties. In addition, the definition of building does not include any vehicle, trailer, tent, caravan or boat unless it is used for two calendar months or more in any year. However the Plan specifically does not permit more than one residential activity per site, residential activity being defined as: *“the use of land and buildings by people for the purpose of living accommodation....”* This proposal of eleven residential situations will not produce same or similar effects on the environment when compared to what is permitted by the Plan.

Access

Permitted standards for on-site access have recently been amended (August 2005) to refer to the number of “users” as opposed to the number of “sites” prior to the amendments. At the time the application was received there was only one site so access formations needed to only meet single lane standards. The rules now enable shared access for up to six users with more than six users requiring a formed access appropriate to the type of vehicles using the access and the number of vehicle movements per day.

The application states the on-site access is adequate for the needs of the Community and a car parking area is provided a short distance from the sealed Marahau Valley Road and people can easily visit most of the residential situations from this car park. Present traffic movements have been estimated at 40 vehicle movements per day that is less than expected vehicle movements for eleven households due to some members residing full time on the property and the ethos of sharing facilities and assets (such as cars) within the community.

Given this consent is essentially retrospective and no known problems have arisen as a direct result of the standard of on-site access, I recommend the upgrading of the vehicle crossing to comply with the sealing standard of at least ten metres on-site and an advisory sign for a maximum speed of 20 kmph as vehicles enter Marahau Valley Road as being the only consent conditions required to mitigate the effects of gravel migration and safety when entering the sealed public road.

Should the Community apply to increase the number of residential situations on-site I would recommend that the on-site access from the public road up to the car park be upgraded as necessary to meet a minimum width of six metres with further areas upgraded to the six metre width depending on the number of residential situations sharing access. The six metre width and ten metre seal are standards as advised by Council's Engineering Department that would be appropriate for domestic or rural residential type vehicles with the associated number of forty vehicle movements per day.

Wastewater and Stormwater Disposal

The application did not seek any discharge permits so these activities are required to meet permitted activity standards of the Plan. Current upgrades are being addressed through requirements of the Building Act 2004. Any issues regarding these matters are therefore outside of the scope of the Hearing. Council's Consent Planner – Discharges has however, assessed the proposed systems and has provided comments as attached as Appendix 5.

Water Supply

The primary environmental effects of the applications are considered to be:

- decreased flows in the Marahau River particularly at low flow;
- impacts to the quality and availability of aquatic habitat;
- fish passage issues at the abstraction sites; and
- the potability of the water supply.

Marahau River flows

Policy 30.1.11 of the TRMP provides a guide to the allocation of water from rivers where the limit is not stated in the TRMP. Between 10% of the five-year seven-day low flow and up to 33% may be allocated from rivers if the cumulative adverse effects listed in Policy 30.1.9 are avoided, mitigated or remedied.

The applicant's consultant *Envirolink* has provided various flow data (not repeated here) including estimates of the five and ten year low flow for the two unnamed tributaries from which water is taken and an estimate of the low flow of the Marahau River at a previous flow measuring Site 56501 Marahau River at (Hollingworth) Old Quarry. The consultant's estimate is of between 354 m³/day and 475 m³/day being available from the two streams compared with the proposed take of 36 m³/day. The proposed take (36 m³/day) is therefore 10% of the combined tributary flow in a ten year drought (354 m³/day) and is less than 1% of the flow of the Marahau River of 206 l/sec in the same 10 year drought.

With regard to cumulative effect, Table 1 shows the consents and applications for abstraction within the Marahau Catchment and this amounts to approximately 13.4 l/sec as, reportedly, some consents may be unexercised. 13.4 l/sec is 5.8% of the five year low flow of 206 l/sec and less than the guideline (10%) allocation under Policy 30.1.11 TRMP.

Table 1: Marahau Catchment, Abel Tasman Zone Consent Holders

Consent	Permit Holders/Applicants	Source	Daily	Weekly
NN700540	D G Bloomfield	Marahau River	909	
NN010006	Wakatu Inc	Groundwater		
NN000342	R Taylor	Groundwater	15	105
NN000364	D W Macdonald Family Trust	Marahau River Trib	15	105
NN000503	K S and J Goodman	Marahau River	200	1400
	CURRENT ALLOCATION			
	(L/SEC)		13	
RM050296	S Tate	Marahau River Trib	36	252
	PROPOSED ALLOCATION			
	(L/SEC)		13.4	

The extent that the adverse effects listed in Policy 30.1.9 can be attributed to the proposed (S Tate) take during periods of low flow is therefore likely to be small regarding the Marahau River even when the cumulative effect of other existing takes are included. Any adverse effects are likely to be restricted to the two small tributaries, and then only during dry summers.

Abstraction sites

The applicant is seeking retrospective consent for the two existing intakes located within stream beds and one involves a concrete weir structure. The applicant advises that the actual intake pipe is screened in each case and will not entrain native fish as required in the TRMP.

The environmental concerns regarding intake structures is the potential for adverse affects on flood flows including scour of the river bed and banks e.g. destabilising and loss of riparian vegetation on the river bank, and adversely affects on fish passage. The consultant's assessment is that the existing structures are having little if any environmental effect and that poor fish passage at the higher (No 2) intake can be remedied through placing rock (and possibly concreting) to provide a workable and practical fish ladder. This advice is adopted as a condition of consent, if granted.

Potability of the water supply

The proposed on-site reticulated system is unlikely to meet the definition of the term "potable" referred to in Plan permitted, controlled and restricted discretionary activity standards for supplying water to dwelling(s). The Council however accepts rainwater tank supplies as meeting the water supply requirement and this supply is also unlikely in some cases to meet the "potable" standard. Should the committee grant consent it is recommended that conditions of consent reflect the Nelson Marlborough District Health Board recommendations in that the MVFC water scheme be registered as a community drinking water supply including compliance with relevant Drinking Water Standards for New Zealand and the development of a Public Health Risk Management Plan.

Risk from Natural Hazards

A potential flood hazard may exist on the land adjacent to the Marahau River but no new buildings are proposed in this area and any on-site relocations will require building consent where the flooding issues can be addressed. The applicant has obtained a report from Mr D Nottage and is aware of the areas that may be exposed to a risk from flooding.

Much of the hillside or sloping land is in the Land Disturbance Area 2 where resource consent is required for earthworks over 0.5 metres in height or depth. The applicant obtained a preliminary report by Nelson Consulting Engineers Ltd assessing the stability of four existing building sites and four potential building sites. The report concluded that none of the existing dwellings should be condemned based on a geotechnical hazard. Conditions of consent, if granted, can reflect the findings and recommendations of this report.

Avoiding Conflicts within the Development

There is potential for adverse environmental effects to occur within self-managed communities if clear responsibilities are not assigned to members ensuring buildings, disposal systems, shared land and shared assets such as roads and the water supply reticulation are not properly maintained or managed. I understand MVFC requires potential new shareholders to live in the community for six months before committing to a purchase so that they and existing members have the opportunity to realise if the living arrangement is suitable. Shareholders also have defined areas of land exclusive to their use as well as communal land that has defined responsibilities and purposes.

It would be useful for Council to have on file a plan of these designated areas to assist with communications and be advised of any change of details for the first point of contact for monitoring and compliance issues. A legal company has been established that can serve as a point of contact for Council should the consent holder move from the property or be unavailable. With all these provisions in place this matter is adequately addressed.

Rural Character, Landscaping and Visual Amenity

Most of the existing buildings are located and/or landscaped to fit in to the rural setting and most residential situations cannot see any other on-site residential situation. Due to the topography and location of the site the development on the property is visible from a small area on other properties in the immediate vicinity. The applicant proposes more tree planting be carried out along the northern boundary of the property to form a more dense screen than currently exists.

The Plan has recognised specific areas where landscape qualities are to be maintained or enhanced. Landscape priority areas, Rural 3 zone, Coastal Environment Area and identified ridgelines are some of the means the Council seeks to control the potential adverse visual effects of development. While none of these provisions apply to the subject property a sense of openness and greenness normally associated with the rural areas is maintained on the property despite the number of residential situations due to organic practices, regenerating forest, gardens and vegetable patches.

Respect for the natural environment ingrained within eco-village concepts can provide a greater landscape quality than conventional permitted farming practices and activities such as the unlimited land coverage of greenhouses or hail canopies. The applicant has however volunteered a condition of consent enabling the building coverage (excluding residential situations and greenhouses), to not exceed 4000 square metres. This is double the permitted standard and as dwellings are excluded from the calculation I can see no reason to permit this building coverage extension as allowing this extension could lead to visual amenity adverse effects that are more than minor.

