

**Tauranga City Council Submission to the:
Proposed National Environment Standard for Assessing and Managing Contaminants in Soil (the Proposed NES).**

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Tauranga City Council (TCC) Response to the Proposed NES Discussion Document General Questions.			
2/ 18	Question 1. Have the priority problems been defined correctly?	<p>The Proposed NES does not take into consideration environmental protection when a site is being redeveloped. The majority of the proposed Soil Guideline Values (SGV's) do not address environmental protection. The Proposed NES needs to clearly express that the SGV's only address Human Health and whether Council's are restricted to dealing with 'human health' only.</p> <p>The Proposed NES needs to provide a framework to deal with the entire issue of assessing and managing contaminants in soil, not just in respect to 'human health'.</p>	<ul style="list-style-type: none"> • Change the title of the NES to: "NES for Assessing and Managing Contaminants in Soil to protect Human Health". • Clearly express in the NES whether Council's are restricted to dealing with 'human health' only. • Revise the Policy Objective, or include a new policy objective about 'environment' to be implemented by rules in regional plans.
2/ 18	Question 2. Are there other problems you can think of that need to be addressed as a priority?	The NES does not clearly distinguish between the functions of territorial local authorities (TLA's) and regional council's in respect to how the NES will be implemented.	Define Local government roles in implementing the NES, either by a rule or policy guidance (e.g: Regional councils will deal with remediation, etc...).
2/ 18	Question 3. Do you agree with the policy objective?	Yes, but it does not go far enough to address environmental protection.	Revise the policy objective, or include an additional policy objective, to address environmental protection.
2/ 18	Question 4. Should the objective be limited to ensuring that land is safe for human use? If not, why not?	<p>No, environmental protection should also be included in the objective, or a separate objective included to address environmental protection in the Proposed NES.</p> <p>There is a danger that by accepting the Proposed NES it may signal to developers a target to pollute up to rather than the more restrictive levels for environmental protection, put out by the Ministry for the Environment (MfE).</p> <p>Restricting the Proposed NES to Human Health may result in a consistent and uniform approach to that one aspect of the</p>	As above.

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		contaminated soil issue, while leaving an inconsistent and ad hoc approach to environmental protection.	
3/ 23	Question 5. Do you agree with the preferred option?	Yes, the need for national consistency on the management of contaminated land via the Proposed NES is supported.	
3/ 23	Question 6. Is there an alternative option that has not been considered?	No	
3/ 23	Question 7. Are you aware of any other costs or benefits of the alternative options?	No	
4/ 37	Question 8. Do you see any problems complying with the proposed NES or with enforcing it?	<p>One of the key issues associated with this permitted activity is the inability to recoup costs associated with processing and auditing site investigation reports. To address this issue two options are apparent. Either change the activity status from permitted to controlled, or introduce an accreditation scheme for ‘appropriately qualified and experienced practitioners’ where technical reports can be accepted on face value from ‘certified practitioners’ (with liability resting with certified practitioners).</p> <p>Whether permitted or controlled it would be beneficial for a condition to be imposed requiring that copies of any soil investigation reports be supplied to both the TLA’s and regional council’s.</p>	<p>Either change to controlled status or introduce an accreditation scheme for certified practitioners where investigation reports can be accepted on face value without the need for audit or peer review.</p> <p>Add a condition requiring that copies of all investigation reports to both the TLA’s and regional council’s.</p>
4/ 37	Question 9. Are the thresholds for determining whether resource consents is required clear and appropriate?	No, the use of “existing use”, “minimal disturbance”, “small scale”, “temporary” without definition and/ or quantification is ambiguous.	Define and/or quantify “existing use”, “minimal disturbance”, “small scale”, “temporary” in the context of the Proposed NES.
4/ 37	Question 10. Is the permitted activity – subsurface investigation requirement to provide a site investigation report appropriate?	<p>It depends on whether peer review of the investigation report is required (see response to Question 8.).</p> <p>In the absence of ‘certified practitioners’, where liability may rest with the TLA and/or regional council then it is considered that a controlled status is more appropriate to enable cost recovery for audit/ peer review of site investigation reports and other processes.</p>	

