

Report No:	REP11-06-08
File No:	S611
Date:	24 May 2011
<i>Information Only – no decision required</i>	

REPORT SUMMARY

Report to: Environment & Planning Committee
Meeting Date: 24 May 2011
Report Author: Dennis Bush-King, Environment & Planning Manager
Subject: **ENVIRONMENT & PLANNING MANAGER'S REPORT**

EXECUTIVE SUMMARY

This report covers a number of general matters concerning the activities of the Environment & Planning Department.

RECOMMENDATION/S

That the report be received.

DRAFT RESOLUTION

THAT the Environment & Planning Committee receives the Environment & Planning Manager's Report REP11-06-08

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1. Freedom Camping Bill

- 1.1 The Freedom Camping Bill was introduced to Parliament on 18 May 2011, and it is anticipated that it will be in the select committee for six weeks and in force by mid August. The Bill is intended to work in conjunction with Council Freedom Camping Bylaws and with Department of Conservation freedom camping notices. Council and DOC will be permitted to warrant each other's staff to enhance a co-ordinated approach to enforcement.
- 1.2 Whilst generally permissive of freedom camping, the Bill creates an infringement offence (instant fine) if Council Freedom Camping Bylaws are breached. That provision is transitional, and expires one year after the Bill is enacted, but meantime provides a nationally standard infringement fine of a \$200 for specified breaches of Council Freedom Camping Bylaws. Tasman District Council's recently adopted Freedom Camping Bylaw will need to be included in the schedule to the Bill to allow that to happen. In future, Council Bylaws will need to be amended to meet with the requirements of the Bill after the one year transition period. It seems most likely that the changes required will be administrative rather than altering the detail or intent of our recently adopted Bylaw.
- 1.3 As well as issuing instant fines to persons found breaching the Freedom Camping Bylaws, proceedings for offences can also be taken against the owner of a vehicle if the vehicle was used in committing the offence. In addition, enforcement officers may seize and impound property including vehicles if they are used in committing an offence, although there is a formal warning process that must be undertaken prior to any seizure if the owner of the property is present.

2. Environmental Awards 2011

- 2.1 Following on from the discussion at the last E&P meeting, we can confirm that Nelson City Council have now committed to fully participate in the Awards 2011. Staff organisers are looking to simplify and streamline the Awards in response to feedback received from last year. This is expected to reduce the

number of judges required, and reduce the overall time and resources needed. We still aim to deliver a high quality and high profile event.

- 2.2 In keeping with sharing locations (Tasman has hosted the event for the last two years), we will hold the Awards 2011 event in Nelson. As always, Sponsors, Councillors and Council staff play an integral part in the Awards judging process and arrangements will be set in place soon

3. Environmental Education

- 3.1 As the Committee will know the Environmental Education function has shifted from the Environment & Planning Department to the Strategic Development Department. As there is no Strategic Development Committee it has been decided that Environmental Education will be reported on at each Environment & Planning Committee meeting. As required, Rob will present a regular report detailing progress in the Environmental Education area of work.

4. Legal Proceedings

- 4.1 Councillors are advised that we have recently been involved, along with other parties, in settling a weather tight homes dispute in Ruby Bay,

5. Ecofest Recognition

- 5.1 Councillors will be pleased to know that Ecofest, our annual environmental festival, has been listed as a finalist in the Minister for the Environment's 2011 Green Ribbon Award. The Award ceremony announcing the winners is set for 9 June.

6. Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

- 6.1 The Government is introducing a national environmental standard (NES) for contaminants in soil. On 16 May 2011 Cabinet agreed for the Minister to instruct Parliamentary Counsel to draft a national environmental standard under the Resource Management Act 1991.
- 6.2 The NES:
- sets a standard at which land is considered safe for human health
 - ensures land affected by contaminants in soil is appropriately identified and assessed at the time it is developed and if necessary remediated, or the contaminants contained, to make the land safe for human use.

- 6.3 It is intended that NES controls will apply to land use change, subdivision, and disturbance of any land where, “according to the best information available to the local authority”, there has been a facility on the land or a hazardous activity carried out on the land that may have involved the intentional or accidental discharges of hazardous substances that could now be a risk to human health. How this will be written into a legally robust, clear and unambiguous obligation will be interesting.
- 6.4 The proposal is a mix of allowing (permitting) and controlling (requiring resource consents) certain activities on land affected or potentially affected by contaminants in soil. Extracts from the Cabinet paper authorising the drafting of the NES are attached as Appendix 1.
- 6.5 The NES will only impact on new decisions and resource consents and is likely to come into force later this year. Councillors may recall there was a round of public meetings last year and a Council submission was made identifying a range of implementation concerns. The devil will continue to be in the drafting detail.