A submitter believes the visual impact of the residential situations to be more than minor but given the scale of buildings that could be on-site as permitted activities and the fact the Plan does not restrict the number of people residing in a dwelling or on-site in mobile homes or tents for less than two months, the visual effect of the proposal and associated activities can even be considered to be less of an impact visually than can occur as of right. In addition, by granting this consent the existing visual amenity could be improved through consent conditions. While I can understand the frustration of seeing unauthorised developments occur on the adjoining property over a number of years, this consent can provide a more robust means of monitoring, review and enforcement.

Productive Land Values

The subject land is zoned Rural 1 and 2, based on values associated with its productive potential. This land in part has *high* productive value and Rural 2 Zone land is without a doubt a valued asset which must also be sustainably used. The eleven residential situations and their use within an eco-village situation can potentially provide a more sustainable use of the land resource as long as discharges associated with residential activities are properly constructed and maintained. Once in place, composting toilets do not produce waste but a beneficial input for the soil, greywater systems can reuse scarce water resources and conservation practices ensure energy use is minimal.

The theory of self-reliance, zero waste and co-operative concepts working in harmony with the natural environment seek to limit the human “footprint” and restore natural eco-system balances. These practices potentially enhance on-site productive land values and have adverse effects on the environment that are far less than conventional residential and farming practices that rely on large amounts of energy inputs and produce large amounts of waste. However, the adverse effects could be more than minor if discharges are not properly managed and maintained and land fragmentation occurs from a failed community wanting separate titles for the residential situations.

The potential for adverse cumulative effects of allowing fragmentation of land based on the presence of eleven residential situations may result in significant cumulative adverse effects on productive land values. Conditions of consent, if granted, will need to adequately address the potential for land fragmentation.

A covenant preventing the residential situations being used as a reason to subdivide cannot prevent an application for subdivision but it can send a strong message and indication that subdivision as a direct result from the granting of this consent is unlikely to be supported by the Council. Once a rural-residential type of subdivision has been approved the value of the rural character is progressively weakened with each subsequent rural-residential development based on the precedent of the previous development.

Future Effects

The effect of eleven residential situations has already been established on this rural site. The granting of this consent will not change this situation but can ensure the eleven residential situations are improved and better monitored by conditions of consent. The alternative is to enforce the maximum of five dwellings that is likely to result in a number of accessory buildings, mobile homes and other temporary structures to cater for the needs of the existing shareholders. Arguably this is the situation that needs addressing now whereby visual adverse effects are mitigated by allowing more permanent residential situations rather than having permanent residential activities in temporary situations. Any future application for more residential situations will be assessed in accordance with Plan provisions at that time.

5.2 Relevant Plans and Policy Statements.

The land use activity must be deemed to be consistent with relevant objectives and policies pursuant to Section 104 (1) (c) and (d) of the Act. The most relevant Plan is considered to be the proposed Tasman Resource Management Plan and will be used in this assessment. Because this was developed to be consistent with the Regional Policy Statement, the assessment would also be considered satisfy an assessment under the Policy Statement.

The following summarises the most relevant plan matters and provides brief assessment commentary:

Chapter 5 - Site Amenity Effects Council must ensure that the character and amenity values of the site and surrounding environment are protected, and any actual or potential effects of the proposed activities must be avoided remedied or mitigated, including cross boundary effects.

Objectives: 5.1, 5.2, and 5.3 As detailed in the assessment of effects (Chapter 5.1), the rural character and amenity values will be maintained or enhanced and provided wastewater systems are functioning

Policies: 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.9A, 5.2.1, 5.2.4, 5.2.7, 5.2.8, 5.3.2. correctly, the eco-village can better maintain the landscape and rural resource quality than conventional rural living and farming practices.

Chapter 7 – Rural Environment Effects The rural land resource is sustained to meet the reasonably foreseeable needs of future generations. Rural land fragmentation reduces the productive potential of land and the establishment of dwellings on rural land without any productive use of the land is a significant cause of land fragmentation.

Objectives: 7.1, 7.2, 7.3. Increased residential activities in rural locations may create pressure to limit legitimate rural activities. Communal living activities occur in specific locations to ensure the land resource is used efficiently, avoid reduced productive and versatility values of the land and avoid cross-boundary conflicts and land fragmentation.

Policies: 7.1.2, 7.1.2A, 7.2.1A, 7.2.4, 7.3.1, 7.3.3, 7.3.4, 7.3.6, 7.3.9

Chapter 11 - Land Transport Effects The location and form of built development provides a clear and distinctive transition between urban and rural environments and it avoids, remedies or mitigates adverse effects of traffic generation.

*Objective 11.1
Policy 11.1.1.*

This matter is discussed in more detail in the assessment of effects (Chapter 5.1).

Chapter 12 – Land Disturbance Effects The adverse effects of land disturbance including induced slope instability and sedimentation are to be managed through sustainable practices.

*Objective 12.1
Policy 12.1.2*

Chapter 16.2.2 – Vehicle Access Considerations Permitted activity performance conditions that specify minimum standards for on-site access.

Chapters 17.4 & 17.5 – Rural 1 & 2 Zone Rules The proposed activity is subject to permitted, controlled and restricted discretionary activity performance standards and matters set out in Rules 17.4.2, 17.4.4, 17.4.5, 17.4.6, 17.5.2, 17.5.4 and 17.5.6.

Chapter 30 – Taking, Using, Damming and Diverting Water The allocation of water for consumptive uses from rivers is to be managed to maintain water supplies at an acceptable level while adverse effects of cumulative takes on aquatic ecosystems are avoided, remedied or mitigated.

Objectives 30.1, 30.2 The weir structures may have the same effect as the damming of water and adverse effects of the flow regime and passage of fish and eels also need avoiding, remedying or mitigating.
Policies 30.1.9, 30.1.11, 30.1.17, 30.1.28, 30.2.4, 30.2.9, 30.2.14, 30.2.17

Chapter 31.1 - The proposed water activities are subject to permitted, *Water take, controlled and restricted discretionary activity standards and diversion or use* matters set out in Rules 31.1.2, 31.1.3 and 31.1.6.
rules

Chapter 5 *Site Amenity Effects* is concerned with the effects of land uses that cross property boundaries that may add to or detract from the use and enjoyment of neighbouring properties. They may also affect local character.

Objective 5.1.0 seeks to avoid, remedy or mitigate adverse effects from land use on the use and enjoyment of other land and on the qualities of natural and physical resources. Policies specify limiting the intensity of development where wastewater reticulation and treatment are unavailable and to avoid, remedy, or mitigate adverse effects of vehicles, buildings and urban use on rural activities and other properties.

Objective 5.2.0 seeks to maintain and enhance amenity values on-site and within communities. Policies include privacy issues, amenity through vegetation and screening, enabling a variety of housing types and traffic adverse effects are avoided, remedied or mitigated.

Objective 5.3.0 seeks to maintain and enhance the special visual and aesthetic character of localities. Policies include maintaining the open space value of rural areas.

The proposal seeks to legalise eleven residential situations that will only be visible to one other dwelling in a small valley. The buildings are and will further be screened through existing and proposed plantings and are largely built from natural materials that blend into the surrounding rural landscape. On-site privacy has been maintained through building locations and plantings and each residential situation can rarely see other residential situations.

The potential for conflict between residential and rural activities is very low as the property practices organic pasture, orcharding and vegetable growing practices so rural activities occur on-site as well as on adjoining properties. The valley is a mix of uses and lifestyles and being at the end of the sealed and formed public road as well as having low vehicle movements will ensure the effects of vehicles on the area is similar in nature and scale to other existing activities from other properties. Policy 5.2.7 enables a variety of housing types in rural areas the overall objective of maintaining and enhancing amenity values can be achieved by this proposal.

Chapter 7 *Rural Environment Effects* is concerned with sustaining the rural land resource to meet the reasonably foreseeable needs of future generations.

Objective 7.1.0 and its related policies seek to avoid the loss of productive land and avoid, remedy or mitigate adverse potential and cumulative effects on the land resource including cross-boundary effects.

Objective 7.2.0 and related policies provide for communal living activities in restricted locations that have regard for the productive and versatile values of the land, cross-boundary effects, cumulative adverse effects from further land fragmentation and efficient use of the rural land resource.

