

***Section 32 Report***

***Proposed District  
Plan Change 69***

**CONTAMINATED LAND PROVISIONS**

AUGUST 2008  
Wellington City District Plan



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# SECTION 32 REPORT

## PROPOSED DISTRICT PLAN CHANGE 69 CONTAMINATED LAND PROVISIONS

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### 1.0 Introduction

This proposed Plan Change aims to provide a more flexible regime for managing contaminated land within Wellington City, while maintaining a level of control to ensure that any potential adverse environmental effects resulting from the use, redevelopment or subdivision of contaminated land are avoided, remedied or mitigated.

The need for the plan change was identified by concerns raised by both internal and external stakeholders on the application of the current District Plan provisions. Particular matters that require consideration are the resultant requirement for unnecessary resource consents, unnecessarily restrictive resource consents 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.

The Resource Management Act 1991 (the Act) requires the Wellington City Council to undertake an evaluation of the proposed plan change under Section 32 before it can be publicly notified. This report is Wellington City Council's response to this statutory requirement.

### 2.0 Legal Context

The Section 32 evaluation must examine:

- (a) the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and*
- (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

*An evaluation must also take into account:*

- (a) the benefits and costs of policies, rules, or other methods; and*
- (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

Benefits and costs are defined in the Act as including benefits and costs of any kind, whether monetary or non-monetary.

In carrying out a Section 32 analysis, the purpose and principles of the Act must be taken into account. Section 5 sets out the purpose of Act, which is to promote the sustainable management of natural and physical resources. Sustainable management includes managing the use, development, and protection of natural and physical resources to enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety. In achieving this purpose, authorities need also

to refer to both matters of national importance identified in section 6 and other matters referred to in section 7.

In achieving the above purpose, section 6 lists matters of national importance that shall be recognised and provided for. The section 6 provisions of relevance to this plan change are:

- (b) “the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:”

Additionally, in achieving the purpose the Act, section 7 sets out matters that authorities shall have particular regard to. The provisions of relevance to this plan change are:

- (b) “the efficient use and development of natural and physical resources:
- (d) intrinsic value of ecosystems
- (f) the maintenance and enhancement of the quality of the environment:”

## **3.0 Background**

### **3.1 Current District Plan Provisions**

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.

### **3.2 Strategy and Policy Context**

In reviewing the specific current District Plan contaminated site provisions, appropriate consideration has been given to the relevant national and regional policy documents, statements, and plans. These documents provide the context and justification for reviewing the current contaminated site provisions.

#### *National Direction*

The purpose of the Act is to promote the sustainable management of natural and physical resources. Sustainable management includes managing the use and development of natural and physical resources to enable people to provide for their health and safety.

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.

Under section 30(1)(ca), regional councils now have an explicit function to identify and monitor contaminated land. Wellington Regional Council maintains a Selected Land Use Register of contaminated land within the region. This register includes six different classifications:

- Category 1: Verified HAIL (Hazardous Activities and Industries List)
- Category 2: Unverified HAIL
- Category 3: Contamination confirmed
- Category 4: Contamination acceptable / managed / remediated
- Category 5: No identified contamination
- Category 6: Entered onto database in error

Section 31(1)(b)(iia) now specifically provides that territorial authorities are responsible for preventing or mitigating any adverse effects of the use, development or subdivision of contaminated land.

A new definition was also introduced into section 2(1), to define contaminated land as:

“land of 1 of the following kinds”

- (a) if there is an applicable national environmental standard on contaminants in soil, the land is more contaminated than the standard allows; or
- (b) if there is no applicable national environmental standard on contaminants in soil, the land has a hazardous substance in or on it that—
  - (i) has significant adverse effects on the environment; or
  - (ii) is reasonably likely to have significant adverse effects on the environment:”

Section 76 of the Act provides that if paragraph (b) of the definition of contaminated land applies, a rule in a district plan may exempt from its coverage an area or class of contaminated land if the rule:

- (a) Provides how the significant adverse effects on the environment that the hazardous substance has are to be remedied or mitigated; or
- (b) Provides how the significant adverse effects on the environment that the hazardous substance is reasonably likely to have are to be avoided; or
- (c) Treats the land as not contaminated for purposes stated in the rule.

Given the amendments to the Act, it is appropriate for the Council to review current plan provisions and determine whether there is a need to introduce further provisions that will prevent or mitigate the adverse effects of the use, development or subdivision of contaminated land.

Section 75 of the Act requires that district plans must give effect to –

- (a) any national policy statement;
- (b) any New Zealand coastal policy statement; and
- (c) any regional policy statement

and must not be inconsistent with –

- (b) a regional plan for any matter specified in section 30(1).

There are no relevant national policy statements relating to contaminated land. The New Zealand Coastal Policy Statement is also not relevant.

### Regional Policy Statement and Plans

The relevant chapters of the Regional Policy Statement for the Wellington Region, 1995 are Chapter 6 – Soils and Minerals and Chapter 13 – Waste Management and Hazardous Substances.

Method 23 in Chapter 6 seeks to:

- *investigate soils that are known to be, or may be, contaminated as a basis for identifying contaminated sites and for developing appropriate strategies for remedial action.*

Policy 13 in Chapter 13 seeks:

- *to minimise the risk of damage to the environment and human health from contaminated sites in the Region*

Method 20 and 21 in Chapter 13 seek to:

- *in conjunction with territorial authorities, compile a register of all confirmed contaminated sites in the Region, including underground storage tanks*
- *adopt the ANZECC guidelines on contaminated sites to assist in the assessment of risk, prioritisation of sites, and development and implementation of a strategy for action for contaminated sites in the Region.*

The relevant Chapters of the Regional Plan for Discharges to Land for the Wellington Region 1999 are Chapter 2 – Issues, Chapter 4 – Objectives and Policies, Chapter 5 – Regional Rules, Chapter 6 – Non-Regulatory Methods, Chapter 7 – Principal Reasons for Policies, Chapter 8 – Principal Reasons for Regional Rules and Chapter 9 – Environmental Results Anticipated. The relevant provisions from these Chapters are set out in Appendix 1.

While having no statutory weight as a draft document, the provisions of the Draft Regional Policy Statement 2008 were also considered, as demonstrating the approach that the Regional Council proposes in respect of their functions to identify and monitor contaminated land. Draft provisions of particular relevance include:

#### Issue 4. Soil contamination

*Some land where hazardous substances have been used or stored*

- *such as the site of gas works, petrol stations, and sheep dips*
- *has been contaminated by those activities.*

*Development of that land for new uses such as residential or agricultural uses may not be safe if soils are contaminated.*

#### Policy 32: Management of contaminated land

*District plans shall include policies and rules that do not allow activities on contaminated land if that activity could be adversely affected by the contamination.*

#### Explanation

*Policy 32 directs city and district councils to include provisions in their district plans to control land uses on contaminated land.*

*The Ministry for the Environment has compiled a list of 53 hazardous activities and industries capable of contaminating soil and causing adverse effects on the environment, including people. This alerts city and district councils to the likelihood of soil contamination, and therefore the need for further investigation. If land has been used for a hazardous activity or industry, for example a landfill or timber treatment plant, the actual level of any contamination needs to be determined before new land uses are allowed to be established on the site.*

*The term “contaminated land” has the same meaning as in the Resource Management Act.*

Method 25: Database of sites at risk of contamination

Maintain a database of sites:

- (a) with a history of storing, using or manufacturing hazardous substances;
- (b) where a major spill involving hazardous substances has occurred; and/or
- (c) where analysis of soil or water samples has confirmed that it is contaminated land.

