

Section 32 Report

Part 2

Contaminated Land

Prepared for the
Proposed Kaipara District Plan

Prior to Notification

28 April 2025

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ABBREVIATIONS USED IN THIS REPORT

Kaipara District Council Operative District Plan	KDP
National Environmental Standards	NES
Northland Regional Council	NRC
Northland Regional Policy Statement	NRPS
Proposed Kaipara District Plan	PDP
Proposed Regional Plan	PRP
Resource Management Act 1991	RMA
Section 32 of the RMA	s32
Section 42A of the RMA	s42A

1. INTRODUCTION

1.1 Overview

1. This report details the pre-notification evaluation undertaken by Kaipara District Council (**KDC**) in relation to Contaminated Land for the Proposed Kaipara District Plan (**PDP**). The report has been prepared in accordance with the requirements of section 32 of the RMA (**s32**).

1.2 Topic Description

2. Land contamination arises where past land use involving hazardous substances has resulted in a hazardous substance infiltrating the soil. Well known common examples of contaminated land include old landfills, timber treatment sites, sheep dips, and service stations where petrol and oil has leaked out of tanks. Lead paint applied historically to old houses can result in residue of lead in soil near the house.
3. Those examples mostly relate to land contamination caused by historical land uses that took place at a times when there was less knowledge or concern about the effects of hazardous substances and fewer controls on their use.
4. Issues arise where the contamination has, or is reasonably likely to have, significant adverse effects on the environment (including human and ecological health.) This is not always the case. Any adverse effects need to be assessed by reference to the properties of the hazardous substance, its concentration in the soil, and the sensitivity of nearby land uses to the effects of that substance. If adverse effects are found, remediation of a contaminated site may be possible through a range of measures to make the site safe for a particular future use.
5. Kaipara District Council, as a territorial authority, has a function under RMA s31(1)(b) to control land use for “the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land.” This is the basis for district plan provisions on contaminated land.
6. District plan responses to contaminated land issues are supplementary to responses led by Government in a national environmental standard and by the Northland Regional Council in the proposed regional plan.
7. The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) Regulations 2011 addresses the major issues of contaminated land regarding human health. The NESCS aims to ensure that land affected, or potentially affected, by contaminants in soil is appropriately identified, assessed, and managed before it is subdivided, used, or developed, to mitigate any adverse effects on human health.
8. The NESCS sets out the activity status for managing the actual or potential adverse effects of contaminants in soil on human health from five activities: subdivision, land-use change, soil disturbance,

soil sampling, and removing fuel storage systems.¹ Kaipara District Council is required to observe and implement national environmental standards.

9. The NESCS refers to the Hazardous and Industries List (HAIL) as the starting point for assessing risk. The HAIL, published by the Ministry for the Environment, lists the industries and activities that typically use or store hazardous substances. The NESCS applies to any “piece of land” on which an activity or industry described in the HAIL is being undertaken, has been undertaken or is more likely than not to have been undertaken.²
10. Identification of the location of HAIL activities is not always straight forward. Records of land are not always readily available about land use history. Kaipara District Council property files, resource consent databases, dangerous goods files, and information the council has available to it from the Northland Regional Council, or the Environmental Protection Authority (EPA) may be relevant in considering whether a HAIL activity has occurred on land.
11. Where NESCS applies, any of the five relevant activities must be assessed for compliance in accordance with the NESCS.
12. The Proposed Regional Plan for Northland contains objectives, policies, and rules relating to contaminated land, including these:
 - a. Objective F.1.14 is to protect human health, and minimise the risk to the environment, from discharges of contaminants from contaminated land.
 - b. Policy D.4.7 requires that discharges of contaminants from contaminated land to air, land or water are managed or remediated to a level that does not result in unacceptable risk to human health or the environment, mitigates adverse effects on potable water supplies, and avoids, remedies or mitigates adverse effects on aquatic ecosystem health, water quality, human health and amenity values.
 - c. Rules in C.6.8 focus on contaminants that may be present at concentrations that could pose a potential human health and/ or environmental risk. These are known as contaminants of concern.³ The rules permit some investigation of potentially contaminated land and some discharges from contaminated land into water or land; provide for remediation as a controlled activity; and provide for other activities on contaminated land as restricted discretionary or discretionary activities.
 - d. The PDP has limited scope, avoiding overlaps with NESCS and the regional plan. There are minor changes to the management of contaminated land under the PDP compared to the Operative Kaipara District Plan (KDC.) Both the KDC and PDP include objectives and policies to facilitate

¹ NESCS Reg 5.

