



**New Zealand Telecommunications Forum (TCF) Submission to
Ministry for the Environment:
Proposed Amendments National Environmental Standard for Assessing and
Managing Contaminants in Soil to Protect Human Health**

Executive Summary

The New Zealand Telecommunications Forum (TCF) appreciates the opportunity to comment on the proposed amendments to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the NESCS). The TCF is well placed to comment on the current regime as its members' networks cover the whole country. The industry continues to invest in extending fixed line (linear) and mobile networks to improve coverage, and to upgrade them with new technology, particularly in urban areas.

Since the NESCS came into effect in January 2012 there has been a lack of clarity and certainty with respect to how the standards are intended to relate to linear infrastructure projects, particularly those within the road rather than a "site". This has resulted in significant inconsistency in the application of the standards by councils which, in turn, has contributed to time delays and additional costs.

The majority of soil disturbance activities undertaken by our members take place within the road. The proposed amendments offer the opportunity to resolve the certainty for network utility operators and provide a greater level of national consistency in the administration of these standards than is currently experienced. In particular the proposal of cl 5.2 allowing network utility operators to undertake projects with no resource consent is supported. Being able to undertake a risk-based assessment to determine if the NESCS applies is another practical and positive amendment. The telecommunication industry has developed methods of deployment which minimise soil disturbance and are therefore low risk with regard to contaminated soil.

This submission only responds to questions relevant to network utility operators – as set out in the discussion paper.

Telecommunications Infrastructure

The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. The TCF enables the industry to work together and to discuss issues and topics collaboratively, and to reach acceptable solutions that can be developed and implemented successfully. Its members represent 95% of the sector.

The industry plays an important role with respect to the NZ economy. MBIE recently noted¹ that:

“Digital communications technologies are impacting almost every aspect of our lives. We rely on them for business, government, education, health and in our communities. The communications sector is a critical enabler of economic growth in the twenty-first century.”

Meeting consumer and business demands for new and improved digital services means constant investment and innovation in telecommunications infrastructure. This investment can be assisted through strong government support with nationwide policies. In 2014, total telecommunications investment reached \$1.7 billion. This level of investment, compared to revenue, put New Zealand near the top of the OECD in 2013. This investment has contributed to the Ultra-fast Broadband roll-out, as well as a rapid deployment of three competing 4G mobile networks - with the deployment of 5G mobile networks already on the horizon. The industry is also continuing with further deployment into regional areas to provide broadband to rural communities via the Government's Rural Broadband Initiative (RBI). As a result of this investment in infrastructure, New Zealand has seen the fastest uptake of fibre in the developed world².

Fixed and mobile telecommunications networks are essential national infrastructure that underpin urban development as well as supporting the rural economy by ensuring New Zealanders are digitally connected to each other and the world. The economic and social benefits of this connectivity have been widely acknowledged. The applications and services that these networks enable are rapidly becoming indispensable for businesses and the community who expect high speed, and reliable services wherever they are and whatever they are doing. The majority of businesses in New Zealand rely on telecommunications services - fixed and mobile, voice and data - for at least some part of their operation.

In its recent publication on the digital economy³, the OECD has noted the complementarity of fixed and mobile networks. It explains that fixed infrastructure is critical for backhauling wireless traffic and therefore enables better use of spectrum. Fixed and mobile networks are

¹ Ministry of Business, Innovation & Employment Review of the Telecommunications Act 2001, Regulating Communications For The Future, September 2015

² TCF 'Telecommunications – Enabling New Zealand's Future' prospectus 2016

³ OECD, OECD Digital Economy Outlook 2015.

national networks, all of which will require ongoing investment as technology, and consumer demands, change.

The complementarity of fixed and mobile networks contributes to applications and services which will relieve pressure on other national infrastructure. Examples include:

- ‘Internet of things’ devices will be communicating with other devices to enable efficiency and productivity gains for New Zealand across a whole range of areas.
- Driverless cars, which could become commonplace within the next decade, have the potential to radically change our transport systems and potentially ease pressure on roading infrastructure in urban areas.

Considerable investment in telecommunications infrastructure will continue to be required to enable New Zealand to benefit from these innovations.

New Zealanders have benefited from this investment in terms of the technological change and the underlying opportunities for productivity gains. Rapid growth in demand for data services, driven in part by services such as video streaming, mean that further investment in telecommunications infrastructure will be necessary as the industry responds to this burgeoning demand. It will be essential that further investment in telecommunications infrastructure can be made efficiently and with as much certainty as possible.

