

PROPOSED GORE DISTRICT PLAN SECTION 32 REPORT

CONTAMINATED LAND



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Glossary of Terms

Resource Management Act 1991	RMA or 'the Act'
Gore District Council	GDC or 'the Council'
Operative District Plan	ODP
Proposed District Plan	PDP
Draft District Plan	DDP
Southland Regional Policy Statement	RPS
National Planning Standards 2019	PS
Southland Regional Policy Statement 2017	RPS
National Policy Statements	NPS
National Environmental Standards	NES
National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health	NESCS
Sites Associated with Hazardous Substances (SAHS)	SAHS
Hazardous Activities and Industries List	HAIL
Permitted Activity	PA
Controlled Activity	CA
Restricted Discretionary Activity	RDA
Discretionary Activity	DA
Non-complying Activity	NCA
Southland District Plan	SDP
Clutha District Plan	CDP
Proposed Selwyn District Plan	PSDP
Proposed New Plymouth District Plan	PNPDP

1. Executive Summary

This report contains a Section 32 analysis of the Contaminated Land provisions of the Proposed District Plan (PDP). Section 32 of the Resource Management Act 1991 ('the Act' or 'the RMA') requires objectives in plan change proposals to be examined for their appropriateness in achieving the purpose of the Act, and the policies and methods of those proposals to be examined for their costs, benefits, efficiency, effectiveness and risk in achieving the objectives. The analysis set out in this report is to fulfil the obligations of the Council under Section 32 of the Act.

Overall, the scale of significance of the contaminated land provisions is low. The level of detail in this evaluation is commensurate with the scale and significance of the environmental, economic and cultural effects anticipated from the implementation of the provisions.

The key issue relating to contaminated land is that it can present risks to human health and the environment when it is used and developed. Contaminated land is land where the soil is or may be (due to a past activity) contaminated by a hazardous substance that could have an adverse effect on human health or the environment. Land can become contaminated when hazardous substances are not used, stored or disposed of in an appropriate way or as a result of past land uses involving chemicals, such as agricultural pesticides. The Operative District Plan (ODP) (status quo) contains limited objectives, policies or rules that are specific to contaminated land.

The Proposed District Plan (PDP) provisions include objectives and policies in relation to the identification and management of contaminated land. There are no rules in this chapter as rules relating to contaminated land are contained in the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS).

The PDP objectives and policies have been drafted to address the resource management issues relating to contaminated land. They seek to:

- Support the identification of contaminated land and availability of this information to landowners and users;
- Require potentially contaminated land to be investigated and managed to minimise the risk to human health and the environment; and
- Manage contaminated land in accordance with the NESCS.

These matters are specifically addressed via one overarching objective along with three policies relating to the identification of contaminated land; the investigation and remediation of contaminated land; and determining appropriate management actions for contaminated land. A cross-reference is included in the PDP directing plan users to the NESCS rules and noting that resource consent may be required from the Council under the provisions of the NESCS.

The preferred option is the PDP provisions instead of the status quo which includes limited provisions specific to contaminated land. The PDP provisions will provide greater clarity and direction to applicants and decision makers in relation to contaminated land. They will assist in managing potential adverse effects on human health and the environment, and they align with

the NESCS. Overall, this will provide for the sustainable management of contaminated land consistent with Section 5 of the RMA.

2. Overview and Purpose

2.1 Introduction to the resource management issue(s)

The purpose of the contaminated land provisions is to ensure that contaminated land is identified, assessed and appropriately managed.

The provisions seek to address and manage the following issue:

1. Contaminated land can present risks to human health and the environment when it is used and developed.

Contaminated land may be associated with past activities such as the manufacture and use of pesticides, timber treatment and sheep dipping. Land may also be contaminated where hazardous substances are not used or stored correctly. When contaminated land is used or disturbed there can be resultant adverse effects on human health and the environment that require management.

2.2 Purpose of the report

The purpose of this report is to provide an evaluation of the proposed provisions in accordance with the requirements of Section 32 of the RMA 1991.

The PDP contains a chapter on contaminated land which includes objectives and policies in relation to the identification and management of contaminated land. There are no rules contained in this chapter as rules relating to contaminated land are contained in the NESCS.

