

Report No:	REP12-05-05
File No:	L263-1
Date:	7 May 2012
Decision Required	

REPORT SUMMARY

Report to: Environment & Planning Committee
Meeting Date: Thursday, 17 May 2012
Report Author: Mary-Anne Baker, Policy Planner
Subject: **TRMP LAND DISTURBANCE PROVISIONS REVIEW:
PROJECT OUTLINE**

EXECUTIVE SUMMARY

- 1.1 The Tasman Resource Management Plan (TRMP) provisions for managing adverse effects arising from land disturbance activities were first introduced in 1996. A number of changes affecting the rules and related rules in other parts of the plan have been made at various times since then.
- 1.2 The current arrangement and content of the land disturbance rules is complex, a number of inconsistencies have arisen and there are a number of implementation issues.
- 1.3 This report discusses some of the issues arising and recommends a review of the land disturbance provisions of the TRMP

RECOMMENDATIONS

- 2.1 That the Environment & Planning Committee adopts the draft resolution

DRAFT RESOLUTION

THAT the Environment & Planning Committee:

- a) **Receives the TRMP Land Disturbance Provisions Review: Project Outline, Report No. REP12-05-05.**
- b) **Instruct staff to commence a review of the land disturbance provisions of the TRMP that considers:**
 - (i) **Any inconsistencies in the way activities are managed;**
 - (ii) **Measures to improve readability and format of rules, including a review of how thresholds are expressed;**
 - (iii) **Alternative approaches to ensuring adoption of best practice measures to manage erosion and sedimentation effects of land disturbance activities;**
 - (iv) **Relationship between relevant policies and land disturbance rules across the plan, including biodiversity, landscape effects in the Coastal environment (but limited in scope to that covered by Change 3), flood effects of ground level change, (but not in relation to Mapua/Ruby Bay);**

- (v) **Extent of at risk terrain (LDA2) and level of control on risk activities including management of land disturbances in urban areas**
 - (vi) **Appropriate measures to manage cleanfill operations.**
- c) **Notes that the review of land disturbance provisions will incorporate a report on outstanding submissions still to be heard on Change 3.**



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1. Purpose

- 1.1 The Tasman Resource Management Plan (TRMP) provisions for managing adverse effects arising from land disturbance activities were first introduced in 1996. A number of changes affecting the rules and related rules in other parts of the plan have been made at various times since then.
- 1.2 The current arrangement and content of the land disturbance rules is complex, a number of inconsistencies have arisen and there are a number of implementation issues. For example, the complexity of the rules is making it difficult in some instances to determine the status of an activity. This is costing the community time and money and creating unnecessary confusion.
- 1.3 This report describes the project scope required to address some of the more significant issues relating to the land disturbance provisions and seeks approval for this project to commence.

2. Background

- 2.1 Chapter 12 of the TRMP describes adverse effects of land disturbance activities and there are only four policies. The main focus of chapter 12 is on managing erosion and water body sedimentation effects with one policy concerned with quarrying effects on high quality soils. Other matters related to land disturbance activities and effects are referred to in other chapters of the TRMP, including the margins of rivers in Chapter 8, landscape in Chapter 9 and water in Chapter 33. The key purposes of the land disturbance provisions, especially the rules, have however, become blurred as changes and additions have been made to address issues arising over time.
- 2.2 The rules in Section 18.5 of the TRMP are broadly based on consideration of risky activities and risky terrains. Thus Land Disturbance Area 1 (LDA1) covers the entire district except for the Separation Point Granite risky terrain shown in LDA2. A number of activities (trenching, tracking, blading, vegetation removal near rivers etc) are specifically controlled.

- 2.3 A proposed national environmental standard for forestry activities was released in 2010 and addressed measures to manage plantation forest effects, including land disturbance and earthworks. It is currently undergoing review in light of feedback on the draft with particular attention being given to the cost benefit analysis. The fate of this NES is uncertain, but the analysis and technical work already done in support of it will provide useful direction for any land disturbance review.

3. Present Situation/Matters to be Considered

3.1 Duplication and Inconsistency

The rules in Section 8.5 are long and complex. There is unnecessary duplication but also inconsistency in management of similar activities, including limits for trenches dug for services, recontouring and cut and fill controls. For example, the recontouring of a hectare of land and the formation of a road are both permitted yet a utility trench that is greater than 0.6m in width is a controlled activity. Another example is the rule for re-contouring 18.5.2.1 (p) which does not restrict the height of any fill if not over one hectare. Earthworks to construct roads may include fill batters substantially more than one metre and movement of tonnes of fill as a permitted activity. There are significant risks in this scale of earthworks particularly without clear guidelines for erosion and sediment control. This is especially so in urbanizing catchments (see section 3.8 below).

