

Waimakariri District Council Proposed Waimakariri District Plan

Recommendations of the PDP Hearings Panel

Recommendation Report 6

Hearing Stream 3 Part 2: District-wide matters- CL- Contaminated Land

This report should be read in conjunction with **Report 1** and **Recommendation Report 2**.

Report 1 contains an explanation of how the recommendations in all subsequent reports have been developed and presented, along with a glossary of terms used throughout the reports, a record of all Panel Minutes, a record of the recommendation reports and a summary of overarching recommendations. It does not contain any recommendations per se.

Recommendation Report 2 contains the PDP Panel's recommendations on the PDP's Part 2: District-wide Matters – Strategic directions - SD Strategic directions objectives and policies.

Appendix 1: Schedule of attendances

Appendix 2: Recommended amendments to the Proposed Plan – Tracked from notified version

The Hearings Panel for the purposes of **Hearing Stream 3** comprised Commissioners Gina Sweetman (Chair), Allan Cubitt, Gary Rae, Neville Atkinson and Niki Mealings.

1. Introduction

Report outline and approach

1. This is Report 6 of 37 Recommendation Reports prepared by the PDP Hearings Panel appointed to hear and make recommendations on submissions to the Proposed Waimakariri District Plan (PDP).
2. The report addresses the objective, policies and the advice note relating to the CL – Contaminated Land Chapter and the submissions received on those provisions. The relevant provisions are:
 - Introduction
 - Objective CL-O1
 - Policies CL-P1 to CL-P4
3. We have structured our discussion on this topic as follows:
 - (a) **Section 2** summarises key contextual matters, including relevant provisions and key issues/themes in submissions;
 - (b) **Sections 3 - 6** contains our evaluation of key issues and recommended amendments to provisions; and
 - (c) **Section 7** contains our conclusions.
4. This Recommendation Report contains the following appendices:
 - (a) **Appendix 1: Schedule of attendances** at the hearing on this topic. We refer to the parties concerned and the evidence they presented throughout this Recommendation Report, where relevant.
 - (b) **Appendix 2: Recommended amendments to the Proposed Plan – Tracked from notified version.** For each submission point and further submission point, we provide a recommendation as to whether it should be accepted or rejected. This sets out the final amendments we recommend be made to the PDP provisions relating to this topic. The amendments show the specific wording of the amendments we have recommended and are shown in a 'tracked change' format showing changes from the notified version of the PDP for ease of reference. Where whole provisions have been deleted or added, we have not shown any consequential renumbering, as this method maintains the integrity of how the submitters and s42A Report authors have referred to specific provisions, and our analysis of these in the Recommendation Reports. New whole provisions are prefaced with the term 'new' and deleted provisions are shown as struck out, with no subsequential renumbering in either case.
5. We record that all submissions on the provisions relating to the CL – Contaminated Land chapter have been taken into account in our deliberations. In general, submissions in support of the PDP have not been discussed but are accepted or accepted in part. More

detailed descriptions of the submissions and key issues can be found in the relevant s42A Reports, Responses to Preliminary Questions and written Reply Reports, which are available on the Council's website. As stated above, our decision on each submission point is set out in Appendix 2.

6. In accordance with the approach set out in Report 1, this Report focuses only on 'exceptions', where we do not agree fully or in part with the s42A report author's recommendations and / or reasons, and / or have additional discussion and reasons in respect to a particular submission point, evidence at the hearing, or another matter.
7. The requirements in clause 10 of the First Schedule of the Act and s32AA are relevant to our considerations of the PDP provisions and the submissions received on those provisions. These are outlined in full in Report 1. In summary, these provisions require among other things:
 - (a) our evaluation to be focussed on changes to the proposed provisions arising since the notification of the PDP and its s32 reports;
 - (b) the provisions to be examined as to whether they are the most appropriate way to achieve the objectives; and
 - (c) as part of that examination, that:
 - i. reasonable alternatives within the scope afforded by submissions on the provisions and corresponding evidence are considered;
 - ii. the efficiency and effectiveness of the provisions is assessed;
 - iii. the reasons for our recommendations are summarised; and
 - iv. our report contains a level of detail commensurate with the scale and significance of the changes recommended.
8. We have not produced a separate evaluation report under s32AA. Where we have adopted the recommendations of Council's s42A report authors, we have adopted their reasoning, unless expressly stated otherwise. This includes the s32AA assessments attached to the relevant s42A Reports and/or Reply Reports. Those reports are part of the public record and are available on the Council website. Where our recommendation differs from the s42A report authors' recommendations, we have incorporated our s32AA evaluation into the body of our report as part of our reasons for recommended amendments, as opposed to including this in a separate table or appendix.
9. A fuller discussion of our approach in this respect is set out in Section 5 of Report 1.