Implementation: Wellington Regional Council

### **3.3 New Guidelines**

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. These five guidelines are:

#### **Contaminated Land Management Guidelines No. 1 - Reporting on Contaminated Sites in New Zealand (October 2003)**

This guideline details the type and amount of information required in a contaminated site report. Its aim is to ensure consistency in the reporting on contaminated sites. It includes checklists for reporting requirements for contaminated sites and for the removal of petroleum underground storage tanks

#### **Contaminated Land Management Guidelines No. 2 - Hierarchy and Application in New Zealand of Environmental Guideline Values (updated June 2007)**

This guideline has been developed to ensure the consistent selection and application of environmental guideline values. It will be of use to environmental consultants and landowners undertaking contaminated site investigations, and to council staff involved in reviewing contaminated site assessment reports.

#### **Contaminated Land Management Guidelines No. 3 - Risk Screening System (February 2004)**

This guideline describes the Risk Screening System (RSS). The system aims to provide a nationally consistent means of ranking sites that are, or are suspected of being, contaminated. The purpose of ranking a site is usually so that it may be prioritised for further investigation.

#### **Contaminated Land Management Guidelines No. 4: Classification and Information Management Protocols (August 2006)**

The purpose of this guideline is to suggest a nationally consistent way of classifying, managing and releasing contaminated site information held on council registers or databases. Local government is encouraged to adopt the systems and classifications provided by this guideline, so that we can have a nationally consistent system which will enable all practitioners involved in contaminated land to talk the same language.

#### **Contaminated Land Management Guidelines No.5: Site Investigation and Analysis of Soils (February 2004)**

This guideline provides best practice for the sampling and analysis of soils on sites where hazardous substances are present or suspected in soils in New Zealand and guidance on the principles governing the interpretation of the data obtained.

The Ministry for the Environment has also introduced the **Contaminated Land Management Guidelines Schedule A: Hazardous Activities and Industries List**

(HAIL), which is a compilation of activities and industries that are considered likely to cause land contamination resulting from hazardous substance use, storage or disposal.

The Ministry for the Environment has also released a number of relevant industry-specific contaminated land guidelines:

- Identifying, Investigating and Managing Risks associated with Former Sheep-dip Sites: A Guide for Local Authorities (November 2006)
- Checklist for the Removal of Petroleum Underground Storage Tanks (April 2001)
- Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand (June 1999)
- Guidelines for Assessing and Managing Contaminated Gasworks Sites in New Zealand (August 1997)
- Health and Environmental Guidelines for Selected Timber Treatment Chemicals (June 1997)

## 4.0 Research and Consultation

### 4.1 Research

As part of the development of this plan change, reviews were undertaken of:

- recently approved resource consents involving contaminated sites
- recent plan changes where the activity status of contaminated land had been considered (Central Area Plan Change 48 and the Airport and Golf Course Recreation Precinct Plan Change 57)
- District plans prepared by other local authorities that include provisions relating to contaminated land.

The following documents were the primary sources of information guiding this evaluation:

- *Wellington City District Plan*, Wellington City Council, operative 2000
- *Proposed Plan Change 48: Central Area Review*, Wellington City Council, decision as notified, October 2007
- *Proposed Plan Change 57: Provision for Non-Airport Activities within the Airport and Golf Course Recreation Precinct*, Wellington City Council, proposed June 2007
- *Draft Regional Policy Statement for the Wellington Region 2008*, Wellington Regional Council, 2008
- *Regional Policy Statement for the Wellington Region*, Wellington Regional Council, operative 1995
- *Regional Plan for Discharges to Land for the Wellington Region*, Wellington Regional Council, operative 1999
- *The Environmental Case Management of Lead Exposed Persons: Guidelines for Public Health Services*, Ministry of Health, 2007 (revised)
- *Contaminated Land Management Guidelines No. 1 – Reporting on Contaminated Sites in New Zealand*, Ministry for the Environment, 2003
- *Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values*, Ministry for the Environment, 2007
- *Contaminated Land Management Guidelines No. 3 – Risk Screening Systems*, Ministry for the Environment, 2004

- *Contaminated Land Management Guidelines No. 4 – Classification and Information Management Protocols*, Ministry for the Environment, 2006
- *Contaminated Land Management Guidelines No. 5 – Site Investigation and Analysis of Soils*, Ministry for the Environment, 2004
- *Contaminated Land Management Guidelines Schedule A: Hazardous Activities and Industries List (HAIL)*, Ministry for the Environment, 2004
- *Identifying, Investigating and Managing Risks associated with Former Sheep-dip Sites: A Guide for Local Authorities*, Ministry for the Environment, 2006
- *Checklist for the Removal of Petroleum Underground Storage Tanks*, Ministry for the Environment, 2001
- *Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand*, Ministry for the Environment, 1999
- *Guidelines for Assessing and Managing Contaminated Gasworks Sites in New Zealand*, Ministry for the Environment, 1997
- *Health and Environmental Guidelines for Selected Timber Treatment Chemicals*, Ministry for the Environment, 1997
- *Health and Safety Guidelines on the Cleanup of Contaminated Sites*, Occupational Safety and Health and Department of Labour, 1994
- *Australia and New Zealand Guidelines for the Assessment and Management of Contaminated Sites*, Australian and New Zealand Environmental and Conservational Council and the National Health and medical Research Council, 1992
- *Draft Good Practice Guide to District Plan Contaminated Land Provisions*, Ministry for the Environment, 2008

## 4.2 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 Tenth Trust
- Hill Young Cooper (authors of the draft Good Practice Guide)
- 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.

## 5.0 Reason for the plan change

There are a number of reasons why it is appropriate to 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.
- 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.

Users of the District Plan, both internal and external, have raised concerns with the current contaminated site provisions and their application, prompting a review of the provisions. Particular concerns that users have raised are:

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

The discretionary activity (unrestricted) activity status was applied due to the uncertainties at the time of what matters the Council should exercise its discretion over. 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 lesser 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.

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.

Some plan users have raised whether the sites listed in the Register meet the definition of contaminated site as outlined in the Plan. This is a critical issue as the Council uses the Register as the main trigger for determining whether the rule applies or not. Using the Register is a more pragmatic approach, but the risk is that it does not contain up-to-date information. Presumably, the correct application of the definition would require a statement as part of every resource consent outlining whether or not the site is contaminated based on the definition in the Plan. However, this would require technical expertise into the preparation of a consent application, adding costs for the applicant. The Greater Wellington Regional Council has advised that the Register is updated and classifications changed as required when they receive a report, such as a soil investigation or tank pull, or similar. If the site is already on the Register, then the listing will be updated with the findings, and if the site is now remediated, then the classification will be changed. Where the information relates to a newly confirmed site, details will be added to the Register and a letter sent to the Wellington City Council advising them of the site's status.

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.

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.

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 any works is proposed on their 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.

