

Section 32 Report – Part 2

Chapter 10: Contaminated Land

prepared for the

Proposed Waikato District Plan

July 2018



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I OVERVIEW AND PURPOSE

The purpose of this Section 32 Summary Report is to review both the context and approach undertaken by Council in the development of objectives, policies and rules included within the framework of the Proposed Waikato District Plan (District Plan) as they relate to the use and management of contaminated land. This management framework has been developed to align with the regulations of the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soils to Protect Human Health) Regulations 2011 (NES), however do not replace or supersede those regulations.

The issues, objectives, policies, rules and methods contained within this s32 Report must be read in conjunction and with reference to the sections contained within Part I Section 32 Report – Introduction to the Evaluation Report.

I.1 Topic Description

Chapter 9 of the Operative Waikato District Plan (Waikato Section) and Section 15.3 of the Operative Waikato District Plan (Franklin Section) (the Operative District Plan), outline the issues, objectives, policies, rules and methods of implementation that are applicable to contaminated land within the District. This chapter seeks to provide for the continued use of land for productive and industrial, commercial and other sensitive activities across all zones through a rule-based framework.

Contaminated land is located throughout the District. The management of that contaminated land relies on the identification of past land use activities, including traditional Waikato primary productive activities, which have the potential for residual land contamination. It is therefore appropriate that contaminated land is managed through a specific chapter of the District Plan to ensure that activities specific to the use and development of contaminated land, in particular sensitive activities, are enabled whilst managing the potential effects of that activity on human and environmental health.

I.2 Significance of this Topic

There are multiple sites within the District known to be contaminated due to the past land use activities and practices. In some cases, contamination renders that land unusable. However, Council does not have comprehensive knowledge of all potentially contaminated sites. It is expected that activities should not use contaminated land where the risk to human health or the environment is high or where the risk to human health is unknown, unless remediation of that land has taken place and any risk has been reduced to an acceptable level.

Activities that are specifically sensitive to land contamination should not locate on contaminated land. These include places where people, and in particular young people, spend large amounts of time; such as homes, sports fields, schools, kindergartens and childcare centres. Some activities, such as commercial or industrial activities, may be able to remediate a site so that the risks posed to their activity by the contamination are managed.

Remediation of contaminated sites must be managed on a case by case basis. In some instances, the remediation of sites may result in the spread of contaminants within the environment. Therefore, the remediation of land must be regulated to avoid the potential for a cumulative impact on the environment. Similarly, where contaminated material is removed from a site, the disposal site must be appropriately consented and managed to avoid the potential for further adverse effects to occur.

In some situations, containment of areas of contamination as a remediation method or as part of a combination of methods may be appropriate to mitigate risk. Where those containment activities have been assessed as appropriate, it is important that future land use activities do not disturb those contained areas of contamination. Generally, containment techniques such as capping of remediated sites are not appropriate where the land is to be used for residential activities as there are potential risks to future owners of that land.

The District Plan provisions need to strike the appropriate balance between enabling the ongoing use and development of contaminated land and the management of the effects of that use or development on human health and the receiving environment.

1.3 Resource Management Issue to be Addressed

The use and development of contaminated land has the potential to cause adverse effects to human health and to the environment. The use and development of contaminated land has been identified as a resource management issue to be actively addressed through the Waikato District Plan. Land that has been contaminated by previous land use practices can present a risk to the health and safety of people and the environment if that risk is not appropriately managed.

The District Council's functions under s31(1)(b)(iia) RMA is the prevention or mitigation of the adverse effects of the development, subdivision, or use of contaminated land. The issue is recognised at a national level through the NES.

Both sections of the Operative District Plan identify a similar single issue; being that the development of contaminated land may result in humans being exposed to contaminants which are harmful to human health. This requires management to avoid those effects on human health, or the discharge of contaminants to the environment.

1.4 Current Objectives, Policies, Rules and Methods

Contaminated land is currently subject to the objectives and policies of Chapter 9 of the Operative District Plan (Waikato Section) and Section 15.3 of the Operative District Plan (Franklin Section). These policies are implemented through the NES and, in the Waikato Section a rule relating to remediation within each of the zone chapters, including Te Kauwhata Living Zone, and are relevant only where the NES does not apply. The remediation rule was retained at the time the NES came into effect as it was considered it did not either conflict or duplicate the NES.

Both Operative Waikato District Plan sections provide a similar approach to the management and remediation of contaminated land within the District. The current approach involves the advance investigation of land known to have been occupied or potentially occupied by a soil contaminating activity, and the use of that land only where the risks to human health are minimised or avoided through soil remediation. That remediation must not pose a more significant risk to human health or the environment than if remediation had not occurred.

There is some variation between the methods within the Waikato and Franklin Sections of the Operative District Plan. The Franklin Section relies on the assessment criteria for all general subdivision while the Waikato Section relies on Regulations 8 to 11 of the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soils to Protect Human Health) Regulations 2011, subject to conditions.

The Issues, Objectives, Policies and Rules of each section of the District Plan are as follows:

1.4.1 Waikato Section

Issue

Use or redevelopment of contaminated land can pose a risk to human health, or increase contaminant discharges to the environment.

Objective

Human health or the environment is not harmed by the use or development of contaminated land.

