

Moanataiari Project

TO	Thames-Coromandel District Council
FROM	Sam Napia - Strategic Relationships & Projects Manager
DATE	12 March 2013
SUBJECT	Moanataiari Project

1 Purpose of Report

The purpose of this paper is to recommend to Council the progression of the Moanataiari project to its conclusion.

2 Background

The Governance Group Decision of 5 December 2012

Adhering to the project plan and after more than a year of investigation, including international scientific reviews, the Moanataiari Project Governance Group resolved to implement a remedial response on 5 December 2012.

This response was based on an awareness creation programme promoting behavioural changes, providing safe soil in which to grow vegetables and providing some assistance to property owners in some areas to cover exposed material in high traffic areas and other similar solutions such as are currently promoted by the Ministry of Health. The response provided for non-intrusive remediation but excluded "dig and dump" type remediation.

Significantly, leading to the decision, the final motion was moved and seconded respectively by community representatives Wati Ngamane and Shane Bromley.

The Ministry for the Environment representative voted against the motion; as did the two representatives from the Waikato Regional Council, who also asked that their opposing votes be recorded.

Subsequent to the Governance Group Decision of 5 December 2012

Withdrawal of funding and support by the Ministry for the Environment

Within a week of that decision, the Ministry for the Environment (MfE) wrote¹ to advise that it did not agree with the Governance Group decision - despite its fair and full participation in the decision making process - and that it was terminating its funding and support for the project, citing (amongst other things) their disappointment that "a detailed remedial action plan" was not available at the meeting.

It had apparently escaped the Ministry's attention that detailed action planning was the key component of the very next project phase; and, ironically, the Ministry's termination of funding and support meant that detailed remedial planning would possibly now never happen.

Withdrawal of funding and support by the Waikato Regional Council

Also within a week of that decision, the Waikato Regional Council (WRC) notified² that it would terminate its funding agreement, saying that its representatives "were not confident

¹ ECM Doc Set 2846879

² ECM Doc Set 2851424

that the resolution will provide the best long-term protection...in line with Government's policy".

Of their subsequent February 2013 Council meeting, the WRC reported that "Thames-Coromandel constituency councillor Simon Friar said he was disappointed that the district Council had chosen to abruptly end the project without completing a detailed action plan to manage the risks."³

It had apparently escaped the WRC's attention that it was not we but they, by reason of their withdrawal of funding and support, who ended the project.

The Ministry of Health

In a 24 January 2013 letter to Council's Chief Executive⁴, the Ministry of Health takes the Council to task for coming to "the conclusion of negligible public health risk". The Ministry also expresses disappointment "that the Health Risk Assessment [HRA] [had] been finalised without taking into account the external, international peer review commissioned by the Ministry of Health".

Unfortunately, the Ministry's information is incorrect.

Except in circumstances⁵ of daily risk-specific doses at or below relevant reference health standards⁶, it has never been concluded that the risk is negligible; to the contrary, TCDC staff have consistently pointed out that some level of potential risk will always exist - even after any remediation. Furthermore, the international peer review was certainly taken into account; indeed, a summary key finding of that review, that the "the text is generally well-written, comprehensive, and scientifically credible"⁷ was reported to the Governance Group.

The Ministry also advised of its continued support and advice on managing the public health risks through the district medical officer of health. The Ministry's letter concludes with confirmation that "If there was to be no permanent soil remediation, the current health risks persist and our advice (contained in *Arsenic and Health*) remains unchanged".

The Minister for the Environment

On 26 February 2013, the Minister for the Environment wrote to Council's Mayor explaining that she had been advised by her officials that the sole reason for their voting against the governance group decision was out of concern over the cost benefit analysis that had been reported. The Mayor's response informed the Minister that:

- Ministry officials knew as early as July 2012 that a Moanataiari project analysis of cost benefit was required and forthcoming; subsequently,
- Ministry staff received from TCDC staff a draft cost benefit analysis more than a month before the 5 December 2012 Governance Group meeting, but,
- Ministry staff never offered up an alternative analysis prior to or during the 5 December 2012 Governance Group meeting; that is despite,
- The Ministry having had a detailed cost benefit analysis⁸ on the NES⁹ in their

³ <http://www.waikatoregion.govt.nz/Community/Whats-happening/News/Media-releases/Funding-agreement-formally-ended/>

⁴ ECM Doc Set 2872534

⁵ For example, in the case of vegetable consumption in the western part of Moanataiari.

