



NEW ZEALAND DEFENCE FORCE

Te Ope Kaatua o Aotearoa

HEADQUARTERS NEW ZEALAND DEFENCE FORCE

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1461/11/5

19 April 2010

Ministry for the Environment
PO Box 10362
Wellington

Attention: James Court

Dear Sir

PROPOSED NATIONAL ENVIRONMENTAL STANDARD - ASSESSING AND MANAGING CONTAMINANTS IN SOIL - NEW ZEALAND DEFENCE FORCE SUBMISSION

Reference:

- A. MFE discussion document, Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil.

Thank you for providing the New Zealand Defence Force (NZDF) with the opportunity to make a submission in respect of the discussion document at Reference A.

The NZDF supports the intent of the proposed standard in ensuring that human health risks are minimised when developing contaminated land. NZDF does have major concerns in relation to the following matters:

1. The NES proposal fails to specifically address the application of the NES to designations and the outline plan process under s.176A RMA.
2. With respect to Defence land, the HAIL list is inappropriate as a method for determining preliminary site investigation requirements as it is too generic in its categorisation of potential contaminated sites.
3. The reliance on HAIL to impose site investigation requirements in addition to the outline plan process is likely to impose significant costs and delay on NZDF projects.

The NZDF Estate

The NZDF maintains and operates a Defence estate of approximately 74,833 hectares of land, concentrated in nine main bases/camps and two military training areas at Waiouru and Tekapo. The entire estate is spread across approximately 100 sites within the North and South Islands and subject to various Territorial Authority jurisdictions. Historic activities and some current activities have resulted in soil contamination within parts of the Defence estate. These areas are managed in terms of the Occupational Safety and

Health in Employment Act 1992, Hazardous Substances and New Organisms Act 1996 and Resource Management Act 1991 legislation.

The Defence estate is also subject to the Defence Regulations 1990, which require a high level of security to be imposed over a site that is a 'Defence Area' under the Defence Act 1990. These security requirements are necessary to safeguard material, people and activities, some of which are of a hazardous nature. Public access is therefore not readily available to NZDF sites. As a consequence public exposure pathways to contaminated areas within the Defence estate is significantly minimised.

Defence Purpose designations and outline plans

NZDF sites are provided for in District Plans by 'Defence Purposes' designations in accordance with Part 8 provisions of the Resource Management Act 1991 (RMA). Development of, and activities on, land held for Defence Purposes are almost entirely authorised by the 'Defence Purposes' designation under the RMA. Therefore most physical building works are subject to outline plan procedures in accordance with s.176A of the RMA. The outline plan is a notification by the Requiring Authority, to the Territorial Authority, of an intention to carry out the Public Work previously authorised by the designation. The outline plan provides the Territorial Authority with an opportunity to query:

- a. whether the public work falls within the scope of the designation, and
- b. the adequacy of measures proposed to address adverse effects on the environment.

The Territorial Authority may only request changes to the outline plan, it cannot oppose the public work (but can appeal to the Environment Court any requiring authority decision in relation to any requests for changes).

The NES and designations/outline plans

Under s.9(1) RMA activities on designated sites must comply with an NES, or be otherwise authorised under that section. In addition, and of particular relevance to new works on NZDF sites, s43D (3) requires, conditionally, that the NES will prevail over a designation that requires an outline plan.

However, the discussion paper does not address how the proposed NES will apply to designations, in particular outline plan processes. Instead it focuses on the resource consent process. Specific issues that are not addressed include:

- How are the NES requirements to be integrated into the outline plan process?
- What will happen when the Requiring Authority and TA have differing views on the condition of the land?
- How will the TA seek to enforce aspects of the NES when the TA only has recommendatory powers in respect of outline plans?

Further, there are definition issues that need resolution for purposes of clarity. It is not clear in the discussion paper whether a 'work' within the meaning of s.176(A) of the RMA is 'use' or 'development' within the context of the proposed NES.

These issues mean it is uncertain how TA's will apply the NES to designated sites. This creates a risk that compliance costs and project delays will increase, out of step with environmental benefits, which is a significant concern for NZDF.

The HAIL list

The discussion paper proposes that the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) be utilised as a trigger for determining whether or not a site requires a preliminary site investigation. While in principle we support that, the NZDF opposes use of the HAIL list in its present form as, with respect to defence sites, it is too generic a tool for determining potential site contamination.

The HAIL identifies 'Defence works and defence establishments, including ordinance storage and training areas where live firing is carried out', which means that it applies to all NZDF land. It provides no recognition for large tracts of the Defence estate which are held for manoeuvre/training, open space, recreational and residential purposes, and are not affected by soil contamination.

As a consequence, under the proposed NES, the development of any defence land will be subject to a preliminary site investigation. While that may be appropriate in some cases, again it is uncertain how low or no risk defence sites will be managed by TA's under the NES.

Suggested amendments to the proposed NES

NZDF believes the following two amendments to the proposed NES are required:

1. Amend the proposed NES to clearly address how the NES will apply to designations and in particular provide clear guidance on information requirements in relation to outline plans for new works on designated land.
2. Modify the HAIL list by removing 'Defence Works' or by changing the definition of 'Defence Works'. The former would place reliance on other listed activities for identifying potential general risk areas on Defence sites, while the latter would specify only those Defence activities that may pose a site contamination risk, such as those currently specifically stated.

NZDF can assist to develop these amendments (or alternatives) further if required, in particular with defence specific amendments to the HAIL.

Thank you for the opportunity to comment on the proposed NES.

Yours faithfully



GARY PENNEFATHER
Environmental Planner