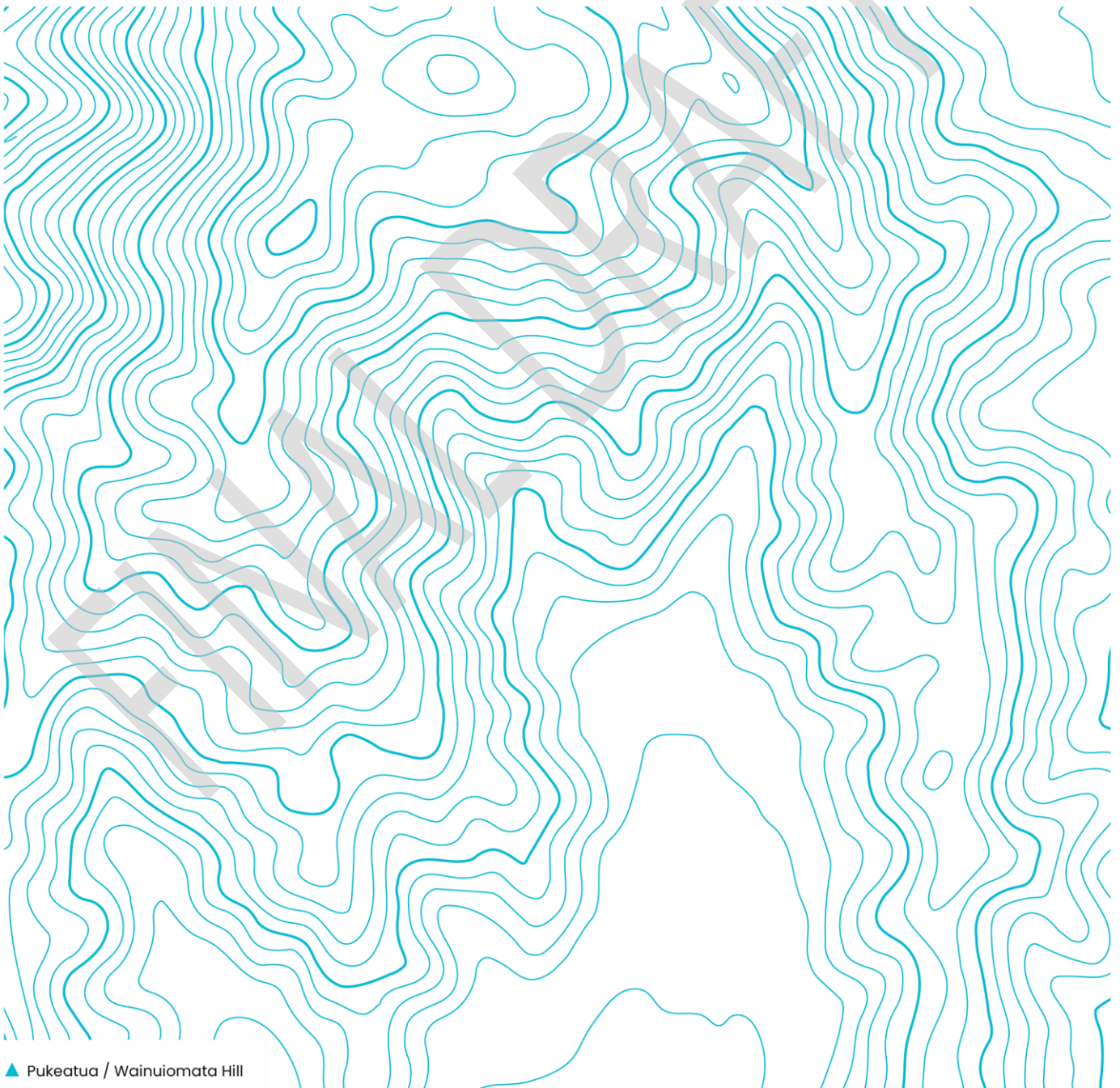


# Section 32 Evaluation CONTAMINATED LAND



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## 2 Overview and Purpose

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- (1) Hutt City Council is reviewing the City of Lower Hutt District Plan. This is a full review of the District Plan, including the approach to contaminated land.
- (2) This report is a record of the review with regard to contaminated land, and includes an evaluation of objectives and provisions for a proposed Contaminated Land chapter for the District Plan, in accordance with the requirements of s32 of the Resource Management Act 1991.
- (3) This report sits as one of a package of reports for the proposed Plan and should be read alongside the General report which covers matters common to all topics..

### Introduction to contaminated land

- (4) Under the RMA, *contaminated land* means:  
*land that has a hazardous substance in or on it that—*
  - a) *has significant adverse effects on the environment; or*
  - b) *is reasonably likely to have significant adverse effects on the environment.*
- (5) Hazardous substances may include industrial, agricultural, horticultural and household chemicals, medical wastes, petroleum products, explosives and radioactive substances.
- (6) Under the RMA, hazardous substances includes, but are not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 (HSNOA) as a hazardous substance. Under the HSNOA, hazardous substance means:  
*unless expressly provided otherwise by regulations or an EPA notice, any substance*
  - a) *with 1 or more of the following intrinsic properties:*
    - i. *explosiveness:*
    - ii. *flammability:*
    - iii. *a capacity to oxidise:*

- iv. *corrosiveness:*
  - v. *toxicity (including chronic toxicity):*
  - vi. *ecotoxicity, with or without bioaccumulation; or*
- b) *which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any 1 or more of the properties specified in paragraph (a).*
- (7) Land can become contaminated when hazardous substances are not used, stored or disposed of appropriately. Contaminated land is commonly associated with heavy industrial activities that involve hazardous substances. Former agricultural and reserve land is also often contaminated through the use of fertilizers and pesticides, particularly in areas used for storage and cleaning of equipment.
- (8) People can be exposed to contaminated land by direct contact with contaminated soil, swallowing food or water from contaminated environments and breathing vapours or contaminated dust. As well as endangering health, contamination can limit the use of land or cause corrosion that may threaten buildings and property.

### **The role of HCC and GWRC in managing contaminated land**

- (9) Under s31(1)(b)(iia) of the RMA, territorial authorities (such as Hutt City Council) have the following function for the purpose of giving effect to the Act:
- the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land.*
- (10) Historically, this function has been achieved through objectives, policies and rules in district plans that regulate land use, subdivision and development on sites that have been identified as contaminated or potentially contaminated. However, since 2012 district plan rules on contaminated land have largely been superceded by the regulations of the National Environmental Standard for Assessing and Managing Contaminants in Soil (NES-CS). Territorial authorities are now responsible for implementing these regulations.