Objective 7.3.0 and related policies seek to avoid, remedy or mitigate the adverse effects of existing and potential future activities on rural character and amenity values. Attributes including openness, greenness, productive activity and scale of structures contribute to the rural character and activities that have adverse effects on these attributes, health or permitted rural activities are to be excluded from rural areas. The servicing adverse effects of rural development is also to be avoided, remedied or mitigated.

The proposal enhances productive land use opportunities as long as domestic discharges comply with permitted standards. The eco-village concepts of living in harmony with the natural environment and the reuse of resources will result in the loss of productive land associated with building sites but as these sites often have associated areas of organic vegetable, orchard or pasture crops or assist in pest eradication and forest regeneration, the net result is a gain in productive potential. The residential cartilage is therefore not as extensive as conventional residential living where the intensification of residential activities can conflict with a working rural environment. As the valley has a mix of uses the eco-village activities are unlikely to result in cross boundary conflicts.

The MVFC has been operating since 1974 and has legal instruments in place relating to shares and the rights of shareholders. While the future cannot be predicted, the management of the Community has been well established that minimises the potential for community members to seek individual titles for their shares. In addition the shareholders do not own the land and the owners of the land do not own the development on-site so these factors would suggest there is a very minor risk of subdivision and land fragmentation as the direct result of granting this consent.

Overall an eco-village that complies with Council discharge standards can be considered to be an efficient use of the rural land resource especially when comparisons are made with the scale of buildings and conventional farming and residential practices that can occur as of right in the rural area.

Chapter 11 *Land Transport Effects* seeks to ensure the safe and efficient provision of the road network. Policy 11.1.1 promotes the location of development so that adverse effects of traffic generation are avoided, remedied or mitigated and provides a distinct transition between the urban and rural environments.

It is considered that this proposal, if granted, will not have adverse cumulative effects on the rural roading network in terms of conflicting with existing and potential rural activities and capacity of rural roads to cope with residential type activities. Communal living involves the sharing of vehicles, low energy inputs and a degree of self-reliance that result in lower than normal vehicle movements.

Chapter 12 *Land Disturbance Effects* recognises the Separation Point Granite terrain is susceptible to erosion and sediment generation upon disturbance if not managed appropriately. Soil loss can harm aquatic habitats, adversely effect drainage patterns and damage archaeological sites. Leaving cut slopes open to the weather can induce instability and slope failure.

Recommended conditions of consent can ensure sustainable practices are employed in upgrading existing residential situations so these adverse effects are no more than minor. In addition, any further development involving cut batters or excavations over 0.5 metres will require additional resource consent where appropriate conditions will mitigate these adverse effects.

Chapter 30 *Taking, Using, Damming and Diverting Water* addresses the need to maintain minimum river flows, maintain or enhance the quality of aquatic habitats and provide for the passage of fish.

The applicant advises that the actual intake pipe is screened in each case and will not entrain native fish as required in the TRMP. The environmental concerns regarding intake structures is the potential for adverse affects on flood flows including scour of the river bed and banks e.g. destabilising and loss of riparian vegetation on the river bank, and adversely affects on fish passage. The consultant's assessment is that the existing structures are having little if any environmental effect and that poor fish passage at the higher (No 2) intake can be remedied through placing rock (and possibly concreting) to provide a workable and practical fish ladder. This advice is adopted as a condition of consent.

It is considered that the effects of the take are no more than minor on naturally occurring Marahau River low flows with only some concern about the effect of abstraction in very dry summers on the instream values of the two tributary streams. However, provided the information regarding stream flows is correct and provided the applicant scheme is efficient and well maintained, then any effects on instream values of the two tributary streams should also be minor.

In conclusion it is considered that the proposed activities are not contrary to the policies and objectives of the Proposed Plan. The proposal is suited to the rural area where rural character, amenity and productive land values can be maintained and cross-boundary conflicts are not increased. Granting consent for the abstraction of water from two small tributaries of the Marahau River is consistent with the policies and objectives of the TRPS and TRMP.

5.3 Part II Matters

The proposed land use activities are considered to be consistent with the purpose and principles contained in Part II of the Resource Management Act.

Part II of the Act is concerned about enabling communities to provide for their wellbeing while sustaining resources to meet the needs of future generations, safeguarding the life-supporting capacity of soil and water and avoiding, remedying or mitigating adverse effects of activities on the environment (Section 5). To achieve this, Council shall have particular regard to the efficient use of resources, maintenance and enhancement of amenity values and quality of the environment and the finite characteristics of the soil resource (Section 7).

As I have discussed earlier the proposal is an efficient use of the land resource, will not increase cross-boundary conflicts that undermine the ability of other properties to meet their needs, will maintain or enhance the amenity values of the area and the potential to lead to unsustainable land fragmentation of the finite soil resource is very minor.

It is considered that conditions of consent can ensure MVFC is consistent with the Act's purpose of achieving the sustainable management of natural and physical resources.

5.4 Matters of Discretion and Control in the Plan

The proposal is a discretionary activity where matters of discretion are unlimited. The applicant referred to the Plan's provision for Papakaianga Development (defined as "*the use and occupancy of multiple-owned allotments by the Maori landowners and involving the development of the land for residential units and other buildings and uses necessary to enable the owners to live on their land*"), but it is considered inappropriate to draw comparisons to a provision specifically recognising aspects of Maori culture when the applicants and shareholders are not the Maori owners of the land.

As a *restricted discretionary* activity under TRMP Rule 31.1.6, conditions on various matters over which Council has reserved control for the water take (see Rule 31.1.6(1)-(12)) can be adopted including the following:

- (1) *The quantity, rate and timing of the take not otherwise specified above, including rates of take, rostering or rationing steps . . . and any other requirements to maintain any minimum flow or level given in Schedule 31.1C.*
- (3) *The effects of the take, use or diversion on other uses or values of the water body or coastal water, including those given in Schedule 30.1.*
- (5) *Effects on other water users.*
- (6) *The effects of the take, use or diversion including takes from groundwater, either by itself or in combination with other existing takes, on aquatic and riparian ecosystems, fish and eel passage and flows in rivers, coastal streams or coastal waters, including in estuaries.*
- (8) *Installation of water meters as provided for in Schedule 31.1B or in Policy 30.2.11.*
- (9) *Information to be supplied or monitoring requirements.*
- (10) *Measures to achieve efficient water use or water conservation, including sealing of artesian bores, preparation of property water management plans, and measures to monitor water use.*
- (12) *Financial contributions, bonds and covenants in respect of the performance of conditions and administration charges (Section 108 of the Act).*
- (14) *The nature, scale and distribution of beneficial effects resulting from the proposed water take, use or diversion*

The conditions of consent required under the TRMP in this Marahau Zone are relatively few. However, issues include ensuring that water taken is used efficiently. As provided for in the TRMP, Council can reserve the right to require a property water management plan from the consent holder. Such a plan could be required to document efficiency measures including a leak detection programme and for repairs and maintenance. The ability for Council to review the quantities and rates of water authorised under the water permit in response to a property water management plan may also be appropriate.

5.5 Other Matters

Precedence and Cumulative Effects

Precedence in itself is not an “effect” but the subsequent approval of this proposal to lead to other similar applications from rural properties each wanting like treatment. This can lead to a cumulative effect that is very much a relevant adverse effect under Section 3 (d) of the Act.

In resource management terms, the cumulative effect of establishing a pattern of consent decisions based on other applicants wanting similar outcomes, can have adverse effects on significant resource management issues. The issue of "precedence" must be acknowledged in practical terms as giving rise to cumulative adverse effects:

- Applications for consent are lodged on the basis that consent to previous applications have been granted under like conditions; and
- Council can expect pressure to act consistently in its application of Plan objectives, policies, rules and assessment criterion. That is, Council is expected to be consistent in its decision-making.

This application is unique in that District-wide there have been few applications for Communal living and the nature of the activity has already been consented to in previous Specified Departures. However the MVFC have greatly increased the scale of the community beyond these original approvals and have not obtained all Council approvals required for the existing on-site development. While the Council should not be seen to be permissive of any disregard of legal requirements by anyone, this resource consent does present a more robust means of ensuring the existing situation is upgraded to acceptable standards and helps to ensure further development does not occur without obtaining the required consents.