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		<p>Where an accreditation system is established, and any liability rests with the 'certified practitioner' then requiring an investigation report as a permitted activity is considered appropriate. However it needs to be clear that the SGV's are only for Human Health and that other environmental thresholds may need to be addressed for the TLA's/ regional council's to classify soil as remediated or managed.</p> <p>However, It is not clear when the requirement to provide a site investigation report is triggered under the proposed permitted activity status (a building consent process?). It may be difficult to monitor and enforce as councils are unlikely to know the activity is being undertaken.</p> <p>Guidance is also required on when it is appropriate for the Council to undertake a peer/technical review of the testing/validation done by an applicant. This can be a costly process and there are likely to be disputes by an applicant who essentially ends up paying twice. Further, there are potentially liability issues for councils in this process.</p>	<p>Clarify what the trigger is for a site investigation report.</p> <p>Provide guidance on when it is appropriate for the Council to undertake a peer/technical review of the testing/validation done by an applicant.</p>
4/ 37	Question 11. Have we adequately defined the land that should be subject to a condition requiring site investigation?	There is a potential contradiction within the Proposed NES, between the use of the HAIL and the use of a council register. It is not clear how the two categories are linked e.g. by 'either...or'.	Insert "or" after (HAIL) on Page 28
4/ 37	Question 12. Have we adequately provided for activities that should not be caught by the requirements of this NES?	<p>The NES should include a volume of soil disturbance that is allowed before the NES is triggered so activities such as retaining walls can be carried out without investigation being necessary. There should also be a clear definition of what constitutes "soil disturbance".</p> <p>There is an issue with what constitutes an 'existing use' – does this mean existing use rights under s10 of the Resource Management Act 1991.</p> <p>Some clarity should be provided over the treatment of and impacts on land identified for a particular purpose (i.e. a vacant residential section) and the requirement to undertake soil testing for the purpose for which the land has been zoned and subdivided. The subdivision</p>	<p>Define and quantify "soil disturbance".</p> <p>Define "existing use" for the purposes of the NES.</p> <p>Clarify how land that has been zoned and subdivided for a particular purpose prior to the NES should be treated after the NES is given effect.</p>

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		of vacant land prior to this NES coming into effect means that this land would not have existing use rights per se (no existing houses), and so potentially would be subject to this NES as not exempt through previous assessment under the subdivision or rezoning process. In TCC this relates to around 1400 residential properties that may otherwise be exempt from a consenting requirement.	
4/ 37	Question 13. How do you think the NES should ensure the adequacy of site investigation?	<p>By ensuring consultants are appropriately qualified and investigations are undertaken in accordance with MfE Guideline 5.</p> <p>There is a problem with cost recovery where there is no consent process; it therefore needs to be a controlled activity if no accreditation scheme is in place. MfE need to investigate the liability of councils accepting investigation reports on face value from certified practitioners.</p> <p>The usual means to ensure adequacy of a site investigation is by way of a peer review. When an application is made for a resource consent, costs can be recovered. When an activity is a permitted activity costs cannot be recovered</p>	Investigate the liability of Council's accepting investigation reports on face value from certified practitioners
4/ 37	Question 14. Is the permitted activity – use, development and subdivision better provided as a controlled activity or another alternative?	See response to Question 8.	
4/ 37	Question 15. How should the NES address site-specific assessment for produce consumption?	It will be almost impossible to determine those sites that would be caught by the threshold of inhabitants of residential/ lifestyle-blocks that consume more than 10 per cent of their fruit and vegetables from their home gardens, therefore a non-regulatory mechanism is likely to be the most appropriate. Thought needs to be given in practical terms of how non-regulatory advice is to be provided. Web based information on this matter by MfE may be useful.	Provide guidance in practical terms of how to identify subject sites and non-regulatory advice that should be provided.
4/ 37	Question 16. How should the NES address naturally occurring elements in soil?	The Proposed NES should control these 'natural hazards' as if they are a contaminant under the Proposed NES.	Control these 'natural hazards' as if they are a contaminant under the Proposed NES

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5/ 47	Question 17. Have we accurately reflected the range of costs and benefits arising from the proposals for an NES, who might bear the costs or receive the benefits?	No, because the number of sites referred to in the NES discussion document is considered to be significantly underestimated.	Undertake a more comprehensive assessment of the number of sites that may be contaminated, to allow a more realistic estimation of associated costs to be calculated.
5/ 47	Question 18. Are there any costs and benefits we have overlooked?	No comment.	
5/ 47	Question 19. Do you have information that you would like to see included in the cost-benefit analysis that will be carried out after the submissions are received and analysed?	No comment.	