- (11) In contrast, under s30(1)(ca) of the RMA, regional councils (such as Greater Wellington Regional Council) have the function of the investigation of land for the purposes of identifying and monitoring contaminated land.
- (12) To assist with identifying potentially contaminated land, the Ministry for the Environment has compiled a list of activities and industries commonly associated with contaminated land. This list is called the Hazardous Activities and Industries List (the HAIL). Greater Wellington Regional Council uses the HAIL to identify potentially contaminated sites, which it then registers on the Selected Land Use Register. Further investigation of an individual site is required to determine whether the site is contaminated.

## 3 Statutory and Policy Context

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- (13) The following sections discuss the national, regional and local policy framework that are particularly relevant to the statutory and policy context for Open Space and Recreation Zones for the District Plan Review.

### 3.1 Resource Management Act 1991

#### 3.1.1 Section 5 – Purpose and Principles

- (14) The purpose of the RMA is set out in Section 5. The purpose is to promote the sustainable management of natural and physical resources.
- (15) Under s5(2) of the Act, sustainable management means:

*managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*

- (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

#### 3.1.2 Section 6 – Matters of National Importance

- (16) Section 6 of the RMA sets out matters of national importance that all persons exercising functions and powers under the Act shall *recognise and provide for* in achieving the purpose of the RMA. However, no section 6 matters are relevant for the proposed Contaminated Land chapter.

### 3.1.3 Section 7 – Other Matters

- (17) Section 7 of the RMA sets out other matters that all persons exercising functions and powers under it shall *have particular regard to* in achieving the purpose of the RMA. The relevant s7 matters for the proposed Contaminated Land chapter are:

Section	Relevant Matter
7a	Kaitiakitanga.
7b	The efficient use and development of natural and physical resources.
7c	The maintenance and enhancement of amenity values.
7f	Maintenance and enhancement of the quality of the environment.

### 3.1.4 Section 8 – Treaty of Waitangi

- (18) Section 8 of the RMA requires Council to take into account the principles of the Treaty of Waitangi when exercising functions and powers under the Act.
- (19) Council has engaged with Mana Whenua of Lower Hutt as part of the District Plan Review, including with representatives of Taranaki Whānui ki te Upoko o te Ika (Port Nicholson Block Settlement Trust), Wellington Tenth's Trust, Palmerston North Māori Reserve Trust, Te Rūnanganui o Te Āti Awa ki Te Upoko o Te Ika a Māui Incorporated and Te Rūnanga o Toa Rangatira Incorporated.

### 3.1.5 Section 31 – Functions of territorial authorities under this Act

- (20) Section 31 of the RMA outlines functions of territorial authorities for the purpose of giving effect to the Act.



- (21) This includes the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land (s31(1)(b)(ia)).

## 3.2 National Policy Statements

- (22) Under section 75(a) of the RMA, the District Plan must give effect to any national policy statement.
- (23) No national policy statements are relevant for the proposed Contaminated Land chapter.

## 3.3 New Zealand Coastal Policy Statement

- (24) Under section 75(b) of the RMA, the District Plan must give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS).
- (25) The NZCPS sets out the objectives and policies in order to achieve the purpose of the RMA in relation to the coastal environment.
- (26) Policy 14(c)(x) of the NZCPS is relevant for contaminated land. It states:

*Promote restoration or rehabilitation of the natural character of the coastal environment, including by:*

- c) where practicable, imposing or reviewing restoration or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require restoration or rehabilitation, possible approaches include:*
- x. decommissioning or restoring historic landfill and other contaminated sites which are, or have the potential to, leach material into the coastal marine area.*

## 3.4 National environmental standards

- (27) National environmental standards provide a nationally consistent set of standards that manage a range of activities nationwide. A district plan can only be more lenient or stringent than a national environmental

standard where this is expressly specified in the national environmental standard.

- (28) The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 is relevant for the proposed Contaminated Land chapter.

### **3.4.1 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NES-CS)**

- (29) The NES-CS is a nationally consistent set of planning controls and soil contaminant values. It ensures that land affected by contaminants in soil is appropriately identified and assessed before it is developed, and if necessary, either the land is remediated or the contaminants are contained to make the land safe for human use.
- (30) The NES-CS does not provide for more lenient or stringent rules in district plans.
- (31) The NES-CS specifies activities that are permitted, subject to conditions being met. The following table lists the permitted activities and associated conditions. If the specified conditions for these activities would not be met, resource consent is required for the activity as either a controlled, restricted discretionary or discretionary activity.

<b>Reg 8(1) - Removing a fuel storage system from a piece of land or replacing a fuel storage system</b>
<p>a) The activity must be done in accordance with the current edition of Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand, Wellington, Ministry for the Environment.</p> <p>b) The territorial authority of the district where the system is located must be notified of:</p> <ul style="list-style-type: none"><li>i. The place where the activity is to be done,</li><li>ii. The dates on which it is intended that the activity begin and end, and</li></ul>

- iii. The facility at which it is intended that soil taken away in the course of the activity be disposed of.
- c) Notification under paragraph (b) must be done no sooner than 1 month and no later than 1 week before the activity begins.
- d) The volume of soil disturbed must be no more than 30m<sup>3</sup> for each tank in the system.
- e) The volume of soil taken away in the course of the activity must be no more than 30m<sup>3</sup> for each tank in the system.
- f) Soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind.
- g) The duration of the activity must be no longer than 2 months.
- h) The results of the investigation of the piece of land required by the guidelines described in paragraph (a) must be reported to the territorial authority within 3 months after the activity ends.

#### **Reg 8(2) - Sampling the soil of a piece of land**

- a) Controls to minimise the exposure of humans to mobilised contaminants must:
  - i. Be in place when the activity begins,
  - ii. Be effective while the activity is done, and
  - iii. Be effective until the soil is reinstated to an erosion-resistant state.
- b) The soil must be reinstated to an erosion-resistant state within 1 month after the end of the course of sampling for which the activity was done.
- c) Soil must not be taken away in the course of the activity except as samples taken for the purpose of laboratory analysis.
- d) The integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.

#### **Reg 8(3) - Disturbing the soil of a piece of land**

- a) Controls to minimise the exposure of humans to mobilised contaminants must:

- i. Be in place when the activity begins, and
  - ii. Be effective while the activity is done, and
  - iii. Be effective until the soil is reinstated to an erosion-resistant state.
- b) The soil must be reinstated to an erosion-resistant state within 1 month after the serving of the purpose for which the activity was done.
- c) The volume of the disturbance of the soil of the piece of land must be no more than 25m<sup>3</sup> per 500m<sup>2</sup>.
- d) Soil must not be taken away in the course of the activity, except that:
- i. For the purpose of laboratory analysis, any amount of soil may be taken away as samples, and
  - ii. For all other purposes combined, a maximum of 5m<sup>3</sup> per 500m<sup>2</sup> of soil may be taken away per year.
- e) Soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind.
- f) The duration of the activity must be no longer than 2 months.
- g) The integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.