⁶ *Reference Health Standard* is a general term used to describe an estimated daily amount of a substance that can be taken into the body without either any risk, or an unacceptable additional risk, of detrimental health effects.

⁷ Email from Sally Gilbert (Ministry of Health) to Bruce Croucher (Ministry for the Environment) date stamped 1:30pm, 29 November 2012.

⁸ *Cost-Benefit Analysis of the Proposed NES for Assessing and Managing Contaminants in Soil to Protect Human Health*, August 2010, Covec Ltd

⁹ National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect

possession since August 2010; therefore,

- To now say that the Ministry's **sole** reason for opposing the 5 December Governance Group decision was concern over the cost benefit aspect of the project is not credible.

The effect of the agencies' actions subsequent to the Governance Group decision

The effect of the agencies' withdrawal is that Council is left to determine the outcome of the project without the support of the MfE and the WRC.

Contrastingly, the expressed continued support and advice on managing public health risk through the District Medical Officer of Health is acknowledged and valued.

3 Issue

Given the support of the Ministry of Health and the District Medical Officer of Health, along with the resources and capabilities of Council, we need to determine what can be done. Thus the issue for determination is how Council should deal with the circumstances at Moanataiari, given the information and resources now at hand. Determining what can be done necessarily starts with analysing the present.

4 Discussion

Analysing the Present

The key questions

On 30 October last year, when Minister Adams visited Moanataiari promising her Ministry's ongoing support, she posed two key questions which remain so to this day. They are:

- What is the level of risk?
- What should be done about it?

What is the level of risk?

As earlier reported to Council, the HRA indicates that the level of risk is small. Although various agencies and officials appear to have become unduly exercised by semantics; and whilst, in context, the risk is not negligible, it is nevertheless small. And indeed, the actions of the Ministry for the Environment - effectively washing its hands of the project - appear to confirm that the risk is sufficiently small as to be non-compelling.

Were there a compelling issue here, the public is entitled to be confident that the Ministry for the Environment would still be in the game. But they are not. And neither is the Regional Council, seemingly reflecting the non-compelling nature of the Moanataiari circumstance.

As a final commentary on this point, as earlier reported to Council, whatever the level of potential risk at Moanataiari to public health, it is many times less than the potential risk posed by Hamilton City's water supply. If Hamilton's circumstance is non-compelling, then Moanataiari's is even more so.

What should be done about it?

What should be done is the substance of the following options, their analysis and the synthesis of recommendations to Council.

Options

Option A – Support the provision of advice by health agencies and provide property information and other information

Under this option, Council would publish a statement for inclusion with land information memoranda (LIMs) and, outside of the memorandum, maintain and make available other

information such as the results of site investigations by Tonkin & Taylor published in June 2012.

Presently the following statement appears on LIMs:

"This property appears on Waikato Regional Councils register (called the Selected Land Use Register or SLUR) of properties known to be contaminated on the basis of chemical measurements or on the basis of past land use.

Its classification is currently "Verified HAIL E7 - because the area has been identified as being reclaimed land built up with various materials including mine tailings.

Council holds a number of reports that are relevant to the property; these are available on request or on the TCDC website, www.tcdc.govt.nz/moanataiari"

Option B – Support the provision of advice by health agencies and provide property information and other information; and, provide soil dumping facility for small scale soil removal

This is essentially Option A with the additional provision of a soil collection facility at the Thames refuse transfer station and thereafter removal to landfill.

Option C – Implement the decision of the Governance Group of 5 December 2012

This option is simply the implementation of the Governance Group decision, albeit without the funding and support of the MfE and WRC.

Option D - Implement a scaled-back version of decision of the Governance Group of 5 December 2012

This option is the development and implementation of a revised project plan that might be achievable within Council's now limited resources.

Assessment of Options

Option A –Support the provision of advice by health agencies and provide property information and other information

The downside of this option is that the expectation that was created by the project would not be realised.

The irony of this circumstance is that, as earlier reported¹⁰, it is considered that – in the identification of Moanataiari as a contaminated site requiring remediation - this council and our community were shepherded down a path that we need not have travelled. And now it appears that the shepherds have abandoned the fold.