Policies ensure that:

- Sensitive activities, such as residential, educational, recreational or childcare activities, are not located on contaminated land.
- Remediation to make the site suitable for the proposed use or redevelopment is undertaken prior to a change of use or redevelopment of contaminated land.
- Remediation of contaminated land does not pose a more significant risk to human health or the environment than if remediation had not occurred.
- Material removed from contaminated land is be disposed of in a manner that avoids further adverse effects on human health or on the environment.
- Use or development of contaminated land that has been remediated does not damage or destroy any contaminant works, unless comparable or better containment is provided.

- Development or use of land known to have been occupied by a potentially contaminating activity does not occur until any risk to human health or the environment has been investigated.

Methods:

- Rules set out in Regulations 8 to 11 of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 in Appendix Of which relate to the removal or replacement of a fuel storage system, the sampling or disturbing of soil, the subdivision of land or changing the use of land, on land that is contaminated or potentially contaminated, because of its past, present or likely use of the land for an activity or industry described in the Ministry for the Environment's Hazardous Activities and Industries List (HAIL).
- Rules permitting remediation of contaminated land, subject to meeting specific criteria, where the NES does not apply.

1.4.2 Franklin Section

Issue

- *Some site activities have the potential to result in contaminants being present on sites. These contaminants may be harmful to human health and require management for removal prior to the subdivision or development of the site.*

Objectives and policies:

- *To avoid, remedy or mitigate any significant adverse effects on the environment from contaminated sites.*
- *Ensuring that the risk to human health that may arise from previous land uses is avoided, remedied or mitigated.*

Policies ensure that:

- All contaminated sites in the district shall be managed in such a way that their adverse effects on human health and soil and water quality are avoided, remedied or mitigated in accordance with the best practicable option available for the site.
- Prior to subdivision or development, the presence (or otherwise) of contaminants associated with previous land uses shall be established, and appropriate works undertaken to minimise any risks to human health from the identified contaminants.

Methods:

- Rules set out in Regulations 8 to 11 of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 in Appendix Of which relate to the removal or replacement of a fuel storage system, the sampling or disturbing of soil, the subdivision of land or changing the use of land, on land that is contaminated or potentially contaminated, because of its past, present or likely use of the land for an activity or industry described in the Ministry for the Environment's Hazardous Activities and Industries List (HAIL).

- The Council, in conjunction with the regional council, will establish and maintain a non-statutory register of suspected contaminated sites, which shall include known details of the level of contamination of each site and the consequent risk to human health and the environment;
- Where contamination levels are confirmed, contaminated sites from the register will be identified in the district plan along with appropriate methods to control their use and ensure their remediation;
- The Council will inform the relevant regional council as soon as practicable of the existence of any suspected contaminated sites, irrespective of the suspected significance of their adverse effects.

1.5 Information and Analysis

The Council has considered various external guidance and resources, internal advice and stakeholder feedback to guide and inform the development of the proposed policy framework within the Contaminated Land Chapter. These are listed in Table 1 below:

Table 1 List of Relevant Background Assessments and Reports

Title	Author	Description of Guidance/ Resource/ Advice
Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES)	Ministry for the Environment (MfE)	The regulations took effect on 1 January 2012. Each territorial and unitary authority implements this NES in accordance with their section 31 functions under the Resource Management Act 1991 (RMA) relating to contaminated land, specifically section 31(b)(iia) “the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land”. Full text in Appendix 2.
Hazardous Activities and Industries List (HAIL)	Ministry for the Environment (MfE)	A list of activities and industries that are considered likely to cause land contamination. Full text in Appendix 3.
Land Use Information Register	Waikato Regional Council	A database that identifies sites where hazardous activities and industries are or have been located throughout the Waikato Region. This list has been compiled from a variety of sources including aerial photography, resource consents, information from district and city councils, dangerous good licences, HSNO test certificate data, land use mapping and historic photographs. A property can be listed on the register but is not necessarily contaminated. Land contamination is confirmed by carrying out a detailed site investigation. This involves

		collecting and testing soil samples. The database is updated and maintained on an ongoing basis.
Waikato District Hazard Register	Waikato District Council	A database that holds information on land hazards including contaminated land updated and maintained by council on an ongoing basis. A property can be listed on the register but is not necessarily contaminated. Land contamination is confirmed by carrying out a detailed site investigation. This involves collecting and testing soil samples.
Users' Guide – National Environmental Standard for Assessing and Managing Contaminants in Soils to Protect Human Health	Ministry for the Environment	Explanation and guidance on the regulations in the NES, including matters such as Good Practice for Councils and material incorporated by reference such as the Contaminated Land Management Guidelines 1 – Reporting, 2 – Hierarchy and Application of Guideline Values, and 5 – Site Investigations and Analysis of Soils.
Contaminated Land Specialist	Waikato District Council – Environmental Health	Support with the review and development of proposed objective and policies.

