

# Section 32 Report

## Whenua paitini/ Contaminated land

prepared for the

# Proposed Waimakariri District Plan

18 September 2021



**WAIMAKARIRI**  
DISTRICT COUNCIL

## TABLE OF CONTENTS

<b>1. OVERVIEW AND PURPOSE .....</b>	<b>4</b>
<b>1.1 Purpose of Section 32.....</b>	<b>4</b>
<b>1.2 Topic Description.....</b>	<b>4</b>
<b>1.3 Significance of this Topic.....</b>	<b>5</b>
<b>1.4 Current Objectives, Policies and Methods .....</b>	<b>5</b>
<b>1.5 Information and Analysis.....</b>	<b>6</b>
<b>Table 1 – List of relevant background assessments and reports.....</b>	<b>6</b>
<b>1.6 Consultation Undertaken.....</b>	<b>6</b>
<b>Table 2 – Specific consultation processes.....</b>	<b>6</b>
<b>1.7 Iwi Authority Advice.....</b>	<b>8</b>
<b>Table 3 - Consideration of advice from Iwi Authority.....</b>	<b>Error! Bookmark not defined.</b>
<b>1.8 Reference to Other Relevant Evaluations .....</b>	<b>8</b>
<b>2. STATUTORY AND POLICY CONTEXT .....</b>	<b>8</b>
<b>2.1 Resource Management Act.....</b>	<b>8</b>
<b>2.2 National Instruments .....</b>	<b>9</b>
<b>2.3 Regional policy statement and plans.....</b>	<b>11</b>
<b>2.4 Iwi Management Plan .....</b>	<b>11</b>
<b>2.5 Any relevant management plans and strategies.....</b>	<b>12</b>
<b>2.6 Any other relevant legislation or regulations .....</b>	<b>12</b>
<b>2.7 Any plans of adjacent territorial authorities.....</b>	<b>12</b>
<b>3. KEY RESOURCE MANAGEMENT ISSUES .....</b>	<b>13</b>
<b>3.1.1 Issue 1 .....</b>	<b>13</b>
<b>3.1.3 Issue 2 .....</b>	<b>14</b>
<b>3.1.4 Issue 3 .....</b>	<b>14</b>
<b>4. OVERVIEW OF PROPOSED OBJECTIVES, POLICIES AND METHODS .....</b>	<b>15</b>
<b>4.1 Strategic Direction.....</b>	<b>15</b>
<b>4.2 Zone / District-wide Subject .....</b>	<b>15</b>
<b>4.3 Proposed Objectives and Policies.....</b>	<b>15</b>
<b>4.4 Proposed Methods .....</b>	<b>15</b>
<b>5. SCALE AND SIGNIFICANCE EVALUATION .....</b>	<b>16</b>
<b>5.1 Evaluation of Scale and Significance.....</b>	<b>17</b>

5.2	Summary - Scale and Significance.....	18
6.	EVALUATION OF PROPOSED OBJECTIVES.....	18
6.1	Evaluation of Proposed Objectives.....	18
7.	EVALUATION OF PROPOSED POLICIES AND METHODS .....	19
7.1	Evaluation of Proposed Policies and Methods.....	20
7.2	Summary - Evaluation of Proposed Policies and Methods.....	25

## 1. EXECUTIVE SUMMARY

Contaminated land relates to previous use of land for activities involving hazardous substances that can adversely affect human and ecological health. The review of the Operative District Plan identified that the introduction of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (the NESCS) has changed the role of the District Plan to one of facilitating the NESCS and controlling any relevant matters not covered by legislation.

The Canterbury Regional Council identifies and monitors contaminated land and is responsible for the control of discharges from contaminated land. The Proposed Waimakariri District Plan provisions therefore do not seek to duplicate the requirements of legislation or the Regional Council and are restricted to objectives and policies (which are not provided within the NESCS) to guide applications and decision making in relation to contaminated land.

The key changes proposed to be introduced are:

- A separate chapter with objectives and policies for the use and development of contaminated land and to implement the NESCS.
- Provisions within other chapters such as those for adverse effects on flora and fauna as a matter of discretion for earthworks activities.

It is anticipated that the proposed provisions are the most appropriate to achieve the purpose of the Act and will provide guidance for decision making and be part of an integrated approach to managing contaminated land.

## 2. OVERVIEW AND PURPOSE

### 2.1 Purpose of Section 32

The overarching purpose of Section 32 of the Resource Management Act 1991 (RMA) is to ensure that plans are developed using sound evidence and rigorous policy analysis, leading to more robust and enduring provisions.

Section 32 reports are intended to clearly and transparently communicate the reasoning behind plan provisions to the public. The report should provide a record of the evaluation process, including the consultation, technical work, methods, assumptions and risks that informed that process. A robust report can prove highly useful to decision makers, particularly where it clearly communicates the analysis undertaken to identify the most appropriate way to achieve the purpose of the RMA.

The District Council is required to undertake an evaluation of any proposed District Plan provisions before notifying those provisions. The Section 32 evaluation report provides the reasoning and rationale for the proposed provisions and should be read in conjunction with those provisions.

### 2.2 Topic Description

Sites contain contaminated land when land has a hazardous substance in or on it that has, or is reasonably likely to have, significant adverse effects on the environment.