This report assesses the appropriateness of the proposed objectives to achieve the purpose of the Act and the effectiveness and efficiency of the policies which give effect to the objectives. Information is provided on the issues the provisions seek to address, the research undertaken and an evaluation of the provisions relating to contaminated land within the ODP.

An assessment of the scale and significance of the provisions will inform the level of detail included in this report.

3. Statutory and Policy Context

3.1 Resource Management Act

In carrying out a Section 32 analysis, an evaluation is required of how the proposal achieves the purpose and principles contained in Part 2 of the RMA.

Section 5 sets out the purpose of the RMA, which is to promote the sustainable management of natural and physical resources.

Sustainable management means *managing the use, development, and protection of natural and physical resources to enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety, while –*

- (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

In achieving this purpose, authorities also need to recognise and provide for the matters of national importance identified in Section 6, have particular regard to other matters referred to in Section 7 and take into account the principles of the Treaty of Waitangi referred to in Section 8.

Section 6

The Section 6 matters relevant to this topic are:

- e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*

The above matter is relevant to this chapter because if activities on contaminated land are not managed appropriately there can be adverse effects on ancestral lands and water of importance to Māori.

Section 7

The Section 7 matters that are relevant to this topic are:

- (a) kaitiakitanga*
- (b) the efficient use and development of natural and physical resources*
- (f) maintenance and enhancement of the quality of the environment*

The above matters are relevant to this chapter the management of contaminated land may be a facet of kaitiakitanga on particular sites and is related to the efficient use and development of land while maintaining or enhancing the quality of the environment.

Section 8

Section 8 of the RMA requires the Council to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). There has been an ongoing partnership with Hokonui Rūnanga as part of the PDP development process. This feedback has informed the Section 32 evaluation, and the obligation to make informed decisions based on that consultation is noted.

Section 31

Section 31(1)(b)(iia) of the RMA states that a territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of– the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land.

The management of contaminated land in the PDP directly relates to this function.

3.2 National Policy Statements

The Section 32 – Overview and Urban Form and Development report includes details and a brief assessment of all National Policy Statements (NPS).

There are no National Policy Statements of particular relevance to contaminated land.

3.3 National Environmental Standards

The Section 32 – Overview and Urban Form and Development report includes details and a brief assessment of all National Environmental Standards (NES).

The following NES is relevant to contaminated land:

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

The NESCSC applies to certain activities undertaken on ‘pieces of land’ on which any potentially contaminating activity on the Ministry for the Environment’s Hazardous Activities and Industries List (the HAIL) is occurring, has occurred, or is more likely than not to have occurred.

The NESCSC provides a nationally consistent set of planning controls for contaminated land. It ensures that contaminated land is identified, assessed, and (if necessary) made safe for human activity, although it does not address environmental effects of contaminated land.

The NESCSC does not contain objectives or policies to guide decisions made under its rules. All territorial authorities are required to observe and enforce the requirements of the NESCSC.

3.4 National Planning Standards

The National Planning Standards (PS) 2019 require a more bespoke approach to planning zones than the ODP. The PS also provide the structure and form for the plan content along with definitions and mapping criteria.

The PS contain the following aspects of relevance to this topic:

- Section 7. District-wide Matters Standard – This specifies that if the following matters are addressed in the plan they must be under the Hazards and risks heading:
 - If provisions to manage contaminated land are addressed, they must be located in the Contaminated land chapter.
 - If provisions relating to hazardous substances are addressed, they must be located in a chapter titled Hazardous substances under the Hazards and risks heading.
- Section 14. Definitions Standard – This standard specifies mandatory definitions to improve plan consistency across the country. The definition of contaminated land is included in the National Planning Standards as follows:

Contaminated land: *has the same meaning as in section 2 of the RMA*
Means land that has a hazardous substance in or on it that –
(a) has significant adverse effects on the environment; or
(b) is reasonably likely to have significant adverse effects on the environment.

3.5 Regional Policy Statement

The Southland Regional Policy Statement 2017 (RPS) sets out the framework and priorities for resource management in the region. The RPS identifies the regionally significant issues around the management of the Region’s natural and physical resources and sets out what needs to be achieved (objectives) and the way in which the objectives will be achieved

(policies and methods). The PDP is required to give effect to the RPS by Section 75(3) of the RMA.