1.6 Consultation Undertaken

During the review and development of a policy framework to support the assessment and management of contaminated land, a number of meetings were held with internal staff as well as community open days and stakeholder workshops. The following feedback was received through these consultation sessions:

Table 2 Specific Consultation Processes

Date	Group	Subject Matter	Feedback
5 May 2015	Collaborative Forum – Multi Stakeholder Workshop (External Stakeholders)	<ul style="list-style-type: none"> • Biodiversity and Landscapes • Heritage • Urban land and Infrastructure • Natural Hazards • Network Utilities • Rural subdivision and landuse • Urban development • Plenary (Subject matter determined through the plenary session)	No comments or feedback on contaminated land topic

23 July 2015	Extended Working Group (Council Staff)	<ul style="list-style-type: none"> • Consents issues • Economic issues • Environmental Health issues • Iwi issues • Monitoring issues • Reserves issues • Roading issues • Three waters issues 	No comments or feedback received on contaminated land topic
27 August 2015	Consultant Workshop	Key issues and DP format	No comments or feedback on contaminated land topic
27 June 2016	Extended Working Group (Council Staff)	Objectives – Contaminated Land	No specific feedback
24 August 2016	Extended Working Group (Council Staff)	Policies – Contaminated Land	General discussion on policies and methods within the NES and non-regulatory methods such as keeping records.
24 January 2017 and 4 May 2017	Extended Working Group (Council Staff)	Rules and other Methods – Contaminated Land	NES applies – No feedback received

While no specific external consultation has been undertaken on the contaminated land topic, this matter has been canvassed through the comprehensive consultation and engagement on the wider District Plan review. A series of public open days, stakeholder information days and workshops with stakeholders and partner councils were held from 2015 through to the end of 2017, which included the release of the draft proposed district plan at the end of 2017.

The draft district plan was available for public to view on council's website from November 2017 to January 2018. Consultation on the draft district plan was carried out through a series of 11 open days were held between 17 October 2017 and 7 December 2017 and through a feedback period from 20 November 2017 to 22 January 2018. Feedback on the contaminated land objective and policy was received through this process and this feedback is summarised in Table 3.

Table 3 Public Consultation

Key Stakeholder	Subject Matter	Feedback Summary	Planner's Response
Oil Companies – <ul style="list-style-type: none"> • Z Energy Ltd • BP Oil NZ Ltd • Mobil Oil NZ Ltd 	Contaminated Land Objective and Policies	The feedback raised concerns that the draft district plan provisions for contaminated land focussed disproportionately on change of land use and remediation and failed to recognise the other aspects of the NES such as removing or	Some amendments were made to the issue, objective and policies as a result of the feedback.

Key Stakeholder	Subject Matter	Feedback Summary	Planner's Response
		<p>replacing fuel storage systems, sampling and disturbing soil. Draft provisions were also considered to focus more on the management of contaminated land as opposed to remediation.</p> <p>The feedback suggested changes to the draft proposed issue statement, objective and policies to better align with and support the NES and to ensure the provisions were not more restrictive than the NES.</p>	

1.7 Iwi Authority Consultation and Advice

1.7.1 Consultation

Clause 3 of Schedule 1 of the RMA set out the requirements for local authorities to consult with tangata whenua through and iwi authorities. Clause 3 also requires Local Authorities to consult with any person, group or ministry that may be affected by changes made to the District Plan.

Council used the following methods to create an Iwi Reference Group.

- Joint Management Agreement
- Tai Tumu Tai Pari Tai Ao (Waikato Tainui Environmental Plan)
- Partnerships
- Collaboration

The purpose of the Iwi Reference Group was to provide Council with a single forum to socialise the proposed changes to the Operative District Plan.

The Iwi Reference group was made up of all iwi and hapuu within the district that council currently consults with via the Resource Consent Process.

Engagement and consultation with the Iwi Reference group took place between December 2014 and December 2017. (See Part 1 Section 32 Report – Introduction to the Evaluation Report)

1.7.2 Advice

Under Clause 4A of Schedule 1 of the RMA sets out the requirements for local authorities to consult with iwi authorities before notifying a proposed plan. Clause 4A(1)(b) requires Council to have particular regard to any advice received on a draft proposed policy statement or plan from those iwi authorities.

Council with discussions with the relevant Iwi and Hapuu and through Te Kahui Mangai website:

Council undertook consultation with:

Iwi authorities within Waikato District:

- Waikato Tainui
- Ngaati Tamaoho

Iwi for the purpose of RMA list on Te Kahui Mangai

- Tainui o Tainui

Iwi that have relationship from other districts

- Hauraki
- Ngaati Maniapoto
- Ngaati Paoa - Hauraki

The above Iwi groups were consulted with and a summary of their comments issues and Council's consideration are listed in Part I Section 32 Report – Introduction to the Evaluation Report.

1.8 Decision-making

A number of topic based workshops were carried out with Councillors throughout the district plan review process. The workshops on the policy framework for contaminated land are listed in table 4.

Table 4 Summary of Decision-making Processes

Meeting / Date	Document	Decision/direction
Councillor Workshop 7 May 2016	Draft Issues Statements – Contaminated Land	Comments regarding terminology – People vs human health
Councillor Workshop 7 May 2016	Draft Objective – Contaminated Land	No feedback
Councillor Workshop 5 September 2016	Draft Policies – Contaminated Land	No feedback
Councillor Workshop 5 September 2016	Draft Rules – Contaminated Land	Some general discussion. No specific feedback as NES applies

1.9 Reference to Other Relevant Evaluations

This s32 topic report should be read in conjunction with the following evaluations:

- “Section 32 Report – Part 2: Chapter 10 – Hazardous Substances” prepared for the Proposed Waikato District Plan, dated June 2018.

2 ISSUES, OBJECTIVES, POLICIES AND RULES

2.1 Higher Level Planning Documents and Legislation

2.1.1 Legislation

Resource Management Act 1991

Section 31 (1)(b) of the RMA includes the prevention or mitigation of adverse effects of the use, subdivision or development of contaminated land as a requirement of Council's functions of the RMA.