The purpose of the Contaminated Land Chapter is to:

- i. provide direction for land use management in relation to contaminated land (where this is not covered by existing legislation or regulation); and
- ii. facilitate implementation of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the NESCS).

The main change since the District Plan was made operative in 2005, is the introduction of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) Regulations 2011. The Waimakariri District Council must give effect to National Environmental Standards.

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 in order to mitigate any adverse effects on human health. The NESCS sets out the activity status for subdivision, use and development of land.

### 2.3 Significance of this Topic

The significance of the topic relates to the potential for adverse effects from contaminated land on human and ecological health. The introduction of the NESCS, however, limits the role of the District Plan in the control of land use and subdivision involving contaminated land, resulting in a lower level of significance for this topic within the District Plan.

### 2.4 Current Objectives, Policies and Methods

The Operative District Plan does not contain specific objectives for managing contaminated land. Instead, the objectives focus on broader issues such as maintaining and enhancing the life-supporting capacity of the land resource in the District.

The Operative District Plan does include policies to ensure that contaminated sites are managed to prevent or mitigate effects in a manner appropriate for the level of risk associated with the site, and provide direction for assessment of plan changes or resource consents for the subdivision, use or development of contaminated sites.

Contaminated land rules are contained in the Land and Water Margins Chapter which also includes the earthworks rules. These include a discretionary activity rule for any land use activity on a contaminated site that involves:

- a. the use, erection, reconstruction, placement, alteration, extension, removal or demolition of any structure or part of any structure in, on, under, or over the land;
- b. the excavation, drilling, tunnelling or other disturbance of the land;
- c. the destruction of, damage to, or disturbance of the habitats of plants or animals in, on or under the land; or
- d. the deposit of any substance in, on or under the land of the site

## 2.5 Information and Analysis

**Table 1 – List of relevant background assessments and reports**

<b>Title</b>	<b>Author</b>
District Plan Effectiveness Review	Development Planning Unit, Waimakariri District Council, March 2017
<b>Description of Reports</b>	
An assessment of the effectiveness of the Operative District Plan was undertaken before commencing the District Plan Review. The review identified that the Operative District Plan does not directly refer to Environment Canterbury's Listed Land Use Register, and should be updated to better reflect the outcomes sought by the NESCS.	
<b>Title</b>	<b>Author</b>
Contaminated Land Management Guidelines 2011	Ministry for the Environment
<b>Description of Reports</b>	
Guidelines to enable contaminated land to be assessed and managed consistently throughout New Zealand.	
<b>Title</b>	<b>Author</b>
Hazardous Activities and Industries List (HAIL)	Ministry for the Environment (MfE)
<b>Description of Reports</b>	
A list of activities and industries that are considered likely to cause land contamination.	

## 2.6 Consultation Undertaken

Consultation has been undertaken for the District Plan Review process with key stakeholders and the local community.

Consultation has also been undertaken with Council staff and adjacent district and regional councils to understand issues and gaps not otherwise covered by legislation.

**Table 2 – Specific consultation processes**

<b>Date</b>	<b>Group</b>	<b>Subject Matter</b>	<b>Feedback</b>	<b>Response</b>
September 2017	Community	Issues and Options consultation	Contaminated land was not specifically covered in the consultation material provided, and there were no comments received on contaminated land.	
31 October 2018	Canterbury Regional Council	Implementation of RPS Policy 17.3.2	Identified regional and district plan responsibilities and ensure an integrated approach is established.	

			<p>Vegetation suffering from the disturbance of contaminated soil is an example of where District Plan rules could apply.</p> <p>Different roles for regional and district plans have been recognised and an integrated approach is proposed.</p>
22 January, 2019	Christchurch City Council	Effects on the environment	<p>Staff at Christchurch District Council identified that policies for matters other than human health could be relevant for resource consent assessment.</p> <p>Gaps in relation to effects on the environment considered as discussed in section 3.1.4.</p>
6 May, 2019	4Sight Consulting on behalf of Z Energy Ltd, BP Oil New Zealand Ltd, and Mobil Oil New Zealand Ltd.	What's the Plan consultation	<p>It is important to distinguish between hazardous substances and contaminated land. Use of hazardous substances does not typically correlate to contaminated land which instead relates to historic discharges or loss incidents of hazardous substances.</p> <p>Important to have a contaminated land policy framework given the absence of objectives and policies within the national environmental standard for assessing and managing contaminants in soil to protect human health.</p> <p>Applications that require discretionary consent pursuant to the NESCS can be assessed against framework. NESCS provides appropriate land use controls in relation to both disturbance and changes of use.</p> <p>Hazardous substances and contaminated land are proposed to be managed in separate chapters.</p> <p>The proposed Contaminated Land Chapter includes objectives and policies.</p> <p>The focus of the NESCS is on human health, not effects on the environment, therefore these other effects should be considered in the drafting of the District Plan, to give effect to council's role, under the RMA, in the prevention or mitigation of any adverse effects of the</p>

			development, subdivision, or use of contaminated land.
--	--	--	--

## 2.7 Iwi Authority Advice

Clause 3(1)(d) of Schedule 1 of the RMA sets out the requirements for local authorities to consult with iwi authorities during the preparation of a proposed plan. Clause 4A requires the District Council to provide a copy of a draft proposed plan to iwi authorities and have particular regard to any advice received. This section summarises the consultation feedback/advice received from the iwi authority relevant to contaminated land and the District Council's consideration of, and response to (as required by Section 32(4A)(b) of the RMA), that feedback/advice.