Yet, to be fair to the decision of the MfE and WRC to pull their project funding and support, the fact is: the relative potential risk is small.

Moreover, whilst it is acknowledged that it would be desirable to further minimise risk from arsenic exposure from all sources, if the Hamilton circumstance provides many times more risk to a population a hundred-fold greater than Moanataiari; and, if there is no compulsion to remediate that source of arsenic exposure, then there is significantly less reason to remediate Moanataiari.

Again, to be fair to the MfE and WRC, this logical conclusion is manifestly congruent with their decision to pull funding and support for the project.

At the same time however, the Ministry of Health has offered the provision of ongoing

¹⁰ Report to Council meeting of 19 December 2012 ECM Doc Set 2835408

support and advice on managing public health risk through the district medical officer of health. The Ministry has already made available a very readable booklet, entitled *Arsenic and Health*, and the Ministry commends to the Council this information in its letter of 26 February 2013.

If this option were implemented, the Council would undertake to distribute *Arsenic and Health*, and otherwise make it available through our website.

The estimated cost of implementing this option is within the resources provided for by Council's 2013/14 Annual Plan¹¹. It is considered that there are no other material financial or policy implications related to implementing this option. The following is some commentary on statutory responsibilities that are relevant to this project:

- **Resource Management Act:** Council's functions under the Act include responsibility for the prevention or mitigation of any adverse effects of the development, subdivision or use of contaminated land. This does not necessarily suggest that Council ought to be responsible for physical remediation.
- **NES:** Existing uses are not affected by the NES. The NES only applies in the case of subdivision, land-use change, earthworks of a certain scale, soil sampling or removing fuel storage systems.
- **Building Act:** The issue of contaminated land is not covered by the Act's provisions relating to construction on land subject to natural hazards (sections 71 and 71).
- **Health Act:** The Act defines a health nuisance as including sites "in such a state as to be offensive or **likely** to be injurious to health" (emphasis added).
- **Local Government Official Information and Meetings Act:** The Act covers the provision of LIMs, which is discussed elsewhere in this report.

Finally, it is useful to note that implementing this option does not necessarily close the door on the availability of remediation funding assistance from the MfE and WRC to individual property owners, if sought. Though the Council might understandably decline to be again involved in a contaminated land funding partnership with the MfE and WRC, the WRC's offer¹² extends to helping individual property owners if they want to apply to the MfE's contaminated sites remediation fund.

Option B – Support the provision of advice by health agencies and provide property information and other information; and, provide a soil dumping facility for small scale soil removal

Extending Option A, this option provides for soil removed by Moanataiari residents to be taken to the nearby Thames refuse transfer station and, thereafter, an appropriate permanent landfill site. This facility would be for normal domestic purposes such as soil disturbance associated with planting or removing trees or small scale building work, but not for large scale soil disturbance.

It is anticipated that, within the context of our regional council resource consent for the operation of the transfer station, Moanataiari soil would be deemed by the regional council to be hazardous material. The installation of a purpose-built bunker to receive the material and the storage of the material awaiting removal to landfill may therefore be subject to a review by the regional council of our present arrangements. Whether such a review would be required and what costs would be associated with it is as yet unconfirmed.

With regard to removal from the transfer station to a permanent site, practically speaking,

¹¹ The draft Annual Plan 2013/14 provides for \$40,000 to deal with the Moanataiari issue. This provision contemplated the support of the MfE and WRC through to remedial action planning and access to government funding for any remedial actions undertaken.

¹² <http://www.waikatoregion.govt.nz/Community/Whats-happening/News/Media-releases/Funding-agreement-formally-ended/>

there are two facilities that can receive the material into landfill. These are in Tirohia and Hampton Downs.

Other considerations include the establishment of a bunker for receiving Moanataiari soils at the Thames refuse transfer station; machinery and transport to a permanent landfill facility; and disposal costs to landfill. The estimated cost of establishing the bunker is \$7,980. The overall cost of disposing soil in this manner is estimated to be \$232 per tonne.

Though we have arrived at a cost per tonne estimate, it would not be possible to usefully estimate a total cost for implementing this option because of variables that include:

- the weight of soil per disposal event;
- the number of disposal events;
- whether residents outside of Moanataiari would avail themselves of this facility.