7. Delta / Hope Zone Replacement Water Permits Completed

- 7.1 The process of issuing 133 water permits to replace the existing permits that expire on 31 May 2011 has been completed on time. All existing permit holders opted to join the coordinated approach to issuing new permits with a six year term, which allows time for the Lee Valley Dam proposal to be properly considered. The outcome has resulted in a small reduction in the overall water allocation in these two zones.

8. Hearing 60 Finalisation of decisions

- 8.1 The Committee needs to complete the decision-making on the package of changes under Hearing 60, in order to be able to notify all decisions by late June. This set of changes covers Part 4 Rivers and Lakes and all related amendments to other parts of the TRMP; (Variation 68 and Changes 17, 26 & 27), Change 16 cultural heritage sites, Change 25 greywater discharges and miscellaneous technical amendments in the Richmond West Variation 1 to Change 10. The decisions from deliberation in April are all interim at present and apart from some minor definition drafting, are able to be finalised after the TRMP text showing amendments is considered. This matter will be considered “In Committee” after this part of the meeting.

9. RECOMMENDATION

That the report be received

10. DRAFT RESOLUTION

THAT the Environment & Planning Committee receives the Environment & Planning Manager's Report REP11-06-08



Dennis Bush-King
Environment & Planning Manager

Appendix 1 – Extract from cabinet paper on NES on Soil Contamination

Table 2 Proposed NES controls

#	Control	Activity	Outcomes sought by terms and conditions (I = indicative limit)	Default
1.	Permitted	The removal of underground petroleum storage systems and associated subsurface soil sampling and impacted soil removal.	<p>Limits on the:</p> <ul style="list-style-type: none"> a) volume of soil disturbance (I: 30m³ of soil in aggregate per tank) b) duration of the disturbance (I: 1 month) <p>Requirements to:</p> <ul style="list-style-type: none"> c) notify the council prior to the commencement of the activity d) dispose of removed soil at facility authorised or consented to receive such waste e) prepare and report the findings of site investigations to the council within a specified time frame f) undertake the tank removal, investigation, remediation, validation and management processes in accordance with the <i>environmental management plan for UPST removal / replacement</i>¹ contained in substance or incorporated by reference. 	Controlled (3) or Restricted Discretionary (4)
2.	Permitted	Small scale and temporary soil disturbance and subsurface soil sampling	<p>Limits on the:</p> <ul style="list-style-type: none"> a) volume of soil to be disturbed (I: 25m³ per 500m² of land) - limit does not apply to subsurface sampling b) duration of the disturbance activity (I: 1 month) <p>Requirements to:</p> <ul style="list-style-type: none"> c) minimise the adverse effects of mobilised contaminants d) reinstate to an erosion resistant state within a specified time limit (I: 1 month) <p>Restrictions on the:</p> <ul style="list-style-type: none"> e) removal of soil off the site, except for samples taken for the purpose of laboratory analysis. f) compromising of the integrity of any structure designed to contain contaminated soils or other contaminated materials. 	Controlled (3) or Restricted Discretionary (4)
3.	Controlled	Land use change, subdivision, disturbance of land where the risk to human health from soil contamination does not exceed the soil contaminant value (SCV) for the intended land use as per Appendix B	<p>Requirements for:</p> <ul style="list-style-type: none"> a) site investigation report confirming that the risk to human health from soil contamination does not exceed the SCV for the intended land use in accordance with SCV standards derived in substance (or incorporated by reference). <p>Standards relating to:</p> <ul style="list-style-type: none"> b) the undertaking of site investigation and person who undertakes it derived in substance (or incorporated by reference) from <i>Contaminated Land Management Guideline No. 1</i>² and <i>Contaminated Land Management Guideline No. 5</i>³. <p>The ability to control the following types of matters under the terms and conditions of any resource consent:</p> <ol style="list-style-type: none"> 1. Where there is a risk of significant adverse effects on other receptors from contaminants present on the site (e.g. built structures, ecological and amenity values, soil quality), the adequacy of reporting and nature and scope of monitoring and management requirements including any site management plan. 2. Where soil and other materials are to be removed from the land, the appropriate tracking, and safe transport to land that is authorised and/or consented for the disposal of any the soils and materials. 3. Duration of the consent. 4. Timing and nature of review of consent conditions. <p>Notification:</p> <p>Applications for controlled activities under this rule to be considered without publically notifying them.</p>	Restricted Discretionary (4)