The iwi has reviewed the Contaminated Land Chapter and no feedback/advice was received.

## 2.8 Reference to Other Relevant Evaluations

This Section 32 topic report should be read in conjunction with the following evaluations:

- Earthworks – disturbance of contaminated soil
- Hazardous Substances – management of land use and subdivision not covered by Hazardous Substances and Worksafe legislation and regulations
- Subdivision – considers contamination of sites as part of subdivision assessment

# 3. STATUTORY AND POLICY CONTEXT

## 3.1 Resource Management Act

Section 5 of the RMA sets out the purpose of the RMA, which is to promote the sustainable management of natural and physical resources. In achieving this purpose, authorities need to recognise and provide for matters of national importance identified in section 6, have particular regard to other matters listed in section 7, and take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) under section 8.

The NESCS, Regional Policy Statement and Regional Plans that provide higher-order policy direction to the District Plan Review give effect to Part 2 of the Act.

### 3.1.1 Section 5

The purpose of the Act includes management and protection of resources that enable people and communities to provide for their health and safety while safeguarding life-supporting capacity of soil and ecosystems and avoiding, remedying or mitigating any adverse effects of activities on the environment (among other matters).

These matters are relevant to contaminated land management where there is potential to adversely affect the health of people and ecosystems as well as the life-supporting capacity of soil.

### 3.1.2 Section 6

The s6 matters relevant to this topic are:

- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna: and



(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

The disturbance of contaminated soil has the potential to affect significant indigenous vegetation and significant habitats of indigenous fauna. Contaminated land and its management is identified in the Iwi Management Plan as a relevant matter. This is further discussed in Section 3.4.

Other matters of national importance may be relevant depending on the location of particular sites, such as significant risks relating to natural hazards and potential adverse effects on natural character of areas in 6(a) and outstanding natural features and landscapes in 6(b).

### 3.1.3 Section 7

The s7 matters most relevant to this topic are:

- (a) kaitiakitanga;
- (aa) the ethic of stewardship;
- (b) the efficient use and development of natural and physical resources;
- (c) the maintenance and enhancement of amenity values;
- (d) intrinsic values of ecosystems;
- (f) maintenance and enhancement of the quality of the environment;
- (g) any finite characteristics of natural and physical resources; and
- (h) the protection of the habitat of trout and salmon.

The efficient use and development of natural and physical resources includes rehabilitation and use of land that has been contaminated. The rehabilitation or disturbance of contaminated land has the potential to create adverse effects on amenity values and the quality of the environment for example through noise during the rehabilitation process and any need to seal sites with a hard surface.

The potential to affect ecosystems, finite resources, e.g. soil and habitats, is identified and the exercise of kaitiakitanga and ethic of stewardship are relevant to the management of these finite resources and values.

### 3.1.4 Section 8

Section 8 of the RMA requires the district council to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). Tangata whenua, through iwi authorities have been consulted as part of the District Plan Review process. The iwi has reviewed the Contaminated Land Chapter and no feedback/advice was received.

## 3.2 National Instruments

The following national instruments are relevant to this chapter:

### 3.2.1 National Planning Standards

The National Planning Standards were introduced in November 2019 with the purpose of improving the consistency of council plans and policy statements. Under s75 (3) of the RMA, district plans must give effect to a national planning standard.

The proposed chapter gives effect to the National Planning Standards and includes district-wide provisions within a separate Contaminated Land Chapter under the 'Hazards and Risks' section. It also uses the standardised definition of 'contaminated land'.

### 3.2.2 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS)

The NESCS is a nationally consistent set of planning controls which must be enforced by the District Council under section 44A(8) of the RMA.

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 in order to mitigate any adverse effects on human health. The NESCS sets out the activity status for the subdivision, use and development of land.

The NESCS covers the following:

- removal or replacement of fuel storage systems and associated soil, and associated subsurface soil sampling;
- small-scale (no greater than 25 cubic metres per 500 square metres of affected land) and temporary soil disturbance activities (no more than two months' duration); and
- subdividing land or changing land use where a preliminary investigation shows it is highly unlikely the proposed new use will pose a risk to human health.

Under the NESCS, land is considered to be actually or potentially contaminated if an activity or industry on the Hazardous Activities and Industries List (HAIL) has been, is, or is more likely than not to have been, undertaken on that land. The land use history is the trigger for determining whether the land is covered by the NESCS. The HAIL, published by the Ministry for the Environment, lists the industries and activities that typically use or store hazardous substances.

Under section 44A of the RMA, a district plan must not contain rules that duplicate or conflict with a provision in a national environmental standard.

The NESCS does not contain any policy guidance so when considering an application for resource consent the objectives and policies in the plan apply.

The focus of the NESCS is to protect human health and does not apply to assessing or managing the actual or potential adverse effects of contaminants on other receptors within the environment.

### 3.2.2 National Policy Statement for Freshwater 2020

The National Policy Statement for Freshwater is relevant to contaminated land as escape or spillage could lead to contamination of freshwater bodies. However, actions are for regional councils (which manage discharges) and sit outside the District Plan.