#### **Reg 8(4) - Subdividing land or changing the use of the piece of land**

- a) A preliminary site investigation of the land or piece of land must exist.
- b) The report on the preliminary site investigation must state that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land.
- c) The report must be accompanied by a relevant site plan to which the report is referenced.
- d) The consent authority must have the report and the plan.

## **3.5 National Planning Standards**

- (32) Section 75(3)(ba) requires district plans to give effect to national planning standards.

- (33) Of particular relevance for the Contaminated Land chapter:
- Standard 4 (the District Plan Structure Standard) sets the overall structure for district plans. This structure includes a Hazards and Risks section, within Part 2 – District-Wide Matters.
  - Standard 7 (the District-Wide Matters Standard) requires that if provisions to manage contaminated land are addressed, they must be located in the Contaminated land chapter.
  - Standard 10 (the Format Standard) includes requirements for unique identifiers for chapters, sections and provisions. The unique identifier for the Contaminated Land chapter and related sections and provisions is CL.
  - Standard 14 (the Definitions Standard) specifies definitions to be included in district plans where specific terms are used. The Standard specifies that the terms contaminated land and hazardous substance have the same meaning as in section 2 of the RMA.

## 3.6 Regional Policy Statement for the Wellington Region

- (34) Under section 75(3)(c) of the RMA, the District Plan must give effect to the Regional Policy Statement for the Wellington Region (RPS). The RPS identifies the significant resource management issues for the region and outlines the policies and methods required to achieve the integrated sustainable management of the region's natural and physical resources.
- (35) The relevant objective and policy of the RPS for the proposed Contaminated Land chapter are Objective 30 and Policy 34. They state:

**Objective 30**

*Soils maintain those desirable physical, chemical and biological characteristics that enable them to retain their ecosystem function and range of uses.*

**Policy 34: Controlling activities on contaminated land – district plans**

*District plans shall include policies and rules that control activities on contaminated land so that those activities are not adversely affected by the contamination.*

### **3.6.1 Proposed RPS Change 1**

- (36) Section 74(2)(a)(i) of the RMA requires Council to have regard to any proposed regional policy statement when preparing its district plan.
- (37) Greater Wellington Regional Council proposed a change to the RPS in August 2022 (Proposed RPS Change 1). Proposed RPS Change 1 addresses a range of resource management issues, including the impacts of climate change, loss and degradation of indigenous biodiversity, degradation of freshwater, and urban development capacity.
- (38) No amendments of Proposed RPS Change 1 are relevant for the proposed Contaminated Land.

## **3.7 Natural Resources Plan for the Wellington Region**

- (39) Section 75(4)(b) of the RMA states that the District Plan must not be inconsistent with a regional plan for any matter specified in section 30(1) of the RMA, which relates to functions of regional councils under the Act. The Natural Resources Plan for the Wellington Region (NRP) is the only operative regional plan for the Wellington region.
- (40) There is the potential for inconsistency between a regional plan and district plan in relation to contaminated land, particularly with regard to earthworks (which are often regulated by both regional and district plans, although usually for different purposes) and the mobilisation of contaminants from land use and development on contaminated land.
- (41) The provisions of the NRP on contaminated land are summarised below

<b>Section</b>	<b>Relevant Matter</b>
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Objective O41	<i>The environment is protected from the adverse effects of discharges of hazardous substances and the creation of contaminated land is avoided.</i>
Objective O42	<i>Contaminated land is identified and the discharges of contaminants are managed to protect the environment.</i>
Policy P68	<i>The discharge of contaminants to land shall be managed to ...  (b) avoid creating contaminated land,</i>
Policy P99	<i>The discharge of hazardous substances from contaminated land is managed so that significant adverse effects on fresh water, including groundwater, coastal water, and air are avoided, remedied or mitigated to the extent practicable.</i>
Rule R71	Discharge of biosolids to land is a restricted discretionary activity subject to conditions. Condition (c) is that <i>the discharge shall not result in the creation of contaminated land.</i>
Rule R81	The use of land for detailed site investigation of contaminated land and any associated discharge to air is a permitted activity, subject to conditions on the methodology of the investigation and reporting of the outcome.
Rule R82	Discharge of contaminants from contaminated land where a contaminant may enter water is a permitted activity, subject to conditions on site investigations, impacts on human health or the environment, and impacts on water quality.
Rule R83	Rule R83 is a discretionary rule for activities that do not meet the permitted activity conditions of Rules R81 and R82.

Rule R91	Rule R91 permits <i>minor</i> discharges of contaminants, subject to a range of conditions, including that the discharge does not result in the creation of contaminated land (condition (c)(iii)). Where this condition is not met, the discharge would be a discretionary or non-complying activity under the catch-all rules for discharges (Rules R93 and R94).
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- (42) The NRP also includes a range of objectives, policies and rules that specifically address the discharge of contaminants, including discharges to land.
- (43) In addition, the NRP includes other objectives, policies and rules for earthworks, but there is no specific relevance of these for contaminated land.

### 3.7.1 Proposed NRP Change 1

- (44) The relevant objectives, policies and rules of proposed regional plans are discussed below: Under section 74(2) of the RMA, Hutt City Council is required to have regard to proposed regional plans in regard to any matter of regional significance or for which the regional council has primary responsibility (under Part 4 of the Act).
- (45) Greater Wellington Regional Council proposed a change to the Natural Resources Plan (Proposed NRP Change 1) in October 2023. As of the notification of the proposed District Plan, this proposed change represents the only proposed regional plan for the Wellington region, and is in the hearing phase of its plan change process. However, there are no proposed changes to provisions that relate to contaminated land (although some changes impact the Regional Council's regulation of the discharge of contaminants and earthworks more generally).

## 3.8 Iwi management plans

- (46) Section 74(2A) requires territorial authorities, when preparing or changing a district plan, to take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to



the extent that its content has a bearing on the resource management issues of the district.

- (47) However, no iwi management plans have been lodged with Hutt City Council.

### **3.9 Other plans, policies, and strategies**

- (48) In addition to statutory plans, policies and strategies, there are other planning documents of Council that, while not directly prepared under specific legislation, should be considered as part of the District Plan Review as they set Council's intentions on some matters that need to be addressed through the District Plan Review.

- (49) However, there are no plans, policies or strategies of relevance for the proposed Contaminated Land chapter.

### **3.10 District plans of adjacent territorial authorities**

- (50) Section 74(2)(c) of the RMA requires the Council to have regard to the extent to which the District Plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

- (51) Consistency with the approaches of the district plans of adjacent territorial authorities is not relevant for the Contaminated Land chapter as there are no cross boundary issues for contaminated land, and the regulation of subdivision, land use and development for contaminated land is predominantly achieved through the NES-CS (discussed above).

