



STAFF REPORT

TO: Environment & Planning Committee

FROM: Dennis Bush-King, Environment & Planning Manager

REFERENCE: S611

SUBJECT: **MANAGER'S REPORT - REPORT REP10-04-07** - Report prepared for meeting of 8 April 2010

1. MAPUA PUBLIC HEALTH REPORT

Appendix 1 contains the Executive Summary of the Public Health Risk Assessment conducted into the Mapua Rehabilitation project. The key finding is that it is unlikely there are adverse long term health effects for residents from the clean up process although there were some limitations noted which were to be addressed through the recommendations, including some specific recommendations directed to Tasman District Council.

The Ministry has given interested parties up to six weeks to respond with any feedback. Staff will continue to work up a response but there may also be some Councillor interest to be involved. We should welcome report as it is another step towards bringing the Mapua rehabilitation project to a point of conclusion. Clearly the site is in a much better state than it ever was with the removal of a complex chemical cocktail with its associated risks to the environment and people.

Staff do take issue with the continued reference to arsenic and mercury as “chemicals of concern”. This repeats an erroneous assumption made by PCE, based perhaps on the idea that the FCC pesticide factory must have formulated or mixed the whole range of pesticides. This was not so and all the monitoring, from start to finish, supports this view.

In response to the PCE concerns however additional soil testing was carried out on the residential soil on FCC West which confirmed these metals are there at background concentrations. The tested reinstated commercial grade soil also confirms that these metals were not on the site at elevated concentrations. The Site Auditor did not request any additional sampling for these metals.

The argument that they were not tested for at a high enough frequency is based on the assumption they were present on site in significant quantities, and that therefore the 1996 AEE was incorrect in not listing them as “chemicals of concern”. We dispute this assumption. If they had been onsite in elevated quantities, then they would be in the reinstated soil at elevated concentrations, and they are not.

The report asserts that “limitations of the site characterisation done prior to consents” contributes to the perceived omissions. While we accept that the very process of site characterisation of contaminated land has limitations, we dispute the insinuation that a good job was not done. Council had the benefit of multiple advice streams from some of the best national and international consultancies in contaminated site management. We accept that changes to the reagents in the MCD process could have been handled differently but the by-products of copper and nitrates do not present public health risks that cannot be managed and, in fact, they are.

The report suggests that the Peer Review Panel (PRP) did not have sufficient oversight or opportunity to intervene to address issues of compliance by the consent holder. This was not its purpose. It was a vehicle to advise Council as the regulator on monitoring and compliance issues. It did not remove any obligation from the consent holder to comply with the consent conditions and nor did it substitute for Council in terms of its enforcement responsibilities.

The PRP was a creation of the consent process and it was an innovative and appropriate means of independent and professional advice to Council for such a large and complex process. If such a device is to be a standard condition of consent for contaminated site clean-ups, we would suggest to MfE the role, purpose, and powers would need to be clearly established particularly in light of the residual enforcement obligations on a consent authority.

Recommendation #3 to MfE requires that MfE seek expert opinion on testing for, among other contaminants, arsenic in the soil in the properties to the south and west of the site. Arsenic is a naturally occurring metal and the background levels appear to be about 3-5 ppm in the soils at Mapua. Craig Stevenson’s Report September 2009, in Appendix 2 states that arsenic and lead levels were not elevated in the treated soil, or fugitive emissions.

Arsenic was tested in the reinstated final soils and the median is 5ppm. The new proposed Soil Guideline Value in the draft National Environmental Standard for arsenic is 20ppm for residential, and we fail to see how deposited dust from the piles of soil that had a median of 5ppm could even approach this concentration.

While not directed at TDC we consider this aspect of the recommendation is not necessary, or testing will show arsenic is not a problem.

