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CLUTHA DISTRICT COUNCIL

Address all correspondence to:
The Chief Executive

Our Reference

7 April 2010

Glenn

SR35/3

Ministry for the Environment
PO Box 10362
WELLINGTON 6143

RECEIVED
15 APR 2010

Dear Sir/Madam

PROPOSED NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL

Thank you for the opportunity to make a submission on this proposed National Environmental Standard (NES). At its meeting on 1 April 2010 the Clutha District Council adopted the following submission.

Policy objective

In general, the Clutha District Council supports the objective of the proposed NES, ie "To ensure that land affected by contaminants in soil is appropriately identified and assessed at the time of being developed and if necessary remediated, or the contaminants contained, to make the land safe for human use."

We accept that the proposed NES is targeted at human health and safety only. However, it is important that the NES is structured so that it doesn't interfere with councils' ability to address other contaminated site issues.

Allocation of roles

Our main concern with the proposals is that the consent requirements would all sit with Territorial Local Authorities, despite the fact the most of the information and expertise is held by Regional Councils. In our case, the Otago Regional Council already has rules and requirements for activities that would disturb contaminated soil, and has staff with specific technical expertise in this area. There is therefore a real risk of a disconnection being created.

To summarise the situation, territorial councils will be responsible for controlling land use activities on contaminated land for the purpose of protecting human health. Regional councils will be responsible for identifying and monitoring contaminated land and controlling any discharges from contaminated land. In practice, regional councils have also controlled any land use or other activities on contaminated land for the purpose of protecting the wider (natural) environment.

1 Rosebank Terrace
PO Box 25, Balclutha 9240, New Zealand
Telephone + 64 3 4190200 Fax + 64 3 4183185
Email help.desk@cluthadc.govt.nz
Website www.cluthadc.govt.nz



This is a highly fractured and complicated arrangement. As a territorial authority, we will be responsible for advising whether consent is needed for land use activities under the NES, but the information we require to make that decision will be held by the Regional Council, and most other functions relating to contaminated land will be undertaken by the Regional Council.

In our view, much more thought and consultation needs to be put into this issue before proceeding.

Consent requirements

There is some debate about whether site investigation should be a permitted activity, or controlled. We realise that if investigations are permitted, some landowners and consultants may not inform councils of non-complying test results. However, even as a controlled activity there would still be nothing to prevent people carrying out testing before deciding whether or not to apply for consent. Therefore we support the proposed permitted status, as it will minimise the barriers to people advising councils of investigations.

Of much more concern is the proposed trigger point for requiring resource consent for development on contaminated land. In the Discussion Document this is too uncertain to be workable as currently worded, ie:

- *“the risk to human health from soil contaminants is assessed as being unacceptable for the intended land use*
- *there is insufficient information to confirm whether the risk to human health from soil contaminants is acceptable or not.”*

Both of these triggers are based on judgments of what is “unacceptable” or “insufficient”, and of whether a site is potentially contaminated. Such considerations are more appropriate for the assessment of a consent application, not the decision on whether or not a consent is required. This would especially be the case for sites which are not on a regional register, and/or which are contaminated by substances not covered by the 12 specific Soil Guideline Values attached to the NES. In those circumstances there would be a real risk of arguments between landowners and councils about process, and inconsistency of approach between councils. In such cases the NES would fail to meet its stated objective.

There needs to be a very clear and unambiguous definition of when a consent is required, eg for specified activities on land which is included on a regional register of contaminated land. This would require councils to ensure that regional registers were accurate and up to date, but would provide landowners with clarity and certainty.

Implementation

If the NES is to work, there is an expectation that councils will commit to new database and information sharing systems, and take on additional technical expertise (either in-house or contracted). However, these expectations are not made explicit in the document. The discussion

document notes that there will be “a relatively small one-off costs for council who currently do not address contaminated land issues”. However, in fact there are likely to be significant up-front costs in databases and information management systems to deal with the split in responsibilities, and significant on-going costs in maintaining the information and systems, and in staff and/or consultant costs in assessing investigation results.

There is currently significant pressure from central government and ratepayers to reduce the costs of local government, so any such additional requirements of councils should be made explicit and the costs adequately assessed before any decision is made on the NES.

There is also an expectation that territorial and regional authorities will work much more closely, without any proposed mechanism for this. As noted above, the allocation of responsibilities is very fractured and complicated, and both types of authority will be highly dependant on the other in order to be able to fulfil their function. The Discussion Document treats this issue very lightly, with no real assessment of how it would work in practice. The expectation, as voiced at the Dunedin workshop on the NES, that these extra complications and expectations would “force councils to work together much better” is simply naïve, and could potentially lead to considerable duplication and confusion.

If the NES is to work in practice, there needs to be implementation guidelines developed in conjunction with it. Importantly, this should not be seen as something added on afterwards – the NES itself must be designed to be workable, which can only happen if there is a clear understanding of how it will work in practice (eg which agencies will hold what information, how will information be transferred and made available, how will enquiries be dealt with and by whom, how will “qualified and experience practitioners” be defined etc). It may well be that central government will need to take a lead on matters such as on-line registers and service level agreements.

Use of qualified and experienced practitioners

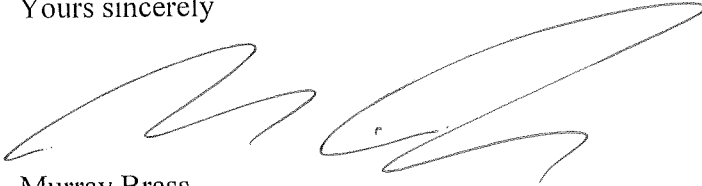
The NES would place a lot of emphasis on the use of “qualified and experienced practitioners” by landowners, consent applicants and councils. From our experience in other RMA and Building Act situations, there will need to be a clear system for defining who meets this criteria, otherwise there will be considerable scope for arguments and inconsistencies. An accreditation or register system should be developed as part of the NES implementation programme referred to above. Accreditation or registration should be personal to an individual rather than an organization to ensure that the appropriate skills are held by the person undertaking the work.

Conclusion

The Proposed NES would meet a worthwhile objective, but needs considerable work to ensure that it will work in practice. We recommend that there should be further consultation with the local government sector on the actual text of the NES, and on implementation guidelines, before proceeding.

If you have any queries about this submission please feel free to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Murray Brass', written in a cursive style.

Murray Brass
PLANNING AND ENVIRONMENT MANAGER