

Report No:	EP12-03-09
File No:	R427
Date:	8 March 2012
<b>Decision Required</b>	

## REPORT SUMMARY

**Report to:** Environment & Planning Committee  
**Meeting Date:** Thursday, 29 March 2012  
**Report Author** Maxine Day, Policy Planner

**Subject:** **IMPLEMENTING THE NATIONAL ENVIRONMENTAL  
STANDARD FOR MANAGING AND ASSESSING  
CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH**

### EXECUTIVE SUMMARY

This report provides an assessment of Council's policy and practice requirements for implementing the newly commenced National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES CS).

The Standard seeks to ensure that land affected by contaminants in soil is appropriately identified and assessed at the time of being developed and if necessary remediated to make the land safe for human use.

Tasman District contains a considerable number of sites that may be affected by the National Standard. It is likely the Council will be implementing the Standard on a regular basis. It is therefore necessary that Council has an appropriate policy framework to support the NES CS and internal procedures to process NES CS consents.

An assessment of the TRMP concluded that only minor changes to the policy framework are necessary for Council to implement the NES CS, and that the bulk of these changes can be undertaken without the need for a Schedule 1 (RMA) process.

A minor variation to remove a policy that deals with information management of contaminated sites is recommended and this will be required to follow Schedule 1 process. It is proposed this be incorporated in the next appropriate plan variation put out by Council. Additionally, one further policy relating to the use of outdated guidelines is required to be removed as it is in conflict with the NES CS - this does not require following the Schedule 1 process.

The introduction of the NES CS also has meant that internal consent processing practices and information management procedures need to be updated. Significantly, the NES CS elevates the importance of maintaining an up-to-date register of contaminated sites.

A number of recommendations are made to the Committee in order for Council to best manage this new responsibility and effectively implement the NES CS.

## RECOMMENDATIONS

It is recommended the Environment & Planning Committee:

**Approves** the implementation of Options 1-16, as set out in Table 1 of this report, including Plan amendments as shown in Appendix 2 in Report REP12-03-09, proceeding without public notification in accordance with s.44A of the Resource Management Act, 1991; and

**Approves** a work-programme to implement Option 17 to remove policy 33.5.3.5, as shown in Appendix 2 in Report REP12-03-09 and that this be incorporated in the next appropriate change to the TRMP.

## DRAFT RESOLUTION

**THAT the Environment & Planning Committee receives the report on Implementing the National Environmental Standard for Managing and Assessing Contaminants in Soil to Protect Human Health REP12-03-09 and:**

**Approves the implementation of Action 1 and Options 2-7, as set out in Table 1 of this report, including Plan amendments as shown in Appendix 2 in Report REP12-03-09, proceeding without public notification in accordance with s.44A of the Resource Management Act, 1991; and**

**Approves a work-programme to implement Option 17 to remove policy 33.5.3.5, as shown in Appendix 2 in Report REP12-03-09 and that this be incorporated in the next appropriate change to the TRMP.**

**Notes that Actions 8-16 of this report are taken to ensure efficient implementation of the NES CS requirements.**

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**Subject:** **IMPLEMENTING THE NATIONAL ENVIRONMENTAL STANDARD FOR MANAGING AND ASSESSING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH**

## **1. PURPOSE**

1.1 The purpose of this report is to assess the policy and practice requirements of the newly commenced National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES CS). The goal of the NES CS is to ensure that land affected by contaminants in soil is appropriately identified and assessed at the time of being developed and if necessary remediated to make the land safe for human use.

The content of this report provides an assessment of the need for:

- changes to the TRMP to enhance effective implementation of NES CS and improve effectiveness of dealing with soil contamination risks to human health at the time of subdivision, land use change and soil disturbance;
- changes to the TRMP to manage wider risks to the environment;
- specific advice or updates to Council's information records, processes and services; and,
- a programme to provide NES CS information to landowners or persons seeking to undertake activities on land identified as being contaminated or potentially contaminated by hazardous substances.

This report also considers the various risks and challenges with implementing and enforcing the NES CS, and puts forwards a number of recommendations to support the effective implementation of the regulations.

## **2. BACKGROUND**

### **2.1 Requirements of NES CS**

On 1 January 2012 the National Environmental Standards for Managing and Assessing Contaminants in Soil to Protect Human Health commenced. The Standard has introduced rules to require certain activities including subdivision, soil disturbance, removal of underground fuel tanks and changing land use, to be subject to the NES CS in certain circumstances - i.e. when an activity is

proposed on a Hazardous Activity and Industry List (HAIL) site<sup>1</sup>. HAIL sites are identified by definition of the current or historic use of a site, rather than any national register of sites<sup>2</sup>.

The NES CS provides a set of rules and standards that all councils must observe and enforce. The national standard also requires plans and policies to be reviewed to ensure they do not conflict with the standard. The NES CS further imposes a duty on any person who is to consider specified activities on any affected piece of land to comply with conditions of the NES CS, or otherwise have certified that it is highly unlikely that there will be a risk to human health from the activity on the piece of land. The NES CS does not affect existing use rights.

### Figure 1: Activity Status for Activities under NES CS

The NES classifies as **permitted activities** (meaning no resource consent required if stated requirements are met):

- removal or replacement of fuel storage systems and associated soil, and associated subsurface soil sampling
- soil sampling
- small-scale (no greater than 25 cubic metres per 500 square metres of affected land) and temporary (two months duration) soil disturbance activities
- subdividing land or changing land use where a preliminary investigation shows it is highly unlikely the proposed new use will pose a risk to human health.

Activities requiring **a resource consent** under the NES include:

- the development of land where the risk to human health from soil contamination does not exceed the applicable soil contaminant value (classified as a controlled activity, meaning resource consent must be granted)
- the development of land where the risk to human health from soil contamination exceeds the applicable soil contaminant value (classified as a restricted discretionary activity)
- the development of land where the activity does not meet the requirements to be a restricted discretionary, controlled or permitted activity (classified as a discretionary activity).

The NES CS does not apply where a land use change involves land going from one productive land use to another different productive land use.