3.2 Lack of Clarity and Certainty

The thresholds in permitted and controlled conditions are often difficult to interpret and enforce, and improvements could be made to wording and to area and volume thresholds to improve functionality of the rules. Some of the current rules are unclear or vague as to what standard is required and can prove problematic and onerous when enforcement action is required. For example issues arise regarding interpretation of “predominant slope”.

3.3 Integration

The land disturbance rules cover a number of activities and effects. Quarrying, changing ground level or earthworks that divert water or flood flows, landscape and amenity effects of land disturbances and biodiversity considerations are all referred to in the land disturbance rules. The inter-connections and cross references between the various policies and rules are blurred in places or overlap; and matters for discretion in the rules do not always reflect issues being addressed in policies.

3.4 Effects on Flood Flows

Assessment of effects of earthworks on flood flows and secondary flow paths of floodwaters are not clearly provided for. The impacts of earthworks in areas susceptible to flooding often are only managed after the fact when the river floods and damage occurs.

One example would be recent earthworks in and around Pitfure stream which has resulted in numerous concerns being raised from the local community worried about the potential effects during future rain events.

3.5 Incomplete Plan Processes (Change 3)

Variations 25 and 33 (both now merged into Proposed Change 3) were notified on 7/9/02 and 20/12/03 respectively. Those variations were aimed at protecting the visual landscape values of the Kina-Ruby Bay cliffs as a natural coastal feature. They introduced controls over development in the area of the Kina - Ruby Bay cliffs, and additional controls on forms of land disturbance including vegetation removal in the Coastal Environment Area. Thirty-two submitters made 150 submissions on the change. The submissions have yet to be reported on and decisions made on Change 3. The provisions have been implemented since they were first notified.

Landscape effects of land disturbances are within the scope of the work being done under the Outstanding Natural Features and Landscapes (ONFL) Project which is currently focussed on Golden Bay through the Golden Bay Landscape project being led by Shelagh Noble. There are a number of overlaps between this work, resolution of the Proposed Change 3 submissions and review of land disturbance activities. The original preparation and reporting on Change 3 clearly indicated that the landscape effects of land disturbances in coastal areas are to be covered more comprehensively through future landscape work. Some of this work has been done and informs the ONFL Project. However, in order to resolve the outstanding Plan Change 3 process, this review will address the land disturbance landscape effects only in respect of the scope of Change 3.

3.6 Limitations of Effects Based Approach

The plan takes an effects-based approach in managing land disturbance effects on water quality and aquatic ecosystems. Land disturbance is mostly permitted provided specified water quality standards are met. It is difficult in practice to assess whether an activity will comply with the permitted activity conditions and often compliance action happens “after the event” when damage has already occurred. It is also difficult for operators to determine prior to commencing work what mitigation measures are necessary to meet the required off-site standard. Both aspects are made even more complex by the variable impact of weather at the time land is disturbed, including the impact or severity of the storm event and the potential extent of mitigation works are required. Sediment and erosion control workshops run by Council at the end of 2010 showed a high level of uncertainty about the required level of performance expected to mitigate sedimentation effects of land disturbance activities. Additionally, feedback from the earthworks contracting industry indicates the lack of clear rules and guidelines proves a problem with tendering for work.

Some instances where permitted activities such as tracking have not carried out best practice for erosion and sediment control there have seen significant problems encountered during the construction phase.

3.7 Good Practice

As part of issues raised during the sediment and erosion control workshops, Council undertook the preparation of good practice guidelines in relation to erosion and sediment control. The guidelines are based on work already carried out by Auckland Council, and the NZ Transport Authority and are amended to suit Tasman. The guidelines provide operators and developers with information about the best practice mitigation measures required to minimise adverse effects of erosion and sedimentation. This work can help inform any revision of plan provisions.

3.8 Urban Areas

There are gaps in the land disturbance provisions including management of land disturbances in urban areas and long term sediment and erosion control.

It has become evident that the land disturbance provisions do not deal adequately with erosion and sedimentation management associated with development in urban areas. In urbanizing catchments, for many towns, the streams are particularly sensitive to sediment – they are lowland, short, of flat gradient and discharge directly into the coast. Erosion and sediment runoff during storm events in urban catchments has led to adverse effects on the Council's own storm water network as well as on receiving waters.

3.9 Downstream Impacts and Relationship between LDA2 and SIRA

Recent storm events (Tapawera, Golden Bay) led to some concerns about the level of regulation over some land disturbance activities and whether risks to adjacent or downstream land arising from activities in unstable areas are appropriately addressed. The relationship between management of land disturbances activities in the Slope Instability Risk Areas and other risk terrains, especially where it overlaps with the LDA2, also needs reassessing.