The RPS contains a chapter on contaminated land – Chapter 11: Contaminated Land – which identifies the following issue with contaminated land:

- Contaminated land that has not been adequately identified, assessed or managed may contribute to increased risk to the environment (including community health).

The RPS includes two objectives which seek to “*Identify, investigate and manage contaminated land*” and “*Avoid, remedy or mitigate adverse effects on the environment (including human health) from contaminated land*”.

There are then three policies which give effect to these objectives. These policies seek to achieve the following:

- identify and prioritise contaminated land;
- manage contaminated land to protect human health and avoid, remedy or mitigate adverse effects on the environment; and
- promote an integrated management approach between central government, local authorities, tangata whenua, landowners, developers and the community in relation to the management of contaminated land.

There are listed methods for the Regional Council which include:

- establishing and maintaining provisions in regional plans;
- identifying, investigating and managing contaminated sites and prioritising them for management, remediation or mitigation of effects; and
- informing, educating and assisting territorial authorities, industry, landowners and the community in relation to contaminated sites.

There are also listed methods providing direction to territorial authorities (including Gore District Council) which include:

- establishing and maintaining contaminated land provisions in District Plans;
- encouraging collaboration and information sharing; establishing strategies and protocols to collaborate, inform and work together on contaminated land issues; and
- consulting with tangata whenua when making decisions in relation to contaminated land that may adversely affect the quality of the environment and tangata whenua values.

The PDP Contaminated Land Chapter objectives and policies align with the RPS direction whilst recognising that the NESCS is the primary tool for managing contaminated land and consents under the NESCS are processed by Environment Southland.

3.6 Regional Plans

Environment Southland has prepared a number of regional plans, these include:

- Regional Air Plan 2016
- Effluent Land Application Plan 1998
- Regional Water Plan 2010

Environment Southland's proposed Southland Water and Land Plan was made partially operative following a council meeting in January 2021.

The provisions of the Southland Regional Plans are summarised within the Section 32 – Overview and Urban Form and Development Evaluation Report. To date most District Plans have relied solely on Regional Policy Statements to provide strategic direction as District Plans must give effect to Regional Policy Statements under the RMA.

The Southland Water and Land Plan contains one specific policy on contaminated land, being Policy 36 – Manage contaminated land. This policy requires the best practicable option be adopted to prevent or minimise adverse effects from contaminated land or a discharge of a hazardous substance. The Plan also contains rules in relation to the following:

- discharge of contaminants from contaminated land (Rule 46).
- site investigations (Rule 46A).
- discharges of contaminants from closed landfills (Rule 47).
- cemeteries (Rule 48).
- the take and use of groundwater from contaminated land (Rule 54).

The Southland Regional Council has established the Sites Associated with Hazardous Substances (SAHS) register to hold information on land that is or may be contaminated, either by past or current activities. The Ministry for the Environment has published the Hazardous Activities and Industries List (HAIL), which identifies industries and land use activities that are likely to contaminate the land they occur on. These lists form an important part of the regional approach to managing contaminated land.

In most cases the responsibility for the management of effects on the environment arising from hazardous substances and contaminated land will sit with the Southland Regional Council (e.g. leaching of contaminants to waterbodies or groundwater from land development or disturbance activities) through administration of the Water and Land Plan. However, the District Councils (including GDC) are responsible for the administration of the NESCS.

3.7 Iwi Environmental Management Plan(s)

'Te Tangi a Tauira – The Cry of the People' the Ngai Tahu Ki Murihiku Natural Resource and Environmental Management Plan identifies a broad range of relevant matters when considering where and how Gore grows and develops. In particular, there is a desire to:

- Limit the impacts of climate change on indigenous species and ecosystems and the risks of natural hazards by appropriately managing urban development and providing for sustainable energy and transport systems.
- Protect sites of significance and indigenous biodiversity areas along with appropriate management of water.
- Limit impacts of industrial activity and subdivision by involving iwi in decision making processes and managing land use, building and water issues.
- Provide appropriate infrastructure management.