### **3.11 Other legislation or regulations**

- (52) In addition to the RMA, other legislation and regulations can be relevant considerations for a district plan, particularly where management of an issue is addressed through multiple pieces of legislation and regulatory bodies.

- (53) However, there are no other relevant pieces of legislation or regulations that are relevant for contaminated land.

# 4 Resource management issues

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## 4.1 Introduction to resource management issues

- (54) This section discusses the resource management issues for the proposed Contaminated Land chapter, and includes a summary of the evidence base that has informed the identification of resource management issues for the District Plan Review.
- (55) For the District Plan Review, the determination of resource management issues for rural zones, and the options for addressing those issues, has involved:
- A review of the statutory and strategic context for contaminated land (outlined in Section 3 of this report),
  - A review of the existing approach of the District Plan for contaminated land,
  - A review of the approaches of other district plans in the Wellington region, and
  - Engagement with Mana Whenua, the community and other stakeholders (including engagement on a draft District Plan).

## 4.2 Evidence base

### 4.2.1 Existing approach of City of Lower Hutt District Plan

- (56) The current District Plan does not include any objectives or policies that specifically address contaminated land.

- (57) In addition, the only rules in the District Plan that refer to contaminated land are the controlled activity rules for subdivision (Rules 11.2.2(a) to 11.2.2(t)). Subdivisions only meet these rules if they comply with the Ministry for the Environment's Contaminated Land Management Guidelines 1-5. If these guidelines are not met, subdivision is a restricted discretionary activity.
- (58) However, the NES-CS, which came into force in 2012, regulate land use, subdivision and development on contaminated land, and effectively supercede the subdivision provisions for contaminated land. The regulations of the NES-CS are summarised in Section 2.4 of this report.
- (59) While a council may choose to impose stricter or more lenient standards if a national environmental standards, the more strict/lenient rule only prevail if the standard specifically provides for more strict/lenient rules. In the case of the NES-CS, there are no provisions in the standards that provide for more strict/lenient rules.

## **4.2.2 Analysis of other district plans**

- (60) As part of the District Plan Review, Council has analysed the approach of other district plans in the Wellington region with regard to contaminated land.
- (61) The objectives of these plans on contaminated land are relatively consistent. They typically include a single, relatively straight forward objective that seeks to address the future land use, development and subdivision of contaminated and potentially contaminated land for the purpose of addressing risk to human health and the environment. Some of the objectives refer specifically to treatment and remediation of contaminated land.
- (62) The broad policy direction of these plans is relatively consistent, with direction on:
- Identification of contaminated and potentially contaminated land.
  - Addressing the risk of adverse effects on human health and the environment from land use, development and subdivision of contaminated land.

- Remediation and ongoing management of contaminated/potentially contaminated sites.

(63) With regard to rules, none of the plans that have been reviewed since the NES-CS came into effect include rules on land use, development and subdivision on contaminated or potentially contaminated land. Instead, all of the plans include a note in the plan that gives advice to plan users on the NES-CS.

### **4.2.3 Advice from Mana Whenua**

(64) During engagement with Mana Whenua for the District Plan Review and other projects (including the Whaitua Te Whanganui-a-Tara project, lead by Greater Wellington Regional Council) Mana Whenua have expressed a general concern with contamination of land the natural environment, particularly for surface waterbodies and the Waiwhetū Aquifer. This is part a concern with the ongoing legacy of contaminated land associated with historical heavy industry.

### **4.2.4 Stakeholder and community engagement**

(65) For the District Plan Review, Council has primarily engaged with the community and other stakeholders through two rounds of engagement:

- The *Shaping Your City* engagement (2020), on issues and options for the District Plan Review, and
- The *Draft District Plan* engagement (2023), on a full draft of the plan that had been developed through the District Plan Review.

(66) Little feedback was received on the draft Contaminated Land chapter, although there were requests for amendments to the draft objectives and policies, including:

- Amending CL-O1 to specifically refer to priority contaminant standards and land use exposure, rather than potentially contaminated land and intended use.
- Issues with referring to the Selected Land Use Register, with may have a name change in the future.

- Amending CL-PI to specifically refer to HAIL activities.
- Requests for a policy that would require landowners to provide environmental report of identified HAIL land to Greater Wellington Regional Council.

(67) Concerns were also raised with the potential contamination of land from new industrial activities.

### **4.3 Summary of issues analysis**

(68) Based on the statutory context, research, analysis, and consultation outlined above, the following issues have been identified with respect to contaminated land:

- Issue 1: Without appropriate remediation or management, the subdivision, use, and development of contaminated land can lead to adverse effects on the environment, including human health.
- Issue 2: Given the different functions of Hutt City Council, Greater Wellington Regional Council and central government for the management of land use and development of contaminated land, management of this land use and development is essential for effective and efficient management.
- Issue 3: Regulation of new land use and development of contaminated and potentially contaminated land is achieved through the NES-CS, effectively making rules in district plans for these activities redundant.

# 5 Scale and significance assessment

(69) In writing this evaluation report we must provide a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects anticipated from the implementation of the proposal.

(70) In assessing that scale and significance we have had regard to:

<b>Matters of national importance</b>	No matters of national importance (from s6 of the RMA) relate to contaminated land.
<b>Other matters</b>	Some of the more general other matters from s7 of the RMA are relevant for contaminated land, including kaitiakitanga, the efficient use and development of natural and physical resources, maintenance and enhancement of amenity values, and maintenance and enhancement of the quality of the environment.
<b>Degree of change from the operative plan</b>	There would be little change from the current approach for managing land use of contaminated and potentially contaminated land, given the application of the NES-CS.
<b>Geographic scale of effects</b>	Potentially contaminated land is widespread throughout Lower Hutt. It can often be present for industrial, commercial, rural and open space land,

	or locations with a history of these types of land uses.
<b>Number of people affected</b>	The provisions of a Contaminated Land chapter affect very few people, given that the regulation is primarily achieved through the NES-CS.
<b>Duration of effects</b>	The effects of land use and development of contaminated and potentially contaminated land are potentially long lasting, although this would vary greatly depending on the nature and scale of the contamination and the details of the land use and development.
<b>Economic impacts</b>	Enabling land use and development of contaminated and potentially contaminated land (albeit with a resource consent requirement) provides for economic opportunities, particularly in industrial areas.
<b>Social and cultural impacts</b>	Remediation of contaminated and potentially contaminated land can have a positive social and cultural impact. A change in use of contaminated and potentially contaminated land can also provide for facilities that contribute to amenity of an area.
<b>Environmental impacts</b>	Remediation of contaminated and potentially contaminated land can have a positive environmental impact. However, inappropriate use of contaminated and potentially contaminated land can have an adverse

	effect, particularly if contaminants are mobilised.
<b>Health and safety impacts</b>	Remediation of contaminated and potentially contaminated land can have a positive health impact. However, inappropriate use of contaminated and potentially contaminated land can have an adverse effect, particularly if contaminants are mobilised.
<b>Degree of interest from mana whenua</b>	Mana Whenua have expressed a general concern of the impact of contaminated land on the environment, particularly on waterbodies and the Waiwhetū Aquifer. This includes concerns on the impacts of sites with a history of heavy industrial activities.
<b>Degree of interest from the public</b>	There has been little interest in this topic from the public during engagement on the Draft District Plan.
<b>Degree of risk or uncertainty</b>	The degree of risk and uncertainty for this topic is low, given that the regulation of land use and development for contaminated and potentially contaminated land is effectively set by the NES-CS.