2. Summary of provisions and key issues

Outline of matters addressed in this section

10. In this section, we provide relevant context around which our evaluation of the notified provisions and submissions received on them is based. Our discussion includes:
 - (a) summary of relevant provisions;
 - (b) themes raised in submissions; and
 - (c) identification of key issues for our subsequent evaluation.

Relevant provisions

11. As indicated in paragraph 1.2 of this Recommendation Report, the relevant provisions we address relate to Part 2: District-wide matters – CL Contaminated Land.

Submissions

12. Submissions on the CL- Contaminated Land Chapter generally supported the notified plan provisions, with some amendments sought, along with the deletion of two policies.

Key issues

13. The issues in contention on this chapter addressed in this report are:
 - (a) Objective CL-O1
 - (b) New CL-O2

3. Objective CL-O1

Overview

14. The Panel's recommended amendments to CL-O1, over and above the amendments recommended by the reporting officer, is summarised below:

Provision	Panel recommendations
Objective CL-O1	That the objective be reworded to read "Human health and the environment are protected from the subdivision, use and development of contaminated land"

Amendments and reasons

15. The submissions we consider here are those seeking amendments in relation to Objective CL-O1. Specifically, submitters sought:
 - (a) Amending the reference to people and property to human health¹
 - (b) Amending the objective to include reference to significant adverse effects².
16. The s42A report recommended:
 - (a) Rejecting the amendment to refer to human health; and
 - (b) Rejecting the reference to significant adverse effectsFor the reasons that the notified version gave effect to s31 functions and the RPS.
17. We note that Mr Rowe, planner for the Fuel Companies, in evidence accepted the s42A recommendation. In evidence, Ms Dale planner for Kainga Ora sought an amended wording that would change the wording of the objective to focus on managing contaminated land to protect human health and the environment. We consider that the further amendment sought falls within the scope of the original submission.

¹ Fuel Companies [276.12]

² Kāinga Ora [325.94]

18. Ms Manhire did not change her position in respect of the wording of CL-O1 in her Reply Report.
19. We considered the wording proposed by Ms Dale and the notified version of CL-O1 against s31 RMA and Objective 17.2 and Policy 17.3.2 of the RPS. We generally preferred Ms Dale's evidence and suggested rewording; however, we have further reworded the objective to make it clearer about its focus. We recommend that the Fuel Companies and Kainga Ora's submissions be accepted in part.

4. New Objective CL-O2

Overview

20. The following is a summary of the Panel's recommended amendment:

Provision	Panel recommendations
New CL-O2	Insert a new objective on the benefits of the remediation of contaminated land

