

20-D-01705

s 9(2)(a)

Dear s 9(2)(a)

Thank you for your email of 26 August 2020 requesting the following under the Official Information Act 1982 (the Act):

*In 2016 there was an interim review of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (2011). As part of this review consultation occurred and a submission was submitted by Wellington City Council. I was heavily involved in the research, analysis and drafting that led to this submission, however the final authors name was listed as Campbell Robinson, then Best Practice Manager at WCC. Can I please request a copy of this submission.*

The Ministry for the Environment has identified the submission document in scope of your request as listed in the document schedule.

Personal contact information within this document has been withheld under the following section of the Act:

9(2)(a) to protect the privacy of natural persons, including that of deceased natural persons.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our [OIA responses page](#) shortly after the response has been sent. If you have any queries about this, please feel free to contact our Executive Relations team: [ministerials@mfe.govt.nz](mailto:ministerials@mfe.govt.nz).

Yours sincerely



Glenn Wigley  
Director, Waste and Resource Efficiency, Regulatory & Policy

**Document schedule**

<b>Document no.</b>	<b>Document date</b>	<b>Content</b>	<b>Decisions</b>	<b>OIA sections applied</b>
1	2016/10/14	PDF of submission.	Released subject to one redaction	9(2)(a)

Released under the provisions of the Official Information Act 1982

[Via online submission]

14 October 2016

NESCS Consultation 2016  
Ministry for the Environment  
PO Box 10362, Wellington 6143

**Re Wellington City Councils submission on Proposed Amendments to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011.**

I enclose Wellington City Councils' submission on the proposed amendments to the National Environmental Standard on contaminated soils.

The Council thanks the Ministry for the Environment for the opportunity to comment on the proposals. We are generally supportive of the changes and would welcome any opportunity to work together with the Ministry and other partners on the drafting of the new regulations.

Yours sincerely,

Campbell Robinson  
Manager, Heritage and Practice  
S.(9)(2)(a) [REDACTED]  
[campbell.robinson@wcc.govt.nz](mailto:campbell.robinson@wcc.govt.nz)

Released under the Official Information Act 1982

## **Responses to proposals.**

The submission is ordered on the proposals within the discussion document and where appropriate we have suggested technical amendments to improve the NES.

### **Section 3 – the HAIL:**

#### **Proposal 3.1 – Clarify the HAIL categories to increase consistency.**

##### **Comment:**

1. WCC **supports** this change on the basis that the proposal would reduce the existing ambiguity around what constitutes a HAIL activity.
2. The Council notes that with respect to airports, the NES only applies to a 'piece of land', therefore if parts of airports (or any other sites) do not meet the definition of a 'piece of land' then the NES does not apply to that land.

#### **Proposal 3.2 – Remove the reference to 'sports turfs' in Category A.10**

##### **Comment:**

3. The Council **supports** this proposal.
4. We note that contaminated land practitioners will be better informed as to whether or not general sports fields are consistently found to have contamination below residual background levels/specified soil contaminant standard/soil acceptance criteria.
5. If the term 'sports turf' is to be completely removed then we suggest sub terms such as 'bowling greens, golf greens and other such intensively managed turfs' could be used to help provide useful definition and clarification to the regulations, and achieve the intended outcomes as originally desired when compiling the HAIL list.

#### **Proposal 3.3 – Remove express reference to 'environmental discharges' in category A.14 and 'risk' in categories H and I.**

##### **Comment:**

6. The Council **supports** this proposal.

#### **Proposal 3.4 – Provide guidance on the HAIL, including characteristics of activities and industries that have potential to contaminate soil.**

##### **Comment:**

7. The Council **supports** this proposal.

### **Responses to Questions:**

- Q1: Yes, for the reasons as discussed above, subject to further consideration of Proposal 3.2.
- Q2: The Council agrees with some questions around the amendment subject to Proposal 3.2, for the reasons stated above.
- Q3: As mentioned new definitions for greens/golf greens/other similar intensively managed turfs maybe appropriate. A definition or guidance on what constitutes 'bulk' in the context of the HAIL may also be useful.
- Q4: Guidance should be grounded in real-world examples to help with interpreting whether or an activity is a HAIL activity, particularly relative to the changes to sports turfs. Guidance should also include address migration potential for common contaminants (underground storage of petrol/diesel, sheep dips for example).
- Q5: The result of the changes should theoretically result in more certainty, less delays and less costs in terms of developing sports fields and other sites as well as a better understanding of HAIL by Council staff and landowners.
- Q6: As discussed above, the most obvious potential unintended outcome might be not assessing sports fields when they should be subject to the NES. Ideally results of actual investigations should determine whether or not the HAIL list should be amended to remove this reference entirely.

### **Section 4 – Does the NESCS apply to my land?**

**Proposal 4.1 – Require a risk-based assessment when deciding whether the NESCS applies to a site.**

#### **Comment:**

8. The Council **supports** this proposal but notes that suitable guidance will be required to ensure the intent of the change is delivered in practice. We note that the examples provided within the discussion document are technically feasible and credible but could be considered overly simple and any guidance should cover a range of more complex situations.
9. With regard to the use of the term 'more likely than not' as opposed to 'reasonably likely', the former is considered to be more measureable and certain as opposed to the greater level of ambiguity associated with 'reasonably likely'.