(71) The overall scale and significance of the effects of Contaminated Land part of the District Plan Review are **low**, predominantly due to the regulation of subdivision, land use and development being achieved through the NES-CS.



# 6 Proposed District Plan objectives and provisions

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(72) The sole objective of the proposed Contaminated Land chapter is:

**CL-O1: Safety of contaminated land**

*Contaminated and potentially contaminated land is safe for its intended use.*

(73) The objective is implemented through the following policies:

- **CL-P1: Identification of contaminated and potentially contaminated land,**

*Identify contaminated land and potentially contaminated land prior to subdivision, change of use, or development by:*

1. *Working with Greater Wellington Regional Council to maintain the Selected Land Use Register, and*
2. *Requiring the investigation of contaminant risks for sites with a history of land use or activity that could have resulted in contamination of soil.*

- **CL-P2: Management of contaminated land,**

*Minimise the risk to human health from the subdivision, change of use, removal or replacement of fuel storage systems, or sampling or disturbing soil of contaminated land by:*

1. *Encouraging a best practice approach to site management for sites with elevated contaminant levels, which may include remediation, containment, and/or the disposal of contaminated soil, and*
2. *Ensuring the land is safe for its intended use.*

- **CL-P3: Benefit of remediating contaminated land, and**

*Recognise the benefits of remediation and site management of contaminated and potentially contaminated land in enabling*

*development opportunities that can contribute to social, economic, and health benefits for people and communities.*

- (74) The objective and policies are implemented by the NES-CS (described in section 3.4.1 of this report and attached as Appendix 1), with no additional rules.
- (75) The objective and policies provide support for the application of the NES-CS and would assist in resource consent processes by making reference to integrated management, requirements for investigation of contamination risks, minimising risks, and the benefits of remediation.

# 7 Evaluation of objectives

- (76) This section is the evaluation of objectives, as required through s32(1)(a) of the RMA.
- (77) An objective is a statement of what is to be achieved through the resolution of a particular resource management issue. A district plan objective should set out a desired end state to be achieved through the implementation of policies and rules.
- (78) Under s75(1)(a) of the Resource Management Act, a district plan must state the objectives for the district.
- (79) Under s32(1)(a) of the Resource Management Act, an evaluation report required under the Act must examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA. The purpose of the RMA, as stated in s5(1) of the Act, is to promote the sustainable management of natural and physical resources.

<b>Evaluation of Objective</b>
<b>CL-O1: Safety of contaminated land</b>
<i>Contaminated and potentially contaminated land is safe for its intended use.</i>
<p><b>Relevance</b></p> <ul style="list-style-type: none"> <li>• Addresses the identified resource management issues.</li> <li>• Sets an objective for Council's function under s31(1)(b)(iia).</li> </ul> <p><b>Usefulness</b></p> <ul style="list-style-type: none"> <li>• Clearly states outcomes sought for Contaminated Land.</li> <li>• Provides guidance what Council is trying to achieve when considering resource consent applications under s104 of the RMA.</li> </ul> <p><b>Reasonableness</b></p> <ul style="list-style-type: none"> <li>• The objective do not create unjustifiably high costs.</li> <li>• Is consistent with outcomes sought in other district plans in the Wellington region.</li> </ul> <p><b>Achievability</b></p>

- Can be achieved without imposing a significant regulatory burden on people undertaking land use and development under the District Plan (although the NES-CS have a greater influence on this).
- The proposed objectives are achievable within Council's powers, skills and resources by implementing the associated policies and NES-CS.

#### **Alternatives**

- **No objective (the status quo)**

The alternative to the recommended objective is to not include an objective for contaminated and potentially contaminated land. This is effectively the existing approach of the operative District Plan.

While Council could continue to undertake its functions under the RMA without a specific objective, given the relevant regulations are set by the NES-CS regardless of what objectives are set by the District Plan, an objective is still useful in providing context to plan users on the outcome to be achieved in the management of land use and development of contaminated and potentially contaminated land.

#### **Summary**

CL-O1 sets a clear outcome for contaminated and potentially contaminated land under the District Plan that is relevant, useful, reasonable and achievable, particularly given the identified resource management issues and the Council's role in the integrated management of contaminated/potentially contaminated land.

## 8 Evaluation of policies, rules and other methods

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- (80) Policies and rules implement, or give effect to, the objectives of a plan.
- (81) Policies of a district plan are the course of action to achieve or implement the plan's objective (i.e. the path to be followed to achieve a certain, specified, environmental outcome). Rules of a district plan implement the plan's policies, and have the force and effect of a regulation.
- (82) Under s32(1)(b) of the Resource Management Act, an evaluation report required under the Act must examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
- (i) *identifying other reasonably practicable options for achieving the objectives; and*
  - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
  - (iii) *summarising the reasons for deciding on the provisions.*
- (83) Under s32(2) of the Resource Management Act, the assessment of the efficiency and effectiveness of the provisions must:
- (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
    - (i) *economic growth that are anticipated to be provided or reduced; and*
    - (ii) *employment that are anticipated to be provided or reduced; and*
  - (b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*

(c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

### **Quantification of benefits and costs**

- (84) Under Section 32(2)(b), the benefits and costs assessed should be quantified if practicable.
- (85) Quantification of the benefits and costs it is not practicable in relation to this topic as there is a wide range of land use and development that may occur on contaminated and potentially contaminated land, and the benefits and costs for the different land uses and development would vary greatly.

### **Risk of acting / not acting if information is uncertain or insufficient**

- (86) Under Section 32(2)(c) the assessment of efficiency and effectiveness of provisions must include an assessment of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- (87) There is some uncertain information regarding potentially contaminated land. While a lot of this has been identified through GWRC's Selected Land Use Register, it is likely that there are sites where activities on the Hazardous Activities and industries List have occurred in the past, and as such, have potentially contaminated land.
- (88) However, the risk of not acting is relatively low given the NES-CS ensure regulation of land use and development of contaminated and potentially contaminated.