Terms of Land Use Consents or Water Permit before Expiring

The applicant has applied to complete the permanent establishment of the eleven residential situations within ten years. While eleven residential activities currently occur on-site whereby five dwellings have been previously consented to, there are another five situations where work is proposed to make living arrangements more permanent. These are as follows:

- Map reference I3 – currently a sleepout behind the original cottage to be relocated to one of P5 to P8 positions and upgraded to become a residential situation;

- Map reference P1 – currently a yurt and house bus to become a residential situation;
- Map reference P2 – currently a collection of three buildings, one needs demolishing and a residential situation is to be established here;
- Map reference P4 – currently a caravan and attached room awaiting to become a residential situation;
- Map reference P6 – used to contain a mobile home, is currently vacant but is to become a residential situation on this site or on one of the other proposed sites(P5, P7 or P8); and
- Map reference I2 – a caravan to be relocated to one of P5 to P8 positions and used as a sleepout.

As the work for these residential situations will be undertaken by separate shareholders I do not see the need to extend the normal time frame of five years to ten years to give effect to this consent, given the ability to apply for an extension of time under Section 125 of the Resource Management Act. This is a retrospective consent as the residential situations have been on-site for some length of time and it is important that building upgrades and permanent establishments occur sooner rather than later. In addition under the Building Act works must commence within six months of the issuing of a building consent and be completed in two years. A ten year time frame does not complement these requirements.

The applicant has also applied for the full 35 year term provided in the RMA. If the Committee decides to grant resource consent RM050728 and RM050296 it is recommended they have the expiry date of 31 May 2015 in line with the common expiry date for water permits in the Marahau Water Management Zone listed in Schedule 31.1A TRMP. It is appropriate that the landuse consent for the intake structures have the same term. Renewal of the water permit consent in 2015 falls to a *controlled* activity status under the TRMP, subject to various matters stated in Rule 31.1.3.

6. CONCLUSIONS

- 6.1 The proposal is a Discretionary Activity under the Proposed Plan.
- 6.2 The effects of the eleven residential situations on the rural environment will be no more than minor subject to compliance with recommended conditions.
- 6.3 The property has unique characteristics that would enable Council to approve the proposed activities without undermining the integrity of the Plan to achieve its environmental outcomes.
- 6.4 The policies and objectives of the Proposed Plan seek to ensure the use of the land does not adversely affect the character and amenity of the area, avoid cross-boundary conflicts and protect the rural land resource and associated permitted rural activities. Granting consent for the abstraction of water from two small tributaries of the Marahau River is consistent with the policies and objectives of the TRPS and TRMP.

- 6.5 Rural land fragmentation reduces the productive potential of land and the establishment of dwellings on rural land without any productive use of the land is a significant cause of land fragmentation. The MVFC uses the land productively, does not own the land and was established to be a sharing community. Subject to recommended conditions of consent, it is unlikely that subdivision of the subject land would be a direct result from the granting of this consent.
- 6.6 While the eco-village concept involves self-management and a degree of self-reliance, at no time does this absolve the consent holder of their responsibilities to comply with Council regulations and provisions in the Resource Management Act, Building Act and other relevant legislation. The consent holder **MUST** agree to obtain all necessary approvals from Council **PRIOR** to commencing any further development. Conditions of consent can reinforce this requirement.
- 6.7 It is considered that the effects of the take are no more than minor on naturally occurring Marahau River low flows with only some concern about the effect of abstraction in very dry summers on the instream values of the two tributary streams. However, provided the information regarding stream flows is correct and provided the applicant scheme is efficient and well maintained, then any effects on instream values of the two tributary streams should also be minor. During severe droughts it may be appropriate to restrict use of water to essential uses, and to suspend watering of amenity plantings, lawns etc during drought times.
- 6.8 It is considered that this proposal, on this particular site, is not contrary to the policies and objectives of the Proposed Plan and is consistent with the Act's purpose of achieving the sustainable management of natural and physical resources. The adverse effects on the environment will be no more than minor. Therefore the application can be granted under Section 104B of the Resource Management Act 1991.

7. RECOMMENDATION

That pursuant to Sections 9, 13, 14 & 104B of the Resource Management Act, I recommend the application to undertake activities associated with the eco-village community known as "Marahau Valley Farm Community" on Section 27 Square 9 District of Motueka be granted.

8. CONDITIONS

If the Committee grant the application, I recommend the following conditions be imposed:

RM040763

Covenants

1. Within three months of the date of this consent, a covenant under Section 108 of the Resource Management Act 1991 shall be entered into and registered against the certificate of title for the land on which the residential situations are located. The covenant must state that:

- a) The residential situations shall not provide a future basis for subdivision of the title; and
- b) There shall be no more than eleven residential situations on-site unless expressly authorised by the Council through additional resource consent(s) and building consent(s) prior to the construction and occupation of any further development.

The covenant shall be entered into pursuant to Section 108(2)(d) of the Act and shall be registered against the title pursuant to Section 109 of the Act. All cost incurred in preparing and registering the covenant shall be paid for by the consent holder.

Building Upgrades (site numbers refer to Plan A attached and dated 14/11/05)

- 2. All proposed development, upgrades or relocations for the six unconsented residential situations shall comply with the permitted activity building setback and height standards of the Rural 2 zone (Rule 17.5.4 dated 20 August 2005) and Land Disturbance Area 2 (Rule 18.6.7 dated 29 January 2005) or further resource consent is required. In addition the following applies:
 - a) P1 – any further development on the lower fill portion of the existing platform shall either have foundations extend into competent ground below or the existing fill is removed and replaced with certified fill.
 - b) P2 - Any new residential building shall be setback at least four metres from the base of the cut that shall have a cut-off drain constructed at the base to divert stormwater away from the platform. Supplemental planting of the slope above the site is recommended to further enhance stability.
 - c) P4 – any further development on the fill portion of the platform shall either have foundations extend into competent ground below or the existing fill is removed and replaced with certified fill. Any new residential building shall be setback at least four metres from the base of the cut that shall have a cut-off drain constructed at the base to divert stormwater away from the platform.
 - d) P5, P6 & P7 - Further geotechnical investigation and assessment shall be provided prior to any building consent and resource consent (if applicable) application for development of these sites along with the access routes to them.
 - e) P8 – Further geotechnical investigation and assessment shall be provided prior to any building consent and resource consent (if applicable) application for development of this site.
 - f) I3 – once this residential activity is relocated to one of the positions identified as P5-P8 all occupation of site I3 shall immediately cease and the buildings at I3 either removed from the site or demolished.
 - g) I1 & I2 – are to be used as sleepouts.

3. All existing buildings not previously approved under the Specified Departures shall be upgraded to comply with standards required by Council's Co-ordinator, Regulatory Services or demolished or removed from the subject site within five years of the date of this consent.
4. The existing residential situations authorised by previous Specified Departures shall each have a report completed by a professional experienced in the disposal of greywater confirming compliance with the standards of Rule 36.1.6 (dated 20 December 2003) for discharge of domestic greywater. The report shall be provided to the Council by 31 January 2006.
5. The applicant shall provide the Council with a statement that clearly relieves the Council from any liability in respect of the existing buildings that do not have appropriate building consent within one month of the date of this consent.

Amenity

6. The exterior of the residential situations shall be finished in colours that are recessive and blend in with the immediate environment.

Landscaping

7. The consent holder shall landscape the residential situations (including the proposed screening stated in the application dated 7 July 2005) that will have the effect of blending the buildings with the surrounding rural environment to minimise the visual impact of the development on nearby properties.
8. Plantings shall commence within the first growing season from the date of issue of consent with all plantings completed for each residential situation within the first growing season following the completed construction or relocation of each residential situation.

Access

9. The applicants shall apply to Council's Engineering Department within three months of the date of this consent to upgrade the access including the sealing of the access a minimum of ten metres on-site.
10. A sign shall be located on-site advising the maximum speed of 20 kmph for vehicles entering the formed and sealed Marahau Valley Road.

Water Supply

11. The consent holder shall register the MVFC water supply as a Community Drinking Water Supply with the Nelson Marlborough District Health Board within three months of the date of this consent.
12. The MVFC water supply shall comply with the relevant provisions of the Drinking Water Standards New Zealand as determined by the Nelson Marlborough District Health Board including on-going maintenance of the supply and development of a Public Health Risk Management Plan within six months of the date of this consent.

Monitoring and Review

- 13.** The Council may, in the period of two weeks prior and two weeks after each monitoring event, review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991. The purpose of such a review would be to deal with any adverse effect on the environment which may arise from the exercise of the consent that was not accurately foreseen at the time of granting of the consent, and which is therefore more appropriate to deal with at a later stage; and/or to require the consent holder to adopt the best practicable option to remove or reduce any adverse effects on the environment resulting from the residential situations and associated servicing.
- 14.** The monitoring of consent conditions may be undertaken quarterly by Council's Manager, Environmental Information or his agent. The first monitoring check is due three months from the date of this consent and shall be undertaken within five working days of each three month period. The need for visits will be determined by Council's Manager, Environmental Information or his agent and can potentially be reduced by on-going compliance with resource consent conditions.
- 15.** The consent holder shall supply Council a map showing the designated areas for existing shareholders and areas of common land within one month of the date of this consent.
- 16.** The consent holder shall immediately advise Council's Manager, Environmental Information in writing of any change of contact details for the Council's first point of communications with MVFC (for monitoring purposes).

