

TRILITY Wading through Rotorua's DEAL: Wastewater Controversy

The council invited the Daily Post to get answers on the Trility deal

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This year, a council proposal to enter into a 10-year, \$156m deal to manage the city's wastewater with private consortium Trility sparked fervent public debate. After the council's 7-4 decision to enter the contract on July 26, the council invited the Rotorua Daily Post to sit down with Mayor Steve Chadwick and infrastructure manager Stavros Michael to wade through the intricacies of Rotorua's wastewater.

Steve Chadwick notices my New Yorker Magazine tote bag and we make small talk while we wait for Michael to arrive. She reveals years ago, while an MP, she spent an entire evening out with 80-year-old Democratic Party activists in New York City. She remembers it fondly.

My first question is simple — why answer the questions now, rather than before the decision?

Chadwick says she felt “politically . . . the conversation's been wrong. This has been going on for the last three years at least. [We] had to look at wastewater services as a contract — were we doing the right thing? I feel it went in a different direction at the very end because I don't think that it's something that the public has followed really closely each year. Even some of our councillors didn't follow some of the story.”

She says the three-year process had been ‘well-reported, well discussed’.

It wouldn't have been better to have this conversation before the decision was made ‘because [the council was] having it’. Chadwick says Massey University local government expert Andy Asquith's remarks that the process had been ‘as transparent as a brick wall’ has made her ‘angry’.

“The need to invest in our infrastructure was manifestly obvious to me because of the build-up of advice we'd been given. It was an election issue that we would need to invest and that would have to cost us as a council. We'd been very open with the public about this. It's really complex. Some of the submissions showed me that, still, they were feeding on some misinformation and some facts that were in social media that were patently wrong.”

I ask her if she's referring to social media posts and other information councillor Reynold Macpherson has put into the public arena.

“That was part of it, but others picked up the loop too and so it promulgated some fear and anxiety around it. They were not fully informed.”

Macpherson has also urged the council to delay the decision until there is further clarity about how the Government's Three Waters Reform proposal would take shape. Michael says there is no chance a Government offer can 'strand' the council in its Trility contract.

"All the proposal is . . . for councils across the country to consider the possibility, with an inducement . . . which says that you'll be better off if you transfer the ownership of your assets under some kind of super-entity."

He says the Government had invited councils to be open-minded to explore the possibilities of setting up such an entity, and the particulars of its governance, funding and operational structure.

"There's nothing tangible in that . . . the new entities have not [been] set up yet. There's nothing on the table with regards to . . . how they would like the physical services to be delivered. The council has got the right to reassign this contract to some other entity . . . to operate it as it is intended to."

However, the contractor has a 'similar expectation', he says, in that the reassigned entity must be at least the same size, financially, as the council. Chadwick says knowing the state of the asset, to wait for more information from central Government would be 'irresponsible'.

"We knew the state . . . 67 per cent of the value of our [wastewater] network is poor. Invest in it, for goodness' sake. It was about looking after our own destiny and our own infrastructure."

Michael says it's important to remember the goal of the Three Waters Reform proposal is to 'arrest and reduce the possibility of further deterioration of [water] assets'.

"Why would you sit back and wait when you know what you need to do? There's a proposal on the table which is consistent with the Government's environmental intentions and outcomes, it is consistent with good asset management practice, it is consistent with good contract management practice, you are transferring risk away from the community. Why would you sit on your hands? It's like someone saying to you, 'your tyres are half flat, but keep driving anyway'."

Michael says he's seen discussion on social media that says 'Trility can walk away from the contract and all the risk is with the council'.

"That is totally incorrect. There is a \$15m performance guarantee by the parent company. There's a \$2m performance bond."

Michael says that total of \$17m will be adjusted each year in line with inflation.

"I can step in at any given time and tell Trility to pack their suitcases and go home if they're not performing and sub-contract directly with the sub-contractors [Fulton Hogan or Stantec] . . . at the same rates that it provides in the contract. If we incur additional costs above the rates that the contract specifies, I can sue Trility for that. I can destroy Trility's reputation; they will never get any other contract anywhere else again. No major company likes to be associated with a failed contract."

There is also the option to withhold payments if something needs to be rectified, he says.

But how well has the council been at communicating all of these details to the public?

Michael says the council has 'done the best we can'.

"But can you eliminate what one might call selective user information, I don't know."

Chadwick says only one person called her expressing anxiety before the Trility decision.

"Normally you get lobbied — not during this process actually. Some did submit and I don't think they were not taken notice of. I actually think you can't do more than that. They're the best tools that we've got as elected members. It is very important too, not to promulgate information that makes people overly anxious. The right information was given — was it used?"

Chadwick says concerns about the geopolitical situation in Hong Kong — where Trility's parent company Beijing Water Enterprises Group is based — are an 'absolute red herring'.

"I've seen some absurd allegations about 'the mayor's links with China'. I've been very involved in working with other mayors around the country, and we were going to go to China in May. We've had very constructive relationships through Sister Cities. The ownership model of this consortium in the lead of Trility was completely fear-mongering."

Michael says there are no laws preventing territorial local authorities from undertaking business with overseas companies.

"People made the assumption that the Beijing Water [Enterprises] Group, a publicly listed company, is owned by the Chinese Communist Party. I see no evidence of that. Our direct contract is Trility Group Australia."

He says geopolitical contexts are 'always a consideration'. The council makes sure the interests of ratepayers are legally protected.

"Waste Management New Zealand, which we have another contract with, it's owned by Beijing Capital Group, again based in Hong Kong. ANZ, which we are having transactions with on a daily basis, 67 per cent are owned by American shareholders."

Michael says of the \$156m, the Trility consortium will, in reality, only receive — all things going as planned — about \$145m.