'Te Tangi a Tauira' also contains specific references to managing effects on the environment as a result of contamination and pollution of hazardous substances and avoiding contamination of surface and ground water.

3.8 Other Legislation and Policy Documents

The following national guidance documents are considered relevant to this topic:

- Contaminated Land Management Guidelines 2021

Compliance with the guideline is a legal requirement for activities undertaken under the NESCS. It was developed to ensure consistency in reporting on contaminated site investigations.

3.9 Other Local Policies, Strategies and Plans

The Gore Subdivision and Land Development Bylaw 2019 contains references to contaminated land and directs that this needs to be managed under the NESCS. It also requires that soil used in developments shall require testing where it is from a site previously used for HAIL activities, noting that the NESCS would also apply in this situation.

3.10 Climate Change

The effects of climate change have been added to other matters decision makers should have particular regard to (RMAs7(i)).

In accordance with 2020 RMA amendments, by 2022 District Plans will not only need to have regard to the effects of climate change (adaptation) but also climate change mitigation and national adaptation and emission reduction plans prepared under the Climate Change Response Act 2002.

4. Resource Management Issue Analysis

4.1 Background

The issue relating to contaminated land is set out in Section 2.1 above, being that contaminated land can present risks to human health and the environment when it is used and developed.

Contaminated land is land that has a hazardous substance in or on it that could have an adverse effect on human health or the environment. Land can become contaminated when hazardous substances are not used, stored or disposed of in an appropriate way.

Contaminated land is commonly associated with past activities such as the manufacture and use of pesticides, timber treatment and sheep dipping and the disposal of wastes in landfills. People can be exposed to contaminated land by direct contact with contaminated soil, swallowing food or water from contaminated environments and breathing vapours or contaminated dust.

As well as endangering health, contamination can limit the use of land or cause corrosion that may threaten buildings and property. The PDP seeks to address the identified resource management issue by providing overarching objectives and policies to ensure an appropriate assessment of adverse effects associated with development on sites with potentially contaminated land is undertaken as part of a land use or subdivision proposal. The provisions work alongside the NESCS.

4.2 Operative Plan Approach

There are no specific rules in the ODP relating to contaminated land. There is a reference in Chapter 4 – Land Use Activities Rules and Chapter 8 – Subdivision which notes that the rules in the NESCS apply, and resource consent will be required from the Council under these rules.

There are no specific objectives and policies relating to contaminated land contained in Chapter 3 – Land Use Activities Framework. However, there are high level objectives and policies which have some relevance to contaminated land including:

Objective 3.3.2 – *“Ensure that the effects of land use activities do not adversely affect the quality of the environment and are compatible with the characteristics and amenity values of each locality”*

Objective 3.3.7 – *“Ensure that the effects of earthworks and other land disturbance are avoided, remedied or mitigated”*

Policy 3.4.2 – *“Control the adverse effects of land use activities on the environment”*

Policy 3.4.11 – *“Ensure that the effects of earthworks and other land disturbance are avoided, remedied or mitigated”*

There is one policy in Chapter 8 – Subdivision relating to contaminated land which is Policy 8.4.14 – *“Have regard to, and implement, the provisions of the National Environment Standard for Assessing and Managing Contaminants in Soil to Protect Human Health where subdivision occurs on any contaminated site”*.

There is one reference to contaminated land in the matters of discretion for Restricted Discretionary Activity Subdivision Rule 8.10.4.

A copy of the NESCS is contained in Appendix 5 of the ODP for reference.

4.3 Effectiveness of Operative Plan

Issue	Comment	Response
Lack of specific objectives and policies relating to contaminated land	The ODP only contains one policy specific to contaminated land and this is contained in the subdivision chapter, requiring that the NESCS is implemented and had regard to. Overall, there is a lack of specific direction and guidance in relation to contaminated land.	The PDP contains objectives and policies specific to contaminated land. These objectives and policies relate to both subdivision and land use activities. They also give effect to the higher order objectives and policies contained in the Southland RPS.

4.4 Technical Reports and Research

There has been no specific technical reports or research completed in relation to contaminated land, however Environment Southland and other relevant parties have had

the opportunity to provide comment on the draft provisions and the Council has reviewed the ODP and other Councils Resource Management Plans to ensure the PDP provisions achieve best practice principles.