This plan change proposes to address all these concerns by introducing a new management regime for both contaminated and potentially contaminated land as well as ensuring that the plan provisions reflect recent changes to the Act and the new Ministry for the Environment Contaminated Land Guidelines.

The proposed plan change is also considered to give effect to the relevant provisions in the Regional Policy Statement and to not be inconsistent with the relevant provisions of the Regional Plan for discharges, particularly in terms of identifying contaminated sites and addressing the concern that not all contaminated land within Wellington City has been identified, thus posing risks to human health and the environment if development occurs with no control. While at a draft stage and therefore having no statutory weight, the proposed approach of controlling the use, redevelopment and subdivision of potentially contaminated land, where activities contained in the Hazardous Activities and Industries List are known to have occurred on land, also gives effect to the draft Regional Policy Statement.

Introducing new contaminated land provisions is considered to be in keeping with the purpose of the Act, and thus options have been considered to ensure that the proposed plan change is sound in resource management terms.

## **6.0 Plan Change Options**

In considering changes to the current contaminated sites provisions in District Plan, four different options were identified and evaluated.

### ***Option 1 – Status quo***

This option involves not making any changes to existing contaminated site plan provisions. For those Plan Chapters that contain contaminated site provisions, a resource consent for a discretionary activity (unrestricted) would continue to be required for any site investigations to determine the nature and extent of any contamination prior to preparing an application for the remediation or use of the site. A resource consent for a discretionary activity (unrestricted) would also continue to be required for any use of a contaminated site.

### ***Option 2 – Amending existing provisions located within each Chapter, relating to identified contaminated land***

This option involves amending and adding new definitions to the Plan and amending objectives, policies and rules within each Plan Chapter. The definition for contaminated site would be changed to contaminated land and new definitions added for remediation, and the use and redevelopment of contaminated land. A new permitted activity rule for site investigations of listed contaminated land would be introduced to allow for applicants to determine the nature and extent of contamination prior to submitting a resource consent application for any site works. The current activity status for contaminated land would change from Discretionary (Unrestricted) to Discretionary (Restricted) and the rule would be amended from being for the use of any contaminated land to the remediation, use, redevelopment and subdivision of contaminated land. The proposed controlled activity status of the rule applying to activities or building works which disturb or alter the ground of a contaminated site contained within Plan Change 57 to the Airport Precinct would be retained, but the rule would be amended to refer to the remediation, use and redevelopment of contaminated land.

### ***Option 3 – Amending existing provisions located within each Chapter, to address contaminated and potentially contaminated land***

This option involves amending and adding new definitions to the Plan and amending objectives, policies and rules within each Plan Chapter. The definition for contaminated site would be changed to contaminated land and new definitions added for remediation, use and redevelopment and potentially contaminated land. A new 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) to determine the nature and extent of contamination would be introduced. A new permitted activity rule would be added 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. The current activity status for contaminated land would change from Discretionary (Unrestricted) to Discretionary (Restricted) and the rule would be amended from being for the use of any contaminated land to the remediation, use, redevelopment and subdivision of contaminated land and potentially contaminated land. The proposed controlled activity status of the rule applying to activities or building works which disturb or alter the ground of a contaminated site contained within Plan Change 57 to the Airport Precinct would be retained, but the rule would be amended to refer to the remediation, use and redevelopment of contaminated land.

***Option 4 – New stand alone chapter addressing both contaminated and potentially contaminated land, cross-referenced from other Chapters.***

This option involves amending and adding new definitions to the Plan, introducing 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. The definition for contaminated site would be changed to contaminated land and new definitions added for remediation, use and redevelopment and potentially contaminated land. The new chapter would include 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) to determine the nature and extent of contamination would be introduced. A permitted activity rule would be added 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. Discretionary (restricted) activity status would be given to the remediation, use, redevelopment and subdivision of contaminated and potentially contaminated land. The proposed controlled activity status of the rule applying to activities or building works which disturb or alter the ground of a contaminated site contained within Plan Change 57 to the Airport Precinct would be retained, but the rule would be amended to refer to the remediation, use and redevelopment of contaminated land.

## **7.0 Assessment of options**

### **7.1 Objectives**

Section 32 requires examination of the ‘*extent to which each objective is the most appropriate way to achieve the purpose of the Act*’. The Council must therefore be satisfied that the proposed objective in the District Plan is the most appropriate means of achieving the purpose of the Act.

*Proposed Objective:*

x.x.x.x To manage the remediation, use, redevelopment and subdivision of contaminated and potentially contaminated land so as to avoid or mitigate any risk of adverse effects on human health and the environment.

All but the Open Space and Conservation Chapters in the District Plan currently include objectives and policies relating to contaminated sites. A review of the Plan provisions has revealed an inconsistency in the drafting of the current objectives that refers to contaminated sites throughout the Plan. Current objectives refer to:

- Managing existing contaminated sites
- Preventing or mitigating any adverse effects of the formation of contaminated sites.

These current objectives are also considered to be too narrow to adequately provide for the Council’s functions recently introduced under section 31 of the Act and do not reflect the definition of contaminated land in the Act.

The proposed objective is considered to be appropriate in relation to sections 5, 6 and 7 of the Act in that it ensures that the redevelopment or remediation of contaminated land is able to take place but that appropriate controls can be imposed so as to take account of relevant matters addressed in these sections. The objective provides for the remediation of

contaminated and potentially contaminated land to be undertaken while ensuring that any potential adverse effects on human health and the environment resulting from the remobilisation of contaminants and disposal of contaminated material are able to avoided or mitigated. The objective also provides for the control of the use, redevelopment and subdivision of land that may be potentially contaminated due to previous activities and uses of land, which could pose a risk to human health and the environment if uncontrolled works were to occur. Further, this objective provides for the relevant functions under section 31 of the Act, as it is addresses the use, development and subdivision of contaminated land.

Accordingly, the proposed objective is considered to be the most appropriate way for Wellington City Council to carry out its functions and to meet the purpose of the Act.

## **7.2 Policies, rules and other methods - benefits and costs**

Section 32(3)(b) requires the Council to evaluate:

*“whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;*

Section 32(4) (a) states that this evaluation must take into account:

*“the benefits and costs of policies, rules, or methods;*

Table 1 provides an assessment of the benefits and costs of the four options described in Section 6.0 of this report.