Amendments and reasons

21. The submission we consider here is that from Kāinga Ora seeking a new objective to acknowledge that the remediation of contaminated land can have positive benefits for the community and environment³.
22. The s42A report recommended rejection of this submission point, stating it was unclear why an objective recognising possible effects was required and how it would give effect to higher order documents. Ms Manhire was of the view that there was a risk of acting due to insufficient information.
23. Ms Dale provided evidence for Kāinga Ora and suggested amended wording to the original drafting set out in the submission. She outlined how plans can tend to focus on adverse effects and place less weight or ignore positive outcomes. Her view was that it is appropriate to enable and encourage the benefits of remediation in a positively geared planning framework and identified that an objective would enable a balancing of positive and adverse effects and may provide an incentive for remediation. The amended wording was sought to recognise that benefits go beyond land for housing and business activities. The legal submissions from Kāinga Ora set out that there would be no legal impediment to the new objective and its inclusion would be entirely consistent with broader planning principles and s32 RMA.
24. Having reviewed the original wording, we find that the amended wording sought through evidence is within scope of the submission.
25. In reply, Ms Manhire agreed with Ms Dale's reasons and provided a proposed new objective and accompanying s32AA evaluation. We noted Ms Manhire's comment in her reply report "that a council cannot take into account positive effects from the

³ 325.95

proposal when considering whether the effects will be minor but can have regard to mitigating factors”. We were slightly unclear about her comment. While this may be true for determining whether a resource consent may be publicly, limited or non-notified, positive effects need to be considered alongside adverse effects in making a decision on a resource consent under s104, and specifically s104(1)(a) and 104(1)(ab). The inclusion of this objective makes the requirement to consider positive effects even more clear, and we therefore agree with its inclusion.

26. The wording proposed by Ms Manhire and Ms Dale differed. We have considered both draft objectives and have recommended an amended wording that is consistent with the drafting of other objectives in the Plan. Our recommended redraft is set out below.

Benefits of the remediation of contaminated land

The benefits of the remediation of contaminated land undertaken in accordance with good practice approaches, on the health and wellbeing of people and communities and the environment, are recognised.

27. We recommend that Kainga Ora’s submission be accepted in part.

5. Other matters and consequential changes

28. There were no other matters or consequential changes raised.

6. Conclusion

29. For the reasons summarised above, we recommend the adoption of a set of changes to the PDP provisions relating to Part 2: District-Wide Matters – CL – Contaminated Land. Our recommended amendments are shown in Appendix 2.
30. Overall, we find that these changes will ensure the PDP better achieves the statutory requirements, national and regional direction, and our recommended Strategic Directions, and will improve its useability.

Appendix 1: Submitter attendance and tabled evidence for Contaminated Land - Hearing Stream 3

Attendee	Speaker	Submitter No.
Council reporting officer	<ul style="list-style-type: none"> • Jessica Manhire 	
Kainga Ora	<ul style="list-style-type: none"> • Clare Dale • Mr Mattheson 	325, FS 88
Environment Canterbury Regional Council	<ul style="list-style-type: none"> • Joanne Mitten • Jolene Irvine • Nick Griffiths • Kate Dickson 	316
Fuel Companies	<ul style="list-style-type: none"> • Miles Rowe – 4sight 	276, FS 104
Tabled Evidence		
N/A	N/A	N/A

Appendix 2: Recommended amendments to the Proposed Plan - Tracked from notified version
(provisions not consequentially renumbered)

CL - Whenua paitini - Contaminated Land

Introduction

Sites are identified as contaminated when land has a hazardous substance in or on it that may have significant adverse effects on human health or the environment.

The District Council is required to implement the NESCS. The NESCS requires that land affected, or potentially affected, by contaminants in soil is identified, assessed and if necessary managed remediated¹ before it is subdivided, used or developed to mitigate adverse effects on human health. The NESCS sets out the activity status for subdivision, use and development of land.

The District ~~Council Plan does not contain any rules for the subdivision, use or development of contaminated land as this is regulated~~ implements resource consents² under the NESCS. ~~The District Plan does,~~³ however, provide the relevant as the NESCS does not contain any⁴ objectives ~~or~~ and⁵ policies relating to contaminated land, as none are provided by the NESCS ~~the District Plan will apply.~~⁶

Regional councils identify and monitor contaminated land. The Regional Council has recorded potentially contaminated land in the LLUR, which is a public database of land with a history of potentially hazardous activities or industries. The information in the LLUR is used by territorial authorities to identify land that is or has been used for a hazardous activity or industry, when preparing Land Information Memoranda and when assessing applications for resource consent.