Part 3.5(1) is relevant:

(1) Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must: (a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and (b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and

(c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and (d) encourage the co-ordination and sequencing of regional or urban growth.

While recognising the effect that land contamination can have on freshwater resources, an integrated approach to contaminated land is proposed which avoids duplication of higher-order planning requirements.

### 3.3 Regional policy statement and plans

The Regional Council is responsible for the avoidance, remediation, or mitigation of adverse effects from the use of contaminated land within the Coastal Marine Area and within the beds of lakes and rivers. The Regional Council is also responsible for the avoidance, remediation, or mitigation of adverse effects from discharges on contaminated land.

#### 3.3.1 Canterbury Regional Policy Statement 2013

Under Section 75(3)(c) of the RMA, the Proposed District Plan must give effect to the Regional Policy Statement. Chapter 17 – Contaminated Land contains objective 17.2 “Protection from adverse effects of contaminated land’ which aims to protect people and the environment from both on-site and off-site adverse effects of contaminated land.

Territorial authorities are directed under 17.3.1 (7) of the RPS to use the information provided by the Canterbury Regional Council from the listed land-use register to determine if land has been or is subject to a hazardous activity or industry prior to making a decision on a resource consent application.

They are also directed, under 17.3.2(3), to set out objectives, policies or methods to require:

- (a) a site investigation of any land identified as actually or potentially contaminated, prior to any new subdivision or use of land or new development of land that that could result in an increase in any adverse effect resulting from any contamination of the land;
- (b) that any actual or potential adverse effects of contaminated land are avoided, remedied or mitigated in a manner that does not lead to further significant adverse effects on the environment; and
- (c) that any remediation or mitigation works for contaminated land do not lead to further significant adverse effects on the environment.

These directions have been given effect through regional plans and through the objectives and policies of the Proposed District Plan which seek to protect people and the environment from use, disposal and development of contaminated land, use the Listed Land Use Register, and adopt best practice in the management of contaminated land.

#### 3.3.2 Land and Water Regional Plan

The Land and Water Regional Plan manages discharges onto or from contaminated or potentially contaminated land. For example, most of the permitted activity discharge rules in the Canterbury Land and Water Regional Plan have a condition that a discharge must not be onto contaminated or potentially contaminated land.

### 3.4 Iwi Management Plan:

When undertaking a District Plan Review, under s74 (2A), a territorial authority must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial

authority, to the extent that its content has a bearing on the resource consent management issues of the district. The Mahaanui Iwi Management Plan is the only relevant iwi management plan to the district.

The Mahaanui Iwi Management Plan includes an issue statement that Ngāi Tahu must be involved in decision-making about contaminated land.

It includes in Section 5.4 Papatuānuku (Policy 10.1) that states: “management of contaminated land must recognise and provide for specific cultural issues, including: (a) The location of contaminated sites; (b) The nature of the contamination; (c) The potential for leaching and run-off; (d) Proposed land use changes; and (e) Proposed remediation or mitigation work.”

Policy 10.2 requires appropriate and meaningful information sharing between management agencies and tāngata whenua on issues associated with contaminated sites.

These policies have been taken into account when drafting the Proposed District Plan contaminated land policies, together with higher order policies and standards to which effect must be given. The matters identified in the Iwi Management Plan are addressed in the NESCS, RPS and Regional Plans, and supported by the proposed objective and policies which seek to avoid adverse effects on people, property and the environment.

### **3.5 Any relevant management plans and strategies**

There are no management plans and strategies are relevant to this matter.

### **3.6 Any other relevant legislation or regulations**

The following legislation/regulations are relevant to this matter:

- Hazardous Substances and New Organisms Act 1996

### **3.7 Any plans of adjacent and other territorial authorities**

The District Council is required to have regard to the extent to which the district plan needs to be consistent with the plans and proposed plans of adjacent territorial authorities under Section 74(2)(c) of the RMA. The Christchurch, Selwyn and Hurunui District Plans have been considered as adjacent territorial authorities as follows:

#### **3.7.1 Christchurch District Plan**

The Christchurch District Plan has no rules for contaminated land as it is considered to be covered by other legislation including the NESCS. The objectives and policies address both human health and the environment which extends the range of considerations from the protection of human health under the NESCS. Christchurch City Council planning staff commented that where an activity is controlled or restricted discretionary under the NESCS, the objectives and policies of the District Plan (in relation to the environment) are not considered, but they are for discretionary or non-complying activities.

The proposed provisions are consistent with the approach of the Christchurch District Plan and provide for the management of potential effects on natural values to be considered in relation to contaminated land.

### 3.7.2 Selwyn District Plan

Selwyn District Council has recently notified its Proposed District Plan, which proposes a consistent approach to management of the issue, and contains a separate chapter for contaminated land that includes objectives and policies that address human health and the wider environment.

### 3.7.3 Hurunui District Plan

The Hurunui District Plan takes the same approach as the Christchurch District Plan. The objectives and policies deal with both human health and the environment, but there are no rules.

The proposed provisions will similarly provide objectives and policies that cover both human health and the wider environment.