## 2.2 TRMP - History

During 2002 and 2003 Council identified some planning gaps with the TRMP in managing contaminated sites and their effects. These gaps centred around the rules relating to effects from contaminated sites and a lack of guideline values for contaminant levels. Concurrently, work at the Ministry for the Environment was underway to prepare national guidance on contaminant guideline values, and assessing and reporting on contaminated sites. Discussions on a National

<sup>1</sup> HAIL sites are determined by historic or current land use activities, as defined by the Ministry for the Environment. Refer website <http://www.mfe.govt.nz/issues/hazardous/contaminated/hazardous-activities-industries-list.html> for current list of HAIL sites.

<sup>2</sup> Sites *may be* identified on a register, but are not required to be so in order to be a HAIL site.

Environmental Standard on this matter were also underway. As a result of the work at the Ministry, no changes to the TRMP were proposed and instead Council relied on s.15 of the RMA which allows Council to manage any discharges from a site - including contaminants. This approach was supported by evidential State of the Environment reporting which showed no critical levels of concern to the environment arising from unmanaged site contamination.

In its current form, the TRMP already contains policies for managing effects of soil contamination on human health and the environment. These policies relate to the management of effects on human health and the environment, and are dispersed throughout the TRMP. Chapters 5 and 33 relating to site amenity and discharges to land and freshwater provide the most relevant and specific policy framework for addressing the health effects arising from contaminated sites.

Despite a significant number of policies for managing the effects of site contaminants, the TRMP does not take a strong regulatory approach to managing such discharges. There are no rules specifically controlling activities on HAIL sites (except in the Chemical Hazards Area where site specific rules apply) and as such there is the potential for issues to arise with the enforcement, containment and remediation of sites contaminated with hazardous substances. The introduction of the NES CS is a significant regulatory contribution to managing activities on HAIL sites.

### **2.3 Site Contamination Register**

With regard to the management of information on site contamination, Council is empowered through Section 30 of the RMA to investigate land for the purposes of identifying and monitoring contaminated land. This has seen Council investigate a significant number of sites and create a database of HAIL sites (numbering approximately 800 verified sites). The Site Contamination Register (SCR) provides categories for known or unknown information on the contamination, and contains information on sites such as historic orchards and spray shed sites, timber and chemical processing plants, landfill sites, rural airstrips that supplied bulk fertiliser, boat slipways, some sheep dips, and various businesses in commercial and industrial zones. It does not show ex-tobacco plantation land, or all sheep dips. The Register, while comprehensive, is not a complete list of HAIL sites in the Tasman District - known information is still to be added to the register, current work programmes are to be completed and sites may still be unknown to Council.

It is unlikely that Council will ever have a database that contains 100% of the HAIL sites in the Region as the type and location of HAIL sites continually changes, particularly as new “HAIL businesses” establish themselves.

The information collected through the Site Contamination Register is currently only available to specialised staff, although the location of HAIL sites is available to all staff through the “hazards layer” of the GIS (Explore Hazards), and SCR information is made available through the LIM process.

### 3. MATTERS TO BE CONSIDERED

With the introduction of the NES CS there are a number of additional legislative requirements that Council is obliged to implement and enforce. These requirements are set out in section 3.1 below. The implications of implementing and enforcing the new regulations are then considered in section 3.2.

#### 3.1 Legislative Requirements

There are a number of sections of the Resource Management Act (RMA) that govern Council's actions in regard to the NES CS, as well as dictating related functions and duties. The relevant sections of the Act are sections 43A-44A (Relationship between Plans and National Standards); and, s.30 and s.31 (functions and duties).

Council's primary responsibilities for implementing the NS CS are:

- To process any consent application made as a result of the NES CS for Controlled, Restricted Discretionary, or Discretionary activities;
- To enforce observance of NESs to the extent to which their powers enable Council to do so.
- Council *must* amend any plan or proposed plan to remove conflict or duplication with the NES
- Council *may* amend a plan or proposed plan to include reference to a national environmental standard.
- Council *may* amend plans to address any effects not covered by the NES.

Section 43A(5) defines the permitted activity status of activities and the relationship with Plans. The relationship between the NES CS and TRPM is hierarchical, whereby the NES CS standards prevail over any standards of the Plan, although terms and conditions can be imposed where Council wants to deal with effects that are outside the parameters of the NES CS.

Section 43B does not allow rules or consent conditions to be more stringent than an NES, unless the NES specifically allows it. It also states rules cannot be more lenient than the NES. The NES CS says neither. S.43B goes on to set which rules prevail under a number of circumstances and the status of activities with existing use rights etc.

To date there is little case law to provide guidance on the interpretation of sections 43A-44A, or the NES CS regulations.

Sections 30 and 31 set out various regional and district council functions and duties with regard to information and effects management, and these duties have not been altered by the NES CS.

## 3.2 Matters to be Considered - Implementation and Enforcement

The matters to be considered in the implementation and enforcement of the NES CS can be broadly categorised as: TRMP matters; Consent practice and implementation challenges; and, Issues with LIMs and PIMs. These are examined in turn below.

### 3.2.1 TRMP Matters

Currently the TRMP provides a policy framework for managing the effects of existing soil contamination on human health and the environment across several chapters. The implementation of these policies concentrates on non-regulatory methods, except within the Chemical Hazard Areas, and through the assessment criteria for subdivision under 16.3A.

The RMA requires the removal of any conflicts between the objectives, policies or rules of the TRMP with NES CS. Appendix 1 provides a summary of the various policies throughout the TRMP and considers what changes may be necessary to integrate the NES CS. Through this review process there was also an opportunity to assess the wider policy framework for managing soil contaminants, and this is included in the table in Appendix 1. The options and recommendations for changes to the TRMP are set out in the following sections of this report.