TCC Response to Proposed NES Discussion Document Specific Questions.

4.1.2/ 26	Requirement to provide information		
	<ul style="list-style-type: none"> Will the requirement actually provide a disincentive for some landowners to investigate land? 	The requirement to provide information should not be a disincentive for some landowners to investigate land. If a site is on the register, investigations will help the site move through the register process (possibly changing the site category on the register). Requiring investigations on a site creates an even playing field for all owners of sites with potential for contamination to be present.	
	<ul style="list-style-type: none"> Are there concerns this requirement may compel those investigating spills to incriminate themselves i.e., have the information used against them in enforcement action?? 	No comment.	

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	<ul style="list-style-type: none"> Will the requirement be difficult to monitor and enforce, as councils will not necessarily know that the activity is being undertaken? 	The requirements will be difficult to monitor and enforce, as councils will not necessarily know that the activity is being undertaken.	
4.1.3/ 28	<p>Site Investigation</p> <ul style="list-style-type: none"> Have we adequately defined the land that should be subject to a condition requiring site investigation? Is the approach too precautionary, not precautionary enough? Is the category of land certain enough to be meaningful? Is the category of land adequately described so as to provide an objective basis for assessing compliance and enforcement? 	<p>Yes, as long as monitoring and enforcement can be implemented at regional council or TLA level.</p> <p>The approach is considered precautionary enough, however it does need to accommodate environmental controls as per MfE Guidelines.</p> <p>Yes, the inclusion of the HAIL listings ensure that future polluters are captured.</p> <p>Yes</p>	
4.1.3/ 29	<p>Have we adequately provided for activities that should not be caught by the requirements of this permitted activity?</p> <ul style="list-style-type: none"> Do you think it is appropriate for the NES to permit the above activities without requiring site investigation reports? Are there additional activities that should be permitted without requiring site investigation reports? 	<p>Yes</p> <p>No, but applicants and TLA's need to be made aware of regional council requirements where environmental protection guidelines are breached.</p>	

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4.1.3/ 30	How do you think the NES should ensure the adequacy of site investigation?		
	<ul style="list-style-type: none"> Do you think it is appropriate under a permitted activity for the NES to require site investigation reports for activities on affected land and land with a known history of land uses and activities? 	Yes, it is considered appropriate. However, Councils will need a way to recoup costs, if they are required to review the results.	
	<ul style="list-style-type: none"> Do you think that the requirements for site investigation reports provide sufficient certainty for a person to know whether they comply or not? 	Yes, the requirements for site investigation reports provide sufficient certainty for a person to know whether they comply if site report covers all potential contamination onsite. The reports will have to be peer reviewed either by TLA or regional council, unless the report is accepted unconditionally from a certified practitioner.	
	<ul style="list-style-type: none"> Do you think the requirements for site investigation reports provide sufficient certainty for councils to audit and confirm whether the activity meets the conditions of the permitted activity? 	Yes, the requirements for site investigation reports will provide sufficient certainty for councils to audit and confirm whether the activity meets the conditions of the permitted activity if investigations have been completed to an adequate standard.	
	<ul style="list-style-type: none"> Are the benefits of requiring an appropriately qualified and experienced practitioner to prepare the site investigation report outweighed by the potential negative effects associated with the lack of certainty? 	Yes, the benefits of requiring an <i>appropriately qualified and experienced practitioner</i> to prepare the site investigation report outweigh the potential negative effects associated with the lack of certainty. It is important to ensure there is some credibility to these reports and MfE should approve or certify such professionals undertaking these investigations.	

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	<ul style="list-style-type: none"> Are there enough appropriately qualified and experienced practitioners in your region or district to meet the demand for investigations? 	<p>Yes, but the above may alter this. It ultimately depends on whether there are enough <i>appropriately qualified and experienced practitioners</i> in each region or district to meet the demand for investigations, particularly where MfE are to certify such practitioners.</p>	
4.1.3/ 31	<p>How do you think the NES should provide for these activities?</p> <ul style="list-style-type: none"> As a permitted activity, controlled activity, or through an alternative way? (for example, requiring information on soil contamination where resource consent is required by other council controls on use, development or subdivision). 	<p>As previously discussed in order for Councils to recoup costs it will need to be a controlled activity, if they are expected to review the reports (i.e. not able to accept on face value from certified practitioners).</p>	
4.2/ 35	<p>How should NES address site specific assessment for produce consumption?</p> <ul style="list-style-type: none"> Should the NES compel site-specific assessment? For reference purposes only, SGV's are provided in Appendix 2 for 50 % home grown produce consumption – Is it appropriate to remain outside the scope of the NES? 	<p>The NES should only address site-specific assessment for produce consumption when greater than 10% produce land use is expected.</p> <p>Yes, there will be so few, but it is important that TLA's advise applicants particularly with regard to environmental protection.</p>	