#	Control	Activity	Outcomes sought by terms and conditions (I = indicative limit)	Default
4.	Restricted Discretionary	Land use change, subdivision, disturbance of land where the risk to human health from soil contamination exceeds the SCV for the intended land use as per Appendix B	<p>The ability to exercise discretion over the following matters in terms of whether a resource consent will be granted and the terms and conditions that should apply:</p> <p><i>Assessment of the land</i></p> <ol style="list-style-type: none"> The extent to which the level, nature and extent of soil contamination has been characterised and is suitable for the intended land use (as defined in Appendix B), including but not limited to: <ol style="list-style-type: none"> in circumstances where there is no SCV for a contaminant, the extent to which a soil contaminant value protective of human health has been selected and justified against standards derived in substance (or incorporated by reference) from <i>Contaminated Land Management Guideline no. 2</i>¹ in circumstances where a site specific approach has been adopted in selecting an SCV, the extent to which a soil contaminant value protective of human health have been derived in substance (or incorporated by reference) from the <i>MfE site specific methodology</i>². the effects of the contamination on built structures, ecological and amenity values, soil quality. <p><i>Remediation and management and monitoring plans</i></p> <ol style="list-style-type: none"> The approach to the remediation and/or ongoing management of the land and the mitigation measures (including the frequency and location of monitoring of specified contaminants monitoring) The methods to address the risk posed by the contaminants to human health The extent to which the detailed site investigation, site investigation report, and monitoring and risk management plan were approved by an appropriately qualified and experienced practitioner in accordance with <i>Contaminated Land Management Guideline no. 1</i>². The extent site investigation and reporting was undertaken by in general accordance with <i>Contaminated Land Management Guideline No.5</i>³. The timing of the remediation. <p><i>Site validation</i></p> <ol style="list-style-type: none"> The standard of remediation on completion and the adequacy of the site validation report <p><i>Soil removal, transport and disposal</i></p> <ol style="list-style-type: none"> Where soil and other materials are to be removed from the land, the appropriate tracking, and safe transport to land that is authorised and/or consented for the disposal of any contaminated soils <p><i>Duration, review and financial bonds</i></p> <ol style="list-style-type: none"> Duration of the consent The timing and nature of reviews of consent conditions The requirement for and conditions of a financial bond <p><i>Cross agency requirements</i></p> <ol style="list-style-type: none"> The nature of any relevant Regional Council requirements or consent conditions <p>Note: to promote communication between councils and the considering of alignment with any regional consent requirements or existing consent conditions. Not intended for the Territorial Authority to determine the regional consent requirements.</p>	Controlled (3) for a)

Documents referenced in Table 2

1. Ministry for the Environment. Unpublished. *Environmental Management Plan for UPST removal / replacement.*

2. Ministry for the Environment. 2003. *Contaminated Land Management Guidelines No. 1: Reporting on Contaminated Sites in New Zealand*. Ministry for the Environment: Wellington.
3. Ministry for the Environment. 2004. *Contaminated Land Management Guidelines No. 5: Site Investigation and Analysis of Soils*. Ministry for the Environment: Wellington.
4. Ministry for the Environment. 2003. *Contaminated Land Management Guidelines No. 2: Hierarchy and Application in New Zealand of Environmental Guideline Values*. Ministry for the Environment: Wellington.
5. Appendix 2 of the discussion document *Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil* as amended after considering submissions.

Table 2 notes:

- Wording in this table reflects the policy intent rather than settled terminology. Wording and final details are subject to change as a result of the drafting process. Note also that change may occur as a result of the exercise the authority delegated to the Minister for the Environment to give effect to the policy under recommendation 7.

Permitted Activity 2

- Limit a) does not apply to subsurface sampling – the intent is to exclude the obtaining of samples for the purpose of characterising the nature and extent of contamination.
- For clarity excludes disturbance associated with ongoing activities associated with an existing use (section 10 RMA).
- To apply limit a) and restriction e) *site* may require definition. The intent is to allow movement of soil across legal property boundaries where these boundaries are part of a collective site (i.e. multiple adjoining lots owned by the same person).

Appendix B Soil contaminant values and land use scenarios

How is acceptable and unacceptable for use determined?

Soil contaminant values (SCVs_(health)) have been developed for 12 priority contaminants to determine the acceptability of contamination, and therefore whether or not resource consent is required.

SCVs_(health) are soil contaminant concentration levels at or below which the exposure is judged to be acceptable because any adverse effects on human health for most people are likely to be acceptable for the intended land use. The SCVs_(health) for selected contaminants and generic land-use scenarios are provided in Table 2, 3 & 4.

To determine whether land is acceptable for use, measured concentrations of contaminants are required to be compared against SCVs_(health) applicable to the categories described in Table 1.