2.1.2 National Policy Statement

New Zealand Coastal Policy Statement

Policy 14 (x) of the New Zealand Coastal Policy Statement requires rehabilitation or restoration of natural character of the coastal environment through the decommissioning or restoring of historic landfills and other contaminated sites which are, or have the potential to, leach contaminants into the coastal marine area.

2.1.3 National Environments Standard

National Environmental Standard for Assessing and Managing Contaminants in Soils to Protect Human Health

The National Environmental Standard for Assessing and Managing Contaminants in Soils to Protect Human Health (NES) regulate activities proposing to remove or replace a fuel storage system, sample or disturb soil, subdivide land or change the use of that land where the land is known to be used, or have been used, by potentially contaminating activities and industries listed in the Ministry for the Environment's Hazardous Activities and Industries List (HAIL). Where an Applicant proposes to undertake one or more of those activities, an assessment of the activity under Regulations 8 to 11 of the NES are applicable to that application. Rules permitting the use or remediation of that land may be satisfied, subject to conditions.

The NES Regulations are attached as a supporting document to the appendices of this s32 Report.

2.1.4 Regional Policy Statement

Waikato Regional Policy Statement

The Waikato Regional Policy Statement (WRPS) contains specific mention of contaminated land, specifically through Objective 3.25 Values of Soil and Policy 14.3 Soil Contaminants. That objective and supporting policy is as follows:

Objective 3.25 Values of Soil: The soil resource is managed to safeguard its life supporting capacity, for the existing and foreseeable range of uses.

Policy 14.3 Soil Contaminants: Ensure that contaminants in soil are minimised and do not cause a reduction in the range of existing and foreseeable uses of the soil resource. Particular attention will be given to the potential for effects on:

- a) Human health;
- b) Animal health;
- c) Suitability of soil for food production;
- d) Micro-nutrient availability;
- e) Soil ecology; and
- f) Groundwater.

Specifically, that objective and supporting policy seeks the remediation of contaminated soils as a primary method for the future use and development of those soils to support productive, human health and the health and wellbeing of the environment. The WRPS specifically directs District Plans to include the provisions of the NES with the suggestion that District Plans should further incorporate an objective and policy framework to support the implementation methods that related to contaminated land under the former WRPS prior to the NES coming into effect. The WRPS also directs District Plans to support any land zoning changes with the information that identifies contaminated sites and how risks presented by contamination will be managed.

2.1.5 Iwi Environmental Plans

Waikato Tainui Environmental Plan

Issue 21.2.6, supporting Objective 21.3.3, Policy 21.3.3.1 and supporting Methods (a) to (d) of the Waikato Tainui Environmental Plan require the management of contaminated land, and where possible its mitigation or remediation, through development of an understanding of the location of contaminated sites, implementation of plans to manage, mitigate or remediate contaminated sites and enforcement of pollution mitigation by the polluter as opposed to the user of the land.

Maniapoto Environmental Management Plan

Objective 18.3.1, supporting Policy 18.3.1.2 and Action (d) of the Maniapoto Environmental Management Plan seek the management and restoration of contaminated land, including the avoidance of land contamination subject to future land uses.

Those strategic matters and provisions that have been specifically given effect or had regard to in this chapter are summarised in Table 5 below. These documents broadly identify the resource management issues for the District and provide the higher-level policy direction to resolve these issues.

Table 5 Higher Order and Guiding Documents

Document (Statutory obligation in italics):	Relevant provisions the Chapter 10 – Contaminated Land topic is required to take into account/ give effect to:
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Resource Management Act 1991	Section 31(1)(b)
National Coastal Policy Statement	Policy 14 (x)
Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soils to Protect Human Health) Regulations 2011	The NES Regulations are attached as a supporting document to the appendices of this s32 Report due to the size of Regulations 8 to 11 of the NES
Waikato Regional Policy Statement	Objective 3.25 and supporting Policy 14.3
Waikato Tainui Environmental Plan	Issue 21.2.6 Objective 21.3.3 Policy 21.3.3.1 Methods (a) to (d)
Maniapoto Environmental Management Plan	Objective 18.3.1 Policy 18.3.1.2 Action (d)

2.2 Issues

The evaluation of objective and provisions in the following sections relate to the resource management issue stated below:

Table 6 Issue Statement

Issue statement	Contaminated Land The use and development of contaminated land has the potential to cause adverse effects to human health and to the environment.
<p>The use and development of contaminated land has been identified as a resource management issue to be addressed through the Proposed Waikato District Plan. Land that has been contaminated by previous land use practices has the potential to be redeveloped or utilised in a way that can present a risk to human health and the environment.</p> <p>One of Councils functions under s31(1)(b) of the RMA is the prevention or mitigation of adverse effects of the use, subdivision or development of contaminated land. The issue is recognised at a national level through the NES.</p>	

3 EVALUATION OF OBJECTIVES

Below is a summary of the objectives that have been identified as the most appropriate to address this resource management issue and achieve the purpose of the Resource Management Act 1991 (RMA). A copy of the full objectives evaluation is contained in Part 5 of the s32 report.

The following objective is considered to be the most appropriate way to achieve the purpose of the Act.