**CL-P1: Identification of contaminated and potentially contaminated land**

**CL-P2: Management of contaminated land**

**CL-P3: Benefit of remediating contaminated land**

**No rules**

**Why these provisions are included in the proposed District Plan**

These policies collectively implement the proposed objective and provide context to plan users for the implementation of the NES-CS.

Policy CL-PI provides useful context to plan users on integrated management of contaminated and potentially contaminated land by outlining how the functions undertaken by Hutt City Council integrate with the role of the Greater Wellington Regional Council. This is supported by additional information provided in the introduction of the chapter.

No rules are proposed as the NES-CS do not enable rules that are more lenient or stringent than the NES-CS to have effect.

### **Efficiency and effectiveness**

#### **Environmental effects**

It is anticipated that the identification of potentially contaminated land and the management and remediation directed by the proposed policies and the NES-CS would result in positive environmental effects, by ensuring that there is no increase in risk to human health associated with land use, subdivision and development. While management of water quality is a function of regional councils, remediation of potentially contaminated land could have a positive effect on water quality by reducing the risk of contamination of stormwater runoff and groundwater.

#### **Economic effects**

In some situations, requiring property owners to identify potentially contaminated land and manage the risks to human health and the environment from the potentially contaminated land (including remediation), as the property owner will incur a cost associated with identifying/assessing whether the land is potentially contaminated, as well as the cost associated with managing the risk to human health and the environment. The scale of the cost will vary from site to site, depending on site size, type of potential contamination, history of use, current use, and proposed use.

Identifying a site as potentially contaminated may also have an effect on the value of the property.

Constraints on changes of use, subdivision and development of land may have an adverse effect on the economic potential for the site, and may also affect the ability of the site to provide for employment.

#### **Social effects**

No social effects are anticipated from the implementation of the proposed policies and the NES-CS.

#### **Cultural effects**

No cultural effects are anticipated from the implementation of the proposed policies and the NES-CS.

#### **Overall assessment**

Effectiveness is high as the provisions provide for the management of new land use and development of contaminated and potentially contaminated land, noting that

this is largely achieved through the application of the NES-CS, which cannot be influenced by the District Plan Review.

Efficiency is high given the clarity provided by policies on how CL-O1 would be achieved (noting that the chapter cannot improve efficient through rules, given the application of the NES-CS).

### **Reasonably practicable alternative**

#### **Alternative option 1: No policies or rules**

This alternative approach would effectively be the same as the proposed approach, except there would be no policies on contaminated land. This is effectively the current approach of the District Plan.

For the most part, the effectiveness and efficiency of this options would be the same as that of the approach that is proposed for the District Plan. This is due to both this option and the proposed approached addressing contaminated land by implementing the NES-CS.

However, under this option, the District Plan would not give any direction to plan users, including decision makers, when they considering proposals associated with contaminated land. This could lead to uncertainty for plan users. As a result, this option is less effective than the proposed approach for the District Plan.

Overall, this option would be similar to the proposed approach for the District Plan. However, as this option would lack any policy direction, it is not as appropriate as the proposed approach.

#### **Alternative option 2: Additional policies and methods on a non-regulatory approach**

This alternative approach would be the same as the proposed approach, except there would be an additional non-regulatory method (expressed through an additional policy) for council to proactively identify potentially contaminated land and to work with property owners to address the risk associated with the contamination.

For the most part, the effectiveness and efficiency of this options would be the same as that of the approach that is proposed for the District Plan. This is due to both this option and the proposed approached addressing contaminated land by implementing the NES-CS. However, this alternative is not recommended as it is preferable for council to set its policies on non-regulatory methods through strategies outside the District Plan that are more flexible and more easily updated to respond to council's commitments for non-regulatory methods, which can be adjusted by funding decisions made through Council's Long Term Plan.



## 9 Summary

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(89) This evaluation has been undertaken in accordance with section 32 of the RMA in order to identify the need, benefits and costs and the appropriateness of the proposal having regard to its effectiveness and efficiency relative to other means in achieving the purpose of the RMA. The evaluation demonstrates that this proposal is the most appropriate option as it:

- Sets objective and policies to respond to the identified resource management issues and the Council's function for contaminated land under s31(1)(b)(iia) of the RMA,
- The objective and policies provide useful context and direction for the application of the NES-CS, and
- The proposed Contaminated Land chapter provides for integrated management (particularly with management undertaken by Greater Wellington Regional Council) without duplication of regulation set by the Natural Resources Plan for the Wellington Region and the NES-CS.

# 10 Attachments

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Attachment 1: National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011

FINAL DRAFT



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

Jerry Mateparae, Governor-General

## **Order in Council**

At Wellington this 10th day of October 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 43 of the Resource Management Act 1991, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister for the Environment given in accordance with section 44 of the Act, makes the following regulations.

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**Resource Management (National  
Environmental Standard for Assessing and  
Managing Contaminants in Soil to Protect  
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## Regulations

### 1 Title

These regulations are the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

### 2 Commencement

These regulations come into force on 1 January 2012.

### 3 Interpretation

In these regulations,—

**Act** means the Resource Management Act 1991

**current edition** means the edition that has legal effect when the edition is being used

**detailed site investigation** means an investigation that—

- (a) is done by a suitably qualified and experienced practitioner; and
- (b) is done in accordance with the current edition of *Contaminated Land Management Guidelines No. 5—Site Investigation and Analysis of Soils*, Wellington, Ministry for the Environment; and
- (c) is reported on in accordance with the current edition of *Contaminated Land Management Guidelines No. 1—Reporting on Contaminated Sites in New Zealand*, Wellington, Ministry for the Environment; and
- (d) results in a report that is certified by the practitioner

**fuel storage system** means a system in which at least 1 of the following is underground:

- (a) a storage tank for aviation kerosene, diesel, kerosene, lubricating oil, or petroleum:

- (b) the whole of the tank's ancillary equipment:
- (c) part of the tank's ancillary equipment

**HAIL** means the current edition of the *Hazardous Activities and Industries List*, Wellington, Ministry for the Environment

**person** means the person referred to in regulation 5(1)(a)

**preliminary site investigation** means an investigation that—

- (a) is done by a suitably qualified and experienced practitioner; and
- (b) is reported on in accordance with the current edition of *Contaminated Land Management Guidelines No. 1—Reporting on Contaminated Sites in New Zealand*, Wellington, Ministry for the Environment; and
- (c) results in a report that is certified by the practitioner.