**Table 1: Cost and benefit analysis of identified options**

	<b>Option 1 – Status Quo</b>	<b>Option 2 – Amending existing provisions within each Chapter to address known contaminated land only</b>	<b>Option 3 – Amending existing provisions within each Chapter to address both known and potentially contaminated land</b>	<b>Option 4 – New stand alone chapter addressing both known and potentially contaminated land.</b>
<b>Costs</b>	<ul style="list-style-type: none"> <li>• Does not address land that may have been contaminated due to historic practices and subsequently poses a risk to human health and the environment if it is redeveloped.</li> <li>• Applicants generally have to obtain a resource consent to undertake site and soil investigations to determine the nature and extent of any contamination on known contaminated sites, prior to lodging a resource consent for further site works.</li> <li>• Requires unnecessary resource consents, as captures any works on</li> </ul>	<ul style="list-style-type: none"> <li>• Does not address land that may have been contaminated due to historic practices and subsequently poses a risk to human health and the environment if it is redeveloped.</li> <li>• Adds a new requirement for resource consent for the subdivision of contaminated land.</li> </ul>	<ul style="list-style-type: none"> <li>• There will be additional costs for applicants to demonstrate that land is not contaminated in order to progress the redevelopment of the land without the need for a resource consent.</li> <li>• Costs will range depending on the size of the site and the type of testing involved. For example, a desktop analysis for a large site may cost between \$4 – 8,000, and soil bench-marking may cost between \$8 – 2,000 depending on the results of the desk-top study. Soil bench-marking for smaller sites may cost between</li> </ul>	<ul style="list-style-type: none"> <li>• There will be additional costs for applicants to demonstrate that land is not contaminated in order to progress the redevelopment of the land without the need for a resource consent.</li> <li>• Costs will range depending on the size of the site and the type of testing involved. For example, a desktop analysis for a large site may cost between \$4 – 8,000, and soil bench-marking may cost between \$8 – 2,000 depending on the results of the desk-top study. Soil bench-marking for smaller sites may cost between</li> </ul>

	contaminated sites, even if soil is not being disturbed.		<p>\$2 – 10,000.</p> <ul style="list-style-type: none"> <li>• Adds a new requirement for resource consent for the subdivision of contaminated and potentially contaminated land.</li> <li>• New cost for applicants who are remediating, using, redeveloping or subdividing potentially contaminated land, where they haven't first confirmed that it is not contaminated.</li> </ul>	<p>\$2 – 10,000.</p> <ul style="list-style-type: none"> <li>• Adds a new requirement for resource consent for the subdivision of contaminated and potentially contaminated land.</li> <li>• New cost for applicants who are remediating, using, redeveloping or subdividing potentially contaminated land, where they haven't first confirmed that it is not contaminated.</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>• Requires a resource consent for any works on contaminated land, ensuring that any potential environmental risks and adverse effects are avoided or mitigated.</li> <li>• Reduces risk for human health and safety.</li> <li>• No resource consents required for work on land that may be potentially contaminated.</li> </ul>	<ul style="list-style-type: none"> <li>• Removes need for unnecessary resource consents for soil and site investigations to determine the nature and extent of any contamination.</li> <li>• Removes need for unnecessary consents for works on the site that would not disturb any contamination.</li> <li>• No resource consents required for work on land that may be</li> </ul>	<ul style="list-style-type: none"> <li>• Requires a resource consent for any works on contaminated land, ensuring that any potential environmental risks and adverse effects are avoided or mitigated.</li> <li>• Will reduce the risk of adverse effects on public health and the environment resulting from works on sites that are not listed in the Selected Land Use Register, but have been</li> </ul>	<ul style="list-style-type: none"> <li>• Requires a resource consent for any works on contaminated land, ensuring that any potential environmental risks and adverse effects are avoided or mitigated.</li> <li>• Will reduce the risk of adverse effects on public health and the environment resulting from works on sites that are not listed in the Selected Land Use Register, but have been</li> </ul>

		<p>potentially contaminated</p> <ul style="list-style-type: none"> <li>• Reduces risk for human health and safety.</li> <li>• Requires a resource consent for any works on contaminated land, ensuring that any potential environmental risks and adverse effects are avoided or mitigated.</li> </ul>	<p>contaminated by historic activities and industries.</p> <ul style="list-style-type: none"> <li>• Reduces risk for human health and safety.</li> <li>• Provides a greater level of protection by addressing potentially contaminated land.</li> <li>• Removes need for unnecessary resource consents for soil and site investigations to determine the nature and extent of any contamination.</li> <li>• Removes the need for unnecessary consents for works on the site that would not disturb any contamination, saving applicants money.</li> </ul>	<p>contaminated by historic activities and industries.</p> <ul style="list-style-type: none"> <li>• Reduces risk for human health and safety.</li> <li>• Provides a greater level of protection by addressing potentially contaminated land.</li> <li>• Removes need for unnecessary resource consents for soil and site investigations to determine the nature and extent of any contamination.</li> <li>• Removes the need for unnecessary consents for works on the site that would not disturb any contamination, saving applicants money.</li> </ul>
<b>Effectiveness and Efficiency</b>	<ul style="list-style-type: none"> <li>• Generates unnecessary consents, both in terms of soil and site investigations and for minor works on land that is contaminated, but the works will not disturb any</li> </ul>	<ul style="list-style-type: none"> <li>• More complicated to make amendments to the District Plan to reflect advances in understanding and future technologies, requiring changes to most chapters in the</li> </ul>	<ul style="list-style-type: none"> <li>• More complicated to make amendments to the District Plan to reflect advances in understanding and future technologies, requiring changes to most chapters in the</li> </ul>	<ul style="list-style-type: none"> <li>• May cause some confusion at first, as plan users get used to having a stand alone chapter addressing contaminated land.</li> <li>• Will result in the need for more resource</li> </ul>

	<p>contaminated soil.</p> <ul style="list-style-type: none"> <li>• More complicated to make to the District Plan to reflect advances in understanding and future technologies, requiring changes to most chapters in the Plan.</li> <li>• Opens up consents to a wider discretionary assessment, including the potential for notification.</li> <li>• No costs for implementation, as no changes would be required to the text of the District Plan.</li> </ul>	<p>Plan.</p> <ul style="list-style-type: none"> <li>• Will result in the need for more resource consents, when land is identified as being potentially contaminated by previous activities and industries listed in the HAIL.</li> <li>• Removes the need for unnecessary consents for soil and site investigations.</li> <li>• Restricts discretion to key assessment criteria, avoiding the need to consider wider effects that may not be relevant.</li> <li>• Provides better guidance for Plan Users on the matters to be considered.</li> <li>• Avoids resource consents that have other controlled and discretionary (restricted) elements from being bundled into a discretionary</li> </ul>	<p>Plan.</p> <ul style="list-style-type: none"> <li>• Will result in the need for more resource consents, when land is identified as being potentially contaminated by previous activities and industries listed in the HAIL.</li> <li>• Removes the need for unnecessary consents for soil and site investigations.</li> <li>• Restricts discretion to key assessment criteria, avoiding the need to consider wider effects that may not be relevant.</li> <li>• Provides better guidance for Plan Users on the matters to be considered.</li> <li>• Avoids resource consents that have other controlled and discretionary (restricted) elements from being bundled into a discretionary activity</li> </ul>	<p>consents, when land is identified as being potentially contaminated by previous activities and industries listed in the HAIL.</p> <ul style="list-style-type: none"> <li>• Removes the need for unnecessary consents for soil and site investigations.</li> <li>• New chapter objective and policies would apply across the area based chapters of the Plan, and be considered alongside those chapters.</li> <li>• Maintains the integrity, effectiveness and efficiency of existing District Plan objectives.</li> <li>• Easier for any future changes, such as updated guidelines or a National Environmental Standard, as contaminated land provisions have been integrated into a single chapter, removing the need to make</li> </ul>
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		activity consent.	consent.	<p>amendments to multiple chapters.</p> <ul style="list-style-type: none"> <li>• Provides integrity to contaminated land as an issue by addressing this in a integrated chapter rather than fragmenting the issue throughout the Plan</li> <li>• Restricts discretion to key assessment criteria, avoiding need to consider wider effects that may not be relevant</li> <li>• Provides better guidance for Plan Users on the matters to be considered.</li> <li>• Avoids resource consents that have other controlled and discretionary (restricted) elements from being bundled into a discretionary activity consent.</li> </ul>
<b>Appropriateness</b>	<p>Not appropriate</p> <ul style="list-style-type: none"> <li>• Inconsistent with the 2005 amendments to the Act.</li> </ul>	<p>Limited</p> <ul style="list-style-type: none"> <li>• Not considered appropriate as it is not fully consistent with recent amendments to</li> </ul>	<p>Appropriate</p> <ul style="list-style-type: none"> <li>• Appropriate as it is consistent with the recent amendments to</li> </ul>	<p>Appropriate</p> <ul style="list-style-type: none"> <li>• Appropriate as it is consistent with the recent amendments to</li> </ul>