Table 8 Summary of Objectives

Objective	Summary of evaluation
<p>11.2.1 Objective – Contaminated Land</p> <p>a) The subdivision, use and development of contaminated land is managed to protect human health and the environment.</p>	<p>The WRPS specifically directs District Plans to include the provisions of the NES with the suggestion that District Plans should further incorporate an objective and policy framework to support the implementation methods that related to contaminated land under the former WRPS prior to the NES coming into effect. The WRPS also directs District Plans to support any land zoning changes with the information that identifies contaminated sites and how risks presented by contamination will be managed.</p> <p>The objective gives effect to the higher order policy direction of the WRPS specifically through ensuring contaminated land is managed to avoid the potential effects on the environment under development by future foreseeable land uses in a manner that preserves the capacity of the land resource to be subject to productive use or development subject to Part 2. That use, subdivision or development must ensure (as required by supporting Policy 11.2.2) that disturbance or remediation of contained contaminants will not result in the greater spread of those contaminants than if the disturbance or remediation did not occur.</p>

4 SCALE AND SIGNIFICANCE EVALUATION

The level of detail undertaken for the evaluation of the Proposed District Plan provisions has been determined by an assessment of the scale and significance of those provisions. The scale and significance assessment considered the environmental, economic, social and cultural effects of the provisions. In making this assessment regard has been had to the following, namely whether the provisions:

- (a) Are of regional or district wide significance;
- (b) Have effects on resources that are considered to be a matter of national importance in terms of s6 of the Act;
- (c) Adversely affect people's health and safety;
- (d) Result in a significant change to the character and amenity of local communities;
- (e) Adversely affect those with particular interests including Maori;
- (f) Limit options for future generations to remedy effects;
- (g) Whether the effects have been considered implicitly or explicitly by higher order documents; and
- (h) Include regulations or other interventions that will impose significant costs on individuals or communities.

The evaluation has focused on those provisions that will result in a substantial change to the present management of contaminated land and its use and development. The majority of changes proposed to the current provisions involve the merging of issue statements, objectives and policies under both Sections of the Operative Waikato District Plan into one issue, objective and policy that gives effect to the direction of the WRPS.

A policy has been developed and evaluated to address a particular issue and seeks to meet a specific objective; being to manage the use, subdivision and development of contaminated land to protect human health and the environment.

The following table contains a summary of the policy considered to be of a scale and significance to justify a more comprehensive evaluation of options:

Table 7 Scale and Significance Assessment

Issue	Provisions evaluated	Scale and Significance Reasoning
<p>The use and development of contaminated land has the potential to cause adverse effects to human health and to the environment.</p>	<p>11.2.2 Policy – Managing the use of Contaminated Land</p> <p>Methods: Provisions contained in the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.</p>	<p>While it is generally stated that contaminated land can result in significant adverse effects on human health and the environment; at a District level, the scale and significance of the issue is not fully known, due to the widespread location and extent of contaminated sites and limited knowledge of the degree and type of contamination District wide. Therefore, management of the use, subdivision or development of contaminated land can involve high compliance costs. However, contaminated land holds a lesser standard of significance within the District Plan for the following reasons:</p> <ul style="list-style-type: none"> (a) The contaminated land issue is addressed within a number of higher order planning documents that direct Council to manage the issue within the District Plan; (b) The NES provided methods for the investigation, development and/ or remediation of contaminated land while the scope of the District Plan is to provide policy support to the NES; and (c) There is limited scope in the

		<p>development of the objectives and policies framework of the District Plan as they are largely dictated by the NES and should reflect the direction set by the NES.</p> <p>For those reasons, a minimal level of detail is required in respect of this s32 evaluation.</p>
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5 EVALUATION OF PROPOSED POLICIES, RULES AND METHODS

Section 32 (1)(b) requires an evaluation of whether the provisions are the most appropriate way to achieve the objectives by identifying other reasonably practicable options, assessing the efficiency and effectiveness of the provisions in achieving the objectives, and summarising the reasons for deciding on the provisions.

The assessment must identify and assess the benefits and costs of environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment. The assessment must, if practicable, quantify the benefits and costs and assess the risk of acting or not acting if there is uncertain or insufficient information available about the subject matter.

5.1 Identification of Reasonably Practicable Options – for Achieving Objective

The following assessment consists of an examination of all reasonably practicable options for achieving Objective 11.2.1. This high-level screening process considers the effectiveness of each option. Only the options considered to be reasonably practicable will be evaluated in this section.

The options analysed within this assessment include the exclusion of any issues, objectives and policies regarding contaminated land management (the “Do Nothing” approach), the maintenance of the status quo with respect to the current provisions of the Waikato Section of the Operative District Plan, the adoption of the Franklin Section provisions into the Proposed District Plan or the development of new issue, objective and policy statements.