Key conclusions from the assessment of the TRMP include:

- 1. Improve the planning guidance on NES CS within the TRMP.**  
The TRMP plays a pivotal role in guiding the public and consenting staff on the status and consent requirements for land use, subdivision and discharge activities. Currently, there is no reference to the NES CS within the TRMP and staff recommend the TRMP should, at a minimum, contain references to the NES CS.
- 2. The existing rules for managing environmental effects from site contamination do not need to be altered.**  
Generally, the consenting and resource science staff consider that most other effects can be captured through the existing TRMP rules and section 15 of the RMA<sup>3</sup>, with no additional rules in the TRMP being required to manage environmental effects of contaminated sites.
- 3. There are risks that TRMP permitted activities will occur and Council will not be aware of NES CS breaches.**  
There is potential for uncertainty on the status of activities or development on HAIL sites where the activity is permitted by the TRMP but the NES CS requires a resource consent for the same activity.

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<sup>3</sup> Section 15 of the RMA creates a blanket restriction on the discharge of contaminants into water, land or air. As the NES CS does not manage discharges s.15 sits alongside the NES CS and continues to be available as a tool to manage any adverse environmental effects arising from the discharge of contaminants from HAIL sites.

Difficulty arises in alerting persons to the requirement to comply with the NES CS, and in enforcing the regulations.

There is no risk to subdivision of land proceeding without Council knowledge as no subdivision is a permitted activity.

Because most activities are controlled in some way by the TRMP or captured under the Building Act or health licencing etc., the risk of land use changes proceeding with no Council involvement is small. However, there are a range of permitted activities relevant to soil contamination that Council may not become aware of, including:

- land disturbance (within the TRMP permitted volume standards)
- establishment of domestic gardens, residential playgrounds etc on contaminated sites
- construction of buildings such as sleepouts under 10m<sup>2</sup> or
- carports under 20m<sup>2</sup> that do not require building consent
- land use changes such as home occupations that meet TRMP permitted standards
- change of permitted commercial or industrial activities within appropriate zone where no building consent is required

In the situations above, the responsibility for ensuring the activity complies with the NES CS lies with the person carrying out the activity. However, if Council becomes aware of the activity being established post 1 January 2012 it becomes Council's role to enforce the NES.

Despite the onus of responsibility for observing the NES lying with persons conducting activities, it seems likely Council will encounter some adverse reactions in enforcing these standards, particularly where a permitted activity under the TRMP requires consent under the NES CS.

The Council may also encounter negative publicity where people consider the "rules have changed" or there is "unnecessary bureaucracy" or the "costs of compliance are too high".

Other than notifying the landowners of HAIL sites directly and the wider public of the NES CS (through public notices and in the TRMP) there is little that can be done to avoid criticisms of this nature as Council is required by law to implement the NES CS. However, some consideration should be made of the additional costs and process burden that may be encountered prior to proposing any additional rules or policies that go beyond the NES CS (e.g. for managing effects on environmental health).

There will always remain a risk that any person may act without authorisation and that Council remains unaware of a contaminated site or activity.



**4. The TRMP could be amended to include a copy and/or references to the NES CS.**

Alerting TRMP users to the NES CS is a critical component of implementing the NES CS. This report recommends inserting simple references to the NES CS and creating a companion document to the TRMP to indicate where and how NES CS rules apply.

**5. Only minor amendments are needed to the TRMP to remove any conflicts between the provisions of it and the NES CS.**

There is only one policy that directly conflicts with the NES CS. There are no rules that create conflict. There are some other policies that need consideration for amendments as well. One further policy is required to be removed to update the TRMP with processes and practices now required by NES CS.

**6. The NES CS does not provide a policy for Discretionary activities therefore the TRMP is required to fulfil this role.**

The policy framework of the TRMP is dispersed throughout the plan, and despite some inconsistencies is considered to be sufficient to provide guidance for discretionary NES CS resource consents.

### **3.2.2 Consent Practice and Implementation of NES CS**

The new regulations impose a considerable additional burden on Council's resource and building consent processes. The NES CS requires the majority of subdivision, land use change (including all new houses, extensions etc), soil disturbance works and fuel tank removals to be considered for compliance with the regulations. The NES CS then imposes an additional layer of resource consenting for activities that do not meet the permitted activity standards of it.

The NES CS requires the Council's regulatory staff to introduce new internal processes and additional external steps to the consent process. By default it also requires a high standard of information about HAIL sites, and introduces potential liability to local authorities.

Some of the implementation difficulties that may arise as a result of the NES CS are broadly categorised into the following:

- **Implementation Practice Challenges:**
  - knowing of, and monitoring, minor soil disturbance at levels of 25m<sup>3</sup> and above (particularly where land owners/occupiers seek to remove contaminated land ahead of seeking consent(s) for change of land use or subdivision);
  - sensitively managing the potentially significant cost to applicants when enforcing the NES CS by requiring reports, additional consents or remediation;

- providing sufficient training to planning, building and administrative staff that have “first-contact” with customers to provide accurate information and have judgement skills for determining sites that are “more likely than not” to contain a HAIL site.
- budgeting and managing the on-going cost of monitoring sites and management reports. There is little current opportunity to charge fees for monitoring permitted activities (i.e. ensuring disturbance of only 25m<sup>3</sup>, or if additional terms for permitted activities are imposed such as verifying approved disposal etc).
- **Lack of knowledge on all HAIL sites:**
  - HAIL sites did not have to, and are still not required to, be registered with Council, therefore neither a new property owner nor Council may be aware the site was/is a HAIL site;
  - The cost of establishing that the land is/is not a HAIL site may be significant, and Council may face adverse publicity on these costs and processes.
  - Commercial sensitivity of “labelling” property with HAIL status and making such information available to other parties
  - The HAIL changes from time to time and the NES CS will require Council staff (particularly consent planners and resource scientists) to be very cognisant of the current HAIL criteria (53 criteria as at January 2012) when considering any new building consents or resource consents, as well as updating and maintaining Council’s SCR database as changes occur.
  - While there will always remain a risk that Council’s records are incomplete or incorrect, Council remains obliged to implement the NES CS, therefore decisions and processes for identifying sites must be based on a defensible process for establishing the likelihood or otherwise of a site being a HAIL site. Provided that a reliable and substantive effort has been made by an authority to hold and maintain up-to date records on HAIL sites, criticism or legal action can be defended.
  - There is a need to prioritise the initial and on-going updating of the Site Contamination Register (and associated Explore Hazards GIS), so that council staff can rely on its accuracy and ensure that they hold the most “up to date information”.
- **Access to Information**
  - Currently, the Explore Hazards GIS dataset is not freely available although information on specific properties is made available through LIMS or PIMS. There is no proposal to make this information freely

available, but it must be made available if requested by persons inquiring or applying to undertake activities on known HAIL sites.