It also includes money for insurance and for Michael's salary, for example.

"The consortium will be paid . . . \$14.5m a year on monthly instalments. We can stop paying them, and we claim that [\$17m]. The money we have in our budget for the \$14.5m we use that money to pay for the services. If we don't pay Trility, that amount of money we'd pay someone else to do it."

Chadwick agrees: 'Services would continue'.

Chadwick says one councillor — Tania Tapsell — requested an executive summary of the contract.

Michael says he also has had individual discussions about the contract with councillors.

But why not just pre-emptively circulate the executive summary of the contract to councillors, I ask. Chadwick says 'we never do'.

"[Councillors] don't ask for contract details. We don't go drilling in. That's the job of specialist staff in council."

Michael says the executive summary 'is not something that councillors haven't seen before in our reports'.

"We've been talking about it for three years now. We had six workshops, 10 Operations and Monitoring [Committee] reports. It's just a matter of practicalities as to how much you give a governance board in terms of the burden of having to read a voluminous document, and how much do you expect them to understand in terms of the technical definitions of the contract?"

That's what an executive summary is for though, isn't it, I ask. It's a high-level understanding. Michael agrees, but reiterates that what is in the executive summary is not new information to councillors. Chadwick says councillors asked many questions and were encouraged to talk to the council officers to gather more information.

Macpherson has previously pointed out the contract contains a remedy, should the council be in breach, that the council will be liable to pay five years of profit to Trility. He's estimated it to be between \$12.5m and \$15.5m. In my official information request, I'd asked for the council's figure, but was not provided it, the council citing 'commercial sensitivity'.

Michael says he knows the number, but 'it is nowhere near the number people are bandying around'.

"But the number is purely theoretical because the number I know is what the consortium has advised us is their target profit for the contract".

He claims it is 'less than half' Macpherson's figure. That meant the expected figure would be, at the low end, less than \$6.25m, and at the high end, less than \$7.75m.

"The point is that [Trility] need to prove it. If they are losing money in the last five years in the contract then they are not entitled to anything."

He says he understands the consortium expects to invest more money than it is paid in the 'first few years'.

"By renewing some elements faster than anticipated they will save in operational costs."

Michael confirms that is the only remedy in place if the council is found to be in breach of the contract, but it also allows for negotiation if circumstances change. Chadwick says despite 81 per cent of submitters stating opposition to the proposal, the public should still have confidence that submissions are listened to. Michael agrees:

"Everybody should be assured . . . that whatever they say is read, is digested, is considered against the context of what we do before we make a final recommendation."

Chadwick says she was 'quite surprised' the decision 'became so political at the very end'.

"I got a number of emails just the two days before. A lot of them were quite misinformed. The innovative approach [to wastewater] is quite outstanding. As long as we've done all the due diligence on the contract and made sure that in the best interests of our ratepayers we're going to get a better service than we've currently got. I think for some who submitted they were clearly embarrassed at the exposure of underinvestment in infrastructure that had gone on. There were two previous mayors. They're anxious that there is a direct or indirect criticism of underinvestment."

She says the submission from former mayor Kevin Winters stating he believes the council's proposal was 'really biased' in favour of the council officers' recommendation made her 'a bit sad'. Former mayor Grahame Hall had also described the process toward the decision as 'poor'.

"When I'm no longer a mayor I'm not going to speak out on issues that are before [the] council of the day, because you don't have all the information in front of you", Chadwick says.

Michael says a council officer's recommendation 'is not biased', it's inherently weighted to explain why you made the recommendation. He also refutes Winters' criticism that wastewater management should be done 'in-house'. By establishing a risk management plan and assessing what needs to happen, the council is still managing the wastewater services in-house, he says.

"The [council] infrastructure group is not going anywhere. The management of the network in terms of the strategic long-term performance remains with the council. The reality is different layers of management."

Chadwick's comments are put to Winters after the interview. He says he has put his views forward as a submitter and declines to comment further.

On Friday, Hall said it was 'such a pity' Chadwick was 'unable to take on board a little bit of helpful advice from a number of experienced sources'.

"With many unfortunate events taking place in [the] council in recent times, former mayors have been forced to speak out. I honestly believe our council is in a mess under the current regime. To promote the idea there has not been investment in our infrastructure to suit their argument is true in very recent years, but simply not true over the past 25 years."

In response to the various criticisms against him, Macpherson told the Rotorua Daily Post, that in his opinion, the reason his group Rotorua Residents and Ratepayers "mounted criticism" through its Facebook page was 'because the mayor's regime commonly manipulates the release of information by holding confidential workshops with interminable PowerPoint presentations to announce predetermined decisions'. He says, in his view, serious consideration of "systematic feedback from elected members" was not allowed and the council 'then follows up with heavily biased press releases'.

Macpherson says he has 'great respect' for Michael and the Trility wastewater proposal was a 'monumental piece of professional work'.

"I have, however, not been given access to the full contract, only to snippets. [Michael's] estimate of \$6.25m to \$7.75m is based on what Trility advised him to be their target profit. My estimate of \$12.5m

to \$15.5m liability is based on Trility's actual profits reported online that range between 16.5 and 19.9 per cent of revenue over the last five years. Neither estimate is therefore misinformation, as the mayor claims."

I ask for parting words from Chadwick and Michael.

Chadwick says the Trility wastewater decision is a 'far-reaching [and] very innovative' initiative.

"[It] totally fits with any Government's proposition about how councils manage their wastewater services. For something that I was energetically enthusiastic about, I was sorry to see that some hadn't quite got the right end of the stick on it."

On Friday, a council spokeswoman said contract documents were 'in the process of being signed'. The contract will take effect in November.