Each option is evaluated within Table 8 below:

Table 8 Reasonably Practicable Options for Achieving Objective

Objective	<p>10.2.1 Objective – Contaminated Land</p> <p>(1) The subdivision, use and development of contaminated land is managed to protect human health and the environment.</p>				
Options	Description (brief)	Relevance	Feasibility	Acceptability	Recommendation
<p>Option 1</p> <p>Do nothing – (remove all policies and rules in District Plan zone chapters).</p>	<p>Remove all polices and associated rules in District Plan zone chapters.</p>	<p>The NES will still apply but the removal of policies is unlikely to be effective as there will be no policy guidance to support the implementation of the NES.</p> <p>Removal of rules in District Plan zone chapters is likely to be effective as these duplicate the NES.</p>	<p>The NES will still apply but will have no policy support. Council may not fulfil its responsibilities under S31 RMA and will not be giving effect to the Waikato Regional Policy Statement.</p> <p>Unlikely to achieve the objective as there would be a lack of certainty regarding the containment and effects mitigation of use or disturbance of contaminated land, including the nature of contamination.</p>	<p>Considered to be unacceptable if lack of policy support results in an ineffective application of the NES. Should this be the case this option creates a level of risk to exposure of contaminants to humans where land is not fully investigated or effectively remediated, and risk to the environment where contamination is ineffectively contained or containment is disturbed.</p>	<p>Discard</p> <p>Not fulfilling responsibilities under section 31 RMA and not given effect to the WRPS.</p>
<p>Option 2</p> <p>Status quo – (retain existing policies of the Waikato Section and apply across the entire</p>	<p>Retain all existing issues, objectives, policies and methods of the Waikato Section only.</p>	<p>Effective, however promotes inefficiency in the requirement to manage the present rule framework of each zone as opposed to straight alignment with the NES.</p>	<p>Presently achieves the minimum requirements of Council to give effect to the WRPS and requirements under s31 (1)(b)(ia) RMA.</p>	<p>Acceptable on the basis that the present issue, objective, policies, methods and multiple rule framework requires the investigation into the historic use of sites to determine the presence of land contamination and requires remediation;</p>	<p>Discard</p> <p>It is considered that there are more efficient and effective ways of managing the use, subdivision and development of contaminated land.</p>

Objective	10.2.1 Objective – Contaminated Land (1) The subdivision, use and development of contaminated land is managed to protect human health and the environment.				
Options	Description (brief)	Relevance	Feasibility	Acceptability	Recommendation
district).				including addressing both human health and environmental effects. This option does not give full effect to the WRPS as policies would not be updated to be better aligned to and support the NES.	
Option 3 Adopt the objectives and policies of the Franklin Section and apply across the entire district.	Adopt the issue, objectives and policies of the Franklin Section into the District Plan.	Effective, however promotes inefficiency in the requirement to manage the present rule framework of each zone as opposed to straight alignment with the NES.	Presently achieves the minimum requirements of Council to give effect to the WRPS and requirements under s31 (1)(b)(ia) of the RMA.	Acceptable on the basis the present issue, objectives, policies and methods framework requires the investigation into the historic use of sites to determine the presence of land contamination and require remediation; however, does not take into account the effects of remediation on environmental health This option does not give full effect to the WRPS as policies would not be updated to be better aligned to and support the	Discard It is considered that there are more efficient and effective ways of managing the use, subdivision and development of contaminated land.

Objective	<p>10.2.1 Objective – Contaminated Land</p> <p>(1) The subdivision, use and development of contaminated land is managed to protect human health and the environment.</p>				
Options	Description (brief)	Relevance	Feasibility	Acceptability	Recommendation
				NES.	
<p>Option 4</p> <p>Incorporate new issue, objective and policy into the Proposed District Plan.</p>	<p>Implement a new inclusive issue, objective and policy framework to better align with and support NES.</p>	<p>Effective as promotes District Plan clarity and more closely aligns to the steps for assessment of activities under the NES.</p>	<p>Will wholly achieve Council’s responsibilities under s32(1)(b)(1 la) and to give effect to the WRPS.</p>	<p>Highly acceptable, as the new issue, objective and policy framework gives effect to the WRPS, seeking adoption of the NES standards and process steps for investigation, use or remediation, containment where required and any ongoing management of contaminated sites.</p>	<p>Further evaluate</p> <p>The new provisions of the Proposed District Plan for closer alignment to the NES and its role in the management of use, subdivision and development of contaminated land.</p>

5.1.1 Evaluation of Selected Options

This section contains an evaluation of Option 4 identified above for further evaluation. The short list of option has been developed further to include (where relevant) polices, rules and methods. In this case provisions have been bundled as they are expected to work together to achieve the objective. For efficiency, this second tier evaluation focuses on the approach and the policies and rules which implement that approach as a package, rather than a detailed analysis of every policy and every rule. How this section is approached in terms of level of detail depends to what extent the options are departing from the existing District Plans and the significance of the alternative options. Table 9 provides a summary of the evaluation results.

Objective 10.2.1 – Contaminated Land

The policy provision of the proposed chapter will work as a package to achieve the objective of the management of use, subdivision and development of contaminated land. That provision is set out as follows:

Policies 10.2.2 – Managing the use of Contaminated Land

- (1) Contaminated land is managed or remediated to ensure that contaminants are at a level acceptable for the proposed land use.
- (2) Disposal of contaminated soil must be carried out in a manner that avoids further adverse effects on human health or on the environment.
- (3) Use or development of contaminated land must not damage or destroy any contaminant containment works, unless comparable or better containment is provided, or monitoring demonstrates that the containment is no longer required.
- (4) Ensure that the use, subdivision and development of contaminated land management approaches include:
 - (a) undertaking a site investigation of any land identified as actually or potentially contaminated, prior to any new subdivision or change of use of land, that could result in an increase in any adverse effects from the contamination of a piece of land;
 - (b) Remedial action plans;
 - (c) Site validation reports;
 - (d) Site management plans as appropriate for identifying, monitoring and managing contaminated land.