3.10 Cleanfill Management

Management of either cleanfills or private landfills or are not addressed in the TRMP. Issues arise in relation to stability of cleanfill sites, location, including proximity to water courses, effects on groundwater and management of other materials that are often disposed of in association with cleanfill. The Council's Joint Waste Management and Minimisation Plan notes the need to consider cleanfill regulations to manage including control of location, material accepted and data collection. While deposition of clean fill is not always a land disturbance activity this issue does have a relationship as often land disturbance is required prior to establishing a cleanfill (for example removal of topsoil, gravel quarry), and sediment control is often also required.

Problems arising from the lack of provisions for “clean” fill arose during recent monitoring of demolition activities, where demolition material was sent to private landfill in an attempt to avoid paying for Council services and also undercutting other contractor tenders. Material that was deemed “unacceptable” for land fill by NCC was subsequently dumped in Tasman District.

4. Financial/Budgetary Considerations

- 4.1 A review of the land disturbance rules will require staff resources, more or less depending on the scope of the review. Existing staff resources can be used and it is unlikely that significant additional consultant costs will be involved.
- 4.2 Resolution of submissions on outstanding plan change processes is required in any case. There is unlikely to be any significant additional expenditure by Council.

5. Options

5.1 No Review

The plan remains largely in its current state. Historical submissions would still require resolution.

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5.2 Partial Review

The land disturbance provisions are amended to make their structure and content more rational, more internally consistent and easier to interpret. No fundamental change to direction or thresholds. Historical Submissions would still require resolution.

5.3 Substantive Review

The land disturbance provisions are more completely reviewed to examine success of current effects based approach, relationship with the Slope Instability Risk Area and management of land disturbances in urban areas. Historical Submissions would still require resolution.

6. Pros and Cons of Options

- 6.1 The status quo will result in on-going frustration with land disturbance rule implementation and interpretation. Some land disturbance activities continue to be managed inequitably, including land disturbances in urban areas, recontouring and service trenches. It continues with an “ambulance at the bottom of the cliff” approach to compliance - both by land owners/developers and by council staff enforcement efforts.

- 6.2 The partial review allows a “cosmetic” approach as a potentially quicker option to assist with plan interpretation. A partial review will inevitably raise more substantive issues anyway.
- 6.3 As well as enabling a more integrated approach, a more substantive review allows the Council to consider an alternative “best practice” approach that provides better guidance for land owners and developers about expected performance and levels of mitigation required to meet water quality standards. It allows more substantive issues to be addressed as part of the process.

7. Significance

- 7.1 This is not a significant decision under Council’s Significance Policy, but it is likely to have a significant localised impact on some landowners and developers because land disturbance activities they may wish to carry out may be affected by this review. Consultation with landowners and other interest groups will be required.

8. Recommendations

- 8.1 That the Environment & Planning Committee receives the TRMP Land Disturbance Provisions Review: Project Outline, Report No. REP12-05-05.
- 8.2 That the Environment & Planning Committee instruct staff to commence a review of the land disturbance provisions of the TRMP that considers:
- (vii) Any inconsistencies in the way activities are managed;
 - (viii) Measures to improve readability and format of rules, including a review of how thresholds are expressed;
 - (ix) Alternative approaches to ensuring adoption of best practice measures to manage erosion and sedimentation effects of land disturbance activities;
 - (x) Relationship between relevant policies and land disturbance rules across the plan, including biodiversity, landscape effects in the Coastal environment (but limited in scope to that covered by Change 3), flood effects of ground level change, (but not in relation to Mapua/Ruby Bay);
 - (xi) Extent of at risk terrain (LDA2) and level of control on risk activities including management of land disturbances in urban areas
 - (xii) Appropriate measures to manage cleanfill operations.
- 8.3 That the review of land disturbance provisions incorporates a report on outstanding submissions still to be heard on Change 3.

9. Timeline/Next Steps

- 9.1 Staff will commence preparation of a policy options paper that considers existing plan provisions, issues arising and potential options and solutions for addressing them.
- 9.2 As part of this process it will advise iwi and stakeholder groups about the planned review and seek input into the identification of issues and potential solutions.
- 9.3 The policy options paper will be provided to the Committee later in 2012.

11. Draft Resolution

THAT the Environment & Planning Committee:

- a) **Receives the TRMP Land Disturbance Provisions Review: Project Outline, Report No. REP12-05-05.**
- b) **Instruct staff to commence a review of the land disturbance provisions of the TRMP that considers:**
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