NOTATIONS

1. Monitoring of the consent is required under Section 35 of the Resource Management Act 1991 and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, Council will recover this additional amount from the resource consent holder. Costs are able to be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.
2. This consent is issued pursuant to the Resource Management Act 1991 and the Proposed Tasman Resource Management Plan. It does not constitute building consent and the proposed activities shall obtain the necessary approvals pursuant to the Building Act 2004.
3. Any matters not referred to in this application for resource consent or are otherwise covered in the consent conditions must comply with the Proposed Tasman Resource Management Plan (PTRMP) or the Resource Management Act 1991 or further resource consent is required to be obtained.

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of the application lodged by
S TATE

For a resource consent required under the Tasman Resource Management Plan (TRMP) and Section 14 of the aforesaid Act and a decision under the provisions of Sections 104 of the same aforesaid Act .

DECISION

THAT pursuant to Section 104 of the Resource Management Act 1991, the Hearing Committee under authority delegated by the Council GRANTS consent for the *take and use* of water for community supply subject to the following conditions and for a period expiring on *31 May 2015*.

1. Location, Take and Use Details:

Location:	<i>Marahau Valley</i>
Property Valuation:	<i>1931008200</i>
Legal Description (at take point):	<i>Sq 9 Sec 27 District of Motueka</i>
Category of Water Source:	<i>Surface water</i>
Tributary:	<i>Marahau River tributary</i>
Catchment:	<i>Marahau</i>
Zone:	<i>Abel Tasman</i>
River Number:	<i>R.571</i>
Map references at take points:	<i>Easting: 2508839 Northing: 6023995</i> <i>Easting: 2508725 Northing: 6024126</i>
Maximum rate of take:	<i>2 litres/second</i> <i>36 cubic metres/day</i> <i>252 cubic metres/week</i>

- At no time shall the rates of taking and use of water exceed those stated in Condition 1.
- The permit-holder shall keep such records as may be reasonably required by the Council and shall, if so requested, supply this information to the Council. If it is necessary to install a water meter or other measuring devices to enable satisfactory records to be kept, the permit-holder shall, at his or her own expense, install, operate and maintain suitable devices.

4. The permit-holder shall supply to Council's Consent Planner – Water, no later than 31 May 2006, photographs (in digital format if possible) of their weir intake structure showing particularly that fish passage has been provided for past this structure.
5. Council reserves the right to require from the permit holder a Scheme Management Plan that may include, but is not limited to, identification of the location of the various pipelines, turnouts, discharge points, reservoirs and other infrastructure and, if requested, documents measures adopted to achieve efficient water use including leak detection programs and repair and maintenance, and measures to achieve full compliance with the conditions of consent.
6. The Council may within three months following the anniversary of the granting of the consent each year review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the following purposes:
 - a) to deal with any unexpected adverse effect on the environment which may arise from the exercise of the consent; and/or
 - b) to require the adoption of the best practical option to remedy or reduce any adverse effects on the environment; and/or
 - c) to comply with requirements of an operative regional plan including any allocation limit, minimum flow regime, rate of use limit, or rationing restriction; and/or
 - d) to comply with relevant national environmental standards made under section 43 of the Resource Management Act 1991; and/or
 - e) to reduce the quantities of water authorised to be taken if the permit is not fully exercised.
7. This permit may be cancelled upon not less than three months notice in writing by the Council to the permit-holder, if the permit remains unexercised without good reason for any continuous period exceeding two years, but without prejudice to the right of the permit-holder to apply for a further permit in respect of the same matter.

Advice Notice Monitoring 1:

Monitoring of this resource consent is required under Section 35 of the Resource Management Act 1991, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the resource consent holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.

Advice Notice Monitoring 2:

Pursuant to Section 36 of the Resource Management Act, 1991, the permit holder shall meet the reasonable costs associated with the monitoring of this permit.

Advice Notice Access:

Access by the Council or its officers or agents to the land subject to this water permit is reserved pursuant to Section 332 of the Resource Management Act.

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the application lodged by **S STATE**

For a resource consent required under Section 13 of the aforesaid Act and a decision under the provisions of Sections 104 of the same aforesaid Act

DECISION

THAT pursuant to Section 104 of the Resource Management Act 1991, the Hearing Committee under authority delegated by the Council GRANTS consent for the *use and maintenance* of two intake structures subject to the following conditions and for a period expiring on *31 May 2015*.

Location Details:

Location:	<i>Marahau Valley</i>
Property Valuation:	<i>1931008200</i>
Legal Description (at take point):	<i>Sq 9 Sec 27 District of Motueka</i>
Tributary:	<i>Marahau River tributary</i>
Catchment:	<i>Marahau</i>
Zone:	<i>Abel Tasman</i>
Map references at intake points:	<i>Eastings: 2508839 Northing: 6023995</i> <i>Eastings: 2508725 Northing: 6024126</i>

1. The intake structures shall not present a barrier to fish migration and adequate passage shall be provided and thereafter maintained for native fish present in both tributary streams past each intake to the satisfaction of the Council's Manager of Environment & Planning and shall include, but is not limited to, the placement of rock below intake weir No 2 to provide a functioning fish ladder as described in the *Water Supply Report* by *Envirolink* dated May 2005.
2. That both authorised intakes shall be screened so as to avoid the entrainment of fish. The screen shall have a mesh size not greater than 5 millimetres and shall be constructed such that the intake velocity at the screen's outer surface is less than 0.7 metres/second. The screens shall be maintained in good working order at all times.
3. The intakes shall not result in scouring of the bed or banks of the streams but, if erosion or scour does occur, then this damage shall be repaired to the satisfaction of the Council's Asset Engineer (Rivers).

4. The consent holder shall take all practical measures during any construction or maintenance activities to avoid introducing sediment to the Marahau River.

In addition, no discharge of sediment shall decrease the visual clarity of the water 50 metres downstream of the intake structure by more than 40%, as measured by the black disk method, compared to immediately upstream of the site.

5. Council may, for the duration of this consent and within the three month period following the anniversary of its granting each year, review the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for the purposes of:
 - Dealing with any adverse effect on the environment which may arise from the exercise of the consent and which is appropriate to deal with at a later stage; or
 - When relevant national environmental standards have been made under Section 43 of the Resource Management Act 1991; or
 - Requiring the adoption of the best practical option to remove or reduce any adverse effects on the environment.

Advice Notice Monitoring 1:

Monitoring of this resource consent is required under Section 35 of the Resource Management Act 1991, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the resource consent holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.

Advice Notice Monitoring 2:

Pursuant to Section 36 of the Resource Management Act, 1991, the permit holder shall meet the reasonable costs associated with the monitoring of this permit.

Advice Notice Access:

Access by the Council or its officers or agents to the land subject to this water permit is reserved pursuant to Section 332 of the Resource Management Act.



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Neil Tyson, Consent Planner (Water)

REFERENCE: RM050296 (Water Permit) and RM050728 (Landuse Consent)

SUBJECT: **Stephen Tate** - Report prepared for 14 November 2005 hearing

1. APPLICATIONS

Stephen Tate (the applicant) has applied (RM050296) for consent to take and use water for a private community and minor irrigation on land in the Marahau Valley from two small tributary streams of the Marahau River. The applicant has applied for the full 35 year term provided in the RMA but the writer understands that the applicant would accept the common (zone) expiry date of 31 May 2015. The water supply is an existing, currently unauthorised, water scheme as it has been taking water at times at rates in excess of the *permitted* activity rule which allows a maximum use of five cubic metres per day per property.

The applicant also applies (RM050728) for retrospective landuse consent to place and use two intake structures in the beds of two streams for the purposes of exercising consent RM050296.

In their application dated 7 July 2005 the applicant states in #23 that “..where practicable, each will be connected to the reticulated water supply within the property.” The statement continues: “Where it is not practical to connect to the water reticulation, rainwater storage or a bore will provide potable water”. The application assessed in this report, relates to the reticulated water supply and, if granted consent, the applicant would be entitled under Council’s *permitted* activity rules to take an additional 5 m³/day within their property from any source. Applying the applicant’s (*per residential situation*) rate of 2 m³/day allows two additional houses not able to be practically supplied from the reticulated water supply to take water from other natural sources. It follows, that if more than two houses cannot connect to the reticulated water scheme, they will need to be authorised under RM050296 (Water Permit) or an additional consent, or they comply if they were shown to solely rely on rainwater storage. The remainder of this report therefore relates to the reticulated water supply.