	<ul style="list-style-type: none"> <li>• Inconsistent with the Ministry for the Environment’s Contaminated Land Guidelines</li> <li>• Not considered appropriate as it is not consistent with recent amendments to the Regional Policy Statement and Regional Discharge Plan.</li> </ul>	<p>the Act and the Regional Policy Statement and Regional Discharge Plan.</p> <ul style="list-style-type: none"> <li>• Inconsistent with the Ministry for the Environment’s Contaminated Land Guidelines</li> </ul>	<p>the Act.</p> <ul style="list-style-type: none"> <li>• Approach is consistent with the Ministry for the Environment’s Contaminated Land Guidelines.</li> <li>• Approach is consistent with the Regional Policy Statement and Regional Discharge Plan, and, while not a statutory document, gives effect to draft Regional Policy Statement.</li> </ul>	<p>the Act.</p> <ul style="list-style-type: none"> <li>• Approach is consistent with the Ministry for the Environment’s Contaminated Land Guidelines.</li> <li>• Approach is consistent with the Regional Policy Statement and Regional Discharge Plan, and, while not a statutory document, gives effect to draft Regional Policy Statement.</li> </ul>
<b>Conclusion</b>	<ul style="list-style-type: none"> <li>• This approach is not an effective or efficient option to achieve the purpose of the Act.</li> </ul>	<ul style="list-style-type: none"> <li>• This approach is not an effective or efficient option to achieve the purpose of the Act.</li> </ul>	<ul style="list-style-type: none"> <li>• This is in part an efficient and effective way to achieve the purpose of the Act. It is not favoured as would continue the repetitive nature of current rules in the Plan and duplication of objective, policies and rules within each chapter.</li> </ul>	<ul style="list-style-type: none"> <li>• This is an effective and efficient way to achieve the purpose of the Act. <b>This is the preferred option.</b></li> </ul>

### 7.3 Policies, rules and other methods - summary

#### *Option 1 – Status Quo*

Given the greater number of costs to benefits, option 1 is not favoured. This review was triggered through concerns with the current Plan provisions and inconsistency with 2005 amendments to the Act and the introduction of the Ministry for the Environment's Contaminated Land Guidelines and Hazardous Activities and Industries List. In particular, this option is not considered to be in keeping with the purpose of the Act, particularly in terms of avoiding, reducing or mitigating adverse effects on the environment, and providing for the health and safety of people and communities.

#### *Option 2 - Amending existing provisions located within each Chapter, relating to identified contaminated land*

Option 2 would go some way in addressing the concerns that have been raised with the current provisions, and give effect to the 2005 amendments to the Act and the purpose of the Act itself. It also addresses the concerns expressed around the current activity status, by making any remediation, use, redevelopment or subdivision a restricted discretionary activity, thus avoiding any other necessary controlled or restricted discretionary activities being bundled into a discretionary activity status.

However, this option would not address the potential risks and effects on public health and safety and the environment from the use, redevelopment and subdivision of land that has been contaminated due to historic practices and land uses, but is not listed on the Regional Council's Selected Land Use Register. Therefore, this option is not favoured as it does not fully address the 2005 amendments to the Act, and is inconsistent with the Regional Policy Statement and the Ministry for the Environment's Contaminated Land Guidelines. It is considered that the costs of this option outweigh the benefits, and as such, this is not the best option for meeting the resource management objective.

#### *Option 3 - Amending existing provisions located within each Chapter, to address with contaminated and potentially contaminated land*

The benefits of this option are considered to outweigh the costs. This option enables a high level of health and safety and environmental protection from the risks posed from contaminated land. This option addresses the 2005 amendments to the Act, gives effect to the Regional Policy Statement, and is consistent with the Regional Plan and the Ministry for the Environment's Contaminated Land Guidelines.

The costs of the compliance regime, requiring resource consents for the use, redevelopment and subdivision of potentially contaminated land are in part mitigated by the non-notification clause, which provides more certainty for applicants, while ensuring that risks to public health and the environment will be protected through a consent regime. While this option meets the purpose for the plan change, it is not the most favoured option due to reasons of plan effectiveness and efficiency. Given the principles for managing contaminated and potentially contaminated land are the same for all Areas of the City, it is more appropriate for them to be located in the same place, rather than repeat them in each chapter.

#### *Option 4 - New stand alone chapter addressing both contaminated and potentially contaminated land, cross-referenced from other Chapters*

The introduction of a stand-alone chapter with appropriate rules for the control of the use, redevelopment and subdivision of contaminated and potentially contaminated land is considered the most appropriate option. This option addresses the 2005 amendments

to the Act, gives effect to the Regional Policy Statement, and is consistent with the Regional Plan and the Ministry for the Environment's Contaminated Land Guidelines.

This option enables a high level of public health and safety and environmental protection from the risks posed from contaminated land. Given the principles for managing contaminated and potentially contaminated land are the same for all Areas of the City, it is more appropriate for them to be located in the same place, rather than repeat them in each chapter. The costs of the compliance regime, requiring resource consents for the use, redevelopment and subdivision of potentially contaminated land are in part mitigated by the non-notification clause, which provides more certainty for applicants, while ensuring that risks to public health and the environment will be protected through a consent regime.

#### **7.4 The risk of acting or not acting**

Section 32(4)(b) also requires the Council to assess:

*“the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.”*

There is not considered to be uncertain or insufficient information about the subject matter. Accordingly all potential policies, rules and other methods can effectively be assessed.

### **8.0 Conclusion**

The need for a review of current District Plan provisions relating to contaminated sites was identified by concerns raised by both internal and external stakeholders on their application. Particular matters that required consideration included the requirement for unnecessary resource consents, unnecessarily restrictive resource consents and the need to manage land that is not listed on the Wellington Regional Council's Selected Land Use Register, but may have been potentially contaminated through historic land practices. A review was also necessary to bring the District Plan into line with 2005 amendments to the Resource Management Act 1991 which introduced a new definition for contaminated land and clarified the roles and responsibilities of territorial authorities and regional councils and the Ministry for the Environment's recent Contaminated Land Guidelines.

There are a number of reasons why it is appropriate to 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 ;
- Exposure to hazardous substances can have significant adverse effects on human health and on the environment;
- Contamination is not always limited to a specific site and can be transferred onto adjacent and nearby land. Vapour and gases from contaminated land may present additional risks of explosion and odour.

