



Subject **RE: RE: Advise on the National Environmental Standards**

From Jeremy Butler <Jeremy.Butler@tasman.govt.nz>

To MDCA <info@ourmapua.org>, Kathie Fletcher <Kathie.Fletcher@tasman.govt.nz>

Cc Annie Reed <annie.reed@tasman.govt.nz>, Leif Pigott <Leif.Pigott@tasman.govt.nz>

Date 2021-01-11 20:58

Hi Marion

Firstly, I'm not sure why you are not directly this query to the resource consents team. They are the team who implements the TRMP and the NES that relates to Contaminated Soil (NES-CS). Many of the questions that you have relate to the forward-looking consent process. I have copied in the subdivisions and natural resources team leaders.

The NES-CS is very specific and I'll just address a couple of the interpretations that you have not got correct. A change of land use is not the suggestion that the land use will change at some point in the future. The land use change applies at the time when regulatory approval for the change is actually sought. Furthermore, by definition in the NES-CS, of a change of land use: **An activity is changing the use of the piece of land, which means changing it to a use that, because the land is as described in subclause (7), is reasonably likely to harm human health** I'm not involved in the application, but in a general sense, changing the land use from an orchard to pasture does not change the risk to human health. That change will occur when a subdivision consent is lodged. The effects of any contamination will be dealt with at that time.

The NES-CS does contain a consent requirement for earthworks on a HAIL site, but I am not familiar with what is happening on the site, and consents staff should comment on that.

Essentially, there is no additional risk to human health at the moment, and the assessment system is structure to assess (and address) that risk at the time that that risk eventuates (i.e. at subdivision or building time).

From a policy point of view, land contamination is a constraint on land that can be "fixed". When we are looking at future development locations, there are many constraints that we cannot address and which are show-stoppers (e.g. sea level rise, productive land). Land contamination is certainly a serious matter, but there are a number of ways that land can be remediated, and typically it is not a show-stopper. There certainly may be costs and limitations on developing the land when that time arrives, but we do not always have the luxury of simply avoiding any land that may have an orcharding history.

Hope this helps  
Jeremy

**Jeremy Butler**

Team Leader – Urban & Rural Development Policy  
 DDI +64 3 543 8531 | [Jeremy.Butler@tasman.govt.nz](mailto:Jeremy.Butler@tasman.govt.nz)  
 Private Bag 4, Richmond 7050, NZ



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**From:** MDCA <info@ourmapua.org>  
**Sent:** Monday, 21 December 2020 10:59 am  
**To:** Jeremy Butler <Jeremy.Butler@tasman.govt.nz>; Kathie Fletcher <Kathie.Fletcher@tasman.govt.nz>  
**Subject:** Fwd: RE: Advise on the National Environmental Standards

Good morning Jeremy & Kathie,

Last week I emailed Rob Smith regarding some question regarding the NES and subdivision and he has referred me onto both of you in your positions of reviewing the TEP. (Please see email trail below)

Are you able to help MDCA understand what appears to be double standards.

On another note, I wish you both a wonderful and safe festive season and I hope you get an opportunity to have a restful break.

Kind Regards

Marion Satherley

MDCA Chair

----- Original Message -----

**Subject:**RE: Advise on the National Environmental Standards  
**Date:**2020-12-21 10:33  
**From:**Rob Smith <[Rob.Smith@tasman.govt.nz](mailto:Rob.Smith@tasman.govt.nz)>  
**To:**MDCA <[info@ourmapua.org](mailto:info@ourmapua.org)>  
**Cc:**Christeen Mackenzie <[Christeen.Mackenzie@tasman.govt.nz](mailto:Christeen.Mackenzie@tasman.govt.nz)>

Kia Ora Marion

I have had a look at the response from Dennis and agree with his assessment.

We can't and shouldn't second guess what someone's intention is when they own land. While we like to be involved in planning and management of earthworks on HAIL sites, in this instance we cannot intervene in private activities as long as they are not breaching any rules. If an application for subdivision or other land use activity is received we will be able to address the site and its management under the relevant rules including the NES.

This might be a topic that the Community wishes to engage in through the Tasman Environment Plan process presently under way. I understand that the Policy team has presented to the MDCA already (Jeremy Butler or Kathie Fletcher would be the key contacts for this aspect).