Water Permit Application Details - RM050296

Location:	<i>Marahau Valley</i>
Property Valuation:	<i>1931008200</i>
Legal Description (at take point):	<i>Sq 9 Sec 27 District of Motueka</i>
Category of Water Source:	<i>Surface water</i>
Tributary:	<i>Marahau River tributary</i>
Catchment:	<i>Marahau</i>
Zone:	<i>Abel Tasman</i>

Map references at take points:

Easting: 2508839 Northing: 6023995

Easting: 2508725 Northing: 6024126

Maximum rate of take:

2 litres/second

36 cubic metres/day

252 cubic metres/week

Submissions

Of the submissions received to the various applications, only the District Health Board submission relates to the *taking and use* of water and even this submission relates to the quality of the water source and its potability rather than the effects of the taking and use on the environment. This submission is discussed briefly later in this report.

2. ASSESSMENT OF EFFECTS

2.1 Statutory Provisions

The Council's obligations and responsibilities when deciding this application are contained in Section 104 of the RMA. Section 104 sets out those matters which, subject to Part II of the RMA, the Council should have regard including any relevant objectives, policies, rules or other provisions of a plan or proposed plan. The relevant plans to this application are:

- Tasman Regional Policy Statement;
- Transitional Regional Plan; and
- Proposed Tasman Resource Management Plan.

2.1.1 Tasman Regional Policy Statement

The Tasman Regional Policy Statement (TRPS) became operative on 1 July 2001. The TRPS specifies the overriding policies of the Tasman District Council when preparing other resource management plans and when considering any application for any resource consent. Of relevance to this application are the following policies of the TRPS, which state:

The Council will:

Policy 7.3 - The Council will promote efficiency of water use

Policy 7.4:

(i) preserve the natural character of wetlands, rivers and lakes, and

(ii) protect and enhance or support the protection and enhancement of natural, recreational, cultural, intrinsic, and instream features and values of wetlands, rivers (including karst rivers), and lakes, in particular those that are of international, national, or regional significance;

and in determining significance of such water bodies for such values, the following criteria shall be applied:

- (i) *size of the water body; and*
- (ii) *diversity of species and abundance of populations of indigenous flora and fauna supported by the water body; and*
- (iii) *rarity of any species of flora or fauna, or of habitat type, associated with the water body; and*
- (iv) *condition of the water body; and*
- (v) *special scientific, recreational, cultural, or amenity values of the water body; and*
- (vi) *recognised international, national, or regional importance of the water body; and*

in relation to all significant wetlands, rivers, and lakes, the risk adverse effects on their natural, recreational, cultural, intrinsic or instream values shall be relevant to achieving such protection or enhancement.

Policy 7.6 – The Council will recognise the priority of minimum domestic, stockwater and firefighting needs in providing for water allocation for abstraction during drought periods.

2.1.2 Transitional Regional Plan

The Transitional Regional Plan (TRP) contains the Water and Soil Bylaw 1990 which covers the use of the region's watercourses until replaced by provisions under the TRMP. Sections 2.4.1, 2.4.2 and 5.1.1 of this bylaw require that a resource consent be obtained for any structure in a watercourse including intake structures. No new structures are required under this application rather retrospective consent for the existing weir.

2.1.3 Tasman Resource Management Plan - Part V - Water

The proposed Tasman Resource Management Plan (TRMP) was publicly notified on 25 May 1996. Part V of the TRMP details the policies and rules for the management of the District's water resources and was publicly notified on 3 November 2001.

Under the provisions of the TRMP the application falls under Rule 31.1.6 and is a *restricted discretionary* activity. The Council has limited its discretion to a number of matters listed in the TRMP. There are no outstanding references to Rule 31.1.6 considered relevant to this application.

With regard to subclause (a) of Rule 31.1.6, Figure 31.1F does not specify an allocation limit for the Marahau River, but rather, notes that Policy 30.1.9 to Policy 30.1.12 should be referred to. Incidentally, this can now be read as Policy 30.1.9 to Policy 30.1.11, as Policy 30.1.12 is deleted.

Policy 30.1.9 states:

When assessing resource consent applications to take water, particularly those applications to take water from water bodies where no allocation limit has been established, to take into account actual and potential adverse effects, including cumulative adverse effects of the proposal in combination with any existing authorised takes, on:

- (a) natural character of the water body and its margins;*
- (b) associated wetlands;*
- (c) cultural and spiritual, amenity and recreational values;*
- (d) aquatic habitat, including plants and animals;*
- (d) other water users;*
- (e) water reserved for other uses;*
- (f) hydrological regime of the water body;*
- (g) capacity to dilute contaminants;*
- (h) uses and values identified in Schedule 30.1;*
- (i) sustainable yield of an aquifer and the sustainable short and long term yield of a bore based on assessment of yields over five and 100 days.*

Schedule 30.1 does not list the Marahau River specifically. However, it states that any surface water body can have a range of instream uses and values including:

- Aquatic ecosystem values; and
- Community water supply value and use

And have water management objectives including:

- Maintenance of water users' security of supply at an acceptable level; and
- Protection of supplies for stock and domestic users.

Policy 30.1.11 states:

30.1.11 *Except:*

- (i) as otherwise provided by a water conservation order, or*
 - (ii) for rivers in the Moutere gravel catchments;*
- to manage the allocation of water for consumptive uses from rivers that:*

- (a) have no established minimum flow or allocation limit; and*
- (b) do not have regionally or nationally significant aquatic habitat value as identified in Schedule 30.1;*

so that the cumulative abstraction between November and April inclusive, other than in relation to hydro power, from the proposed and all existing authorised takes from the river does not exceed 10 percent of the 5-year, 7-day low flow, provided that up to 33 percent of the 5-year, 7-day low flow may be allocated if the cumulative adverse effects listed in Policy 30.1.9 from the proposed take in combination with any other authorised take are avoided, remedied or mitigated.

The implementation of the above policy is probably the most significant issue raised in this application. Also of relevance to this application are the following policies.

Policy 30.1.17 states:

To avoid, remedy or mitigate the adverse effects of water damming either by itself or cumulatively with other dams, including adverse effects on:

- (a) the flow regime or water levels in rivers, lakes and wetlands;*
- (b) passage of fish and eels*

The applicant's intake weirs may have the same effect as the damming of water.

Policy 30.1.28 states:

To continue investigations and monitoring of the water resources of the District, with the aim of establishing and maintaining defensible allocation limits and management policies to ensure sustainable management of the resource.

Where the uses and values of a water body are unknown or potentially threatened then Council shall work to establish defensible allocation limits.

Policy 30.2.4 states:

To continue to allocate water on the basis of priority in time for any application for a water permit where there is still water available for allocation.

Policy 30.2.9 states:

To take into account, when assessing any application to take water, any:

- (a) provisions that may exist for the reservation of water;*
- (b) effects on other water users;*
- (c) measures taken for water conservation and to ensure efficient water use including monitoring water use;*

Policy 30.2.14 states:

To seek to maintain or establish a minimum security of supply for all water users by establishing allocation limits and trigger levels for rationing whereby a reduction in 35 percent of the allocated amount is expected during a 10-year drought for permits to take water from surface or ground water bodies during summer periods.

Policy 30.2.17:

To promote, encourage and require, as appropriate, water conservation practices in the use of water through:

- (a) water use practices which minimise losses of water;*
- (b) water use practices that use water more efficiently;*
- (c) encouraging water users to use less water;*
- (d) encouraging the re-use of water;*
- (e) requiring the storage of water for any new dwelling not connected to a reticulated water supply.*

Council's Policy Planner has advised that, with regard to the above policies and the plan provisions relevant to this application, the TRMP can be considered effectively operative.