The Regional Council is ~~also~~⁷ responsible for the avoidance, remediation, or mitigation of adverse effects from the use of contaminated land within the CMA and within the beds of lakes and rivers and the avoidance, remediation, or mitigation of adverse effects from discharges of contaminants into or⁸ on ~~to contaminated~~⁹ land, air or water¹⁰.

The provisions in this chapter are consistent with the matters in Part 2 - District Wide Matters - Strategic Directions and give effect to matters in Part 2 - District Wide Matters - Urban Form and Development.

Objective	
CL-O1	Contaminated land

¹ Fuel Companies [276.11]

² Fuel Companies [276.11]

³ Fuel Companies [276.11]

⁴ Fuel Companies [276.11]

⁵ Fuel Companies [276.11]

⁶ Fuel Companies [276.11]

⁷ Fuel Companies [276.11]

⁸ Fuel Companies [276.11]

⁹ Fuel Companies [276.11]

¹⁰ Fuel Companies [276.11]

	The Human health and the environment are protected from the subdivision, use and development of contaminated land does not adversely affect people, property, and the environment ¹⁴ .
CL-O2	Benefits of the remediation of contaminated land <u>The benefits of the remediation of contaminated land undertaken in accordance with good practice approaches, on the health and wellbeing of communities and the environment, are recognised.</u> ¹²
Policies	
CL-P1	Identify contaminated sites Identify sites potentially containing contaminated land, including sites with contamination from current and historical land uses and activities, by using the Regional Council's LLUR, <u>District Council records</u> , ¹³ and coordinating with the Regional Council in the recording and management of contaminated land.
CL-P2	Best practice management of contaminated land Require applications for subdivision, <u>change of</u> ¹⁴ use or development of contaminated land, or potentially contaminated land, to <u>apply a good practice approach to the include an investigation management</u> ¹⁵ of the ¹⁶ risks and to remediate the contamination, or manage activities on contaminated land, ¹⁷ to protect the human ¹⁸ health of people ¹⁹ and the environment. The remediation or mitigation works for contaminated land shall be undertaken in such a way to not pose further risk to human health or the environment than if remediation had not occurred.
CL-P3	Earthworks on contaminated land Discourage the disturbance of contaminated land, unless for the purpose of contamination remediation, where the level, type and toxicity of the contamination could adversely affect natural values, <u>including ecological values</u> ²⁰ .
CL-P4	Disposal of contaminated soil Avoid adverse effects on the health of people and the environment from the disposal of soil from contaminated land.

There are no rules in this chapter. The objectives and policies apply across the Plan.

Advice Notes

¹¹ Fuel Companies [276.12], Kāinga Ora [325.94]

¹² Kainga Ora [325.95]

¹³ Environment Canterbury [316.44]

¹⁴ Kainga Ora [325.97]

¹⁵ Fuel Companies [276.13]

¹⁶ Fuel Companies [276.13]

¹⁷ Fuel Companies [276.13]

¹⁸ Fuel Companies [276.13]

¹⁹ Fuel Companies [276.13]

²⁰ Environment Canterbury [316.46]

CL-AN1	<p>Activities and structures may also be subject to controls outside the District Plan. Other applicable rules or controls within other legislation or ownership requirements include the following:</p> <ul style="list-style-type: none">• The Regional Council's LLUR summarises the information held in its records about land where hazardous activities are known to have occurred or are currently occurring in Canterbury. This is available on the Regional Council's LLUR website. The register should be checked in association with any application for resource consent for subdivision or land development.• A resource consent may be required from the District Council under the NESCS, which prescribes methods used to assess and manage land that is contaminated, or potentially contaminated from an activity or industry on the HAIL. The Regional Council is to be advised when contaminated land is identified.• There are no rules in the District Plan for contaminated land. The NESCS manages subdivision, use and development of contaminated, or potentially contaminated, land. However, the objectives and policies in the District Plan apply to the assessment of any resource consent application.• A resource consent may also be required from the Regional Council in relation to contaminated land.• Contaminated land management guidelines are available on the Regional Council's website.
---------------	---