4.5 Analysis of Best Practice – how other Councils are addressing the same issue

A review of the approach contained in five other District Plans is tabulated below. All of these Plans take the same approach of having specific objectives and policies relating to contaminated land, but no rules as these are contained in the NESCS.

Plan	Objectives and Policies	Rules
Proposed Selwyn District Plan 2020	Objective CL-O1 – Human health and the environment are not compromised by the use of contaminated land. Policy CL-P1 – Require any proposal for subdivision, development, or use of contaminated land or potentially contaminated land to apply a best practice approach to investigate the risks, and either remediate the contamination or manage activities on contaminated land to protect people and the environment. Policy CL-P2 – Use and development of remediated contaminated land does not damage or destroy any containment works, unless comparable or better containment is provided.	N/A – the plan contains a reference to the rules contained in the NESCS.
New Plymouth Proposed District Plan 2022	Objective CL-O1 – The risks to human health from contaminated land are avoided, remedied or mitigated. Policy CL-P1 – Identify sites that are known to contain contaminated soil as a result of land uses and activities, including current and historical land use and activities. Policy CL-P2 – Ensure that contaminated land or potentially contaminated land is suitable for use by requiring investigation, remediation or management where necessary at the time of land use change, subdivision or re-development so as to minimise the risk to human health from the contamination.	N/A – the plan contains a reference to the rules contained in the NESCS.
Waitaki Draft District Plan 2022	Objective CL-O1 – The risks to human health from the unacceptable exposure to contaminated land as a result of subdivision and development are minimised. Policy CL-P1 – Identify, in conjunction with the relevant Regional Council, sites that may be subject to potential contamination as a result of historical land uses and activities.	N/A – the plan contains a reference to the rules contained in the NESCS.

Plan	Objectives and Policies	Rules
	Policy CL-P2 – Minimise the risk to people and the environment from subdivision, use and development of land that may contain, or does contain, elevated levels of contaminants by: 1. enabling site investigations to better understand the type and level of contaminants present; and 2. having particular regard to management measures proposed, which may include remediation, containment, or disposal of contaminated soil; and 3. applying a best practice approach to remediation that does not pose a more significant risk to human health than if the remediation had not occurred; and 4. ensuring the land is suitable for its intended use.	
Proposed Te Tai o Poutini Plan (combined West Coast Plan) 2022	Objective CL-01 – To ensure that contaminated land is used, subdivided, developed or managed in a way that avoids or mitigates adverse effects on the environment and human health. Policy CL-P1 – At the time of subdivision, change of use or development, identify sites that may be subject to potential contamination as a result of historical land use and activities and investigate the risks to human health and the environment. Policy CL-P2 – Ensure that when contaminated land is used, subdivided and/or developed, the land is managed or remediated in a way that avoids or mitigates adverse effects on the environment and manages the risk to human health to a level that is appropriate for the intended use.	N/A – the plan contains a reference to the rules contained in the NESCS.
Invercargill District Plan 2019	Objective CL-01 – Land that is affected by soil contamination is identified, monitored and managed. Objective CL-02 – The adverse effects of contamination on subdivision, use and development of contaminated land are remedied or mitigated. Policy CL-P1 – To promote public awareness and understanding, and to make available to the public information on sites known to be associated with hazardous substances (SAHS). Policy CL-P2 – To develop and maintain an integrated and collaborative approach among central government, regional and local authorities, landowners, developers and the community to the management of contaminated land. Policy CL-P3 – To implement and require compliance with the provisions and requirements of the National	N/A – the plan contains a reference to the rules contained in the NESCS.

Plan	Objectives and Policies	Rules
	Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011. Policy CL-P4 – To manage the subdivision, land use and development of land that is potentially, or known to be, contaminated land so as to protect human health. Policy CL-P5 – To determine appropriate management action for contaminated land on the basis of: 1. The type of contaminants involved 2. The degree of contamination 3. The availability and practicality of appropriate technology for monitoring or remediation 4. Existing and proposed use of the site and surrounding land use 5. National standards or guidelines 6. The potential for offsite or downstream adverse public health and other environmental effects.	
Overall Summary and Conclusion The PDP adopts a comparable approach to those district Plans which have been prepared under the National Planning Standards (Selwyn, New Plymouth, Waitaki and West Coast) by including an objective and policies. The PDP objectives and policies mirror best approach and are consistent with other Plan approaches in their outcomes to manage the effects of contaminated land through identification, monitoring, remediation and generally reducing the risks to human health.		