- Throughout the process of obtaining information on contaminated sites Council has undertaken to handle the information on contaminated sites carefully, and has a policy in section 35.5.5 that states council will *ensure that the information held on the site contamination register about site contamination is available only on application of a Land or Property Information Memorandum*. Council also entered into confidence agreements with landowners that protected information from becoming publicly available. This report recommends only a minor shift from this position, whereby the information will also be available to persons seeking to undertake development or other such activities on a property that is known to Council to contain a HAIL site. The need for a minor change in position arises from an administrative necessity to advise persons seeking to undertake landuse change or subdivision of land (potentially other than land owners) that the NES CS may, or will, apply.
  - Release of information will need to be accompanied by an appropriate disclaimer as despite “best endeavours” to gather and maintain accurate information, Council cannot guarantee that the information held by it is 100% accurate.
  - Particular care is required in maintaining the accuracy of the information held by Council, as regulation 6 of the NES allows a person two options to determine if their land is a “piece of land” as defined by the NES. One option is to commission a preliminary report, while the other is to rely on Council’s information - where this is the most up-to-date information about the area where the piece of land is located. Council will have some discretion in determining if it has the “most up to date information”.
- **Lack of Definition of Terms**
    - The NES CS provides limited guidance on the meaning of words within the regulation and this leads to greater potential for variation in interpretation between local authorities across the country, and greater risk of litigation for each council when defining these terms. Key terms likely to be contentious are: “Production Land”, “Piece of Land” and “more likely than not”.
  - **Remediation (and associated liability)**
    - Practitioners have advised that a Preliminary Site Investigation is likely to cost somewhere between \$500 -\$1500, and a Detailed Site Investigation (DSI) cannot be fully estimated until the scale and nature of the site and proposed activity are known.

It is anticipated that a DSI and report may run to thousands of dollars. Remediation would add more to this figure.

- The issue of costs associated with testing, remediation or avoidance is likely to arise each time a person is required to demonstrate compliance with either the NES CS or any additional rules of the TRMP. The costs of preliminary tests will depend on the nature, scale and extent of contamination. Similarly, the cost of a full report and associated remediation costs is dependent on the nature and scale of the contamination (and the activity proposed).
- It is likely that the matter of retrospective responsibility for the remediation of sites will continue to arise. There is no public liability regime in current legislation for pre-1991 pollution (except in relation to civil law), which means that current landowners are responsible for the costs of remediation where they wish to change the land use or subdivide<sup>4</sup>.

### 3.2.3 LIMs and PIMs - Matters for Consideration

Section 44A(2) of the Local Government Official Information and Meetings Act (LGOIMA) provides mandatory requirements to include information on a land information memorandum (LIM) in certain circumstances, including the likely presence of hazardous contaminants.

Currently, all *known* HAIL sites are recorded on the Site Contamination Register and the GIS database (Explore Hazards). The database is a “live” data set and information is updated as known. Properties are identified in the system with a “red star” and/or yellow overlay. Any LIM or PIM application on a property that contains a hazard notation is referred to the appropriate Resource Scientist for comment prior to issue. It is important to note that not all HAIL sites are contaminated, nor are they known to Council - therefore the Site Contamination Register cannot alone be relied upon in determining the contaminated status of a property.

Remediated land remains on the Register as a HAIL site, but has a special category and any reports on the remediation goes out with a LIM. It is appropriate to advise potential purchasers or landowners of historic use of property and any on-going responsibilities that may be required of ownership.

The yellow overlay of the GIS system (Explore Hazards) denotes a property *may be* subject to soil contamination as a result of pre-1975 horticultural practices. In 2003 these property owners were notified of this notation to their land, and the associated requirements that would be imposed at the time the

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<sup>4</sup> Where these costs are significant Council can make an application to the MfE Contaminated Site Remediation Fund to request financial assistance with remediation. The Fund is a contestable fund and only pays for up to half of the remediation works. There may be demands on Council to contribute funds to remediation as well.

land was subdivided or residential development (including second dwellings) undertaken.

The NES CS does not specifically require any additional wording or changes to LIMS or PIMs. However, in the interests of full disclosure a generic statement on the applicability of the NES CS will likely be included on LIMS where verified HAIL sites are located on the subject property.

PIMs that are issued for activities on HAIL sites may trigger the NES CS and where applicable this will be notified to the applicant. It is noted that PIMs are no longer mandatory for building projects, however the planning assessment process must still be undertaken by Council and therefore any applicability of the NES CS will be picked up at this stage.

#### **4. FINANCIAL/BUDGETARY CONSIDERATIONS**

- 4.1 The cost of implementing and enforcing the NES CS falls on each local authority across New Zealand. This is a mandatory cost imposed by central government. Applicants will also be obliged to carry consent processing and investigation costs.

Council retains its obligation to maintain a HAIL site register, and is legally obliged to remove any conflicts between the NES CS and the TRMP. There are costs associated with amending the TRMP to remove these conflicts and provide references to the NES CS within it. Relatively, these costs are minor as such actions can be done without the need for full Schedule 1 process (i.e. no public consultation is required).

Additional actions to improve practical implementation of the NES CS will incur further costs. The preliminary costs are predominantly staff resource and administrative costs and are also considered to be relatively minor. However, there will be ongoing consent processing, advice, administration, monitoring and compliance costs associated with implementing the NES CS. It is anticipated that determining the need for consents under the NES CS will be contentious and will draw on a number of staff resources. Some of these costs will be recoverable, but not all.

Resolving some of the policy issues that involve amendments to the TRMP are likely to incur further costs, as Schedule 1 processes will be required. If only minor amendments are made it is feasible to “piggy back” such changes to another variation or proposed plan change.

An assessment of relative costs and time are included in the options table set out in Section 5 below.

