
REPORT 3
(1215/52/IM)

PROPOSED DISTRICT PLAN CHANGE 69 – CONTAMINATED LAND

1. Purpose of Report

The purpose of this report is to recommend to the Committee a proposed district plan change to the existing contaminated sites provisions. The proposed plan change is a complete review of contaminated sites provisions and affects the whole District Plan. The proposed plan change proposes a more flexible regime for managing contaminated land.

2. Executive Summary

Proposed District Plan Change 69: Contaminated Land has been drafted to replace existing contaminated site provisions in the District Plan. The proposed plan change includes a complete review of all the contaminated site objectives, policies and rules in the District Plan. The new rules apply in the same way in all Areas (zones) of the City, with the exception of the Airport Precinct. For this reason the contaminated sites provisions have been removed from the area-based chapters and consolidated into a single issue based chapter, titled Contaminated Land.

The proposed plan change:

- introduces a stand alone Contaminated Land chapter that includes specific objectives, policies and rules and cross-referencing the new stand alone chapter in amended objectives, policies and rules within each Plan Chapter;
- amends existing and introduces new definitions to reflect the 2005 amendments to the Resource Management Act 1991;
- includes a permitted activity rule for site investigations of listed contaminated land and land that was potentially contaminated due to historic practices and activities identified in the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) so that the presence and nature and extent of contamination could be determined;

- includes a permitted activity rule to allow for the use, redevelopment and subdivision of any potentially contaminated land that had been confirmed as not being contaminated following initial site investigations; and
- provides discretionary (restricted) activity status to the remediation, use, redevelopment and subdivision of contaminated and potentially contaminated land.

The proposed plan change will need to be considered in relation to other proposed plan changes that have not completed all their statutory processes under the Resource Management Act. It is recommended that the Portfolio Leader for Urban Development and Transport be given the authority to approve and sign off proposed plan variations (i.e. changes to plan changes) closer to the date of notification of the contaminated land plan change. This will enable minor amendments to be made to bring current plan changes into the new contaminated land approach in Proposed Plan Change 69. This was the approach with the recent Earthworks plan change.

3. Recommendations

It is recommended that the Committee:

1. *Receives the information.*

Plan Changes

2. *Agrees to notify Proposed Plan Change 69 (attached as Appendix One of this report), in accordance with the First Schedule of the Resource Management Act 1991, to be publicly notified on 1 November 2008.*
3. *Agrees to adopt the Section 32 Report for Proposed District Plan Change 69 (attached as Appendix Two of this report).*
4. *Delegates to the Portfolio Leader for Urban Development and Transport, the authority to approve minor editorial changes to Proposed District Plan Change 69, minor changes as necessary to align the proposed change with other proposed plan changes that become operative before 1 November 2008 and the authority to sign off the final plan change documentation prior to public notification.*

Variations

5. *Directs officers to prepare proposed plan variations, as necessary before 1 November 2008, to align relevant provisions (that have not completed their statutory processes under the Act) with Proposed District Plan Change 69.*
6. *Delegates to the Portfolio Leader for Urban Development and Transport, the authority to approve and notify variations to proposed district plan changes, as necessary to align these plan changes with*

Proposed District Plan Change 69; and to sign off the final plan variation documentation prior to notification.

7. *Delegates to the Portfolio Leader for Urban Development and Transport, the authority to approve and sign off minor amendments to the Section 32 Report for Proposed District Plan Change 69 and aligned variations to district plan changes.*
8. *Note that if Environment Court appeals are made in respect of Proposed District Plan Change 69 it is estimated that the costs of defending the Council's position could be in the order of \$10,000-\$50,000.*

4. Background

There are a number of reasons why it is appropriate to actively manage the remediation, use, redevelopment and subdivision of contaminated land and land that may have been potentially contaminated due to past practices and land uses:

- People, animals and the environment can be exposed to hazardous substances on contaminated land in a number of ways, including: direct contact with contaminated soil, swallowing food or water from contaminated environments and breathing vapours or contaminated dust;
- Exposure to hazardous substances can have significant adverse effects on human health and on soil, surface water, groundwater and ecosystems. As well as endangering health, these substances can limit the use of land, cause corrosion that may be threaten building structures, and reduce land value; and
- Contamination is not always limited to a specific site. Hazardous substances may seep through the soil into groundwater, or be carried to nearby land and waterways in rainwater or on dust particles. Vapour and gases from contaminated land may present additional risks of explosion and odour.

Currently, the following chapters of the District Plan contain objectives, policies and rules to manage the use (including activities and buildings) of contaminated sites:

- Residential Area
- Suburban Centre
- Institutional Precincts
- Airport/Golf Course Precinct (policy and rule included in Plan Change 57)
- Central Area (amendments proposed in Plan Change 48)
- Rural Area

The Open Space and Conservation Sites zones do not contain any provisions relating to contaminated sites. The plan provisions apply to sites that are listed as being contaminated on Wellington Regional Council's Selected Land Use Register.