² Reg 5(7)

³ Proposed Northland Regional Plan – “contaminants of concern” defined; see also note after rule C.6.8.2.

implementation of the NESCS (there being no objectives and policies in NESCS.) PDP objectives and policies are changed from KDC to improve the guidance given.

13. The Contaminated Land chapter contains no rules. The chapter is expected to influence the assessment of resource consents, including some proposing activities where contamination could adversely affect the environment. It will also be relevant to consideration of plan changes, ensuring that contaminated land risks are covered in rezoning proposals.

1.3 Scale and Significance of the Effects

14. The s32 evaluation must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. To determine the scale and significance, the criteria in Table 1 have been used:

TABLE 1: ASSESSMENT OF SCALE AND SIGNIFICANCE OF EFFECTS		
Criteria	Summary of effects	Evaluation (1 is low and 5 is high)
Reason for change	<ul style="list-style-type: none"> Ten-year district plan review 	2
Degree of shift from status quo	<ul style="list-style-type: none"> PDP continues KDP approach. Minor wording and formatting changes. 	1
Who and how many will be affected, geographic scale of effects	<ul style="list-style-type: none"> District-wide scope Moderate number of landowners affected. 	3
Degree of impact on or interest from Maori	<ul style="list-style-type: none"> The PDP will not add to the NES and regional plan controls on development of contaminated land. On Māori land, contamination from farming activities such as sheep dips is most likely to need consideration. 	3
Timing and duration of effects	<ul style="list-style-type: none"> Ongoing into the future 	4

Type of effect:	<ul style="list-style-type: none"> The PDP will not add to the NES and regional plan controls on development of contaminated land. A small number of resource consents and some plan changes could include assessment under the contaminated land objectives and policies. This will add some costs to those involved. Positive effects on the environment are envisaged from any additional assessment. Where a piece of land is found to be contaminated, remediation will often be a feasible option for the landowner. 	2
Degree of risk or uncertainty:	<ul style="list-style-type: none"> The PDP approach will not add significantly to the overall degree of risk around contaminated land issues. 	1
Total (out of 35):		16

15. The level of detail in this evaluation report is appropriate for the level of effects anticipated.

2. SUMMARY OF ADVICE RECEIVED FROM IWI

16. S32 requires evaluation reports to summarise all advice concerning the proposal received from iwi authorities under Clauses 3(1)(d) and 4A of Schedule 1 of the RMA. The s32 evaluation reports must summarise the response to the advice received, including any provisions of the proposal that are intended to give effect to the advice. The table below summarises the consultation undertaken, and advice received from iwi authorities in relation to Contaminated Land.

TABLE 2: SUMMARY OF ADVICE RECEIVED FROM IWI		
Details of the consultation process	Summary of advice concerning the proposal received from iwi authorities	Summary of the response to the advice received
Engagement with Tangata Whenua 2021 about content of new district plan	<ul style="list-style-type: none"> Align objectives, policies, and methods with the respective Iwi Management Plans and the Te Ao Māori/Māori world view. Update provisions for Papakāinga Development to 	Council considered these points. It was not considered that the objectives and policies on contaminated land would be inconsistent with advice from iwi authorities. The Exposure Draft district plan published in 2022 included draft objectives and

	<p>support and encourage whānau to return to their whenua.</p> <ul style="list-style-type: none"> • Support the development of Māori landholdings to ensure economically sustainable and resilient outcomes for landowners. • Include mechanisms to ensure consultation and/or a cultural assessment is undertaken with Tangata Whenua to protect sites and areas of significance to Māori. 	<p>policies for contaminated land, which drew no comment from iwi. The draft objectives and policies were carried forward to the PDP. (Other issues are addressed in other chapters of the PDP.)</p>
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3. EVALUATION OF OBJECTIVES

3.1 Appropriateness in Terms of Purpose of RMA

17. Council must evaluate in accordance with s32 of the RMA the extent to which each objective proposed in the PDP is the most appropriate way to achieve the purpose of the RMA.
18. Table 3 contains the objectives proposed for Contaminated Land, analysed in Table 4:

TABLE 3: PROPOSED CONTAMINATED LAND OBJECTIVES

CL-O1 Contaminated land Subdivision, use and development of contaminated land is managed to protect human health and safety and the environment from unacceptable risk.
CL-O2 Management and remediation of contaminated land Remediation and/or site management of contaminated land contributes to the health and wellbeing of communities and increases development opportunity for future use and development.

19. Part 2 of the RMA outlines the purpose and principles of the RMA, and Table 2 identifies the relevant sections of Part 2 of the RMA for each of the objectives in Contaminated land.