## **Section 5 – NESCS Activities and Planning Controls:**

### **Proposal 5.1 – No NES resource consent required for activities found to have contamination below soil contaminant standards or Tier 1 soil acceptance criteria.**

#### **Comment:**

10. Whilst the Council **supports** the proposal we note that the change may have unintended consequences in the form of new costs associated with having to prepare a DSI. As part of the assessment of the viability of this proposal the Ministry should carefully compare these costs to costs (and benefits) associated with obtaining a resource consent as a Discretionary (Restricted) Activity as a consent process may incur less SQEP cost and may ultimately provide more certainty for applicants.

### **Proposal 5.2 – Remove option of discretionary activity class for soil disturbance and removal and replacement of fuel tank storage systems.**

#### **Comment:**

11. Whilst the Council **supports** the proposal it maybe have little impact given the existing matters of discretion under regulation 10(3) are sufficiently broad to consider a wide range of effects.

### **Proposal 5.3 – No NESCS resource consent is required for soil disturbance by a network utility operator.**

#### **Comment:**

12. WCC **supports** this change but any drafting needs to be carefully considered in order for the proposal to have the intended impact in practice.
13. In particular CLMG 1 is clear that a Site Management Plan which will need to be prepared by a SQEP. Therefore it is considered imperative that the requirement for a Site Management Plan in accordance with the updated CLMG 1 is maintained as a permitted activity requirement.

### **Proposal 5.4 – Class soil disposal as a stand-alone activity.**

#### **Comment:**

14. The Council **supports** this proposal but notes some discrepancy within the proposal as presented within the discussion document. In particular Table 3 on page 29/30 implies that soil removed that is below background concentrations would be a permitted activity, whereas the discussion under Proposal 5.4 implies that such an activity would still require resource consent as a Controlled Activity. We request this ambiguity in intent be clarified.

**Proposal 5.5 – Remove option of discretionary consent class for soil disturbance and removal or replacement of fuel tank storage systems**

Comment:

15. Whilst the Council supports this proposal, we consider that the amendments and any guidance need to ensure that tanks removals safeguard the surrounding environment as per the Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand.

**Proposal 5.6 – remove option of restricted discretionary and discretionary restricted consent classes for soil sampling.**

Comment:

16. The Council **supports** this proposal.

**Proposal 5.7 – No NESCS resource consent required for subdivisions that are purely ‘paper based’, or do not facilitate a current or future change in use.**

Comment:

17. The Council **supports** the removal of unit title and cross lease subdivision from being subject to the NES but **opposes** the remainder of changes under this proposal.
18. The proposal to introduce a permitted activity for ‘paper based’ subdivisions that “do not facilitate a current or future change in use” is likely to be interpreted in different ways and therefore represents a risk to the intent of the change. For example there maybe conjecture across the sector about what is ‘paper based’ and not ‘facilitating a current or future change in use’.
19. The proposal may give rise to situations where a landowner is able to pass on a site without having to address site contamination issues. There would be equity issues raised by such situations. One option to address such situations is to make mandatory the imposition of consent notices in such subdivisions. For example that “Lot X DP YYYY must only be used for the same use (insert: production land etc.) as was the case prior to the subdivision to create Lot X DP YYYY, due to potential site contamination”.

**Proposals 5.8-5.10 – Definition changes**

Comment:

20. The Council **supports** this proposal.

**Proposal 5.11 – require suitably qualified and experienced practitioners to use a standardised certifying statement in their reports, to provide clarity to report readers.**

Comment:

21. The Council **supports** this proposal.

### **Responses to Questions:**

Q12 The Council largely agrees subject to proposed permitted activity conditions.

Q13 If such groups are subject to proposed permitted activity conditions, this could be extended.

Q14 The Council agrees with Option 1.

### **Section 6 – Management of Contaminated Land:**

#### **Proposal 6.1 – Option of a template ongoing site management plan (TOSMP, with controls) for residential property owners.**

##### **Comment:**

22. WCC **supports** this proposal however we note that the scope of site management plans will need to be carefully defined in order to achieve the purpose of the proposal.
23. The Council promotes the practice of having TOSMP's formally registered as consent notice on titles in order to make clear the obligations for future owners. We believe such an approach could be further promoted within statutory guidance as means of improving the understanding and awareness of the management of contaminated land across the sector.

#### **Proposal 6.2 – Non-regulatory guidance for managing contamination on residential properties:**

##### **Comment:**

24. The Council **supports** this proposal and supports the development of a standardised set of best practice site contamination conditions that promote consistency and certainty of approach across the sector. The Council would welcome an opportunity to work collaboratively on such an exercise.

#### **Proposal 6.3 – Option to enable site-specific soil guideline values to be calculated using the site-specific bioavailable concentration of arsenic and lead.**

##### **Comment:**

25. Whilst the Council **supports** the proposal we note that SQEP's will be better placed to comment regarding its suitability of the approach in the New Zealand context.