2.2 Status and Conditions

As a *restricted discretionary* activity under TRMP Rule 31.1.6, conditions on various matters over which Council has reserved control (see Rule 31.1.6(1)-(12)) can be adopted including the following:

- (1) The quantity, rate and timing of the take not otherwise specified above, including rates of take, rostering or rationing steps . . . and any other requirements to maintain any minimum flow or level given in Schedule 31.1C.*
- (3) The effects of the take, use or diversion on other uses or values of the water body or coastal water, including those given in Schedule 30.1.*
- (5) Effects on other water users.*
- (6) The effects of the take, use or diversion including takes from groundwater, either by itself or in combination with other existing takes, on aquatic and riparian ecosystems, fish and eel passage and flows in rivers, coastal streams or coastal waters, including in estuaries.*
- (8) Installation of water meters as provided for in Schedule 31.1B or in Policy 30.2.11.*
- (9) Information to be supplied or monitoring requirements.*
- (10) Measures to achieve efficient water use or water conservation, including sealing of artesian bores, preparation of property water management plans, and measures to monitor water use.*
- (12) Financial contributions, bonds and covenants in respect of the performance of conditions and administration charges (Section 108 of the Act).*
- (14) The nature, scale and distribution of beneficial effects resulting from the proposed water take, use or diversion*

The conditions of consent required under the TRMP in this Marahau Zone are relatively few. However, issues include ensuring that water taken is used efficiently. As provided for in the TRMP, Council can reserve the right to require a property water management plan from the consent holder. Such a plan could be required to document efficiency measures including a leak detection programme and for repairs and maintenance. The ability for Council to review the quantities and rates of water authorised under the water permit in response to a property water management plan may also be appropriate..

3. ASSESSMENT OF ENVIRONMENTAL EFFECTS

The primary environmental effects of the applications are considered to be:

- decreased flows in the Marahau River particularly at low flow;
- impacts to the quality and availability of aquatic habitat; and
- fish passage issues at the abstraction sites.

3.1 Marahau River flows

Policy 30.1.11 of the TRMP provides a guide to the allocation of water from rivers where the limit is not stated in the TRMP. Between 10% of the five-year seven-day low flow and up to 33% may be allocated from rivers if the cumulative adverse effects listed in Policy 30.1.9 are avoided, mitigated or remedied.

The applicant's consultant *Envirolink* has provided various flow data (not repeated here) including estimates of the 5 and 10 year low flow for the two unnamed tributaries from which water is taken and an estimate of the low flow of the Marahau River at a previous flow measuring Site 56501 Marahau River at (Hollingworth) Old Quarry. The consultant's estimate is of between 354 m³/day and 475 m³/day being available from the two streams compared with the proposed take of 36 m³/day. The proposed take (36 m³/day) is therefore 10% of the combined tributary flow in a 10 year drought (354 m³/day) and is less than 1% of the flow of the Marahau River of 206 l/sec in the same 10 year drought.

With regard to cumulative effect, Table 1 shows the consents and applications for abstraction within the Marahau Catchment and this amounts to approximately 13.4 l/sec as, reportedly, some consents may be unexercised. 13.4 l/sec is 5.8% of the five year low flow of 206 l/sec and less than the guideline (10%) allocation under Policy 30.1.11 TRMP.

Table 1: Marahau Catchment, Abel Tasman Zone Consent Holders

Consent	Permit Holders/Applicants	Source	Daily	Weekly
NN700540	D G Bloomfield	Marahau River	909	
NN010006	Wakatu Inc	Groundwater		
NN000342	R Taylor	Groundwater	15	105
NN000364	D W Macdonald Family Trust	Marahau River Trib	15	105
NN000503	K S and J Goodman	Marahau River	200	1400
	CURRENT ALLOCATION (L/SEC)		13	
RM050296	S Tate	Marahau River Trib	36	252
	PROPOSED ALLOCATION (L/SEC)		13.4	

The extent that the adverse effects listed in Policy 30.1.9 can be attributed to the proposed (S Tate) take during periods of low flow is therefore likely to be small regarding the Marahau River even when the cumulative effect of other existing takes are included. Any adverse effects are likely to be restricted to the two small tributaries, and then only during dry summers.

3.2 Landuse Consent RM050728

The applicant is seeking retrospective consent for the two existing intakes located within stream beds and one involves a concrete weir structure. The applicant advises that the actual intake pipe is screened in each case and will not entrain native fish as required in the TRMP.

The environmental concerns regarding intake structures is the potential for adverse affects on flood flows including scour of the river bed and banks e.g. destabilising and loss of riparian vegetation on the river bank, and adversely affects on fish passage. The consultant's assessment is that the existing structures are having little if any environmental effect and that poor fish passage at the higher (No 2) intake can be remedied through placing rock (and possibly concreting) to provide a workable and practical fish ladder. This advice is adopted as a condition of consent.

4. PROPERTY WATER MANAGEMENT PLAN

Policies 30.2.9 and 30.2.17 of the TRMP requires that the Council promotes the efficient use of the District's water resources. Some basic information has been supplied on the applicant's scheme. The scheme involves two intakes one of which, a concrete weir, requires fish passage to be provided. Both intakes are screened and feed into individual 50 mm pipes which join further down the valley. The applicant has advised that the concrete weir intake is at a higher altitude on an adjacent tributary and is required to supply two houses, which complicates the design of a scheme water treatment system.

Each house has storage of around 3000 litres and ball cocks are reportedly fitted. The one test done showed a flow into an individual house tank of 0.19 l/sec. Installed and maintained ballcocks are important to ensure that water does not run to waste ie water is not discharged as overflow. An efficient and environmentally sustainable scheme would only take water from the stream that was to be used.

5. WATER POTABILITY

The planning officer's report addresses the issue of water supply potability, which is of concern to Public Health submission.

6. DURATION OF CONSENT

To be considered as a *restricted discretionary* activity under Rule 31.1.6 TRMP the application must comply with various matters including the following:

The duration of the permit to take and use water to irrigate Maori perpetual lease land is not greater than the term of the lease for that Land.

The applicant is understood to have recently renewed their lease of the property from Wakatu Inc for 21 years and the current lease runs to 2025. The recommended term of consent is for less than the current lease, and the applicant's request for the maximum term of 35 years under the RMA is not supported.

If the Committee decides to grant resource consent RM050728 and RM050296 it is recommended they have the expiry date of 31 May 2015 in line with the common expiry date for water permits in the Marahau Water Management Zone listed in Schedule 31.1A TRMP. It is appropriate that the landuse consent for the intake structures have the same term. Renewal of the water permit consent in 2015 falls to a *controlled* activity status under the TRMP, subject to various matters stated in Rule 31.1.3.

7. CONCLUSION

Granting consent for the abstraction of water from two small tributaries of the Marahau River is consistent with the policies and objectives of the TRPS and TRMP. It is considered that the effects of the take are no more than minor on naturally occurring Marahau River low flows with only some concern about the effect of abstraction in very dry summers on the instream values of the two tributary streams. However, provided the information regarding stream flows is correct and provided the applicant scheme is efficient and well maintained, then any effects on instream values of the two tributary streams should also be minor.

During severe droughts it may be appropriate to restrict use of water to essential uses purposes, and to suspend watering of amenity plantings, lawns etc during drought times.

Neil Tyson

Consent Planner (Water)





APPENDIX 3 THE COUNCIL HISTORY OF MVFC

- 1974** Marahau Valley Farm Community purchased the lease of 83 hectares (7 hectares in tobacco and the rest of the property was in a state of neglect).
- Dec 1975** Council Building Inspectors visited the site and noted three structures were established without building permit. MVFC were advised to apply for a Specified Departure.
- May 1977** A Hearing panel granted the specified departure with conditions the four dwellings be upgraded to standards by 30/10/1977. The specified departure expired in 1982.
- Oct 1982** MVFC re-applied stating since 1977 they had cleared and cultivated 13 acres, established three additional dwellings, established orchards of over 1000 fruit and nut trees and had an economy based on beekeeping, pottery, fishing, farming and local seasonal work.
- Apr 1983** Council granted the use of no more four dwellings, buildings associated with cottage craft industries were either existing or located on the less productive land and buildings had to comply with the Code of Ordinances. After receiving the decision MVFC advised Council there were now five dwellings on-site.
- Jul 1983** Council granted a fifth dwelling and considered it was a type of workers accommodation and the substandard building it replaced was to be used as a farm shed or demolished.
- 1986/87/90** A Council staff member was involved in addressing surface water problems on the property.
- 1987-2001** Ten building permits/consents were issued for a kitchen, wood burners or heaters, sheds, garages, glasshouse, sleepout, reinstatement of an addition to a dwelling, extension of a dwelling and a yurt. These have been issued without addressing resource consent issues.
- Dec 2002** Council received a complaint regarding yurts on the northern bank of the river and mobile homes on the property. These had no resource consents or building consents.
- Jan 2003** Council sent a letter advising resource consent and an independent building report including remedial works were required and the resource consent was to address safety aspects regarding the use of the northern bank.
- Jul 2003** A follow up letter was sent as Council had no reply to the previous letter.
- Aug 2003** MVFC replied stating that a structural engineer had inspected the yurts, an independent Building Inspector was being organised, the resource consent application was nearly ready and a draft copy was sent to Council. Further information was sought by Council.