Naku noa

Rob

**Rob Smith**

Environmental Information Manager

DDI [+64 3 543 8480](tel:+6435438480) | Mobile [+64 27 231 1053](tel:+64272311053) | [Rob.Smith@tasman.govt.nz](mailto:Rob.Smith@tasman.govt.nz)

Private Bag 4, Richmond 7050, NZ



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**From:** MDCA <[info@ourmapua.org](mailto:info@ourmapua.org)>  
**Sent:** Tuesday, 15 December 2020 6:58 pm  
**To:** Rob Smith <[Rob.Smith@tasman.govt.nz](mailto:Rob.Smith@tasman.govt.nz)>  
**Cc:** Christeen Mackenzie <[Christeen.Mackenzie@tasman.govt.nz](mailto:Christeen.Mackenzie@tasman.govt.nz)>  
**Subject:** Advise on the National Environmental Standards

Good afternoon Rob,

I am writing this to you on behalf of the Mapua & Districts Community Assn (MDCA) as a result of a suggestion by Cllr David Ogilvie at last night's MDCA Public meeting, before MDCA decide whether to take further action.

To explain. Over the past several months MDCA have been in communication with Denis Bush-King regarding the earthworks that has taken place at 166 Mapua Drive.

The concerns MDCA have are -

1. The site is listed as a HAIL category 'V'.
2. The land at 166 Mapua Drive was a working orchard for at least two generations and during this time, we now to know, poor working practices were the norm, especially when it came to the handling and management of herbicides and insecticides.
3. The property was sold approx. seven years ago to Venture Developments who's business is property development. Shortly after the change of ownership all the fruit trees were removed, which one would have thought would trigger a change of land-use.
3. The property is zoned deferred residential. Obviously, intended for subdividing. One would think with a developer purchasing the land and it zoned deferred residential, this too would trigger a change in land-use.
4. There are at least six 100 year old native trees still currently standing on the site near the Aranui Park boundary fence. These trees are a valuable carbon sink. It does not make much sense when one considers the Government is spending a billion dollars to plant trees when we are not protecting the great carbon sink trees that already exist.

5. Earlier this year extensive earthworks took place that shifted many tons of soil towards the boundary line with Aranui Park. At the time of this excavation work the tree roots of six Kahikatea and several cabbage trees within Aranui Park had their roots exposed. Lucky, so far the Kahikatea seem to be standing up to the disturbance, however, sadly several of the cabbage trees have fallen over. Who is responsible for this damage?

Denis has stated that the developers have not lodged a formal resource consent application yet, and that productive land is exempt and this does not matter whether there has been a change from an orchard to pasture, and therefore, the earthworks that have been carried out does not trigger the National Environmental Standards (NES).

Yet in the NES item 1.4 "When the NES Applies" states '*NES applies to assessing and managing the actual or potential adverse affects of contaminants in soil on human health from five activities:- Subdivision, land-use change, soil disturbance, soil sampling., and removing fuel storage systems.*

The site at 166 Mapua Drive has three of these five activites that (in MDCA's mind) apply:-

1. Subdivision. The land is zoned deferred residential and it was purchased by a business that is in the business of property development. Has TDC planning department had any indication, communication or preliminary investigations from the developers regarding subdivision resource consent conditions or application? If so, should this not be a trigger?
2. Land-use change. The change from an orchard, to pasture may not in itself be seen as being significant, but when it is zoned deferred residential and is owned by a property development company is somewhat of a clue to the future intentions for the land.
3. Soil disturbance. Moving tons of contaminated soil in preparation for subdivision prior to lodging a resource consent appears the developers are using loopholes in the system to avoid whatever necessary step that may be required of them once a resource consent is granted.

When MDCA considered the information Denis provided, MDCA has questioned the real value of the NES and the HAIL categories to actually effectively ensure human health and the health of neighbouring trees are protected. And poses the question of who is responsible for any damage from the appearance of this loophole should it occur?

MDCA are seriously considering taking this matter, which appears to be one of interpretation, to the Ministry of the Environment for clarification.

It was at this point Cllr Ogilvie suggested we ask you as the Environmental Officer for TDC for your advise and take on the situation, in the hope you can explain the HAIL listing and how these listings relate to the NES and the activities that have taken place on site with no resource consent, and to ask why there appears to be this loophole for developers to exploit.

I had intended to forward you the correspondence with Denis, however, for some reason the pdf files will not upload.

MDCA appreciate the time it will take you to consider our request of you.

MDCA wish to thank you in anticipation of a response, and wish you and your family a wonderful and safe festive season.

Kind Regards

Marion Satherley

MDCA Chair

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Mapua & Districts Community Association

Mapua Hall

72 Aranui Road, Mapua 7005

[info@ourmapua.org](mailto:info@ourmapua.org)

[www.ourmapua.org](http://www.ourmapua.org)

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