

Are you about to subdivide or change the land use of a potentially contaminated property?

Read this first.

Subdividing? Changing land use?

You'll need to know your responsibilities under regulations¹ for potentially contaminated land.

Even if you don't think your land has been contaminated by past or current land uses, you need to stop and check. Failure to do so could affect your plans.

Establishing whether contamination is an issue in the early stages of planning your project will mean you are less likely to face unwelcome consent delays, increased costs or penalties.

This fact sheet sets out:

- What the regulations require
- Your responsibilities as landowner
- Who can help you: the roles of professionals and the council
- Information that council may require
- Consents that you may need, and their conditions

For information on **how to find out whether your property is potentially contaminated**, see Fact Sheet One in this series.

If **earthworks** are involved in your proposal, see Fact Sheet Four in this series: 'Are you carrying out earthworks on a potentially contaminated property?'

About the National Environmental Standard regulations

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, (known as the NES Soil)² has introduced new requirements.

At the time of any subdivision or change of land use, councils are required to address potential health and environmental impacts associated with contaminated land.

Resource consents may be required under the regulations. These consents, known as NES Soil consents, are additional to other types of consent required for your activity under the Resource Management Act 1991.

You will need to consider whether NES Soil consents are required before subdividing or changing the use of land. You'll need to provide information to council to show that any potential contamination, caused by past land use, can be appropriately managed.

Responsibilities

As a landowner you must:

- Establish whether your proposal is regulated by the NES Soil. Please refer to Fact Sheet One in this series.
- If it is, provide your city or district council with information that shows that the regulations are met.
- Further information may be required, including a preliminary site investigation report.
- If there is evidence of contamination or if a Hazardous Activities and Industries (HAIL)³ activity has occurred on the site, a detailed site investigation may be required. This investigation will include soil sampling, laboratory analysis and a report. It will also provide options for remediation or management of the site if required, to ensure human health is protected.

Both types of site investigation reports (including soil sampling and testing) must be prepared by a suitably qualified and experienced practitioner (SQEP) – an environmental consultant with expertise in contaminated land.

- Your local council may be able to advise how to contact practitioners (SQEPs) operating in your area.
- It may also be necessary to engage a planning consultant to prepare your subdivision or land use consent application to council.

1 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES Soil)

2 www.legislation.govt.nz/regulation/public/2011/0361/latest/DLM4052228.html

3 www.mfe.govt.nz/issues/managing-environmental-risks/contaminated-land/is-land-contaminated/hail.html

Your environmental consultant must:

- Satisfy the council that they meet the professional (SQEP) requirements for the particular property that they are reporting on.
- Complete your site investigation reports (including soil sampling, analysis and reporting) in accordance with:

Preliminary site investigations:

The current edition of Contaminated Land Management Guidelines No. 1 – Reporting on Contaminated Sites in New Zealand, Wellington, Ministry for the Environment⁴.

Detailed site investigations:

The requirements for a preliminary site investigation (above), and; the current edition of Contaminated Land Management Guidelines No. 5 – Site investigation and Analysis of Soils, Wellington, Ministry for the Environment⁵.

- In some cases, it may be necessary to prepare a remediation action plan detailing the proposed remediation works and/or a site management plan. Additional testing may also be required to confirm remediation or for management.

Your planning consultant should:

- Prepare the subdivision or land use consent application and ensure that the necessary NES Soil information is also provided to council.

Your city or district council should:

- Provide available council records upon request to establish whether a HAIL activity may have occurred on the site. (Note: a fee may apply.)
- Confirm that the site investigation reports have been prepared by a suitably qualified professional (someone who meets the council requirements for a SQEP).
- Review the site investigation reports.
- Carry out a thorough check of the consent application to ensure that any potential risks to human health from contaminated land associated with the proposal have been considered. Confirm the suitability of proposed measures to avoid, remedy, or mitigate those risks.
- Liaise with other councils in the region to ensure that contamination issues are appropriately managed.
- Review the remediation action plan and/or site management plan for the site where contamination is present.
- Consider the need (through consent conditions) for remediation to be completed prior to subdivision or land use change.