This report has considered four options to respond to this resource management issue, ranging from retaining the status quo (option 1), undertaking minor amendments to

existing provisions within each chapter (option 2), amending and expanding current provisions to include potentially contaminated land (option 3), to introducing a stand-alone chapter that addresses both known contaminated and potentially contaminated land (option 4).

On balance, it is considered that option 4 best meets the requirements of section 32 of the Resource Management Act 1991 as it represents the most appropriate means of managing any risks and potential adverse effects on public health and the environment from the remediation, use, redevelopment and subdivision of contaminated and potentially contaminated land within the City.

## **Appendix 1 Relevant Provisions from the Regional Plan for Discharges to Land for the Wellington Region 1999**

### **Chapter Two:**

**2.2.12 *The Region has a large number of old waste disposal sites which are now contaminated sites, and which continue to cause adverse effects.***

**2.5.3 *The inappropriate disposal of hazardous wastes has significant potential for adverse effects.***

*Inappropriate disposal includes disposal in landfills that are not designed or managed to receive hazardous wastes, or other forms of illegal disposal.*

*Recent examples of inappropriate disposal of hazardous waste in the Region causing adverse effects, are the disposal of asbestos in "cleanfills", and the disposal in unconfined landfills of contaminated soil from around underground storage tanks. The following wastes have been identified as causing particular problems for disposal in the Region:*

- *contaminated soil;...*

### **2.6 *Site contamination issues***

**2.6.1 *We do not have good information on the location and risks of site contamination in the Region.***

*Without good information, the risks associated with site contamination cannot be controlled.*

*A 1992 desk-top study indicated that there could be 642 contaminated sites (excluding timber treatment sites) in the Region, of which as many as 141 could be high risk sites.<sup>25</sup> This assessment was made on the basis of historical land uses that may result in contamination of the environment. This estimate cannot be validated until assessments have been undertaken to ascertain the degree of contamination, if any, these sites actually have.*

*Types of sites of particular concern in the Region include:*

- *landfill sites, such as the old Wilton dump and Cottles tip site at Horokiwi;*
- *old gas works in Miramar, Masterton, Petone and Carterton;*
- *underground storage tanks throughout the Region (including tanks that are no longer used and sites where tanks have been removed); and*
- *timber treatment plants and storage sites, particularly in Upper Hutt and the Wairarapa.*

*Other major groups of sites with a land use history identified in the study referred to above include chemical manufacturers, drycleaners, electroplaters, engine works, oil production and storage areas, paint manufacturers, pharmaceutical manufacturers, service stations and smelting or refining works. Site contamination may have*

*occurred or could develop at places where agrichemicals have been used in the past (e.g., sheep dips), or are currently discharged.*

**2.6.2 Contaminated sites may continue to discharge contaminants into the environment and, if not properly controlled, contamination can spread from a site to other parts of the environment.**

*Contaminated sites may continue to discharge contaminants into land, water and air in the Region. They can:*

- *contaminate soils;*
- *pollute surface water and groundwater;*
- *allow the uptake of contaminants by plants and animals, where they may bioaccumulate; and*
- *have negative impacts on public health.*

*Contamination can spread through:*

- *leaching into groundwater in cases where a contaminated site is above an unconfined aquifer;*
- *surface run-off into streams or coastal water;*
- *wind-blown dust; and*
- *growing crops in contaminated soil.*

**2.6.3 The clean-up of contaminated sites may simply shift the problem of site contamination elsewhere.**

*A site contamination problem is not solved by transferring the contaminated material to a landfill that is not designed to receive hazardous wastes. This has been an issue in the Region, and indicates a need for better assessment of cleanup options, including means of addressing the problem on-site.*

**2.6.4 There is a problem with liability for "orphan sites".**

*Orphan sites are sites for which those responsible for contamination cannot be located or are no longer around, or sites for which it is not fair or reasonable to expect the current owners to accept liability. It is likely that a relatively small number of sites of this nature exist in the Region. There are also a number of sites where the scale of contamination is such that it is beyond the capacity of the owner to deal with it.*

**Chapter Four:**

**Site contamination management**

*4.1.9 Site contamination in the Wellington Region is identified and characterised, where possible, within three years of the adoption of this Plan.*

*4.1.10 Any risk to human and environmental health presented by contaminated sites is lowered to an acceptable level or the site is otherwise managed in an appropriate and timely manner.*

**Identifying contaminated sites**

*4.2.43 Seek to identify and evaluate sites with a history of using, storing or manufacturing hazardous substances in the Wellington Region, and set priorities for further investigation to confirm the presence or absence of contamination using the ANZECC Guidelines for the Assessment and Management of Contaminated Sites (1992).*

**Explanation:** This Policy addresses the current lack of good information on the location and risks of sites where the historical record of land use indicates that further investigation is desirable to determine the presence or absence of hazardous substances. Such a site potentially represents a risk to human and/or environmental health.

The ANZECC Guidelines for the Assessment and Management of Contaminated Sites will be used to identify types of sites likely to be contaminated and types of activities likely to cause contamination.

Landowners will be advised when the Council is involved in the research or evaluation of their property. Any information the Council holds will be provided directly to the landowner who will have the right to make any corrections to that information. The release of information on sites to other people will be subject to the provisions of the Privacy Act 1993 and Local Government Official Information and Meetings Act 1987.

The information will also be passed on to the territorial local authorities to enable them to carry out their functions in relation to controlling land use, and for inclusion on Land and Project Information Memoranda.

4.2.44 To give priority to identifying and assessing the following types of sites:

- (1) current and closed landfills;
- (2) old gas works;
- (3) underground storage tanks;
- (4) timber treatment plants and storage sites; and
- (5) munitions and military equipment dumps.

**Explanation:** This Policy directs the Council's priorities for identifying and assessing sites with a history of using, storing or manufacturing hazardous substances. All the identified activities are known to have the potential to create contaminated sites. Although these are the priority sites, the Council will seek to identify and assess other types of sites in accordance with Policy 4.2.43.

Clause (3) includes tanks which are currently in use, tanks which are no longer used, and sites from which tanks have been removed.

4.2.45 To retain adequately referenced information on a regional database according to the following categories—

- (1) site with a history of storing, using or manufacturing hazardous substances;
- (2) site where a major spill or other incident involving hazardous substances has occurred;
- (3) site where analysis of soil or water samples has confirmed that it is a contaminated site;
- (4) site where some contaminant management or remediation has occurred; and
- (5) site that was identified in error, that is, was never contaminated.

**Explanation:** The Council will exercise due diligence before entering any information on the database, and will ensure that all information retained is adequately referenced. Referenced data may need to be separately verified by any recipient of the information. Where some site management or remediation has occurred, the

remaining level of contamination can be compared with relevant guidelines that state maximum levels for particular land uses.

As more information is obtained on site contamination in the Region, the regional database will be updated. This information will assist the Council in monitoring and controlling any adverse effects of discharges from those sites, and will assist territorial authorities in controlling land uses on sites that may present a hazard to the environment, including people.

### **Managing contaminated sites**

4.2.46 To develop, in consultation with site owners, occupiers and territorial authorities, strategies for further action for contaminated sites.