5. Scale and Significance

5.1 Scale and Significance Evaluation

Section 32(1)(c) of the RMA requires that this report 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.

	Comments	Assessment		
		Low	Medium	High
Degree of change from the ODP	The PDP proposes more bespoke provisions which are specific to contaminated land and capture their applicability to both land use and subdivision activities. The PDP does not introduce any rules.		x	
Scale of effects – geographically (local, district wide, regional, national).	The provisions will be relevant district wide but only in relation to contaminated land.		x	

	Comments	Assessment		
		Low	Medium	High
Effects on matters of national importance (s6 RMA)	The provisions are not generally relevant to Section 6 matters, with the exception of helping to maintain the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, where this is impacted by contaminated land.	x		
Scale of effects on people (how many will be affected – single landowners, multiple landowners, neighbourhoods, the public generally, future generations?).	The proposed provisions comprise objectives and policies only, with the rules contained in the NESCS continuing to apply (which people are familiar with). As such the scale of effects from the changes will be limited.	x		
Scale of effects on those with specific interests, e.g., Tangata Whenua	The provisions will have specific effects on those who own, develop or manage contaminated land, although as this is already largely managed under the NESCS the effects will not be high.		x	
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?	There is little policy risk as the provisions are consistent with higher order documents and other provisions including the NESCS. The provisions are consistent with the PS approach to provide bespoke zone provisions.	x		
Likelihood of increased costs or restrictions on individuals, communities or businesses.	No increased costs or restrictions are anticipated. The objectives and policies provide more clarity and direction which may reduce consenting costs in some situations.	x		

5.2 Evaluation Summary

Overall, the scale of significance is considered to be low and therefore, the level of detail provided within this evaluation is commensurate with the scale and significance of the environmental, economic and cultural effects that are anticipated from the implementation of the provisions.

6. Consultation

6.1 Overview

During the preparation of the District Plan Review, the Council is required by Clause 3 of Schedule 1 of the RMA to consult with the Minister for the Environment; other Ministers of the Crown and local authorities who may be affected and the mana whenua of the area through iwi authorities. The Council may consult anyone else during the preparation of a proposed policy statement or plan.

6.2 Community and Stakeholder Engagement

6.2.1 Consultation Undertaken

Engagement with the community on the draft District Plan was undertaken 10th August 2022 to 30th September 2022.

Feedback in relation to the provisions for contaminated land was received from key stakeholders including the Oil Companies, Te Whatu Ora Health New Zealand, Transpower, Alliance Group and Silver Fern Farms Limited. Broadly the feedback was supportive of the overall approach, in particular the ongoing reliance and avoidance of duplication with the NESCS. Minor refinements and suggestions were made which have been taken into consideration and some amendments to the provisions were made, as noted below.

6.2.2 Feedback and Advice Received

A summary of the feedback received on the Draft District Plan is tabulated below along with responses on how the feedback has been taken into consideration.

Person / Organisation	Feedback summary	Response
BP Oil NZ Ltd, Mobil NZ Ltd and Z Energy Ltd	- Suggested an amendment to CL-O1 to remove reference to monitoring and to reword the policy to require land to be made safe for its intended use rather than for human use. - Policies CL-P1, CL-P2 and CL-P3 are supported as drafted.	The reference to monitored is retained to allow Council the opportunity to have ongoing monitoring of contaminated land sites.
Te Whatu Ora Health New Zealand – Southern	- Wording is considered awkward and would benefit from refining. - It is crudely implied the NES applies with no additional local objectives. Examples that could use a lift include horticultural / agricultural use, fuel storage (petrol stations) etc.	The wording has been refined to be more succinct and clearer while still retaining the intent of the objective and policies.
Alliance Group Ltd	Supportive of the approach taken and reference to NES without providing additional rules to manage the effects of contaminated land on land use changes and human health.	Agreed, no changes required or made in response.
Silver Fern Farms	Supportive of the approach taken and reference to NES without providing additional rules to manage the effects of contaminated land on land use changes and human health.	
Transpower	Considers CL-O1 should be redrafted as it is unclear what “safe for human use” and “protect the environment” mean. Concerned the objective implies an inappropriate positive obligation for	CL-O1 has been redrafted to provide greater clarity that the intent is to manage the risk to human health and protect the