Resource Consents

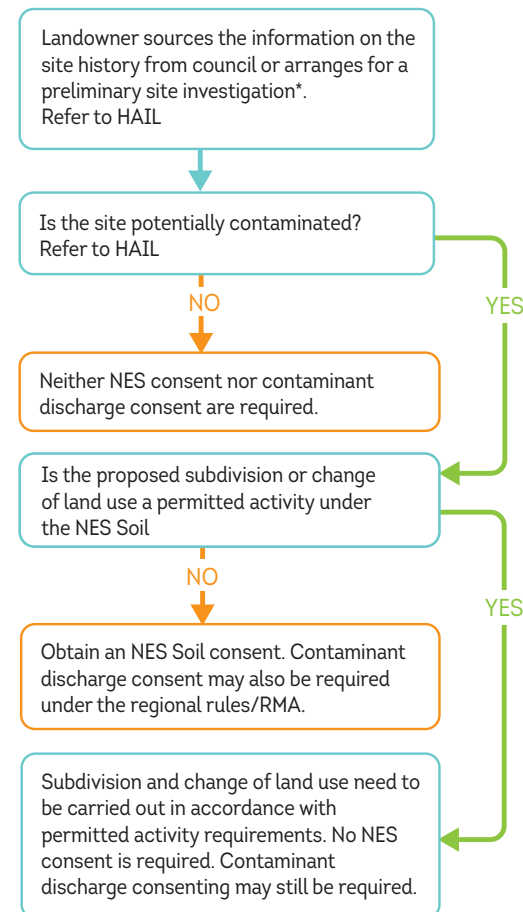
Resource consents are issued by councils under the NES Soil regulation as a tool to manage the potential adverse effects of activities on human health and the environment arising from contaminated soil.

You may need to submit an application to council for an NES Soil consent.

Consents may also be needed for subdivision or land use activities associated with the application.

In addition, consents may be required for any discharges of contaminants from the property. For example, some regional councils (and unitary authorities) regulate discharges of contaminants to land or water under contaminated land rules of the relevant regional plan. These rules must also be considered.

See your local (city or district) and regional council for advice on consent requirements.



HAIL Hazardous Activities & Industries List
NES Soil National Environmental Standard for Assessing and Managing Contaminants in Soil to protect Human Health

* The landowner may additionally provide their own information on the site to council to update the file record.

⁴ www.mfe.govt.nz/publications/hazardous/contaminated-land-mgmt-guidelines/

⁵ www.mfe.govt.nz/publications/hazardous/contaminated-land-mgmt-guidelines-no5/guideline-5.pdf

What will the NES Soil consent application include?

Your application will need to consider:

- The activity status of the consent under the NES.
- The requirement for site remediation and/or management to minimise risk to human health.
- The nature of proposed land use activity, subdivision and/or earthworks and the degree of risk to human health from exposure to hazardous substances, including contaminated soils, both current and in the future.
- The extent that any contaminants may be mobilised and methods for containment, mitigation and/or remediation.
- The requirements for the disposal of contaminated material and for site validation testing upon completion of remediation.

You will need to provide an Assessment of Environmental Effects (AEE) to the council that addresses any potential adverse effects and how these can be avoided, remedied, or mitigated.

What NES Soil consent conditions can I expect?

Consent conditions for contaminated properties may include:

- Site activities – procedures to be followed during your works or activities that must occur as part of site works e.g. earthworks associated with subdivision.
- Site remediation – requirements to mitigate adverse effects on health and the environment. This may include specifications for imported backfill for excavations, site remediation methods and timing, and site validation testing.
- Mitigation of adverse effects – requirements to address exposure to contamination or discharge of contaminants through the control of dust, odours, vapours, erosion, sediment and stormwater runoff, etc.
- Site management – controls to prevent adverse effects on human health and the environment through ongoing site management and/or monitoring.

Other consent conditions, including conditions specific to your site, may also apply.

More information can be found in the other fact sheets in this series:

Contaminated Land Fact Sheet One

Are you planning to undertake earthworks, subdivision, change of land use, selling or buying a property etc?

Contaminated Land Fact Sheet Two

Are you selling or buying a property that may be contaminated?

Contaminated Land Fact Sheet Four

Are you carrying out earthworks on a potentially contaminated property?

These factsheets can be downloaded from www.wasteminz.org.nz

Further Information

Risks from Contaminated Land

www.mfe.govt.nz/issues/managing-environmental-risks/contaminated-land/index.html

Users' Guide: National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

www.mfe.govt.nz/publications/rma/users-guide-nes-for-assessing-managing-contaminants-in-soil/guide-nes-for-assessing-managing-contaminants-in-soil.pdf