The need for the plan change was identified by concerns raised both internally and externally on the application of the current District Plan provisions and to reflect 2005 amendments to the Resource Management Act 1991 and new Ministry for the Environment guidance documents on managing contaminated land.

Particular matters identified were:

- the requirement for unnecessary resource consents under current plan provisions;
- the unnecessarily restrictive status of resource consents for contaminated sites; and
- the need to manage land that is not listed on the Wellington Regional Council's Selected Land Use Register, but may be potentially contaminated through historic land practices.

5. Discussion

5.1 Reasons for the Plan Change

There were five key reasons for preparing Proposed Plan Change 69. These are discussed in sections 5.1.1 to 5.1.5 below.

5.1.1 The current discretionary activity (unrestricted) status for any works on contaminated sites.

This status means that an application for a discretionary (restricted) activity or controlled activity requires assessment as a discretionary (unrestricted) activity if the site is also contaminated. This can mean that an application requires consideration for a much wider range of matters that would not otherwise have been considered and may open the door for notification. The Council has applied a similar activity status for contaminated sites in more recent plan changes that reflect that the Council is now more comfortable specifying matters that it can exercise its discretion over.

5.1.2 The definition of contaminated sites, and the link to Wellington Regional Council's Register of Contaminated Sites.

The current plan definition implies that actual site assessments have been carried out for all sites that are listed on the Regional Council's Selected Land User Register. The Register is largely based on historical information of former site uses. Unless a recent site investigation has been carried out, the Register will not necessarily contain accurate information about the nature (type and extent) of the contaminants, if any, on site. The Register is known to be an incomplete list of land that is contaminated within Wellington City and does not identify all sites that may be subject to contamination. Many sites are not identified as being contaminated until redevelopment occurs. This can lead to potentially significant adverse effects on human health and safety and the wider environment if contamination is present.

5.1.3 The need for a resource consent to undertake any site investigations to determine the level of contamination

In most cases, in order to investigate whether a site is still contaminated (and therefore whether or not the rule should apply), it may be necessary to demolish or remove some structures on the site and carry out minor soil investigations. However, under the current plan provisions, demolition, removal and any minor soil investigations would be considered a 'use/activity' of the site and so requires a resource consent given the current wording of the rule. If an applicant were trying to carrying out site investigations to prove that the site was not contaminated they are prevented from doing so.

In the normal course of events, the demolition and removal of structures and minor earthworks that might be required for soil investigations are permitted activities. Plan users have suggested that should the register-approach remain, that reasonable on-site investigations should be provided for as a permitted activity to either confirm or deny land contamination. If the land is contaminated, then the site investigations will inform the resource consent assessment process.

5.1.4 The use of the term "site" rather than "land", particularly when dealing with larger sites where the entire site is not or may not be contaminated.

The current definition of site in the Plan means that very large sites in areas (such as the port) will trigger the current rule every time works are proposed on the site, even though the particular area where the work is occurring may not be contaminated. Coupled with the activity status as discretionary (unrestricted), this opens up the matters to be considered and the potential for notification.

5.1.5 Recent amendments to the Resource Management Act 1991 and the introduction of new guidelines of managing Contaminated Land

The Resource Management Amendment Act 2005 included specific amendments relating to contaminated land. These amendments were specifically focussed on clarifying the different roles and responsibilities of regional councils and territorial authorities and to introduce a definition of contaminated land. Since the District Plan became operative in 2000, the Ministry for the Environment have released a series of Contaminated Land Management Guidelines whose main purpose is to introduce consistency in contaminated land assessment and management throughout the country. The proposed plan change seeks to bring the current provisions into line with the amendments to the Resource Management Act 1991 and to reflect the new guidelines.

5.2 Overview of the Proposed Plan Change

It is considered, given the issues associated with managing contaminated land, that the proposed objective, policies and rules will work better as a stand-alone chapter applying to all Areas of the City (Residential, Suburban Centres, Rural, Institutional Precincts etc), except for the Airport Precinct.

The proposed plan change attached as Appendix 1 does the following:

- introduces a stand alone Contaminated Land chapter that includes specific objectives, policies and rules and cross-referencing the new stand alone chapter in amended objectives, policies and rules within each Plan Chapter;
- amends existing and introduces new definitions to reflect the 2005 amendments to the Resource Management Act 1991;
- includes a permitted activity rule for site investigations of listed contaminated land and land that was potentially contaminated due to historic practices and activities identified in the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) so that the presence and nature and extent of contamination could be determined;
- Includes a permitted activity rule to allow for the use, redevelopment and subdivision of any potentially contaminated land that had been confirmed as not being contaminated following initial site investigations; and
- Provides discretionary (restricted) activity status to the remediation, use, redevelopment and subdivision of contaminated and potentially contaminated land.