#### **5. OPTIONS**

- 5.1 Table 1 below, sets out the various options and actions for implementing the NES CS. Item 1 is a mandatory requirement. The table covers changes to the TRMP and implementation practice. The policy options are set out as Phase 1

and 2. Whereas Phase 1 Action items are short-term actions that can be undertaken to improve Council’s efficient implementation of the NES CS. Phase 2 items require a longer timeframe and will require Schedule 1 processes. A section on potential changes has also been included for Phase 2, although these are not recommended as the benefit does not outweigh the costs, or there is no obvious need for such changes.

**Table 1: Actions and Options for Effective Implementation of NES CS**

Actions and Options		RMA Process	Cost/Time
<b>Phase 1 –TRMP Actions (2-7 Optional)</b>		No Schedule 1 process required	Short to mid timeframe & Low cost.
1.	Section 33.5.3.8 - remove conflict between NES CS and TRMP; delete reference to outdated Guideline; and consequential amendments to Principal Reasons and Explanation. <b>(mandatory)</b>		
2.	Create a companion document to TRMP that contains the full NES CS and a website address/link to the HAIL list <i>(NB – this approach to be adopted with all current and future NES’s).</i>		
3.	Section 18.5 - insertion of reference to NES CS		
4.	Chapter 19 -insertion of reference to NES CS and where information on the NES can be obtained		
5.	Chapter 33 -insertion of reference to NES CS		
6.	Chapter 36 -insertion of reference to NES CS		
7.	Section 12 -insertion of reference to NES CS		
<b>Information and Practice Updates (8-16 Actions)</b>			
8.	Prioritise updating of Site Contamination Register (SCR) so that it contains “the most up-to-date” information known to Council (small quantity of work now required to complete this).		Short term and on-going. Staff costs/time
9.	Update practice to Environmental Information staff: <ul style="list-style-type: none"> <li>Property records updates upon receipt of any report on contamination produced for any change of use or subdivision application</li> <li>Regular updating of Council database to ensure consistency with EPA database on contaminated sites.</li> </ul>		

Actions and Options		RMA Process	Cost/Time
10.	Ensure SCR information is appropriately qualified to recognise that the information contained within it may have been collected and stored for purposes other than consent information.	NA	Short term and low cost
11.	Update RC and BC application forms to include specific "checkbox" for consideration of NES CS applicability/ HAIL-site likelihood.		
12.	Issue an internal practice update to Planning and Building staff advising of process for implementing NES CS; and reporting of HAIL sites		
13.	Update any public pamphlets etc on soil disturbance; permitted activities; and subdivision to incorporate reference to NES CS requirements and responsibilities.		
14.	Create a pamphlet outlining the consent process for landowners/applicants when seeking a change of use or subdivision site which contains or potentially contains a HAIL site.		
15.	Include NES CS requirement on any LIM for, or PIM where project is on, a verified or unverified HAIL site.		
16.	Letter to known HAIL site landowners advising them of the introduction of NES CS and associated basic requirements (include pamphlet as above). AND/ OR News clip in local paper (TDC Newslink) on commencement of NES and landowner obligation. AND/OR Update to local surveying/planning practitioners.		
<b>Phase 2 - Options Recommended</b>		Schedule 1 process required	Mid-long term (6months-1+yrs). Low - Medium cost
17.	Remove policy 33.5.3.5 that state Council will "ensure that the information held on the site contamination register about site contamination is available only on application of a Land or Property Information Memorandum"; and consequential amendments to Principal Reasons and Explanation.		

Actions and Options		RMA Process	Cost/Time	
18.	Retain Chemical Hazard Area despite currently now both Mapua FCC site and Wakefield site having been remediated. Recommend retain Area provisions for future unknown sites; and incorporate review of Wakefield site in wider review of Wakefield Settlement Review. Noting that Mapua Site is proposed be removed via the Mapua Ruby Bay Plan Change		NA	
<b>Phase 2- Options (Not Recommended)</b>				
19.	<i>Amend Chapter 7 to extend policy 7.3.3.20 to cover land and activities outside Coastal Tasman Area (i.e. across entire rural zone). Development of new objectives and policies for Chapter 6 Urban Environment to manage soil contamination effects in urban zones (to be consistent with Chapter 7 Rural Environment).</i>			Med-long term. Med cost As above
20.	<i>Consolidate the policy framework for managing effects of soil contaminants</i>			
21.	<i>Consideration of new TRMP objectives and policies regarding soil contamination effects on natural environment - in relation to Land Disturbance. Noting that this may become part of a wider review of the land disturbance rules programmed for review in 2012.</i>			
22.	<i>Consider adoption of regulatory rules around Chapter 33 to manage effects on environment from non-point source contaminant discharge. Care needed to address only environmental effects - not human health.</i>			
<b>Do Nothing</b>				
23.	If Council took this option it would not be fulfilling its legislative responsibilities and is not considered a valid option in this circumstance.			

## 6. PROS AND CONS OF OPTIONS

6.1 Action 1 is mandatory and must be undertaken. Options 2-7 are necessary to alert users of the TRMP to the NES CS and how it will be applied. Options 2-7 do not have any significant risks or drawbacks. While the insertion of a companion document is not consistent with how other national regulations have been incorporated in the TRMP, it is proposed this will be remedied by removing all regulations and water orders from the TRMP. All such documents will be incorporated in the companion document. This anticipates further NESs being released and prevents the TRMP from becoming unnecessarily large.



Actions 8-16 are being undertaken to increase the efficient implementation of the NES CS, by raising awareness and understanding of it. The actions do not require significant Council expenditure. The risk of notifying all HAIL landowners is that it agitates them at a time when they may not have any intention of undertaking activities that trigger the NES CS.

This risk needs to be balanced against the option of not notifying HAIL landowners and the likely adverse reaction by them when they do wish to undertake an activity and come up against unanticipated consenting and cost requirements of the NES CS.

Option 17 proposes the removal of the policy on managing information on contaminated sites, and there is a risk that there will be opposition to the removal of this policy. Despite this risk, the management of this sometimes sensitive information needs to be reconsidered as a result of the additional processes required by the NES CS. There is still opportunity to manage the information sensitively and generally release it only where a person is proposing or intending to initiate an activity on the land that may trigger the NES CS.