#### **4 Relationship of regulations with territorial authority and regional council functions**

These regulations—

- (a) deal with territorial authority functions under section 31 of the Act:
- (b) do not deal with regional council functions under section 30 of the Act.

#### **5 Application**

(1) These regulations—

- (a) apply when a person wants to do an activity described in any of subclauses (2) to (6) on a piece of land described in subclause (7) or (8):
- (b) do not apply when a person wants to do an activity described in any of subclauses (2) to (6) on a piece of land described in subclause (9).

*Activities*

(2) An activity is removing a fuel storage system from the piece of land or replacing a fuel storage system in or on the piece of land, which means—

- (a) doing any of the following:
  - (i) removing or replacing the whole system:
  - (ii) removing or replacing an underground part of the system:

- (iii) taking away or putting back soil associated with the removal or replacement of the system or the part:
  - (b) doing any of the following for purposes associated with removing or replacing the whole system or part of the system:
    - (i) sampling the soil of the piece of land:
    - (ii) investigating the piece of land:
    - (iii) remediating the piece of land:
    - (iv) validating the piece of land:
    - (v) managing the piece of land.
- (3) An activity is sampling the soil of the piece of land, which means sampling it to determine whether or not it is contaminated and, if it is, the amount and kind of contamination.
- (4) An activity is disturbing the soil of the piece of land, which—
  - (a) means disturbing the soil of the piece of land for a particular purpose:
  - (b) does not include disturbing the soil of the piece of land, whatever the purpose, if the land is land to which regulation 33(9) or 36 of the Resource Management (National Environmental Standard for Electricity Transmission Activities) Regulations 2009 applies.
- (5) An activity is subdividing land, which means subdividing land—
  - (a) that has boundaries that are identical with the boundaries of the piece of land; or
  - (b) that has all the piece of land within its boundaries; or
  - (c) that has part of the piece of land within its boundaries.
- (6) 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.

*Land covered*

- (7) The piece of land is a piece of land that is described by 1 of the following:
  - (a) an activity or industry described in the *HAIL* is being undertaken on it:
  - (b) an activity or industry described in the *HAIL* has been undertaken on it:

- (c) it is more likely than not that an activity or industry described in the *HAIL* is being or has been undertaken on it.
- (8) If a piece of land described in subclause (7) is production land, these regulations apply if the person wants to—
  - (a) remove a fuel storage system from the piece of land or replace a fuel storage system in or on the piece of land:
  - (b) sample or disturb—
    - (i) soil under existing residential buildings on the piece of land:
    - (ii) soil used for the farmhouse garden or other residential purposes in the immediate vicinity of existing residential buildings:
    - (iii) soil that would be under proposed residential buildings on the piece of land:
    - (iv) soil that would be used for the farmhouse garden or other residential purposes in the immediate vicinity of proposed residential buildings:
  - (c) subdivide land in a way that causes the piece of land to stop being production land:
  - (d) change the use of the piece of land in a way that causes the piece of land to stop being production land.

*Land not covered*

- (9) These regulations do not apply to a piece of land described in subclause (7) or (8) about which a detailed site investigation exists that demonstrates that any contaminants in or on the piece of land are at, or below, background concentrations.

**6 Methods**

- (1) Subclauses (2) and (3) prescribe the only 2 methods that the person may use for establishing whether or not a piece of land is as described in regulation 5(7).
- (2) One method is by using information that is the most up-to-date information about the area where the piece of land is located that the territorial authority—
  - (a) holds on its dangerous goods files, property files, or resource consent database or relevant registers; or
  - (b) has available to it from the regional council.

- (3) The other method is by relying on the report of a preliminary site investigation—
  - (a) stating that an activity or industry described in the *HAIL* is, or is not, being undertaken on the piece of land; or
  - (b) stating that an activity or industry described in the *HAIL* has, or has not, been undertaken on the piece of land; or
  - (c) stating the likelihood of an activity or industry described in the *HAIL* being undertaken, or having been undertaken, on the piece of land.
- (4) The person must—
  - (a) choose which of the 2 methods to use; and
  - (b) meet all the costs involved in using the method that the person has chosen.

## 7 Standards

- (1) In this regulation,—

**land use** means—

  - (a) the current use, if the activity the person wants to do is—
    - (i) to remove a fuel storage system from the piece of land or replace a fuel storage system in or on the piece of land;
    - (ii) to sample the soil of the piece of land;
    - (iii) to disturb the soil of the piece of land;
  - (b) the intended use, if the activity the person wants to do is—
    - (i) to subdivide land;
    - (ii) to change the use of the piece of land

**Methodology** means the current edition of the *Methodology for Deriving Standards for Contaminants in Soil to Protect Human Health*, Wellington, Ministry for the Environment

**priority contaminant** means a contaminant for which the *Methodology* derives a soil contaminant standard.

- (2) If the contaminant of concern is a priority contaminant and the land use fits within an exposure scenario adopted in the *Methodology*, the applicable standard is the soil contaminant standard for the priority contaminant.



- (3) If the contaminant of concern is a priority contaminant and the land use does not fit within an exposure scenario adopted in the *Methodology*, the applicable standard is whichever of the following is more appropriate in the circumstances:
  - (a) the guideline value derived in accordance with the methods and guidance on site-specific risk assessment provided in the *Methodology*;
  - (b) the soil contaminant standard for the priority contaminant of the exposure scenario adopted in the *Methodology* with greater assumed exposure than the actual exposure.
- (4) If the contaminant of concern is not a priority contaminant, the applicable standard is whichever of the following is more appropriate in the circumstances:
  - (a) the guideline value derived in accordance with the methods and guidance on site-specific risk assessment provided in the *Methodology*;
  - (b) a guideline value for the protection of human health that is chosen in accordance with the current edition of *Contaminated Land Management Guidelines No. 2—Hierarchy and Application in New Zealand of Environmental Guideline Values*, Wellington, Ministry for the Environment.

## 8 Permitted activities

### *Removing or replacing fuel storage system*

- (1) Removing or replacing a fuel storage system is a permitted activity while the following requirements are met:
  - (a) the activity must be done in accordance with the current edition of *Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand*, Wellington, Ministry for the Environment;
  - (b) the territorial authority of the district where the system is located must be notified of—
    - (i) the place where the activity is to be done;
    - (ii) the dates on which it is intended that the activity begin and end;
    - (iii) the facility at which it is intended that soil taken away in the course of the activity be disposed of:

- (c) notification under paragraph (b) must be done no sooner than 1 month and no later than 1 week before the activity begins:
- (d) the volume of soil disturbed must be no more than 30 m<sup>3</sup> for each tank in the system:
- (e) the volume of soil taken away in the course of the activity must be no more than 30 m<sup>3</sup> for each tank in the system:
- (f) soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind:
- (g) the duration of the activity must be no longer than 2 months:
- (h) the results of the investigation of the piece of land required by the guidelines described in paragraph (a) must be reported to the territorial authority within 3 months after the activity ends.