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4.2/ 35	<p>How should the NES address naturally occurring elements in soil?</p> <ul style="list-style-type: none"> Should controls on these natural hazards be left to the discretion of the council, be controlled as if they were a contaminant under this NES, or not be subject to any control? 	As per response to Question 16.	
TCC Response to Other Matters identified in the Proposed NES Discussion Document			
General	Liability	<p>It is important that the TLA gets some sort of response on initial application for development on historic use to avoid future liability claims. If no response then a resource consent requirement should be triggered.</p> <p>There is a link between liability and current soil guideline values. If values are updated the liability regime needs to recognise this.</p> <p>The Proposed NES does not address liability issues for decisions councils make on contamination. A site assessment is always a balance between costs and completeness but an NES will require local councils to sign off on site assessments. There is no comment within the Discussion Document upon how liability is to be managed. Liability claims against councils are identified as a driver for the Proposed NES (Case study 1), yet it is not explained how the Proposed NES would offer protection against liability.</p>	Address liability issues.
Appendix 1/ 66	Soil Guideline Values and Exposure Scenarios	A separate group of toxicologists and practitioners have reviewed toxicological intake criteria to arrive at these values in a comprehensive manner.	
Appendix 2/ 69	Site-Specific Assessment	Such assessment should also encompass environment effects as per contaminated Land Management guidelines as well as human health.	

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Appendix 3/ 84	Summary of Toxicological Intake Criteria	MfE have referenced a number of international agencies before identifying values. The intake levels listed appear sufficient to provide a comprehensive assessment.	
4.1.4/ 33	Consent Conditions	May be difficult to include a condition for long term management/monitoring when general subdivision and land use consents (earthworks) are for a short duration. It is imperative that long term management is monitored.	MfE to investigate how long term management is monitored (e.g. via consent notice conditions on Certificate of Title?).
5.0/ 38	Costs and Benefits of the Proposed NES	The Proposed NES has avoided including the costs to territorial authorities for assessing permitted activity site investigation reports for which they can not recover costs. There will be increased staffing at territorial and regional council level. In the case of permitted activities assessments these costs cannot be recovered from the applicant.	Assess increased staffing costs and costs associated with auditing and peer reviewing investigation reports. Need to ensure any costs to TLA can be recovered via consent process, or alternatively an accreditation process which allows acceptance of reports as of right.
7.3.3/ 52 Step 3	Does the site exceed the SGVs_(health)	This section should state if soil contaminant concentrations do not exceed human health the contaminant concentrations in the soil may still exceed the environmental guideline therefore a regional council consent may still be required.	Needs to recognise that a consent may be required from the Regional Council where contaminant concentrations in the soil exceed environmental guidelines.
8.3/ 65 Table 10	Industry Specific Guidelines.	This section should state if soil contaminant concentrations do not exceed human health the contaminant concentrations in the soil may still exceed the environmental guideline therefore a regional council consent may still be required.	Add a note to Table 10 to recognise that a consent may be required from the regional council where contaminant concentrations in the soil exceed environmental guidelines.
Appendix 4/ 89	Hazardous Activities and Industries List	Without discussion or reasoning given illicit drug manufacturing is proposed to be added. Illicit drug manufacture is not the same as an established manufacturing business. It will normally be a one off and undertaken in a building that can be cleaned up or demolished. It should not be part of this category in HAIL.	Either provide justification for addition to list or remove.
4.1.2/ 25	Permitted activities	'Small scale' and 'temporary' activities are not defined.	Define and/or quantify.
4.1.3/ 28	Existing use	Not clear whether this has the same meaning as 'existing use' in the RMA?	Clarify the meaning of 'existing use' in the context of the Proposed NES.
4.1.3/ 29	Minimum level of soil disturbance	Uncertain and ambiguous.	MfE to define and quantify.