## **7. EVALUATION OF OPTIONS**

- 7.1 Following an assessment of the TRMP provisions for managing effects of soil contamination, a reasonable policy framework was found to support the effective implementation of the NES CS, particularly for managing site amenity and discharges from contaminated sites. While activities in the Coastal Tasman Area of the rural environment were well provided for, there was less policy support for activities in the urban areas, and rural areas outside the Coastal Tasman Area. Despite this, the overarching policies of section 5 and 33 are considered to provide an effective framework for implementing the NES CS and no significant changes to the policies are required.

The assessment of the policy framework of the TRMP did highlight the dispersed and repetitive nature of some of the policies. At some future stage, a consolidation of the policies throughout the plan on this matter could be contemplated. Consolidating the policies at this current time would require a considerable expenditure of time and money and this is not considered to be a priority given that there are no immediate issues with the policy framework.

The methods used to implement the policies concentrate on non-regulatory methods, and there had been some concern the rules may not have been sufficient to capture activities on sites where those activities may have effects on human health. However, the NES CS now provides a complete set of rules and regulations governing particular activities on HAIL sites and no further changes to the TRMP rules are required.

There are some changes that can be made to improve implementation of the NES CS, and to comply with section 44A of the RMA. Specifically, the TRMP needs to remove one provision that conflicts with the NES CS, and could be amended to provide a copy of it, as well as incorporating references to the NES CS.

There is also an opportunity to insert additional terms and standards to manage the effects of soil contamination, where those provisions deal with effects not managed by the NES CS. While some additions around permitted activities may be useful, the overarching conclusion from Council staff was that there is not a need to create additional rules or standards to deal with environmental effects of soil contamination. Section 15 of the RMA and the existing discharge rules were considered sufficient to manage such effects in relation to discharges. Some additional work may be required through the review of the Land Disturbance review programmed for 2012 to address issues with transferring soil from one property to another where the volume is 25m<sup>3</sup> or less.

The NES CS will have a significant impact on those properties containing a HAIL site and seeking a land use change away from productive use, or subdivision. The costs and additional processes are likely to create adverse public reactions. There is a need for Council to make information available to applicants to reduce costs where possible, and provide a clear pathway through the NES CS consent processes.

For Council, the impact of the NES CS will most strongly affect the consent processes, requiring updates to internal practices and information management. It appears likely that there will also be ongoing challenges through the consenting process around the interpretation of terms such as "production land" and "more likely than not"; as well as challenges to Council's information datasets. There will be increasing demand for reliable and up to date information on HAIL sites and this ought to become a priority area for staff at both an initial stage and on-going basis. The importance of the SCR being maintained and kept up to date has been elevated by the introduction of the NES CS.

## 8. SIGNIFICANCE

- 8.1 This is not a significant decision under Council's Significance Policy, but it is likely to have a significant localised impact on those people with HAIL properties because the NES CS imposes an additional consenting requirement and cost burden for subdivision and change of land use activities.

## 9. RECOMMENDATIONS

- 9.1 It is recommended the Environment & Planning Committee:

**Approves** the implementation of Action 1 and Options 2-7, as set out in Table 1 of this report, including Plan amendments as shown in Appendix 2 in Report REP12-03-09, proceeding without public notification in accordance with s.44A of the Resource Management Act, 1991; and

**Approves** a work-programme to implement Option 17 to remove policy 33.5.3.5, as shown in Appendix 2 in Report REP12-03-09 and that this be incorporated in the next appropriate change to the TRMP; and

**Notes** that Actions 8-16 of this report are taken to ensure efficient implementation of the NES CS requirements.

## 10. TIMELINE/NEXT STEPS

10.1 The next steps are to:

- Implement internal practice updates immediately
- Notify landowners and practitioners of NES CS requirements before end of April
- Undertake non-Schedule 1 changes to TRMP in Update 44 (mid 2012)
- Removal of policy 33.5.3.5 in a housekeeping Plan change.

## 11. DRAFT RESOLUTION

**THAT the Environment and Planning Committee receives the Report REP12-03-09 Implementing the National Environmental Standard for Managing and Assessing Contaminants in Soil to Protect Human Health, and:**

**Approves** the implementation of Action 1 and Options 2-7, as set out in Table 1 of this report, including Plan amendments as shown in Appendix 2 in Report REP12-03-09, proceeding without public notification in accordance with s.44A of the Resource Management Act, 1991; and

**Approves** a work-programme to implement Option 17 to remove policies 33.5.3.5 and 33.5.3.8, as shown in Appendix 2 in Report REP12-03-09 and that this be incorporated in the next appropriate change to the TRMP.

**Notes** that Actions 8-16 of this report are taken to ensure efficient implementation of the NES CS requirements.



Maxine Day  
**Policy Planner**

### **Appendices:**

*Appendix 1: Assessment of TRMP Policy Framework for managing effects of soil contamination*

*Appendix 2: Proposed Draft change to TRMP*

## APPENDIX 1: Assessment of TRMP Policy Framework for managing effects of Soil Contamination

The following table provides a summary of the various policies throughout the TRMP and considers what changes may be necessary to integrate the NES CS. Text in *Italics* denotes direct quote, and text in **Bold** denotes policy is directed at Human Health only - all others are directed at environmental effects.