**Explanation:** Policy 4.2.46 provides direction for the Council to consult with affected parties when developing strategies for dealing with contaminated sites.

There is a variety of options for further action once a site has been confirmed as contaminated, including:

- removal of contaminated material;
- chemical treatment;
- bio-remediation; and
- in-situ treatment.

The Council prepared a Contaminated Site Management Strategy in 1996, based on a report prepared by Tonkin and Taylor.<sup>39</sup> In accordance with this Policy, any new strategies will be developed in consultation with site owners or occupiers, and territorial authorities.

The ANZECC Guidelines for the Assessment and Management of Contaminated Sites provide useful information on appropriate remedial action and clean-up standards. The Regional Council's approach is to address clean-up requirements on a case-by-case basis within the general framework provided by the Guidelines.

4.2.47 (1) To encourage owners of contaminated sites causing adverse effects on the environment to:

- (a) take primary responsibility for characterising the degree of contamination of the site;
- (b) inform the Regional Council so that the site can be registered on the Regional database;
- (c) take responsibility for appropriate remedial action (if necessary) or management of the site; and
- (d) apply for resource consents for any discharges arising from the site that may have adverse effects, including any discharges resulting from remedial action.

(2) To encourage owners of sites with a history of using, storing or manufacturing hazardous substances to inform the Regional Council so that the site can be investigated and assessed for the presence or absence of contaminants on the site.

**Explanation:** This Policy should be read in conjunction with Policy 4.2.49, which sets out the Council's policy on sites for which liability is in question.

Policy 4.2.47 encourages owners of sites to inform the Council if their site has a history of land use that could have caused site contamination. However, this is not the

*only means by which information may be included on the Regional database. The Council will be carrying out its own investigations as set out in Policy 4.2.43.*

*Policy 4.2.47 also encourages site owners to take responsibility for characterising the nature of any contamination on their site. The Council may share this responsibility, particularly in situations where liability is in question.*

*The owner is responsible for avoiding, remedying or mitigating the adverse effects of discharges of contaminants from the site. In accordance with section 15 of the Act, the Council will require the owner to apply for resource consents for any site discharges (e.g., discharge of contaminated stormwater, disposal of contaminated soil), except discharges allowed by a rule in the Plan. This Policy applies to sites which remain contaminated and to sites for which remedial action is proposed.*

*The Council will transfer sufficient information to the relevant territorial authority to enable them to carry out their functions for controlling the use of land. Method 6.5.5 provides for the development of the necessary procedures.*

*4.2.48 To give particular consideration to the following matters when assessing applications for permits for discharges associated with contaminated sites:*

- (1) the nature, concentration and quantity of contaminants at the site;*
- (2) the potential for contaminants from the site to contaminate surrounding:*
  - groundwater;*
  - surface water;*
  - soil; or*
  - air;**and any effects of that contamination;*
- (3) the potential for direct or indirect contact of humans or animals with contaminants on the site;*
- (4) any actual or potential adverse effects on:*
  - human health;*
  - the health and functioning of plants, animals or ecosystems; or*
  - existing or future uses of water or land on the site and in the surrounding area;*
- (5) any potential long-term or cumulative effects of discharges from the site;*
- (6) any remedial action planned or required in relation to the site, and the potential adverse effects of any remedial action on the matters listed in (1) - above, whether at the site or at another location; and*
- (7) The ANZECC Guidelines for the Assessment and Management of Contaminated Sites and the Draft Health and Environmental Guidelines for Selected Timber Treatment Chemicals, and any other relevant national or international guidelines of standards.*

***Explanation:*** *This Policy sets out the matters which the Council will consider when assessing discharge permits for contaminated sites. The Policy covers all discharges from contaminated sites (to land, water and air), and discharges which are part of the remediation of contaminated sites. The Policy does not limit other matters which may be considered by the Council.*

*Clauses (2) and (3) examine potential exposure pathways for contaminants leaving the site. These include run-off or leaching into water, wind blown dust, migration of hazardous gas through soil, and exposure of humans or animals (both directly - e.g., ingestion of soil -and indirectly - e.g., ingestion of plants which have become contaminated).*

Clause (6) addresses any remedial action which may be required (as a condition on a resource consent) and any effects which may arise from remedial action.

Remedial action covered by this Policy includes discharges from any in situ treatment or any collection and subsequent disposal of contaminated material. In the latter case, the Council wishes to ensure that disposal of contaminated material does not simply shift the contamination to a new site. The Council is also concerned that the level of remediation is appropriate for the level of risk and the costs of management.

Clause (7) provides for the use of the most relevant clean-up standards or guidelines available. This recognises that these documents are constantly being updated as new technologies are developed.

4.2.49 To adopt a case-by-case approach to the management of every contaminated site for which ownership or responsibility for contamination and remedial action cannot be clearly identified.

**Explanation:** Responsibility for managing contaminated sites (including any remedial action) is unclear in situations where:

- site owners or occupants are not able to be identified;
- the occupier, rather than the owner, may be responsible for the contamination; the current owner, acting responsibly but in ignorance, acquired a contaminated site that needs remedial action; or
- the scale of contamination is such that it is beyond the resources of the owner or polluter to deal with it.

This Policy directs the Council to adopt a flexible approach with respect to liability and the development of appropriate responses in cases where liability is complex. It is anticipated that this Policy will apply to only a small number of sites in the Region.

4.2.50 To encourage territorial authorities to use the following means for managing activities on sites identified on the Regional database, where appropriate:

- (1) district plan provisions, including non-regulatory methods; and
- (2) Land Information Memoranda; and
- (3) Project Information Memoranda.

**Explanation:** Territorial authorities are responsible under s.31 of the Act for controlling any actual or potential effects of the use, development or protection of land. Land use controls in district plans may therefore be an appropriate means of avoiding, remedying or mitigating any adverse effects of contaminated sites on activities which may occur on those sites.

The Council will encourage territorial authorities to adopt an approach which recognises that land uses should be appropriate to the level of contamination and the potential hazards of a site. For the avoidance of doubt, the Council is **not** encouraging the listing of potentially contaminated sites, i.e. those with a history of using, storing or manufacturing hazardous substances, in district plans.

Information on Land Information Memoranda and Project Information Memoranda, may, on the basis of information contained on the regional database, include statements of the following kind together with references indicating where more detailed information may be obtained:

- Site with a history of storing, using or manufacturing hazardous substances.
- Site where a major spill or other incident involving hazardous substances has occurred.

- Site where analysis of soil or water samples has confirmed that it is a contaminated site.
- Site where some contaminant management or remediation has occurred. (The remaining level of contamination can be compared with relevant guidelines that state maximum levels for particular land uses.)
- Site that was identified in error, that is, was never contaminated.