Table 1: How to determine which SCVs_(health) are applicable

Category	Applicable SCVs _(health)
Land use or intended land use fits within the generic land-use scenarios described in Table 4	SCVs _(health) contained in Tables 2 and 3
Land use or intended land use results in greater human exposure than for any of the generic land-use scenarios.	Site-specific SCVs _(health) must be derived using the methodology described in the <i>Site-specific Assessment</i> ²¹ , except for land-use scenarios where produce consumption is greater than for the home grown produce consumption exposure scenarios described in Table 4.
Land use or intended land use results in lesser human exposure than for any of the generic land-use scenarios.	Site-specific SCVs _(health) may be derived using the methodology described in the <i>Site-specific Assessment</i> .
There is no SCVs_(health) for the contaminant of concern.	Soil contaminant values protective of human health and selected and justified in accordance with <i>Contaminated Land Management Guidelines No. 2 Hierarchy and Application in New Zealand of Environmental Guideline Values</i> .

If the soil contaminants exceed SCVs_(health) (ie, is unacceptable for use), the activity is a restricted discretionary activity (resource consent is required). If the soil contaminants meet or are under SCVs_(health) (ie, acceptable for use), the activity is permitted and no resource consent is required.

²¹Appendix 2 of the discussion document "Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil" as amended after considering submissions.

Table 2: Summary of soil contaminant values for inorganic substances (mg/kg)

	Arsenic	Boron ¹	Cadmium (pH 5) ²	Chromium ¹		Copper ¹	Inorganic lead	Inorganic mercury compounds ³
				III	VI			
Rural residential / lifestyle block 25% produce	17 ⁴	NL	0.8	NL	290	NL	160	200
Residential 10% produce	20	NL	3	NL	460	NL	210	310
High-density residential	45	NL	230	NL	1,500	NL	500	1,000
Recreational	80	NL	400	NL	2,700	NL	880	1,800
Commercial / industrial outdoor worker / maintenance	70	NL	1,300	NL	6,300	NL	3,300	4,200

1 SCVs for boron, chromium III and copper are much greater than the soil concentration at which plant health will be affected. Plant and other environmental effects may need to be considered separately.

2 Default value is for pH 5. See Appendix 1 of the *Methodology Report*²² for SCVs at other soil pH values.

3 The inorganic mercury SCV does not apply to elemental (pure) mercury.

4 Derived value replaced with 99th percentile of national dataset of background concentrations as described in the *Methodology Report*.

Note: NL = No Limit. Derived value exceeds 10,000 mg/kg.

Table 3: Summary of soil contaminant values for organic compounds (mg/kg unless shown otherwise)

Scenario	BaP ¹ (mg/kg)	DDT (mg/kg)	Dieldrin ² (mg/kg)	PCP ³ (mg/kg)	Dioxin (µg/kg TEQ) ⁴	
					TCDD	Dioxin-like PCBs ⁵
Rural residential / lifestyle block 25% produce	6	45	1.1	55	0.12	0.09
Residential 10% produce	10	70	2.6	55	0.15	0.12
High-density residential	24	240	45	110	0.35	0.33
Recreational	40	400	70	150	0.60	0.52
Commercial / industrial outdoor worker / maintenance	35	1,000	160	360	1.4	1.2

1 SCV to be compared with the equivalent BaP concentration calculated as the sum of each of the detected concentrations of the nine PAHs listed in table 40 of the *Methodology Report* multiplied by the respective PEF.

2 SCV for dieldrin also applies to aldrin separately, or to the sum of aldrin and dieldrin where both are present.

3 Consideration should be given to investigating dioxins for PCP concentrations in excess of 0.3 mg/kg, see last paragraph of section 6.

4 TCDD TEQ calculated as the sum of each of the 17 PCDDs and PDDFs, or 12 PCBs listed in table 46 of the *Methodology Report*, multiplied by the respective 2005 WHO TEF (table 46).

5 The SCV applies to only the 12 dioxin-like PCBs. The 'ordinary' toxicity of the simple sum of the concentrations of these and all other detected PCBs must be considered separately.

Notes:

- It is intended to broadly describe the sampling protocols, analytical methods to be used to collect and measure the contaminants specified in Tables 2 and 3. i.e. in line with *Contaminated Land Management Guidelines No. 5: Site Investigation and Analysis of Soils*.
- It is intended to broadly describe the statistical methods for determining compliance with the above SCV i.e. in line with *Contaminated Land Management Guidelines No. 5: Site Investigation and Analysis of Soils*.

²² Ministry for the Environment, Unpublished, *Methodology for Deriving Soil Contaminant Values Protective of Human Health*, as amended after submissions.