Other district plans that have been considered are:

### 3.7.4 Proposed New Plymouth District Plan

The Proposed New Plymouth District Plan was also considered as a recently notified district plan to provide national context to the development of the provisions for the Proposed Waimakariri District Plan. The objectives and policies of the Proposed New Plymouth District Plan are focused on human health, and there are no rules. The management of effects on the environment considered to be, in most cases, the responsibility of the regional council.

### 3.7.5 Proposed Waikato District Plan

The Proposed Waikato District Plan was also recently notified and includes a chapter that combines hazardous substances and contaminated land. Objectives and policies extend consideration to also include the environment (as well as human health). There are also no rules for the chapter. This approach is consistent with the format and scope of the proposed provisions.

### 3.7.6 Summary

The Proposed Waimakariri District Plan Contaminated Land Chapter is consistent with the plans of adjoining territorial authorities. It is also consistent with the Proposed Waikato District Plan and Proposed New Plymouth District Plan except to the extent the Proposed Waimakariri District Plan also contains objectives and policies for effects on the environment, as well as human health. This is also considered to be within scope of the District Plan's role, under the RMA, in the prevention or mitigation of any adverse effects of development, subdivision, or use of contaminated land.

## 4. KEY RESOURCE MANAGEMENT ISSUES

The resource management issues set out in this section have been identified using sources of information including (but not limited to) the following:

- a. Monitoring and review of Operative District Plan (District Plan Effectiveness)
- b. Assessment of the current plan against higher order documents including the CRPS and the NESCS
- c. Discussion/advice from the regional council, and other territorial authorities
- d. Comments received during the 'What's the Plan' consultation.

### 4.1. Issue 1: The Operative District Plan does not give effect to the NESCS

The Operative District Plan requires updating to reflect the outcomes sought by the NESCS. District Plan rules are likely to duplicate NESCS requirements, for example Rule 23.4.1 (land use activities on

contaminated land). The NESCS is insufficiently referenced in the Operative District Plan and would benefit from clearer guidance through objectives and policies.

#### **4.2 Issue 2: The Operative District Plan does not refer to Environment Canterbury's Listed Land Use Register and duplication of regional responsibilities should be avoided**

The Canterbury Regional Council's Listed Land Use Register (LLUR) identifies contaminated land for use in decision making and including Land Information Memorandums. Environment Canterbury have commented that in regard to contaminated land, the District Plan Review should ensure Environment Canterbury is advised when contaminated land is identified and listed on the land use register. At present it is not clear whether staff are required to check the land use register and this could be clarified.

The current District Plan duplicates the regional council's responsibility to manage discharges. Under Rule 23.4.1, any land use activity which is to be carried out on a contaminated site and involves the deposit of any substance in, on, or under the land of the site is a discretionary activity.

#### **4.3 Issue 3: Contaminated land has the potential to adversely affect the environment and human health**

The focus of the NESCS is human health and it does not address risk to other receptors including the wider environment. Section 31(1)(b)(iia) of the RMA includes prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land as a District function.

The Canterbury Regional Council is responsible for management of contaminated land within the Coastal Marine Area and the beds of lakes and rivers and for the avoidance, remediation, or mitigation of adverse effects from discharges on contaminated land.

Territorial authorities are responsible for the avoidance, remediation, or mitigation of adverse effects for all other new land uses, in a manner that does not lead to further significant adverse effects.

Regional plans will not ordinarily regulate a land use activity unless there is a risk to water quality. For example, a subdivision on a contaminated or potentially contaminated site would not trigger a resource consent from the Canterbury Regional Council unless there was a discharge (stormwater, wastewater etc.) onto land or into water on that site. The NESCS will regulate the remediation of the site before it can be subdivided for the protection of human health but it might not necessarily protect other receptors.

An example might be where there is significant indigenous vegetation (or other indigenous vegetation) on a contaminated site. The new land use activity might be permitted under the NESCS and no site investigation is required, or the action taken to remedy the site under the NESCS might protect against human health but not the indigenous vegetation, and the vegetation is harmed by the disturbance of contaminated soil.

Where consent is required for restricted discretionary, discretionary or non-complying activities, environmental matters can be considered under the objectives and policies of the plan. In instances where it is not a discharge controlled by the Regional Council, or human health managed by the NESCS, earthworks undertaken on contaminated land, where there is no discharge involved, also has the potential to affect the vegetation or habitat directly where earth is disturbed. The District Plan

considers earthworks where it affects sites of ecological significance, or any other indigenous biodiversity protected by the plan, as a matter of discretion. However, there are no rules in the proposed Contaminated Land Chapter so that there is no duplication of the regional plans and the NESCS.

## 5. OVERVIEW OF PROPOSED OBJECTIVES, POLICIES AND METHODS

### 5.1 Strategic Direction

There are no specific strategic direction objectives relating to the management of contaminated land, which is a function that is more specifically managed through other higher order legislation and Regional Plans.

### 5.2 Zone / District-wide Subject

The proposed provisions are located within a district-wide chapter.

