

ANNEXURE C

STANTEC'S ORIGINAL NES COMMENTS

From: [Heveldt, Paul](#)
To: [Campbell Thomson](#)
Subject: RE: LUC-2017-361_memo
Attachments: [image002.png](#)
[RE NES consent advice.msg](#)

Hi Campbell

As you know by now I have provided a detailed opinion to your colleague James Coutts today about change of use under the NES and the relevance / applicability of the NES when contact with any underlying soil which may be contaminated is a possible scenario and the site under discussion is a HAIL site.

I attach my reply to James, rather than reiterate it exhaustively. While it is for another site and context obviously, the arguments have some relevance to the circumstances of your application. If you need to use any of the wording of the attachment then please feel free to cut and paste whatever paragraphs are of interest to you into your reply to Kirstyn Lindsay.

In essence my conclusion is that a strict interpretation of the requirements of reg 5(6) of the NES (as supported by reg 5(7)) would have it that change of use of a piece of land that is a HAIL site is enough to trigger the NES if there is an absence of evidence showing no impacts on human health ; i.e. no DSI or other health risk assessment has been carried out.

The other facet of the argument centres on the interpretation of reg 5(6) contained within the Users' Guide to the NES. This is subtly but importantly different and requires "exposure to soil" to be a factor relating to the change of use before the NES is invoked in a change of use context.

I believe the actual Regulations should take precedence over the interpretation of those Regulations within a "Users' Guide". However I also believe a pragmatic approach is necessary. The Users' Guide stresses this in paragraph 2 of section 2.1.2, #5 which I reproduce as follows:

The key decider as to whether a land-use change falls under the NES is therefore whether, under the intended land use, the exposure to soil is reasonably likely to harm human health. This needs to be carefully evaluated for the specific situation, and may be interpreted within the purpose and context of this regulation as a serious or real and substantial risk. **It requires the council officer to exercise a measure of common sense to not apply the NES, if there is no real risk associated with the proposed land-use change.**

To sum up, the NES applies but its interpretation should be viewed in a common sense manner, as per the final sentence in bold type of the extract above.

Is there a real risk of contact with soil in the current scenario proposed for the change of use at 5 Clark St? Well, there may be – this is different than the context of James Coutts' dilemma regarding the 471 Princes St LUC application where the current total hardstand cover of the site will not be disturbed. For 5 Clark St it is signalled that realignment and installation of services will be required and that presupposes disturbance of soil, to at least a minor extent.

I think the suggestion put forward by Kirstyn Lindsay, and which I believe you support, is the correct way forward. The application can be processed as discretionary activity under the NES (given that no DSI exists) and a condition restricting the disturbance of soils to no greater than permitted activity limits can be imposed. This would deal (as you note) with the services installation issue.

Please get back to me to discuss further if you need to.

Regards

Paul

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From: Campbell Thomson [mailto:Campbell.Thomson@dcc.govt.nz]

Sent: Wednesday, 22 November 2017 9:30 a.m.

To: Grant Fisher <Grant.Fisher@dcc.govt.nz>; Urban Design <urban.design@dcc.govt.nz>;
Resource Consents WWS-BC Comments <resconsent.wwsbc-comments@dcc.govt.nz>; Heveldt,
Paul <Paul.Heveldt@stantec.com>

Subject: LUC-2017-361_memo

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