## **Chapter Five:**

### **Rule 21 Contaminated sites (on-site discharges)**

*The discharge of any contaminants:*

- (1) into or onto land from a contaminated site, (and not from any activity located on the site) other than as provided in clause (1) of Rule 22; or
- (2) into or onto land which is, or is part of, a contaminated site, in association with the on-site remediation of the contaminated site;

is a **Permitted Activity** provided

- (a) there shall be no noxious, dangerous, offensive or objectionable levels of contaminants in the air at or beyond the site boundary as a result of the discharge;
- (b) there shall be no contaminants from the contaminated site or from any discharge associated with site remediation (or any other contaminants emanating as a result of natural processes from those contaminants) beyond the boundary of the contaminated site at concentrations above the background levels for that location;
- (c) the site owner shall undertake such monitoring as is necessary to ensure that the site complies with conditions (a) and (b) above, and shall make the monitoring results available to the Wellington Regional Council, on request.

### **Rule 22 Contaminated sites (off-site discharges)**

*The discharge of any contaminants:*

- (1) into or onto land from a contaminated site (and not from any activity located on the site); or
- (2) into or onto land which is, or is part of, a contaminated site, in association with the on-site remediation of the contaminated site;

*if:*

- (3) the activity involves the removal of material from the contaminated site and the discharge of contaminated material at some other location (unless the material is discharged at a landfill which holds resource consents which enable it to accept the discharge); or
- (4) the discharge does not comply with any of the conditions in Rule 21;

is a **Controlled Activity** and shall comply with the standards and terms below.

#### **Standards and terms**

- (a) the consent holder shall undertake such monitoring as is necessary to ensure that the site complies with conditions or standards set by the Wellington Regional Council under provisions (i) and (ii) of this Rule, and shall make the monitoring results available to the Wellington Regional Council, on request.

#### **Control**

*The Wellington Regional Council shall exercise control over:*

- (1) any on-site actions that may be required in order to manage the actual or potential effects of discharges of contaminants from the originating site or the disposal site;
- (2) standards for site remediation, if necessary;
- (3) the means of removal, and the location of the disposal, of any contaminated material from the site;
- (4) the duration of the consent; and
- (5) administrative charges.

### **Applying for a Resource Consent**

An application for a resource consent under Rule 22 shall be made on the prescribed form, and shall include:

- (1) the matters set out in (1)-(8) of Section 5.3.1 of this Plan;
- (2) a summary of any site investigations that have been undertaken to determine the degree and extent of the contamination, including an identification of the boundaries of the contaminated site;
- (3) any remedial action planned for the site, and the actual and potential effects of the remedial action.

### **Notification**

An application for a resource consent:

- shall not be publicly notified; and
  - shall be considered without the written approval of affected persons;
- except where the consent authority considers that there are exceptional circumstances which justify notification of the obtaining of written approval from affected persons.

**Explanation.** These rules apply to both:

- discharges from contaminated sites (as a result of site contaminants leaving the site, e.g., leaching into groundwater, dispersing into air, or migrating through soil); and
- discharges which result from site remediation activities, whether at the site (e.g., in-situ bioremediation) or at some other location (e.g., removal and disposal of contaminated material).

The rules do not apply to other activities (e.g., factory discharges) which may occur at a contaminated site.

Contaminated sites are defined in Section 3 of this Plan. The rules focus on whether or not the site is having an adverse effect beyond the site boundary. For the purposes of these rules, the "boundary" of a contaminated site means the complete extent of the contaminated land, as assessed at the time that the site was investigated, and confirmed as being contaminated.

If the existence of the contaminated site, or the remediation of the site doesn't have an effect beyond the boundary of the site, then Rule 21 provides that no resource consent is required. This permits, for example, discharges of uncontaminated stormwater from the site, or the on-site containment of contaminated material.

If the site or the remedial action is having or will have an adverse effect beyond the site boundaries then the discharges are controlled activities. The only exception to this is where material from a contaminated site is discharged at a landfill which holds resource consents which enable it to accept the discharge. In this case, no additional resource consent is required.

*In enforcing this rule, the Regional Council will ensure that owners of contaminated sites are given sufficient time to respond to the requirement to obtain a resource consent before enforcement action is taken. This may include issuing an abatement notice which requires a discharge consent to be obtained within a specified time.*

*Policy 4.2.48 is particularly relevant to applications made under Rule 22.*

*Contaminated sites may also be subject to provisions in district plans and other legislation.*

## **Chapter Six:**

### **6.5 Site Contamination**

*The Wellington Regional Council will:*

- 6.5.1 Conduct a preliminary (primarily desktop) investigation to identify sites with a history of using, storing, or manufacturing hazardous substances in the Region.*
- 6.5.2 Work with territorial authorities and industries to develop, implement and maintain a regional database of sites with a history of using, storing or manufacturing hazardous substances, including those where an assessment has been made and contamination confirmed. Sites where spills or other incidents involving hazardous substances have occurred will also be included in the database.*
- 6.5.3 Work with industry groups national agencies and other regional councils to develop appropriate testing techniques to determine contamination levels and risk assessment methods.*
- 6.5.4 Assess the degree of contamination of sites with a history of using, storing or manufacturing hazardous substances, where it is not possible or practicable for site owners to do this, commencing with sites of highest priority.*
- 6.5.5 Develop procedures for transferring the information contained in the regional database to territorial authorities for incorporation onto Project Information Memoranda and Land Information Memoranda, where appropriate.*
- 6.5.6 Work with territorial authorities to develop appropriate provisions in district plans which provide for site specific controls where planning controls are an appropriate response to the effects of contaminated sites.*

## **Chapter Seven:**

### **7.5 Site Contamination**

*Objectives, policies and methods for contaminated sites have been adopted to address the Issues identified in Section 2.6 of the Plan.*

*The successful identification and clean-up of contaminated sites relies on the cooperation of territorial authorities and site owners. For this reason a combination of regulatory and non-regulatory approaches has been adopted.*

*A non-regulatory approach has been adopted to the preliminary assessment and registration phases in order to foster co-operation and ensure that only contaminated sites, as defined in the Plan, are subject to consent requirements.*

*Responsibility for contaminated sites is primarily with the site owners, as this is consistent with the liability provisions for contaminated sites in the Health Act 1956 (s.33), the Toxic Substances Act 1979 (s.48) and the assumptions of liability for discharge of contaminants under the Resource Management Act. A more flexible approach is adopted for sites where liability is more complex, so as to reflect*

*“natural justice” requirements, and to prevent unjust or inequitable liability provisions acting as a barrier to the effective clean-up of contaminated sites. On the regulatory side, the policies reflect the Council’s regulatory role for controlling discharges of contaminants.*

## **Chapter Eight:**

### **8.18 Rules 21 and 22 (contaminated sites)**

*Rules for discharges from contaminated sites have been adopted because the Act's interpretation of "discharge" includes "allow to escape". If a site is contaminated, liable parties could be held responsible if they allow a contaminant to escape from the site. If contaminants escape beyond the boundary of the site, then a resource consent is required. This is because of the potential adverse effects of contaminants from the site on the environment and human health. The discharge is a controlled activity in recognition of the fact that the discharges are occurring in any case, and in order to not create a disincentive for obtaining consents for the site.*

*Discharges of contaminants to land in association with site remediation require a consent if the discharge could have an adverse effect beyond the boundary of the contaminated site. This is because the Council is concerned that the clean up of a contaminated site should not create a contamination problem at another site. Again, discharges of this type are controlled activities so as not to create a disincentive for site remediation.*

## **Chapter Nine:**

*ER 13 The risks associated with confirmed contaminated sites are reduced to an acceptable level.*