TABLE 4: RELEVANCE OF PROPOSED CONTAMINATED LAND OBJECTIVES WITH PART 2 OF THE RMA

RMA Part 2 sections	CL-O1 Contaminated land	CL-O2 Remediation of contaminated land
5(2)	✓	✓
5(2)(a)	✓	✓
5(2)(c)	✓	✓
7(aa)	✓	✓
7(b)	✓	✓
7(f)	✓	✓
7(g)	✓	✓

Section 5 RMA

20. Both objectives contribute to sustainable management by protecting natural resources referred to in section 5(2), with a strong health and safety aspect. CL-1 and CL-2 particularly focus under s5(2)(a) and (c) on sustaining the potential of physical resources to meet the reasonably foreseeable needs of future generations, and on the adverse effects of activities in hazard areas.

Section 7 RMA

21. The objectives contribute to the matters in section 7, notably s7(aa) stewardship of land, and s7(b) efficient use and development of natural and physical resources, especially land, and the activities and built environment on the land. The objectives also address s7(f), maintenance and enhancement of the quality of the environment. Sustainably managing the finite characteristics of the land resource under 7(g) is part of this.

22. Having assessed the proposed objectives against Part 2 of the RMA it is considered that they are the most appropriate way to achieve the purpose of the RMA.

4. EVALUATION OF THE PROVISIONS

23. S32 assessments must determine whether the proposed provisions are the most appropriate way to achieve the proposed objectives. In this instance, Contaminated Land proposes two objectives and this s32 assessment must assess whether the proposed provisions are the most appropriate to achieve those proposed objectives. This must include the identification of alternatives, and cost benefit analysis of the economic, social, environmental, and cultural effects of the provisions including whether opportunities for economic growth and employment are reduced or increased. The risk of acting or not acting where uncertain information exists must also be considered.
24. Contaminated Land proposes four policies and no rules. The following sections of this report will identify the range of options available, and the efficiency and effectiveness of the preferred provisions.

4.1 Options

25. The following broad options have been identified and assessed regarding Contaminated Land:
- a. **Option 1 – Do nothing:** PDP contains no reference to contaminated land.
 - b. **Option 2 – Status Quo:** PDP includes short policy on contaminated land (the same as KDP) but no rules.
 - c. **Option 3 – Enhanced Status Quo:** PDP includes more detailed policies on contaminated land but no rules.
 - d. **Option 4 – Policies and rules:** PDP includes policies and rules on contaminated land, including rules in relation to effects on the environment other than human health.
26. To identify other reasonably practicable options, the Council has undertaken the following:
- a. Derived options by reviewing the council's experience administering the operative district plan (KDP).
 - b. Considered other councils approaches in recently notified district plans. Of the recently notified plans viewed, some but not all district plans contained objectives and policies for contaminated land, but none had rules.
 - c. The council engaged widely in 2022 on draft provisions in the Exposure Draft District Plan. These drew mainly support, with little adverse comment apart from suggesting minor wording changes. Those draft provisions (including some minor wording changes) have now been carried forward into the PDP.

27. Option 1 – Do nothing is not favoured because it would not support assessment of resource consents or plan change proposals where contaminated land issues arise. Option 1 would not therefore fully achieve the councils' function under the RMA in the prevention or mitigation of adverse effects of the development, subdivision, or use of contaminated land. NESCS includes methods but does not include objectives and policies, and it addresses only issues around human health.
28. Option 2, status quo is considered insufficient, as the policies need improvement to fill the gaps in the NESCS and regional plan to ensure that environmental matters can be considered where consent is required for discretionary or non-complying activities.
29. Option 3, enhanced status quo, is the preferred option. Option 3 allows the NESCS and regional plan provisions to continue to be the primary planning approaches to manage contaminated land, augmented by policies to assist resource consent assessment at the district level. Where consent is required for discretionary or non-complying activities, objectives and policies of the PDP frame the relevant contaminated land considerations, helping to resolve difficult and uncertain cases, and providing a basis for resource consent conditions in unusual cases (e.g. by policy on disposal of contaminated soils.) The policies may also positively influence plan change proposals in future. Therefore, Option 3 achieves the council's function under the RMA and an integrated approach with the NESCS.
30. Option 4 – Policies and rules, is not favoured. Regional rules adequately cover the wider environmental risks and Option 4 would erode the advantages of the nationally consistent framework for managing contaminated land established by the NESCS. These advantages include access to a small number of experts on land contamination and remediation, who would be called upon by parties for the few cases that arise in Kaipara District. A unique local set of local controls would increase the costs for all parties exceeding any benefits.