### 5.3 Proposed Objectives and Policies

Objective
<p><b>CL-O1 Contaminated land</b></p> <p>The subdivision, use and development of contaminated land does not adversely affect people, property, and the environment.</p>
Policies
<p><b>CL-P1 Identify contaminated sites</b></p> <p>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 and coordinating with the Regional Council in the recording and management of contaminated land.</p>
<p><b>CL-P2 Best practice management of contaminated land</b></p> <p>Require applications for subdivision, use or development of contaminated land, or potentially contaminated land, to include an investigation of the risks and to remediate the contamination, or manage activities on contaminated land, to protect the health of people 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.</p>
<p><b>CL-P3 Earthworks on contaminated land</b></p> <p>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.</p>
<p><b>CL-P4 Disposal of contaminated soil</b></p> <p>Avoid adverse effects on the health of people and the environment from the disposal of soil from contaminated land.</p>

### 5.4 Proposed Methods

#### 5.4.1 Rules:

There are no rules or activity standards in the Contaminated Land Chapter, instead any effects are managed through the NESCS and District Plan provisions for earthworks.

#### 5.4.2 Matters of Discretion:

The effects of contaminated land on flora and fauna is a matter of discretion if earthworks exceed the thresholds.

#### 5.4.3 Advice Notes:

These are included to draw to attention to other methods for managing adverse effects from contaminated land.

#### 5.4.4 Definitions:

The National Planning Standards definition of contaminated land is used within the proposed chapter.

## 6. SCALE AND SIGNIFICANCE EVALUATION

Section 32 (1)(c) of the RMA requires that a Section 32 report contain a level of detail that corresponds with the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposed objectives, policies and methods.

The level of detail undertaken for the subsequent evaluation of the proposed objectives, policies and methods has been determined by this scale and significance assessment.

In particular, Section 32 (1)(c) of the RMA requires that:

- Any new proposals need to be examined for their appropriateness in achieving the purpose of the RMA;
- The benefits and costs, and risks of new policies and methods on the community, the economy and the environment need to be clearly identified and assessed; and
- All advice received from iwi authorities, and the response to the advice, needs to be summarised.

Further, the analysis has to be documented to assist stakeholders and decision-makers understand the rationale for the proposed objectives, policies and methods under consideration.

In making this assessment regard has been had to a range of scale and significance factors, including whether the provisions:

- (a) Are of regional or district wide significance;
- (b) Involve a matter of national importance in terms of Section 6 of the RMA;
- (c) Involve another matter under Section 7 of the RMA;
- (d) Raise any principles of the Treaty of Waitangi (Te Tiriti o Waitangi) under Section 8 of the RMA;
- (e) Address an existing or new resource management issue;
- (f) Adversely affect people's health and safety;



- (g) Adversely affect those with particular interests including Māori;
- (h) Adversely affect a large number of people;
- (i) Result in a significant change to the character and amenity of local communities;
- (j) Result in a significance change to development opportunities or land use options;
- (k) Limit options for future generations to remedy effects;
- (l) Whether the effects have been considered implicitly or explicitly by higher order documents;  
and
- (m) Include regulations or other interventions that will impose significant costs on individuals or communities.

Policies and methods have been evaluated as a package, as together they address a particular issue and seek to meet a specific objective.

## 6.1 Evaluation of Scale and Significance

	Low	Medium	High
<b>Degree of change from the Operative Plan</b>			✓
The Operative District Plan pre-dates the introduction of the NESCS and the Regional Policy Statement. The introduction of a specific chapter, and primary reliance on methods outside of the district plan are significantly different from the Operative District Plan.			
<b>Effects on matters of national importance</b>		✓	
It is possible that a range of matters of national importance could be affected by contaminated land and its disturbance depending on its location and management.			
<b>Scale of effects geographically (local, district wide, regional, national)</b>	✓		
The management of contaminated land is covered nationally by legislation, however this is administered at the regional and local level. Geographically widespread, for example former sheep dip locations, although affected land may not be extensive.			
<b>Scale of effects on people (how many will be affected – single landowners, multiple landowners, neighbourhoods, the public generally, future generations?)</b>		✓	
The scale of effects from contaminated land could vary depending on the land – for example a former timber treatment site or the development of a former orchard for housing. Effects from contaminated land could potentially affect future generations.			
<b>Scale of effects on those with specific interests, e.g., Mana Whenua, industry groups</b>	✓		
The scale of effects is anticipated to be intermittent and controlled primarily by other legislation and Regional Council controls.			
<b>Degree of policy risk – does it involve effects that have been considered implicitly or explicitly by higher order documents? Does it involve effects addressed by other standards/commonly accepted best practice? Is it consistent, inconsistent or contrary to those?</b>	✓		
Low degree of policy risk as the topic is principally managed outside of the District Plan and the approach is consistent with the NESCS, relevant RPS direction and the National Planning Standards.			

<b>Likelihood of increased costs or restrictions on individuals, communities or businesses</b>		✓	
Likely costs or restrictions are expected to be low as regardless of the district plan, the Council is required to enforce the NESCS, and land use, development or subdivision on potentially contaminated land is already required to comply with the NESCS.			
<b>Summary - Scale and Significance</b>			
The Contaminated Land Chapter is of low significance. While it is a high-level of change from the current plan because there are to be no rules, the topic and potential effects are largely managed by other legislation, such as the NESCS, CARP and LWRP, so the scope for the District Plan is limited. Costs or restrictions on individuals, communities or businesses are minimal.			