A number of the recommendations directed at TDC concern groundwater. The groundwater in the onsite bores and the domestic well at number 13 Tahi Street are monitored quarterly and the offsite wells to the south of the site annually. The report of the annual sampling round for November 2009 shows that of the 10 wells sampled to the south of the site only two wells had concentrations of OCPs or nitrogen that exceed the NZ Drinking Water Standard (NZDWS), and the trend is for decreasing contaminant concentrations.

It is not intended that on-site groundwater be used for irrigation or as a potable supply. Any subdivision for residential purposes will be reticulated in accordance with Council’s Engineering Standards. If it is considered a prohibition on any new bores is warranted, even though we think it unnecessary, a restrictive covenant could be placed on any resulting titles. This would be a preferable and more certain method

than having to implement Recommendation #2 to TDC with the attendant uncertainties of the First Schedule RMA process.

While it is preferable that any existing wells south of the site should not be used for potable water because reticulation is provided if the water complies with NZDWS it would be unreasonable to insist on the prohibition. Recommendation #3 should apply only to those bores that do not meet the NZDWS.

Recommendation #6 refers to the capping layer. Council already has the Site Management Plan (SMP) for the site prepared as part of the Site Audit process. The land to be used for residential purposes has been cleared by the Site Auditor as fit for purpose and there is no capping layer. The capping layer only exists on land to be used for commercial and recreational purposes. The SMP is designed to retain the cap's integrity. The only matter we are to follow up is disturbance of any soils within the Tahi Street road reserve, and while also covered by the SMP, we intend to amend our Asset Management records to include appropriate management advice.

Recommendations #8, #9, and #10 follow similar recommendations in the Site Auditor's Report. Sampling has been completed, reports provided to MfE, and in relation to #8 and #10, the reports are now on our TDC website. Ammonia does not present as a problem and we will do one further monitoring round to confirm this. We are seeking further toxicological advice on the issue with shellfish showing elevated levels of contamination just over the NZ Food Safety standard even though the marine sediments are showing improvement.

The report, in Recommendation #11, suggests for biota monitoring is required. Our view is that it would not be possible to undertake any scientifically robust monitoring of other biota further up the food chain. The impacted beaches are tidal, and not enclosed, and any fish or birds that feed here will also feed throughout the estuary. Sampling reveals the sediments have now reached good levels. We will however seek expert opinion on whether it is possible to monitor biota further up the food chain, and if so undertake this monitoring.

2. RURAL 3 ZONE – COASTAL TASMAN AREA

Following a deputation at the last Committee meeting, staff have met to review the issues raised by CBH Ltd. While noting CBH support for the Rural 3 concept clearly the uptake has been less than expected. Not only have economic circumstances contributed to this but CBH indicated that the relative cost of developing the CTA makes it difficult.

Certainly the fact that developers have to meet DCs and provide transitional water servicing in advance of Council works is an added cost. CBH have questioned the need to service Rural 3 with water. Staff advice is that not all of Rural 3 land has the opportunity to access the deep aquifer underlying the Waimea Plains Catchment like CBH. Further while limited amounts of water have been encountered in the Deep Waimea Moutere Aquifer, the flow rates are not sufficient to provide on demand 20 l/s fire fighting requirements for urban areas like Mapua. Bulk servicing CTA land from what is now called the Moutere Southern Groundwater Zone, is not a realistic option. While Council increased the deep groundwater allocation in this zone two years ago, all allocations have been fully subscribed since then. The only opportunity for deep groundwater here is for individual properties to drill deep bores provided they meet

the distance between bores requirement to access the permitted maximum take of 5 m³/day for domestic use. Reticulation is still the best option for this water-deficit area. However we note the delay in rolling out the water is an issue and there has been a change in timing from the 2006-2016 to 2009-2019 LTCCP.

The policies for the Rural 3 Zone and the design guidance for Rural 3 subdivisions have sought to protect productive values along with rural landscape character values and yet CBH say there is little market demand for lots containing retained unbuilt land for some productive use. The Rural 3 Zone is however a rural zone, not a rural residential zone. If this is where the market is going then the whole framework would need to be looked at and possibly the areal extent of the zone if there was any appetite to move to a rural residential living end-use for any part of the CTA.