Provisions Cascade for preferred option to be evaluated in Table 5 below:	
Option 3 – Enhanced Status Quo	Objective: CL-O1 Contaminated land
	<p>Policies:</p> <p>CL-P1 Identify contaminated sites</p> <p>Identify sites potentially containing contaminated land, including sites with contamination from current and historical land uses and activities, by using the Northland Regional Councils Selected Land-use Register (SLR) and co-ordinating with the Regional Council in the recording and management of contaminated land.</p> <p>CL-P2 Earthworks on contaminated land</p> <p>Unless for the purpose of remediation, discourage the disturbance of contaminated land, where the level, type and toxicity of the contamination could adversely affect human health and safety and the environment.</p>

	<p>Objective: CL-O2 Management and remediation of contaminated land</p> <p>Policy:</p> <p>CL-P3 Contaminated land management and remediation</p> <p>Avoid, remedy or mitigate adverse effects on the health of people and the environment from the management or remediation of contaminated land by ensuring that:</p> <ol style="list-style-type: none"> 1. Contaminated land is managed and/or remediated to ensure that contaminants are at a level acceptable for the proposed land use. 2. A best practice approach to remediation is applied, which does not pose a more significant risk to human health than if the remediation had not occurred. 3. Contaminated land management approaches associated with the use, subdivision and development of contaminated land include where appropriate: <ol style="list-style-type: none"> 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 land; e. preliminary site investigations. 4. Disposal of contaminated soil must be carried out in a manner that avoids further adverse effects on human health or on the environment. 5. 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. 6. Any preliminary or detailed site investigation reports, remedial action plans, site validation reports and ongoing site management plans are prepared in accordance with the Ministry for the Environment's Contaminated Land Management Guidelines #1 and #5 and are provided to both Kaipara District Council and the Northland Regional Council for their records.
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TABLE 5: EVALUATION OF PROVISIONS	
Option(s) & Package of Proposed Provisions	Option 3 – Enhanced Status Quo
Benefits	<p>Economic: enables development of contaminated land subject to other controls outside of the District Plan, and subject to council assessment of contaminated land effects in applications for resource consent and plan changes.</p> <p>Social: retains all human health considerations under NESCS and strengthens these, e.g. by policy on disposal of contaminated soils.</p> <p>Environmental: enables consideration of some wider environmental considerations in the assessment of resource consents.</p> <p>Cultural: enables effects on cultural resources, for example mahinga kai, to be addressed.</p>
Costs	<p>Economic: costs arising under NESCS might be marginally increased by the PDP policies that require additional assessment. Work required to assess the potential for contaminated land (preliminary and detailed site investigations) is the same for regional and district council resource consents and the same analysis can be used for both in many cases.</p> <p>Environmental: costs may relate to pieces of contaminated land that are identified but not remediated for any reason.</p> <p>Social: none identified</p> <p>Cultural: none identified</p>
Opportunities for economic growth	None identified.
Opportunities for employment	None identified.
Certainty and sufficiency of information	Sufficient information is available to identify the proposed provisions as the best option to achieve the proposed objectives.
Risk of acting or not acting if there is uncertainty or insufficient information.	Not applicable as there is certain and sufficient information]
Effectiveness in achieving the objective(s)	The provisions effectively address the key management issue and align the provisions with the purpose and expectations of the NESCS and the RMA. The provisions are effective in maintaining the nationally consistent controls under NESCS and by avoiding overlaps between the district plan, NESCS and the regional plan.
Efficiency in achieving the objective(s)	The provisions are efficient in that they provide a greater level of policy direction for addressing contaminated land. NESCS includes methods but does not include objectives and policies. Where consent is required for discretionary or non-complying activities, environmental matters can be considered under the objectives and policies of the PDP. Therefore, it achieves an integrated approach with the NESCS, which is an efficient way to manage the adverse effects of contaminated land. .

4.2 Reasons for deciding on the provisions

31. The proposed policies on Contaminated Land are the most appropriate way to achieve the objectives. They provide an integrated approach with the NESCS and regional plan and addresses effects from contaminated land not captured by other legislation.
32. The proposed provisions are the most efficient and effective means of achieving the objective as together they will:
 - a. Provide more relevant and specific policy direction for addressing the issues for contaminated land than the KDP and address the RMA section 31 function to prevent or mitigate adverse effects of the development, subdivision, or use of contaminated land.
 - b. Protect people and the environment from adverse effects of contaminated land, going beyond the human health matters addressed by the NESCS.
 - c. Be consistent with best practice in second generation plans throughout New Zealand and minimise unnecessary overlap with other, related legislation.

5. CONCLUSION

33. Pursuant to s32 of the RMA, the proposed Contaminated Land objectives have been analysed against Part 2 of the RMA and are considered to be the most appropriate way to achieve the purpose of the RMA.
34. The proposed provisions have been compared against reasonably practicable options. The proposed provisions are considered to represent the most appropriate means of achieving the proposed objectives.