While the introduction of a new policy is not a new direction for the management of contaminated land within the District Plan, the simplification of the approach to the management methods under the Operative District Plan sections will enable a more cohesive approach to be achieved as per the requirements of s32 (1)(b).

5.1.2 Identification of Options

In considering options for managing and enabling use, subdivision and development of contaminated land, a number of factors were taken into account including:

- a) Issues identified with the Operative Waikato District Plan (Waikato Section) and (Franklin Section) with regard to the use, subdivision and development of contaminated land;
- b) The process steps within the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soils to Protect Human Health) Regulations 2011;
- c) Explanation and guidance on the regulations in the NES, including matters such as Good Practice for Councils and material incorporated by reference such as the Contaminated Land Management Guidelines 1 – Reporting, 2 – Hierarchy and Application of Guideline Values, and 5 – Site Investigations and Analysis of Soils;
- d) Consideration of the most effective and efficient way to manage the potential use, subdivision and development of contaminated land.

Options considered for the potential future use, subdivision and development of contaminated land included:

- (a) Removing all policies within the Waikato and Franklin Sections within the Proposed District Plan;
- (b) Retaining the status quo of existing issues, objectives, policies and rules within the Waikato Section;
- (c) Adoption of the existing issues, objectives and policies within the Franklin Section of the Operative District Plan into the Waikato Section; and
- (d) Incorporation of a new standalone issue, objective and policy within Chapter 10 – Hazardous Substances and Contaminated Land of the Proposed District Plan.

5.1.3 Policy, Rule and Method Evaluation

This section assists to identify the provisions (i.e. policies, rules and methods) that are the most appropriate to achieve the objective.

Table 9 Evaluation of provisions

Provisions most appropriate	Effectiveness and Efficiency	
	Benefits	Costs
<p>10.2.2 Policy – Managing the use of Contaminated Land</p> <p>(1) Contaminated land is managed or remediated to ensure that contaminants are at a level acceptable for the proposed land use.</p> <p>(2) Disposal of contaminated soil must be carried out in a manner that avoids further adverse effects on human health or on the environment.</p> <p>(3) Use or development of contaminated land must not damage or destroy any contaminant containment works, unless comparable or better containment is provided, or monitoring demonstrates that the containment is no longer required.</p> <p>(4) Ensure that the use, subdivision and development of contaminated land management approaches include:</p> <p style="padding-left: 40px;">(i) undertaking a site investigation of any land identified as actually or potentially contaminated, prior to any new subdivision or change of use of land, that could result in an increase in any adverse effects from the contamination of a piece of land;</p>	<p><u>Environmental:</u> Preliminary and detailed investigation of land within the District enables owners, occupiers and future users, including sensitive activities, to understand the effects of land contamination on the use, subdivision or development of that land and appropriately remediate, manage or contain contamination.</p> <p><u>Economic:</u> Management or remediation of contaminated land, requires expenditure in the form of preliminary and detailed site investigations and sampling (including reporting), the preparation of remedial action plans, site validation reports and/ or site management plans where deemed to be necessary by a Contaminated Land Specialist. This expenditure will result in growth of business opportunities within the Waikato District.</p> <p>The management or remediation of contaminated land allows for land to be utilised for a greater range of activities and potentially allows for further development opportunities for land.</p> <p><u>Social:</u></p>	<p><u>Environmental:</u> Remediation of contaminated land where not undertaken in conjunction with best practice, may result in the spread of previously managed or contained contaminants to the environment.</p> <p><u>Economic:</u> Site investigations and sampling of soils, the preparation of preliminary and detailed site investigation reports, remedial action plans and site management plans, including the physical remediation or containment of contamination, has the potential to result in significant upfront costs to the person intending to develop contaminated land.</p> <p><u>Social:</u></p>

<p>(ii) remedial action plans; (iii) site validation reports, (iv) site management plans as appropriate for identifying, monitoring and managing contaminated land.</p>	<p>None are considered applicable to this assessment.</p>	<p>None are considered applicable to this assessment.</p>
	<p>Cultural: Remediation of contaminated land may present a beneficial outcome for the maintenance or restoration of the mauri of soils and waterways which were actually or potentially contaminated due to historic land use.</p>	<p>Cultural: None are considered applicable to this assessment.</p>
<p>Opportunities for economic growth and employment</p>		
<p>Management or remediation of contaminated land, where determined to be required at the time of use, subdivision or development by an activity or sensitive activity, promotes expenditure in the form of preliminary and detailed site investigations and sampling (including reporting), the preparation of remedial action plans, site validation reports and/ or site management plans. This expenditure encourages the growth and development of business opportunities within the Waikato District. The subsequent employment of Contaminated Land Specialists will enable them to develop skills sufficient to become classified as Suitably Qualified and Experienced Practitioners under the Resource Management Regulations 2011.</p> <p>The management or remediation of contaminated land also allows for land to be utilised for a greater range of activities and potentially allows for further development opportunities for land.</p>		
<p>Options less appropriate to achieve the objective</p>		
<p>Option 2: Maintain the status quo of the Waikato Section provisions.</p> <p>Maintenance of Objective 9.2.1 and Policies 9.2.2 – 9.2.7 of the Operative Waikato District Plan (Waikato Section) unchanged as adopted as Chapter 10 – Contaminated Land into the provisions of the Proposed Waikato District Plan.</p> <p>Appropriateness: Maintenance of the existing Issue, Objective and Policies of the Operative District Plan (Waikato Section) as a separate and similar section to the Operative Waikato District Plan (Franklin Section), does not simplify the documentation required when compared to the preferred option of a single Issue, Objective and Policy.</p>		

Option 3: Adopt the Franklin Section provisions into the Proposed Waikato District Plan.