## 7. EVALUATION OF PROPOSED OBJECTIVES

Section 32(1)(a) of the RMA requires the District Council to evaluate the extent to which the objectives are the most appropriate way to achieve the purpose of the RMA. The level of detail undertaken for the evaluation of the proposed objectives has been determined by the preceding scale and significance assessment. Below is a summary of the proposed objectives that have been identified as the most appropriate to address the resource management issue(s) and achieve the purpose of the RMA, against those objectives in the operative plan.

### 7.1 Evaluation of Proposed Objectives

<b>Existing Objective/s</b>	<b>Appropriateness to achieve the purpose of the RMA</b>
4.1.1 Maintain and enhance the life-supporting capacity of the land resource in the District.	<b>Relevance:</b> The objective is very broad and is not specific to the issues related to contaminated land. The terminology largely repeats the purpose of the RMA.
	<b>Reasonableness:</b> It does not directly relate to the section 6 matters of national importance, but does relate to section 7 matters such as the finite characteristics of natural and physical resources.
	<b>Achievability:</b> The general nature of the objective would require significant monitoring to assess the extent to which it has been achieved, and it is not clear what is to be monitored.

Proposed Objective/s	Appropriateness to achieve the purpose of the RMA
<p>The subdivision, use and development of contaminated land does not adversely affect people, property, and the environment.</p>	<p><b>Relevance:</b>            In comparison with the Operative District Plan, the proposed objective is specific to the topic of contaminated land and identifies the extent to which the Proposed Plan will consider environmental effects.</p> <p>The NESCS does not include any objectives and policies, and the objectives and policies of the District Plan apply to inform proposals and decision making.</p>
	<p><b>Reasonableness:</b>            The proposed objective acknowledges the District Council's responsibility to prevent or mitigate adverse effects of the development, subdivision, or use of contaminated land under section 31(b)(iia) of the RMA.</p> <p>It also gives effect to the CRPS, particularly 17.3.2(3) in regards to protecting people and the environment from adverse effects of contaminated land.</p>
	<p><b>Achievability:</b>            The objective should be able to be achieved through integrated management with regional council functions, and through implementation of other proposed chapters.</p>

## 8. EVALUATION OF PROPOSED POLICIES AND METHODS

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

The level of detail undertaken for the evaluation of the proposed policies and methods has been determined by the preceding scale and significance assessment.

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 proposed policies and methods, 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.

Policies and methods have been evaluated as a package, as together they address a particular issue and seek to meet a specific objective.

## 8.1 Evaluation of Proposed Policies and Methods

Options to achieve the District Plan objectives relating to contaminated land	Benefits Environmental, economic, social and cultural effects anticipated	Costs Environmental, economic, social and cultural effects anticipated	Efficiency and Effectiveness	Risk of acting / not acting if there is uncertain or insufficient information about the subject matter of the provisions
<p><b>Option A: Proposed provisions</b></p> <p>Policies for identification, best practice management, earthworks and disposal (of soil from) contaminated land</p>	<p><b>Environmental:</b></p> <p>Where consent is required for restricted discretionary, discretionary or non-complying activities, environmental matters can be considered under the objectives and policies of the plan. Therefore, it achieves an integrated approach with the NESCS.</p>	<p><b>Environmental:</b></p> <p>Environmental cost may relate to areas of contaminated land that are existing but not remediated as work is not proposed, e.g. through subdivision or land use activity.</p>	<ul style="list-style-type: none"> <li>• Allows for improved coordination between the District Plan, NESCS regulations and the Regional Council responsibilities. It achieves an overarching integrated approach with the NESCS and CRPS.</li> <li>• Provides a greater level of policy direction for addressing contaminated land.</li> <li>• The 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 plan. Therefore, it achieves an integrated approach with the NESCS.</li> <li>• Provides direction for the assessment of discretionary and non-complying activities under the NESCS</li> </ul>	<ul style="list-style-type: none"> <li>• Sufficient information is available to identify the proposed provisions as the best option to achieve the proposed objective.</li> <li>• Risk of not acting relates to inconsistency with legislative direction and duplication of regional council functions.</li> <li>• Risk of not acting is that the District Plan is silent on the management of residual adverse effects from contaminated land exposing potential for adverse effects on the environment.</li> </ul>
	<p><b>Economic:</b></p> <p>Development of contaminated land subject to other controls outside of the District Plan are generally enabled.</p>	<p><b>Economic:</b></p> <p>Costs associated with assessment and remediation of contaminated land, including disposal of contaminated soils prior to reuse of affected sites.</p>		

Options to achieve the District Plan objectives relating to contaminated land	Benefits Environmental, economic, social and cultural effects anticipated	Costs Environmental, economic, social and cultural effects anticipated	Efficiency and Effectiveness	Risk of acting / not acting if there is uncertain or insufficient information about the subject matter of the provisions
	<p><b>Social:</b> Human health is a major consideration for the management of contaminated land.</p>	<p><b>Social:</b> None identified</p>	<ul style="list-style-type: none"> <li>Provides direction that sites are to be identified. There is an advice note to check the Listed Land Use Register.</li> </ul>	
	<p><b>Cultural:</b> Any effects on cultural resources, for example mahinga kai, should be addressed through integrated management in relation to contaminated land (as well as through other provisions such as those for riparian margins).</p>	<p><b>Cultural:</b> Any costs to cultural resources affected by ongoing contamination of land where this is not identified through subdivision or development proposals.</p>		
<p><b>Opportunities for economic growth and employment</b></p>				
<p>No specific opportunities for growth and employment are identified.</p>				