*Sampling soil*

- (2) Sampling the soil of the piece of land is a permitted activity while the following requirements are met:
  - (a) controls to minimise the exposure of humans to mobilised contaminants must—
    - (i) be in place when the activity begins:
    - (ii) be effective while the activity is done:
    - (iii) be effective until the soil is reinstated to an erosion-resistant state:
  - (b) the soil must be reinstated to an erosion-resistant state within 1 month after the end of the course of sampling for which the activity was done:
  - (c) soil must not be taken away in the course of the activity except as samples taken for the purpose of laboratory analysis:
  - (d) the integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.

*Disturbing soil*

- (3) Disturbing the soil of the piece of land is a permitted activity while the following requirements are met:

- (a) controls to minimise the exposure of humans to mobilised contaminants must—
  - (i) be in place when the activity begins:
  - (ii) be effective while the activity is done:
  - (iii) be effective until the soil is reinstated to an erosion-resistant state:
- (b) the soil must be reinstated to an erosion-resistant state within 1 month after the serving of the purpose for which the activity was done:
- (c) the volume of the disturbance of the soil of the piece of land must be no more than 25 m<sup>3</sup> per 500 m<sup>2</sup>:
- (d) soil must not be taken away in the course of the activity, except that,—
  - (i) for the purpose of laboratory analysis, any amount of soil may be taken away as samples:
  - (ii) for all other purposes combined, a maximum of 5 m<sup>3</sup> per 500 m<sup>2</sup> of soil may be taken away per year:
- (e) soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind:
- (f) the duration of the activity must be no longer than 2 months:
- (g) the integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.

*Subdividing or changing use*

- (4) Subdividing land or changing the use of the piece of land is a permitted activity while the following requirements are met:
  - (a) a preliminary site investigation of the land or piece of land must exist:
  - (b) the report on the preliminary site investigation must state that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land:
  - (c) the report must be accompanied by a relevant site plan to which the report is referenced:
  - (d) the consent authority must have the report and the plan.

*Consequence if requirement not met*

- (5) If a requirement described in any of subclauses (1) to (3) is not met, the activity is a controlled activity under regulation 9 while it meets the requirements in regulation 9(1).
- (6) If a requirement described in subclause (4) is not met, the activity is a controlled activity under regulation 9 while it meets the requirements in regulation 9(3).

**9 Controlled activities**

*Removing or replacing fuel storage system, sampling soil,  
or disturbing soil*

- (1) If a requirement described in any of regulation 8(1) to (3) is not met, the activity is a controlled activity while the following requirements are met:
  - (a) a detailed site investigation of the piece of land must exist:
  - (b) the report on the detailed site investigation must state that the soil contamination does not exceed the applicable standard in regulation 7:
  - (c) the consent authority must have the report:
  - (d) conditions arising from the application of subclause (2), if there are any, must be complied with.
- (2) The matters over which control is reserved are as follows:
  - (a) the adequacy of the detailed site investigation, including—
    - (i) site sampling:
    - (ii) laboratory analysis:
    - (iii) risk assessment:
  - (b) how the activity must be—
    - (i) managed, which may include the requirement of a site management plan:
    - (ii) monitored:
    - (iii) reported on:
  - (c) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity:
  - (d) the timing and nature of the review of the conditions in the resource consent:
  - (e) the duration of the resource consent.

*Subdividing or changing use*

- (3) If a requirement described in regulation 8(4) is not met, the activity is a controlled activity while the following requirements are met:
- (a) a detailed site investigation of the piece of land must exist;
  - (b) the report on the detailed site investigation must state that the soil contamination does not exceed the applicable standard in regulation 7;
  - (c) the consent authority must have the report;
  - (d) conditions arising from the application of subclause (4), if there are any, must be complied with.
- (4) The matter over which control is reserved is the adequacy of the detailed site investigation, including—
- (a) site sampling;
  - (b) laboratory analysis;
  - (c) risk assessment.

*No public notification of application for resource consent*

- (5) The consent authority must not give public notification of an application for a resource consent to do any of the activities.

*Consequence if requirement not met*

- (6) If a requirement described in this regulation is not met, the activity is a restricted discretionary activity under regulation 10 while it meets the requirements in regulation 10(2).

**10 Restricted discretionary activities**

- (1) This regulation applies to an activity described in any of regulation 5(2) to (6) on a piece of land described in regulation 5(7) or (8) that is not a permitted activity or a controlled activity.
- (2) The activity is a restricted discretionary activity while the following requirements are met:
- (a) a detailed site investigation of the piece of land must exist;
  - (b) the report on the detailed site investigation must state that the soil contamination exceeds the applicable standard in regulation 7;
  - (c) the consent authority must have the report:

- (d) conditions arising from the application of subclause (3), if there are any, must be complied with.
- (3) The matters over which discretion is restricted are as follows:
  - (a) the adequacy of the detailed site investigation, including—
    - (i) site sampling:
    - (ii) laboratory analysis:
    - (iii) risk assessment:
  - (b) the suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination:
  - (c) the approach to the remediation or ongoing management of the piece of land, including—
    - (i) the remediation or management methods to address the risk posed by the contaminants to human health:
    - (ii) the timing of the remediation:
    - (iii) the standard of the remediation on completion:
    - (iv) the mitigation methods to address the risk posed by the contaminants to human health:
    - (v) the mitigation measures for the piece of land, including the frequency and location of monitoring of specified contaminants:
  - (d) the adequacy of the site management plan or the site validation report or both, as applicable:
  - (e) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity:
  - (f) the requirement for and conditions of a financial bond:
  - (g) the timing and nature of the review of the conditions in the resource consent:
  - (h) the duration of the resource consent.

*Consequence if requirement not met*

- (4) If a requirement described in this regulation is not met, the activity is a discretionary activity under regulation 11.

**11 Discretionary activities**

- (1) This regulation applies to an activity described in any of regulation 5(2) to (6) on a piece of land described in regulation 5(7) or (8) that is not a permitted activity, controlled activity, or restricted discretionary activity.

- (2) The activity is a discretionary activity.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations provide a national environmental standard for activities on pieces of land whose soil may be contaminated in such a way as to be a risk to human health. The activities are removing or replacing a fuel storage system, sampling the soil, disturbing the soil, subdividing land, and changing the use of the piece of land. The activities are classed as permitted activities, controlled activities, restricted discretionary activities, or discretionary activities.

The current editions of documents incorporated by reference are available on the Ministry for the Environment's website.

The regulations come into force on 1 January 2012.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 13 October 2011.

These regulations are administered by the Ministry for the Environment.

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