No changes are proposed to the current controlled activity status for contaminated sites in Proposed Plan Change 57 (Airport and Golf Course Recreation Precinct), given the specific nature of the provisions relating to the airport land and the recent nature of that plan change. However, it will be necessary to amend the relevant assessment criteria to bring that plan change into line with the proposed plan change for contaminated land.

Non-notification of applications

It is proposed that all resource consent applications for the use, redevelopment and subdivision of contaminated land be assessed on a non-notified basis without the need for the application to be publicly notified, or notice being served on people who may be affected in some way, although this does not preclude the notification of an application with significant adverse effects.

The assessment of resource consent applications involving contaminated and potentially contaminated land involves highly technical issues that need to be analysed by appropriate experts.

The introduction of the requirement for resource consents for the use, redevelopment and subdivision of potentially contaminated land means there may be an increase in the number of resource consents to be processed, which will have some resource implications. The notification or limited notification of applications would also add significantly to the cost and processing time of applications.

5.3 Consultation

Consultation was undertaken with the following parties in researching and preparing the proposed plan change:

- The Ministry for the Environment
- Greater Wellington Regional Council
- The Tenths Trust
- Hill Young Cooper (authors of the Ministry for the Environment's draft Good Practice Guide for Contaminated Land)
- Representatives from oil companies
- Wellington City Council staff

Notification of the proposed plan change provides an opportunity for public participation through the formal submission and appeal process.

5.4 Plan changes and plan variations

The proposed contaminated land rules are drafted as a district plan change to the Operative District Plan. The Council has a number of proposed district plan changes that have been publicly notified but have not completed their statutory processes under the Act, to become operative. They have interrelationships with the contaminated land plan change and it is important that the wording of all the changes is consistent. To achieve this it will be necessary to vary some of the plan changes that have already been notified. This requires proposed district plan variations, which must be publicly notified in the same way as the plan change that it varies.

Three existing plan changes are affected by the proposed contaminated land plan change, Plan Change 33 (Ridgelines & Hilltops (Visual Amenity) & Rural Area), Plan Change 48 (Central Area Review) and Plan Change 57 (Airport and Golf Course Recreation Precinct). Of these Plan Change 57 is the most likely to be resolved before the public notification of the proposed contaminated land plan change. This will obviate the need for a variation in this case and the required amendments will form part of Proposed Plan Change 69.

Because Plan Change 69 must be notified city-wide, formal public notification will not occur until 1 November 2008 so it can be combined with the next rates mail-out. With three months to this notification date it is difficult to predict which of the other proposed plan changes will be successfully settled at the Environment Court. For this reason this report recommends the delegation of authority to the Portfolio Leader of Urban Development to approve and notify variations to district plan changes to align these plan changes with the propose contaminated land plan change, and to sign off the final proposed plan variation documents. It is also recommended that the Portfolio Leader is given authority to approve and sign off minor amendments that may be required to the Section 32 Report (the formal consideration of alternatives, benefits and costs required by the Act – see Appendix Two). This was the approach with the recent Earthworks plan change.

5.5 LTCCP Implications

This report relates to the ongoing review of the District Plan and has no direct LTCCP implications. Should the plan change be subject to future Environment Court appeals the defence of the proposals could be in the order of \$10,000-\$50,000. The likelihood of this is considered to be low given the nature of the plan change and the extent of consultation that has been undertaken.

6. Conclusion

Proposed District Plan Change 69: Contaminated Land has been drafted to replace existing Plan provisions relating to contaminated sites. The proposed plan change is a complete review of all the contaminated site objectives, policies and rules in the District Plan. The new provisions interact together and most apply in the same way in all Areas (zones) of the City, with the exception of the Airport Precinct. For this reason it is proposed that the contaminated land provisions are consolidated into a single issue based chapter of the Plan.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The draft district plan change relates to the Environmental Strategy and specifically the long term outcome that:

Wellington will have access to safe and reliable energy and water supplies, clean air, and waste disposal systems that protect public health and ecosystems

2) LTCCP/Annual Plan reference and long term financial impact

Relates to the ongoing review of the District Plan. Project C533 – District Plan

3) Treaty of Waitangi considerations

All District Plan work is required to take into account the principles of the Treaty of Waitangi (refer to section 8 of the Resource Management Act 1991).

The Iwi Authorities have been consulted on the preparation of the plan change.

4) Decision-Making

The proposed changes to the District Plan are not significant in that they amend existing provisions that were adopted after following required Council decision making and Resource Management Act processes.

5) Consultation

a) Statutory Consultation

Consultation has been with the oil industry, the Ministry for the Environment, and the Greater Wellington Regional Council

b) Consultation with Maori

Consultation has been taken place with the Iwi Authorities: Wellington Tenth's Trust and Ngati Toa Rangatira

6) Legal Implications

The Council's lawyers have been involved in preparation of the proposed plan change.

7) Consistency with existing policy

The proposed plan change amends the existing District Plan provisions for contaminated sites and is consistent with the Regional Plan for Discharges to Land and the Regional Policy Statement, and gives effect to the draft Regional Policy Statement.