Options to achieve the District Plan objectives relating to contaminated land	Benefits Environmental, economic, social and cultural effects anticipated	Costs Environmental, economic, social and cultural effects anticipated	Efficiency and Effectiveness	Risk of acting / not acting if there is uncertain or insufficient information about the subject matter of the provisions
<p><b>Option B: Status Quo</b></p> <p>This option is not reasonable as it does not give effect to the objective or relevant legislative direction.</p>				
<b>Options less appropriate to achieve the objective</b>				
Proposed provisions to achieve the objective relating to temporary activities	Benefits Environmental, economic, social and cultural effects anticipated	Costs Environmental, economic, social and cultural effects anticipated	• Efficiency and Effectiveness	Risk of acting / not acting • if there is uncertain or insufficient information about the subject matter of the provisions
<p><b>Option C: Contain no policies or rules for Contaminated Land</b></p>	<p><b>Environmental:</b> None identified.</p>	<p><b>Environmental:</b> Relying on the NESCS may not provide protection for other receptors (besides human health) such as the environment.</p>	<ul style="list-style-type: none"> <li>• This may not fully achieve the councils' function under the RMA in the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land, as adverse effects are not limited to human health.</li> </ul>	<ul style="list-style-type: none"> <li>• There is sufficient information to identify that this option is not the most efficient or effective in achieving the objective.</li> </ul>

Options to achieve the District Plan objectives relating to contaminated land	Benefits Environmental, economic, social and cultural effects anticipated	Costs Environmental, economic, social and cultural effects anticipated	Efficiency and Effectiveness	Risk of acting / not acting if there is uncertain or insufficient information about the subject matter of the provisions
	<p><b>Economic:</b> Removes potential duplication, and less cost for doing development on contaminated or potentially contaminated land.</p>	<p><b>Economic:</b> Costs associated with any adverse effects that are associated with matters not covered by regional plans or the NESCS, for example restoring indigenous vegetation.</p>	<ul style="list-style-type: none"> <li>• The NESCS does not provide objectives and policies to provide direction which is less effective for guiding decision making.</li> <li>• While the NESCS provides the rule framework for matters related to human health, it neither addresses adverse effects on other receptors the district needs to address under the RMA. NESCS does not provide assessment of environmental effects. It also does not provide a framework of objectives and policies for the evaluation of discretionary or non-complying activities. Under the NES, s75(1) of the RMA still requires district plans to state the objectives and policies.</li> <li>• Relying on regional plan discharge provisions fails to address the land use activities that are the responsibility of territorial authorities under the RMA, including managing the effects of contaminated land associated with land use activities.</li> </ul>	<ul style="list-style-type: none"> <li>• Risk from acting that the objective would not be achieved and identified risk would not be managed in relation to contaminated land.</li> </ul>
<p><b>Social:</b> None identified</p>	<p><b>Social:</b> None identified</p>			
<p><b>Cultural:</b> None identified</p>	<p><b>Cultural:</b> Potential cost associated with damage to cultural resources not otherwise controlled outside of the District Plan.</p>			
<p><b>Opportunities for economic growth and employment</b></p>				
<p>No specific opportunities are identified.</p>				

Options to achieve the District Plan objectives relating to contaminated land	Benefits Environmental, economic, social and cultural effects anticipated	Costs Environmental, economic, social and cultural effects anticipated	Efficiency and Effectiveness	Risk of acting / not acting if there is uncertain or insufficient information about the subject matter of the provisions
---	--	---	------------------------------	---

**Quantification**

Section 32(2)(b) requires that if practicable the benefits and costs of a proposal are quantified.

The evaluation in this report identifies where there may be additional cost(s), however given the assessment of the scale and significance of the proposed changes above it is considered that it is not necessary, beneficial or practicable to quantify costs and benefits.

It is noted that the work required to assess the potential for contaminated land (preliminary and detailed site investigations) is the same for both regional council resource consents (such as discharge to ground as part of remediation) and the same analysis can be used for any district council resource consent (such as subdivision or earthworks).



## 8.2 Summary - Evaluation of Proposed Policies and Methods

The proposed policies and methods are the most appropriate option to achieve the objective for contaminated land in Waimakariri District as the benefits outweigh the costs (in 8.1) and the methods most efficiently give effect to the proposed objective.

## 9. SUMMARY

The proposed provisions provide more relevant and specific policy direction for addressing the identified issues for contaminated land than the Operative District Plan and acknowledges the District Council's responsibilities to prevent or mitigate adverse effects of the development, subdivision, or use of contaminated land under section 31(1)(b)(iia) of the RMA, and will achieve the purpose of the Act.

The objective and policies give effect to the CRPS, particularly Policy 17.3.2(3) in regards to protecting people and the environment from adverse effects of contaminated land, not just human health matters addressed by the NESCS.

The NESCS describes the methods for establishing whether or not a piece of land is contaminated under the NESCS but does not include objectives and policies. The proposed objectives and policies provide for consideration of effects on the environment, which addresses resource management effects not otherwise controlled.

Overall, the approach achieves an integrated approach with the NESCS and regional plans and addresses effects from contaminated land not captured by other legislation, and are the most appropriate option to give effect to the purpose of the Act.