In terms of the last point, it has long been recognised that Moanataiari is a reflection of the geodiversity of Thames (and the wider district). The question then arises whether the facility would be open to use by residents beyond Moanataiari.

Given such exposure to ongoing cost variability, it would be prudent for Council to consider cost recovery. In this regard, it is noted that the current schedule of fees and charges provides for cost recovery for disposal to the Thames refuse transfer station at a rate of \$150 per tonne. This recovery estimate is less than the current cost estimate for the whole operation by around \$82 per tonne. To address this deficit, Council may choose to set a new fee in the 2013/14 Annual Plan that more closely reflects the current estimate for dumping and disposing of soil via the Thames transfer station.

Option C – Implement the decision of the Governance Group of 5 December 2012

The upside of this option is the completion of the project as contemplated by the original project plan in accordance with a duly arrived at decision by the project's Governance Group.

However, it is not practically possible to resurrect that now dead decision for implementation given the position of the MfE and the formalised resolution of the WRC at its February 2013 meeting to pull its support for the project.

The estimated cost¹³ of implementing this option is \$412,000. For the reasons reported earlier¹⁴, the implementation of such an option will likely require an amendment to Council's Ten Year Plan. The estimated cost alone of consulting over a Ten Year Plan amendment is \$15,000.

Option D - Implement a scaled-back version of decision of the Governance Group of 5 December 2012

The potential upside of this option is the further diminution of additional risk, albeit already small.

Cost estimates for this option have not been scoped given the lack of detail around what a "scaled-back version" might look like. However, such will likely not fall within the funding provided for by Council's draft 2013/14 Annual Plan. The extent of those increased costs may impact on any consideration of whether an amendment to the Council's Ten Year Plan is required. And in any case – as earlier reported – Council may of itself determine that such a decision is significant, thereby requiring a Ten Year Plan amendment.

¹³ This is the total cost; possible contributions from other agencies have not been accounted for. A detailed estimate of cost will be available at the meeting.

¹⁴ ECM Doc Set 2769734.

Additional to any of the forgoing, any revised project pathway will require the assessment of remedial options and the development of remedial action plans. This will, in turn, require the input of the MfE and WRC.

Given how things have turned out, and given the disparity of approaches between the Council and the MfE and WRC, it is very likely that no sustainable decisions around revised remedial options and actions can be reached.

Overall Assessment and Preferred Option

Option A can be implemented by Council without further reference to or reliance upon the MfE and WRC. Implementation of this option will, however, require support and advice on managing public health risks through the district medical officer of health. Advice from the Ministry of Health is that this support is forthcoming. Council may implement this option without the need to seek further funding than that which is provided for by its draft 2013/2014 Annual Plan.

Option B is practically implementable; however, it presents ongoing operational cost uncertainties. For this reason, it cannot be determined that this option falls within the funding provided for by Council's draft 2013/14 Annual Plan. Ongoing operational costs can be recovered from users of the facility through the application of an existing scheduled fee or through the creation of a new fee. However, it is considered that such a move - to create the facility and then require users to pay for its use - would, in the circumstances, not be fair or justified. This is especially the case when one again considers the justification in the first place for the facility's creation given that the potential risk we are dealing with is so small as to be non-compelling.

Option C is very likely not capable of implementation because it would require the MfE and WRC to resile from its position of opposition to the 5 December 2012 Governance Group decision. If Council were to implement that decision of its own accord, a Ten Year Plan amendment will be required. Considering the small potential risk involved – and, by reason of their withdrawal of funding and support for the project, the MfE and WRC's seeming indifference over this small potential risk – the cost of implementing this option is not commensurate with potential benefits.

Option D will similarly require an unlikely meeting of minds between the agencies. And even if such is achievable, the only indications currently available to decision makers suggest that the cost of implementing this option will outstrip benefit.

In overall consideration of the foregoing assessment, the preferred option is Option A - Support the provision of advice by health agencies and provide property information and other information.

5 Suggested Resolutions

That the Thames-Coromandel District Council:

1. Receives this report.
2. Resolves to implement Option A - Support the provision of advice by health agencies and provide property information and other information, as outlined in this report.