- 2003-2004** Jim Hollingworth complains to Council on a number of occasions regarding Council's lack of action.
- Feb 2004** MVFC had by now provided Council with a flood hazard report and a draft independent report on building structures and wastewater systems.
- Mar 2004** Another draft application was received.
- Jun 2004** Council formally notifies MVFC that further lack of action may result in abatement/enforcement action.
- Jul 2004** A formal application was received by Council proposing 18 residential situations (five authorised and existing, another six existing and a future seven dwellings for undeveloped shares), allowing up to five mobile homes on-site including an ablutions block, home occupations for all 18 residential situations and a building for a community art and craft workshop and gallery. They requested public notification of the application. A number of Council staff received copies of the application to cover issues of access, flood potential, earthworks, water issues, discharge issues, compliance matters, building and health issues.
- Jul 2004** Council requested further information.
- Aug 2004** MVFC objected to the request for further information.
- Sep 2004** A combined meeting occurred, a new application incorporating further information as aspects discussed will be prepared.
- Dec 2004** Search warrant executed by Council compliance staff, environmental health officer and building inspector.
- Mar 2005** An abatement notice is served on MVFC requiring MVFC to comply with Specified Departures (only five dwellings) and to cease discharge from domestic wastewater unless authorised by 1/7/2005.
- Apr 2005** A new resource consent application is received that changed some building sites references as some buildings had been removed and the caravan park/mobile home aspect had been deleted from the application.
- May 2005** Further information was requested and subsequently objected to.
- Jun 2005** The applicant met with Council planning staff on the 7th to discuss further information requests. Council's compliance officer and Co-ordinator Resource Consents visited the MVFC site and Jim Hollingworth's property on the 10th. It was advised that if the application was amended to legalise the existing situation of 11 dwellings then Council could process it non-notified as long as six identified parties provided written approvals. Should any of these affected parties not provide written approvals then the application could proceed on a limited notified basis

- 7 Jul 2005** Jim Hollingworth sent an email to Council compliance and planning staff that he and K Goodman are both agreeable to a part notified application with nine dwellings (that being the TDC definition not MVFC version) and would not object to this provided conditions regarding monitoring are imposed.
- 8 Jul 2005** Council receive an amended application dated 7 July 2005 for 11 residential situations and the gallery and craft workshop had been deleted.
- 8 Aug 2005** Further information is requested and objected to. On the 24th the applicant slightly amends the application and provides further information to allow the application to proceed.
- 15 Sep 2005** Limited notification of the application occurred.
- 28 Oct 2005** The abatement notice is withdrawn to await the outcome of this Hearing.

COMPLIANCE SUMMARY

This file relates to breaches of the Tasman Resource Management Plan regulations at the Marahau Valley Farm Commune in Marahau.

Council involvement in the property leased, occupied and known as the Marahau Valley Farm first formally started with a Waimea County Council Town planning Hearing in May 1977.

On 22/04/83 Council granted consent T2/9/1/581 for the establishment of Five Dwellings on the Marahau Valley Farm property.

Council has known about the subsequent breaches of this Consent for a number of years. Concerns at the proliferation of illegal dwellings on Marahau Valley Farm have been brought to council attention by local residents on a number of occasions.

On 09/12/04 Council staff executed a search warrant pursuant to section 334 of the Resource Management Act 1991 at Marahau Valley Farm.

Council staff discovered 11 Dwellings, three Sleep-outs, one House truck and one house bus on the property. Issues relating to the wastewater and effluent disposal on site were also disclosed.

It is proposed that all disclosed issues are now dealt with in a comprehensive Abatement Notice and that provisions are set in place to prevent further proliferation of illegal dwellings.

Four principles have contributed to the current situation at Marahau Valley Farm :

- A lack of understanding of how or who council hold responsible for actions that take place in a Commune situation.
- A laissez faire attitude to council requirements by the occupants of Marahau Valley Farm.

- The lack of timely or positive action by council on identified breaches of TRMP. or RMA. Provisions.
- Building permits and code of compliance certificates issued without regard for Resource Consent provisions.

Recommended Council Policy for MVF

1. This summary seems to indicate a twofold shortfall in council's approach that has contributed to the development of the current situation at MVF.
2. On a number of occasions occupants of the MVF have built structures and buildings without the required permits and consents. Eventually council staff learn of the structures or buildings but either do not take any form of enforcement action or fail to take positive enforcement action. The RMA gives a strict time frame in which enforcement action must take place. Ignoring the problem or turning a 'blind eye' to breaches does not make the problem go away it compounds the problem.
3. On occasion building permits have been applied for and issued to MVF occupants without apparent regard to the required resource consent. The MVF occupants have completed the permitted work without obtaining the required resource consent. Should enforcement action follow the court will see that MVF occupants have obtained permission to build from one arm of the council, continued with the work only to be told after construction that they are without permission to build from another arm of the council. I suggest it is preferable to prevent this situation from developing. It highlights a lack of internal communication between council departments.
4. I propose that a solution to these issues is for future complaints to be directed to myself or Warren Galbraith for investigation on discovery. We are now known to the members of MVF and familiar with the history and current situation. We are both committed to the timely and positive enforcement of any future breaches.
5. Given the MVF history of non-compliance and a laissez faire attitude to council requirements I also propose quarterly compliance checks are done to monitor MVF. Any breaches discovered should be dealt by way of positive enforcement action.
6. I suggest that a policy is put in place requiring all MVF building consent or permit applications to be checked by compliance or consents staff before being processed. If possible building permits should not be granted until required resource consents are obtained.

Jim Trembath
Compliance Officer

APPENDIX 4



Memorandum

To: Mandy Bishop
From: Natasha Lewis
Date: October 20, 2010
Re: Marahau Valley Farms - Wastewater issues

Mandy

I have reviewed Lets Go Environmental Ltd report dated 15 March 2005 and the report dated 26 September 2005, email correspondence I received from David Smythe 12/08/2005 and the Hollingworth submission in preparing these comments.

Marahau Valley Farm Community occupy a 33 hectare property located on Marahau Valley Road. Resource consent has been sought to authorise existing unauthorised land use activities at this site, no resource consent to discharge domestic wastewater has been sought with this application as compliance with Council's permitted activity requirements has been proposed. The property has split Rural 1/Rural 2 zoning and is not located in a Special Domestic Wastewater Disposal Area (restricted to the Marahau residential zone) so the applicable permitted activity rule for the discharge of domestic wastewater is Rule 36.1.4 of the pTRMP, discharges of greywater are specifically covered by Rule 36.1.6. The applicant has proposed to service each of the "dwellings" by a split greywater/blackwater system, blackwater is to be collected and treated by a "Biolo" composting toilet, while greywater is proposed to be treated through individual coarse sand filters with disposal through peat/bark beds or dripper lines.

Council's PTRMP does not contain a specific rule for composting toilets, if the structure is completely sealed a discharge permit would not be required for the use of these toilets. The applicant proposed to install "Bio Loo" toilets which are available from Rotorua, these toilets are "completely sealed" and "urine is not separated". However, the requirements of the Building Act must also be satisfied.

Discharges of greywater are permitted at the site if the requirements of Rule 36.1.6 of the PTRMP can be met. A copy of the conditions of this rule are attached, this rule does not limit the number of individual discharges on each site provided the conditions can be achieved. The applicant has proposed that individual treatment and disposal systems will be constructed to service each "dwelling", these systems were proposed to meet the permitted activity requirements. This includes compliance with setbacks from watercourses and boundaries, volume restrictions and various other requirements.

Compliance with the effluent quality standards of Rule 36.1.6 was proposed by the applicant, however, no monitoring results were provided to validate this claim. Greywater can pose a significant health risk due to its potential high bacteria count and biochemical oxygen demand levels and therefore must be treated appropriately, in addition, poor effluent quality is likely to cause clogging of dripper lines. I am not aware of other sites in this region where the same systems have been utilised to treat greywater, so cannot comment on performance of other systems. The applicant has proposed to meet the permitted requirements, Council may consider monitoring these systems as part of a permitted activity monitoring programme if necessary in the future. As with the composting toilets, in addition the requirements of the Building Act must also be satisfied before the systems are used.