TRMP sections	Current TRMP Provisions	Potential Implications or Plan Changes
<b>2 - Definitions</b>	<p><i>Productive Value - in relation to land, means the inherent or exiting ability of the land to produce plant or animal biomass, arising from its natural and physical features, and includes measures of productivity and versatility.</i></p> <p><i>Productivity - in relation to land, means the inherent or existing ability to produce any type of plant of animal biomass over a given period and area.</i></p>	Consent staff report that there has been some difficulty in interpreting these definitions. "Production Land" likely to present similar difficulties. Consider inserting RMA definition of "Production Land" - although it is noted there is no particular need to repeat definition.
Chapter 5 Site Amenity Effects  Policy 5.1.3.1	<p>Provides policy on avoiding remedying or mitigating contamination risks - for the purpose of site amenity and the environment; as well as additional policy on avoiding remedying or mitigating effects of contaminant discharge beyond the boundaries of the site.</p> <p><i>To ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied or mitigated.</i></p>	<p>No changes needed - provides policy framework for NES CS Restrict Discretionary and Discretionary consent assessment*</p> <p>*Note: the first policy (5.1.3.1) is inconsistent with the objective as it refers to on-site amenity despite the objective being solely related to amenity on other sites</p>
Policy 5.1.3.8	<i>Development must ensure that the effects of land use or subdivision activities on stormwater flows and contamination risks are appropriately managed so that the adverse environment effects are no more than minor</i>	As above
Policy 5.1.3.11	<i>To avoid, remedy or mitigate the likelihood and adverse effects of the discharge of contaminant beyond the boundary of the property.</i>	As above
Objective 5.5	<b>Reduction of risks to public health</b>	No changes needed - provides

TRMP sections	Current TRMP Provisions	Potential Implications or Plan Changes
	<b><i>and safety, property and the environment, arising from fire and hazardous substances.</i></b>	policy framework for NES CS Restrict Discretionary and Discretionary consent assessment
Policy 5.5.3.4	<b><i>To avoid any escape of discharge to surface water or groundwater, or drift to other property, of any hazardous substance, from within the site where it is used.</i></b>	As above.
Policy 5.5.3.9	<b><i>To avoid, remedy or mitigate the adverse effects of land use activities on contaminated sites where there is a risk to human health or the environment by regulating activities being carried out on contaminated sites, particularly where there is a change of use.</i></b>	As above.
Chapter 6 Urban Environment Effects	No specific objectives or policies on managing effects of contaminants in urban environment.	Potential for introduction of new policy for managing soil contaminants from Industrial/ Commercial activities. Noted that other policies under Chapter 5 cover land in any zone, and so new policy not necessary. Raises issue of consistency, as Chapter 7 Rural Environment Effects does contain policies specific to rural activity effects.
Chapter 7 (Rural Environment Effects) Policy 7.3.3.20	<b><i>To avoid potential effects of past land contamination on future residential and rural residential activities.</i></b>	Relates only to rural residential development in the Coastal Tasman Area May need to consider expanding to areas outside Coastal Tasman Area. Noted - no objective for this policy.
8.2.3.13	To avoid, where practicable, facilities for the storage of hazardous substances within 200 metres of the mean high water springs, or of any lake river or wetland.	Deals with new facilities only (Regional plan matter). If consider passive discharge from existing sites to be matter for control, then would be a controlled through Hazardous facility rules and discharge rules.
Chapter 12 - Land	<b><i>The avoidance, remedying or mitigation of adverse effects of land</i></b>	Generic objectives and policies only, supporting text indicates

TRMP sections	Current TRMP Provisions	Potential Implications or Plan Changes
Disturbance Effects Objective 12.1.2	<i>disturbance, including...(g) adverse effects on indigenous biodiversity or other intrinsic values of ecosystems.</i>	primarily focused on environmental effects. . Some additional work may be required through the review of the Land Disturbance review programmed for 2012 to address issues with transferring soil from one property to another where the volume is 25m <sup>3</sup> or less.
Policy 12.1.3.1	<i>To promote land use practices that avoid, remedy of mitigate the adverse effects of land disturbance on the environment ....</i>	As above
16 General Rules	General Rules (all zones) and Subdivision rules etc, contains rules that apply across the District including hazardous substance rules (16.7).	Suggest creating new companion document to TRMP containing the entire NES; or a section containing the standards and activity status of activities as set out in the NES CS; and or an explanation on the NES CS and how it is to be applied, with reference to where the full text of the document and HAIL list can be located (MfE website).  Consider cross referencing within other sections of the TRMP to this new companion document.
16.3A Subdivision Assessment Criteria	<b>13. Whether the subdivided land has been or is subject to contaminants that may be hazardous to the future occupiers of the land and whether sufficient works or other solutions have been undertaken to avoid, remedy, or mitigate the hazardous effects</b>	No change needed.
Chapters 17 and 18	Chapters 17 and 18 cover zone-by-zone and special area rules, including land disturbance rules.	Assuming a district wide set of references to the NES CS are applied it would be unnecessary to provide zone-by-zone rules for activities on a HAIL site.
18.13.3 Chemical Hazard Areas	Chemical Hazard areas: Removal of reference to Wakefield site can be contemplated following remediation of site	The noted CHA sites have been remediated in accordance with the policies in the TRMP, and now the policies on this are redundant. However, recent policy changes through PC 22

TRMP sections	Current TRMP Provisions	Potential Implications or Plan Changes
		<p>(Mapua Ruby Bay) have addressed the Mapua FCC site and not proposed wholesale removal of this section. If whole CHA removed, further work required to remove references to CHA throughout TRMP. It is unknown if the CHA provisions may be used at some future date for as yet unknown Chemical hazard sites. The Wakefield site can be examined in greater detail at the time of the Wakefield settlement review.</p>
Chapter 19	Resource Consent information	<p>Specific reference to the NES CS and or information requirements for activities relating to HAIL sites would be a useful addition to this chapter. Insertion of a reference to the NES SC could be undertaken without applying Schedule 1 processes.</p>
Chapter 33 Discharges to Land and Fresh Water - Objective 33.1.2 Contaminant Discharge	<p><i>The discharge of contaminants in such a way that avoids, remedies or mitigates adverse effects while:</i> (a) <i>Maintaining existing water quality;</i> <i>and</i> (b) <i>Enhancing water quality where existing water quality is degraded for natural and human uses or values.</i></p>	<p>Chapter 33 of the TRMP differentiates between point source and non-point source discharges.</p>
33.1.3.3-7	<p>Policies seeking to improve water quality, control contaminant levels, set criteria for assessing significance of effects etc.</p>	<p>No change required, although effectiveness of policies that rely on non-regulatory methods only requires consideration if Council seeking a more regulatory approach to managing environmental health.</p>
33.1.3.8	<p><i>To avoid, remedy or mitigate the adverse effects of non-point source contamination arising from land use and discharge activities by a mixture of methods, including regulation of discharge activities, particularly through advocacy of best management practices, and to review the mixture of methods used if environmental monitoring shows that</i></p>	<p>No change required</p>