The inclusion of Section 15.3 of the Operative Waikato District Plan (Franklin Section) into Chapter 10 – Contaminated Land provisions of the Proposed Waikato District Plan.

Appropriateness:

Maintenance of the existing Issue, Objectives and Policies of the Operative District Plan (Franklin Section) as a separate and similar section to the Operative Waikato District Plan (Waikato Section), does not simplify the documentation required when compared to the preferred option of a single Issue, Objective and Policy that promotes the efficiency of regulatory services.

Risk of acting or not acting

Uncertainty or insufficiency of information:

The uncertainty or insufficiency of information relate to the limitations on the knowledge of past and present land uses of each individual site, the nature of any contaminants present and the recording of that information and any sampling results on the Property Information File or other Council managed site database.

Risk of acting or not acting:

The risk of acting in the presence of uncertain or insufficient information is that land owners sustain additional costs associated with site investigations on land that is not contaminated.

The risk of not requiring the investigation and remediation of contaminated land under the provisions of the Proposed Waikato District Plan could result in the following effects:

- The potential for contaminated material to be spread within the receiving environment and adverse environmental health as a result of unmonitored or unregulated disturbance, subdivision or use of contaminated sites;
- The potential for exposure of people and fauna to contaminated material and the subsequent adverse effect on the health and wellbeing of those people and fauna;
- The use, subdivision and development of unidentified contaminated sites without investigation into historical land use and the appropriate imposition of controls with the potential to result in adverse effects on human health; and
- The disturbance of previously contained and/ or managed contaminated material which would otherwise be identified and protected from the potential for effects of an unauthorised discharge to the environment under a site management plan procedure.

Efficiency and effectiveness

The relevant objective to be achieved through the policy and rules within the NES is as follows:

10.2.1 Objective – Contaminated Land

- a) The subdivision, use and development of contaminated land is managed to protect human health and the environment.

Policy 10.2.2 – Managing the use of Contaminated Land

Managing the use of Contaminated Land establishes the suite of underlying policy provisions to protect human health and the environment.

Specifically, the policy adopts, as its primary focus, a process of ensuring best practice procedures are implemented when changing the use of, subdividing or developing land regardless of whether the site is known to be contaminated. The policy requires a number of steps to achieve the objective starting with the investigation of the site (confirming the presence of contamination) followed by remediation of the site (as determined by the Regulations of the NES) in accordance with a remedial action plan. Following this is a requirement for validation to ensure that either the site has been remediated in a manner to ensure compliance with the Regulations or a site management plan implemented where contaminated materials can be contained under the status quo.

Under either method, the development of the contaminated land is managed in a way to ensure the effects are mitigated, current and future land owners or occupiers are informed of any current or historic contamination and the potential for disturbance of known contamination is avoided.

Implementing this policy will ensure that the District's land resources are remedied or managed where required to enable a range of uses in accordance with Objective 3.25 of the WRPS.

6 CONCLUSION

After undertaking an evaluation as required by Section 32 of the RMA, Objectives 11.2.1 is considered the most appropriate way to achieve the Purpose of the RMA (Section 5) in terms of promoting sustainable management of natural and physical resources in a way that enables people and communities to provide for their economic and cultural well-being while also avoiding or mitigating any adverse effects on the receiving environment.

It is considered that the recommended policy and methods outlined above are the most appropriate way for achieving the objectives, having considered:

- other reasonably practicable options for achieving the objectives; and
- assessing the opportunities for growth and employment and efficiency and effectiveness of the provisions in achieving the objectives.

APPENDIX I PROVISION CASCADE

Issue to be addressed	Objective	Policies	Rules	Assessment Criteria
<p>10.2 Issue The use and development of contaminated land has the potential to cause adverse effects to human health and to the environment.</p>	<p>10.2.1 Objective – Contaminated Land The subdivision, use and development of contaminated land is managed to protect human health and the environment.</p>	<p>10.2.2 Policies – Managing the use of Contaminated Land (1) Contaminated land is managed or remediated to ensure that contaminants are at a level acceptable for the proposed land use. (2) Disposal of contaminated soil must be carried out in a manner that avoids further adverse effects on human health or the environment. (3) Use or development of contaminated land must not damage or destroy any contaminant containment works, unless comparable or better containment is provided, or monitoring demonstrates that the containment is no longer required. (4) Ensure that the use, subdivision and development of contaminated land management approaches include: (a) undertaking a site investigation of any land identified as actually or potentially contaminated, prior to any new subdivision or change of use of land, that could result in an increase in any adverse effects from the contamination of</p>	<p>Rules set out in Regulations 8 to 11 of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011</p>	<p>N/A</p>

		<p>a piece of land;</p> <p>(b) Remedial action plans;</p> <p>(c) Site validation reports;</p> <p>(d) Site management plans as appropriate for identifying, monitoring and managing contaminated land.</p>		
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APPENDIX 2 RESOURCE MANAGEMENT REGULATIONS 2011

APPENDIX 3 HAZARDOUS ACTIVITIES AND INDUSTRIES LIST (HAIL)