The cost of providing long and sinuous entry roads into Rural 3 subdivisions is a fair point, but that is an inevitable cost in some terrains in the CTA (eg. steeper dissected western hillslopes). However to take advantage of aspect and retain a low density result, means this is an inevitable consequence. Costs could be reduced by looking at level of service but this may have unintended consequences.

On balance the staff view is that a review of the Rural 3 design philosophy and servicing options is not warranted (and would be difficult to programme) unless Councillors direct otherwise. The Committee is reminded that in May 2009 it rejected a staff recommendation to review aspects of the Rural 3 subdivision planning framework.

3. TAXING GROWTH AND DEVELOPMENT

The Local Government Forum and property Council of New Zealand have collaborated to provide a critical review of the role of development and financial contributions. The executive summary is attached as Appendix 2. While Tasman did not come in for any specific mention our DCs are not too far off the \$30,000 per section quoted.

The report essentially says that Council's should use more debt and user charges to pay for trunk services rather than targeting developers. There is also an inference that levels of service should be reduced with the suggestion that DCs and FCs fund "gold" or "green" plated infrastructure.

The report calls for more transparency in the setting of DCs and suggests there should be merit based appeals where a case exists for their continued use. There is also a suggestion that Council should actually compensate land owners where infrastructure is of wider community benefit ie beyond the benefit of the land being subdivided.

DCs, like other taxation systems, have their imperfections but they do provide a valid alternative funding stream for Council infrastructure. The report does signal the likelihood of greater scrutiny and potential challenge.

4. TE TAU IHU TREATY SETTLEMENT

At the time of writing there is nothing to report on where the Te Tau Ihu Waitangi Tribunal Claim is at but in case there is something to report I have provided this slot in the agenda.

5. SCHEDULE 4 REVIEW – MINING IN THE CONSERVATION ESTATE?

The Minister of Energy and Resources and the Minister of Conservation have released a discussion paper containing a suite of measures to designed to facilitate the environmentally responsible development of New Zealand's extensive mineral estate. A preliminary stocktake of land in Schedule Four of the Crown Minerals Act (where all mining other than minimum impact activity is prohibited), and other areas beyond, reached four conclusions:

1. New Zealand is mineral rich and the environmentally responsible development of this potential is a very real possibility;
2. Much of the country's mineral potential is concentrated, often in public conservation areas with high conservation and cultural values;
3. The mineral potential of Schedule Four lands could be developed with only a very small proportion of the land being directly impacted; and
4. Information on New Zealand's mineral potential is limited and Government has a role to improve our knowledge of the mineral estate.

The Government is proposing to remove 7,058 hectares of land from Schedule Four of the Crown Minerals Act but none of this is within Tasman District. It also proposes to add a further 12,400 hectares to Schedule Four including 914 hectares within in the Abel Tasman National Park – see Appendix 3. There is no intention to change the status of the Kahurangi National Park or Nelson Lakes National Park.

The report also identifies areas for further investigation for resource potential and prospectivity. Included is what the report terms the Rotoroa Complex near Murchison, the Riwaka Complex in North West Nelson, and the Dun Mountain Ophiolite belt, in Mt Richmond Forest Park.

The report contains other recommendations about joint Ministerial approval and sets up a contestable conservation fund.

Submissions on the proposals close 4 May 2010. Unless Council wishes to support the addition of areas in the Abel Tasman National Park to Schedule Four, no action is required at this stage.

6. TB VECTOR CONTROL

The February Report from the TB Vector Manager is attached as Appendix 4 for Councillor's information. Of note is the low number of infected herds – down to 1 which is good news.

7. CERTIFICATE OF EXEMPTION – FOOD HYGIENE REGULATIONS

We have received an application for the Rototai Road Community Food Stall to be exempt from full compliance with the Food Hygiene Regulations. Staff do not have delegated authority to decide this matter. The food stall/premises is a block built garage on land owned by Theo Blythe. The intention is that the premise will be used to sell fresh fruit, vegetables and bottled or canned produce only. The bottled or canned products are to be sourced from premises registered for the sale of food.