Amended NESCS

We welcome the Ministry’s review and proposed amendments to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. This submission does not explore the technical aspects of the proposed amendments. The focus of the submission is on the following key amendments of interest to the telecommunications industry:

- ***Proposal 4.1. Risk assessment***

The proposal seeking to introduce the opportunity to conduct a risk-based assessment when deciding whether the NESCS applies to a site is considered a positive and constructive step. In our experience there is a limited amount of information regarding contamination of sites in New Zealand. The HAIL is a broad list of activities that has generated a lot of debate as to whether a site or land is likely to be contaminated. Being able to undertake a risk assessment enables the applicant to determine if the NESCS applies to land where the HAIL activity is likely to have resulted in contamination that poses a risk to human health.

Access to contaminated land information held by public bodies, particularly regional and district councils is critical to enhance the ability to undertake risk assessments. The TCF supports the development of a national register of contaminated sites.

- **Proposal 5.2. Permitted activity for Network Utility Operators**

Soil disturbance undertaken with respect to the installation, maintenance and upgrading of telecommunication facilities e.g. installing a new underground fibre network, or customer connections or foundations for new cell site or cabinet generally involve the following:

- Trenchless methods e.g. directional drills
- Use of micro-trench technology
- Shallow depths
- Narrow open trenches (with the trenches commonly opened and closed within days)
- Small volumes – for example depending on the soil conditions the foundation requirements for a cell site are commonly less than 10m³
- Reuse of soil on-site and sealed surfaces at the time of reinstatement
- Sediment management plans and devices in place
- Contractors that are well trained and operate to industry and health and safety requirements

Further to the above, as these works are commonly in the road other regulatory requirements exist such district plan rules related to earthworks and the National Code of Practice for Utility Operators' Access to Transport Corridors (the Code) that ensure an appropriate level of oversight from local government.

It is considered that use of the term “network utility operator” as defined under section 166 of the Resource Management Act is appropriate. While the definition is reasonably broad it is unlikely to allow inappropriate operators of utilities the opportunity to operate under the permitted status proposed under the amendments. In our experience the use of the term has not enabled non-utility operators to utilise the Code, which applies a similar definition.

The proposal includes a number of key permitted standards, including a site management plan that has to be submitted to Council when the notice to commence works is provided. As part of the SMP a requirement to have an unexpected discovery protocol is supported. We note however that it would be beneficial for the Ministry to develop an unexpected discovery protocol as a national standard in order to provide guidance to both councils and users of the NESCS, this would further promote national consistency that the proposed amendments are seeking to achieve.

National Consistency

The telecommunications industry is unique in that it comprises a group of businesses that invest to provide infrastructure nationally. Consequently, the industry shares common interests with respect to environmental documents. Operating through the TCF has allowed the industry to provide a consistent and united position on the recent National Environmental Standards for Telecommunications Facilities (NESTF) review, Productivity Commissioners “Better Urban Planning”, the proposed National Policy Statement for Urban Development Capacity and the Government’s RMA reforms.

Telecommunications is one of the few industries which see competition occurring upstream at the infrastructure level. If this competition is to be promoted and maintained, it is essential the planning framework supports the roll-out of infrastructure by removing unnecessary barriers, but recognising that property rights and safety are still important. An example of an unnecessary barrier is the current requirement for network operators to obtain the permission of all property owners before installing a low-impact fibre connection along a shared driveway. The Government has recognised that this is a barrier to the efficient roll-out of UFB and has proposed changes to legislation that will provide better access for network operators, while ensuring that the rights of property owners are appropriately protected.

Conclusion

Telecommunications infrastructure, both fixed and mobile, is provided nationally by fixed line and mobile network operators. Consequently, a considerable amount of work occurs that involves soil disturbance. The existing NESCS 2012 required clarification especially with respect to how the provisions applied to the construction of linear infrastructure.

The TCF supports proposed amendments to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health in relation to network utility operators. However there is the opportunity to further improve the implementation and application of these standards through:

- The development of guidance in the form of a national standard for “unexpected discovery protocol”.
- Development of national GIS information register identifying the location of contaminated land.

The national framework should recognise that local variations do exist. However, any criteria developed to respond to these variations should be restricted and the intent clear.

Any reform to the existing legislation that removes ambiguity and provides for national consistency is welcomed. As a group we have experienced the frustrations of operating under the current NESCS and the inconsistent application of this by different councils throughout the country. To this end we would welcome the opportunity to meet to discuss our observations and thoughts to assist in the finalisation of the proposed amendments, including the proposed permitted activity conditions and the non-regulatory guidance proposed under Section 5.2 of the consultation document.

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