

Section 42A Report

Contaminated Land Chapter

Prepared for the

Proposed Kaipara District Plan

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1. Introduction

1.1 Introduction – Contaminated Land Chapter

1. This Right of Reply is provided by the reporting officer under section 42A of the Resource Management Act 1991 (RMA). It responds to matters raised during Hearing 7 on the Contaminated Land chapter of the Proposed Kaipara District Plan (PDP) and provides further advice to assist the Hearings Panel in its deliberations.
2. This reply supplements the Section 42A report dated 21 January 2026. It does not repeat the analysis in those documents but addresses issues raised during the hearing that require further consideration and records the reporting officer's revised recommendation.

2. Purpose of this Report

3. The purpose of this report is to respond to the material presented by submitters at the Contaminated land hearing and to reply to questions raised by the Panel during the hearing.

3. Consideration of evidence received

4. At the hearing held on 10th March 2026 for Contaminated Land, one submitter appeared at the hearing online, this was Georgina Macpherson on behalf of the Fuel Companies.
5. The questions asked by the Panel during the hearing were in response to the submitter evidence regarding environmental effects and earthworks for contaminated land. And there was a query on how the neighbouring Councils managed contaminated land. I address these matters below.

3.1 Does contaminated land have environmental effects, and is it appropriate for the district plan to refer to them?

6. In my opinion the answer is simply 'yes'. The contaminated land chapter of the Proposed District Plan is deliberately structured to operate alongside the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS). The NES-CS establishes nationally consistent, use-based thresholds specifically directed at managing human health risks arising from contaminated soils. That framework is what the District Council is required to implement through its land-use controls.
7. It is entirely orthodox for district plans to acknowledge environmental effects at an objective and policy level, provided this does not result in duplication of regional council functions; and is not contrary to the NES -CS.

8. The KDC proposed approach in the PDP is consistent with the Whangārei District Council District Plan. Whangārei includes a specific objective addressing environmental effects as follows:
- **CL-01 – Adverse Effects on the Environment**, which seeks to ensure adverse environmental effects from contaminated sites are avoided, remedied, or mitigated to acceptable levels; alongside
 - **CL-02 – Adverse Effects on Human Health and Safety**, which focuses on minimising risks to human health.
9. The Whangārei plan then clearly delineates statutory responsibilities, explicitly stating that:
- *district councils manage land-use effects and risks to human health; and*
 - *effects arising from the discharge of contaminants, including impacts on groundwater, surface water, and ecosystems, are managed by the Regional Council through regional plans.*
10. The Kaipara PDP contaminated land chapter adopts the same principled approach. It:
- *recognises environmental effects at a strategic and policy level;*
 - *does not introduce rules, contaminant thresholds, or discharge controls; and*
 - *deliberately avoids duplicating regional council functions.*
11. To address the panels concerns about environmental effects, to reference environmental effects consistent with established district plan practice, nationally aligned, and in my opinion does not amount to regulatory duplication or contradiction.
- 3.2 How should the district plan address earthworks on potentially contaminated land where regional consent is not triggered?
12. It acknowledged that some earthworks activities may trigger district consent while not requiring a regional discharge consent. District earthworks provisions routinely manage localised effects such as erosion, sediment, dust, and amenity.
13. Those matters are appropriately addressed through the Plan's general earthworks provisions, which are broad in scope and apply across a wide range of contexts.
14. Contaminated land, regulation at the district level is closely tied to human health risk and land-use suitability, as provided for through the NES-CS. The NES-CS framework is intentionally specific, exposure-based, and dependent on the intended use of the land (for example, residential versus industrial activities).
15. For this reason, the contaminated land chapter is intentionally scoped to:

- provide policy direction for NES-CS-triggered activities;
 - guide decision-making around whether land is suitable for its intended use from a human health perspective; and
 - avoid establishing a second, broader environmental management regime within the district plan.
16. Again, the neighbouring Whangārei District Council approach supports this distinction. While its contaminated land policies (for example, CL-P2 - Remediation) acknowledge risks to health, safety, and the environment, Whangārei is explicit that discharges of contaminants and off-site environmental effects remain the responsibility of the Regional Council. Earthworks-related effects such as sediment mobilisation are addressed through general district controls, not through an expanded contaminated land regime.
17. The Kaipara PDP follows the same logic. Where earthworks take place on potentially contaminated land but do not trigger NES-CS or regional discharge consents:
- sediment and erosion effects are managed through district earthworks provisions; and
 - contaminant discharges or migration, if relevant, fall within regional council jurisdiction.
18. It was not recommended necessary or appropriate to broaden the contaminated land chapter to manage those effects, as doing so would blur the boundary between Council's sections 30 and 31 of the RMA. The notified approach therefore remains appropriate, nationally consistent, and clearly aligned with statutory responsibilities.

3.3 Conclusion

19. In summary, the notified contaminated land chapter appropriately recognises environmental effects without duplicating regional controls;
- Is considered to be aligned with the NES-CS and district council functions under section 31 of the RMA.
 - Is consistent with established practice, including the neighbouring Whangārei District Council District Plan; and
 - Provides a coherent framework for managing contaminated land and related land-use activities that does not duplicate or contradict the NES requirements.
20. Therefore, I maintain my recommendations as set out in my original section 42A and including Appendix B.