To bring the stall up to full compliance given the community nature of the operation would be a significant cost. The ceiling height would have to be raised to a minimum of 2.4m from the floor, impervious floor, wall and ceiling materials would need to be used, plus on site toilet facilities should be provided. Staff have assessed the risks involved and made satisfactory arrangements regarding food preparation, hand washing and toilet facilities. To insist on full compliance in this instance would cause undue hardship to the occupiers and would not represent a corresponding gain in food safety standards (given the nature of the food sold from the premises).

A draft certificate of exemption is attached for Council approval as Appendix 5.

Recommendation

That the Committee agree pursuant to Regulation 6 of the Food Hygiene Regulations 1974 to grant a certificate of Exemption to Daniel Loytenburg and Kelvin McKenna (Ngang), trading as the Rototai Community Stall as detailed in Appendix 6 to REP10-04-07

8. INTEGRATED CATCHMENT WORKSOP

A workshop is to be held 26-28 April in Nelson on integrated catchment management using the Motueka as the principal case study and with the intention of translating scientific research into practice. Further details can be obtained from Rob Smith.

9. NATIONAL ENVIRONMENTAL STANDARD (NES) FOR CONTAMINANTS IN SOIL

Submissions close 19 April 2010. Staff have a number of concerns about the workability and coverage of the proposed NES. I too have some views which we have not been able to finalise. It is suggested that the Chair and Deputy Chair, with assistance from other members if there is interest, be delegated power to sign off a Council submission.

Recommendation

That the Committee agree to delegate to the Chair and Deputy Chair power to sign off any Council submission on the Proposed National Environmental Standard on Assessing and managing Contaminants in Soil

10. RECOMMENDATION

It is recommended that this report be received.

A handwritten signature in black ink, appearing to read "Dennis Bush-King". The signature is written in a cursive style with a large initial 'D'.

Dennis Bush-King
Environment and Planning Manager

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CERTIFICATE OF EXEMPTION

THE FOOD HYGIENE REGULATIONS 1974: FIRST SCHEDULE REQUIREMENTS FOR REGISTRATION OF FOOD PREMISES - ROTOTAI COMMUNITY STALL

The Tasman District Council grants an exemption pursuant to regulation 6 of The Food Hygiene Regulations 1974 as follows:

Owner: Theo Blythe, 45 Rototai Road, Takaka
Occupier: **Daniel Loytenburg and Kelvin McKenna (Ngang) – Trading as ROTOTAI COMMUNITY STALL**

Premises: Rototai Community Stall, Rototai Road, Takaka

Exemption: The premises are exempt from the requirements under sections of the First Schedule of the Food Hygiene Regulations 1974 which relate to the construction of the premises, the minimum ceiling height and the provision of staff toilet accommodation on the premises, provided that the following conditions are complied with.

Conditions: **a)** The use of the premises shall be restricted to the sale of unprocessed fresh fruit and vegetables and bottled and preserved fruit and vegetables and drinks prepared in a registered premises under the Food Hygiene Regulations 1974.
b) The conditions of the letter from the Tasman District Council dated 26 March 2010 regarding registration of the toilet accommodation and the use of the food stall, shall comply with the requirements of the Food Hygiene Regulations 1974.

Reasons: It is considered that requiring the occupier to raise the ceiling height to a minimum of 2.4m from the floor and to provide impervious floor, wall and ceiling materials, plus provide on site toilet facilities would cause undue hardship to the occupiers and would not represent a corresponding gain in food safety standards, given the nature of the food sold from the premises.

Duration: For the life of the stall subject to annual inspection to ensure compliance. The certificate of exemption shall cease to have effect in respect of this premises, if the current occupiers terminate their occupancy of the premises.

Dennis Bush-King
Environment and Planning Manager
Tasman District Council