TRMP sections	Current TRMP Provisions	Potential Implications or Plan Changes
	<i>water quality standards are not being maintained.</i>	
33.5.2 Objective Contaminated Site Management	<b>To avoid, remedy or mitigate the adverse effects of contaminated sites on human health and the environment.</b>	No change required to objective - provides framework for NES CS, but reference to NES CS useful here to alert TRMP users that NES prevails.
Policy 33.5.3.1	<p><b>To avoid, remedy or mitigate the adverse effects of contaminated sites by investigating or encouraging landowners to investigate sites on the site contamination register, particularly where:</b></p> <p><b>(a) there is a risk of a high level of contamination; or</b></p> <p><b>(b) there is a high level of risk to human health; or</b></p> <p><b>(c) there is a high level of risk of contamination of water resources;</b></p> <p><b>in order to:</b></p> <p><b>(i) confirm whether any site is a contaminated site; and</b></p> <p><b>(ii) define its location and extent; and</b></p> <p><b>(iii) assess the contaminant effects and risks; and</b></p> <p><b>(iv) assess the options for remediation, enforcement of liable parties or other actions, including adding the site to the Chemical Hazard Area.</b></p>	No conflict with NES CS in policy 33.5.3.1 (b) as this policy still enables Council to “encourage” or “investigate” where NES does not apply, or before NES is applied. This policy sits alongside the NES.
33.5.3.2	<p><i>To maintain accurate and timely information about the contamination status of land, in order to:</i></p> <p><i>(a) assist in decisions regarding the monitoring, investigation and remediation options for such land; and</i></p> <p><i>(b) respond to queries about contamination status of specific locations; and</i></p> <p><i>(c) encourage landowners of sites with a history of using, storing or manufacturing hazardous substances to advise the Council so that the site can be included on the site contamination register and investigated and assessed</i></p>	No change required, although a new (d) could be added to indicate that Council will retain and provide information on the NES CS.



TRMP sections	Current TRMP Provisions	Potential Implications or Plan Changes
	<i>for the presence or absence of contaminants on the site.</i>	
33.5.3.3	<i>To facilitate the assessment and remediation of contaminated sites by providing appropriate incentives or other resources.</i>	No change required.
33.5.3.4	<i>To require liable parties to undertake such assessments and remediation.</i>	No direct conflict with NES as TRMP policy sits alongside NES and can be retained to deal with any environmental liability.
33.5.3.5	<i>To ensure that the information held on the site contamination register about site contamination is available only on application of a Land or Property Information Memorandum</i>	No direct conflict, but should <b>remove this policy</b> as it restricts how council can disseminate information. Changes in national priority on this issue, and the fact that PIMs are not longer mandatory means that Council needs to be able to give this information out in circumstances other than those specified in policy 33.5.3.5.
33.5.3.6	<i>To avoid, remedy or mitigate the adverse effects of the discharge of contaminants from contaminated sites.</i>	No change required.
33.5.3.7	<b><i>To avoid, remedy or mitigate the adverse effects of the use of contaminated sites where the level of hazardous substances poses or is likely to pose a risk to human health or the environment.</i></b>	No change required.
33.5.3.8	<b><i>To have regard to the current Australian and New Zealand Guidelines for Assessment and Management of Contaminated Sites when identifying suspected contaminated sites, and in assessing the risks to human and environmental health and options for remediation of contaminated sites.</i></b>	<b>Conflict with NES CS</b> - removal of reference to human health in this policy. Consider adding a policy that outlines the NE CS Standard Guideline Values will be used in assessing impacts of contaminants on human health. The guideline referenced in the policy is now out of date and needs to be removed.
33.5.3.9	<i>To have regard to Ministry for the Environment guidelines for collecting and managing contaminated site information.</i>	Retain -refers to guidelines pre NES CS but relevant for Council information management

TRMP sections	Current TRMP Provisions	Potential Implications or Plan Changes
Chapter 36 - Discharges to Water/Land/Air	Contaminant Discharge rules - Discretionary activities <i>36.3.5.2 Discharge from treatment or remediation of contaminated sites to air is a discretionary activity</i>	Reference to NES CS to be inserted in this chapter. Rule 36.3.5.2 has no volume parameters, therefore <i>any</i> discharge from a remediated or treated contaminated site (i.e. dust) requires consent - potential conflict with NES CS permitted activities. Unclear if this rule relates to non-point discharges <u>and</u> point source (noting that the wording in this section does specifically differentiate between pt and non-point source).

## **EXPLANTORY STATEMENT**

### **Delete Policy 33.5.3.5:**

*To ensure that the information held on the site contamination register about site contamination is available only on application of a Land or Property Information Memorandum*

The policy is now obsolete given the introduction of NES CS and the associated resource consent information requirements. While there may be circumstances where LIM are applied for and the information can be disseminated, there are likely to be greater demands on this information through PIM and planning processes, preliminary development enquiries, and resource consent applications.

Further, policy 33.5.3.5 is a process-oriented policy, rather than environmental effects based policy. It is therefore questionable that the policy remains in what is otherwise an "effects based" Plan.

### **Delete Policy 33.5.3.8:**

*To have regard to the current Australian and New Zealand Guidelines for Assessment and Management of Contaminated Sites when identifying suspected contaminated sites, and in assessing the risks to human and environmental health and options for remediation of contaminated sites.*

This policy is in conflict with NES CS as it refers use of processes in out-of- date guideline. No replacement of this policy necessary as NES CS dictates process for identification and risk assessment.

## **SCHEDULE OF AMENDMENTS**

*Delete the following policies*

~~33.5.3.5 *To ensure that the information held on the site contamination register about site contamination is available only on application of a Land or Property Information Memorandum*~~

~~33.5.3.8 *To have regard to the current Australian and New Zealand Guidelines for Assessment and Management of Contaminated Sites when identifying suspected contaminated sites, and in assessing the risks to human and environmental health and options for remediation of contaminated sites.*~~