	Transpower to remediate substation sites. Supportive of the approach taken with regard to rules and reliance on the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.	environment which is consistent with the intent of the NESCS.
Overall feedback summary		
General feedback was supportive of the draft chapter with some suggestions on how to refine the objectives and policies to provide greater clarity.		
Key changes to draft district plan as a result of feedback		
1. Amendment to overview to refer to 'development' rather than specifically rural areas as contaminated land may be present in all areas of the district. 2. Amendment to CL-O1 to clarify that the requirement is to reduce the risk to human health in line with the NESCS. 3. Refinements to make the policy wording more succinct and clearer while still retaining the intent of the provisions which are broadly supported.		

6.2.3 Response to Consultation

The overall intent of the provisions has been retained, with no rules proposed as these are covered in the NESCS. Minor refinements have been made to the objectives and policies for clarity in line with the suggestions made in the draft plan feedback.

7. Proposed Plan Provisions

7.1 Strategic Direction

The PDP includes a number of strategic objectives which have been tested in terms of s32(1)(a) in their relevant s32 reports. However, the other chapters of the plan should align with these strategic objectives to ensure vertical integration within the PDP.

The PDP does not contain any specific strategic objectives directly relevant to Contaminated Land. Objective UFD-O1 relates to ensuring the district develops in a way that provides for social and cultural vitality, and economic growth while minimising adverse impacts on natural values and that recognises the cultural and traditional relationship of Māori with their lands.

UFD – O1 The district develops in a cohesive, compact and structured way that:

- maintains a compact urban form;*
- minimises adverse impacts on natural and cultural values;*
- recognises the relationship of Māori with their culture, traditions, lands, waterbodies, sites, areas and landscapes and other taonga of significance;*

- d. provides for social and cultural vitality, productivity and economic growth*
- e. takes into account the short, medium, and long term impacts of climate change and natural hazards, and the associated uncertainty*
- f. Utilises existing infrastructure and/or can be efficiently serviced with new infrastructure*
- g. Meets the community's short, medium and long-term housing and business needs, and*
- h. Responds to the underlying relationships Ngāi Tahu hold with the natural environment*

The mana whenua chapter articulates mana whenua and Te Taiao values. The objectives and policies in the Contaminated Land chapter, integrate with the values identified in the mana whenua chapter to ensure appropriate consideration of cultural values.

7.2 Objectives and Policies

The proposed objectives and policies have been drafted to address the resource management issues relating to contaminated land as identified in Section 2.1 of this report. The background assessment of other Council's Plans and the ODP, along with the scale and significance of the issues and topic, have informed the PDP provisions.

The provisions for activities on contaminated land seek to:

- support the identification of contaminated land and availability of this information to landowners and users
- require potentially contaminated land to be investigated and managed to minimise the risk to human health and the environment
- manage contaminated land in accordance with the NESCS

These matters are specifically addressed in the objectives and policies of the contaminated land chapter. One overarching objective is proposed along with three policies relating to the identification of contaminated land; requiring the investigation and management of contaminated land; and determining appropriate management actions for contaminated land.

7.3 Rules

There are no rules in the PDP relating to contaminated land.

Rules relating to contaminated land are contained in the NESCS.

A cross-reference is included in the PDP directing plan users to the NESCS and noting that resource consent may be required from the Council under the provisions of the NESCS.

7.4 Definitions

The following definition is specifically relevant to the contaminated land chapter:

Contaminated land

Has the same meaning as per the Resource Management Act – means land that has a hazardous substance in or on it that—

(a) has significant adverse effects on the environment; or

(b) is reasonably likely to have significant adverse effects on the environment.

General district wide definitions relating to building, dust, effect, environment, land, site, structure, landfill, subdivision, land disturbance and earthworks also have broad relevance to the chapter.

8. Evaluation of Objectives

This section of the report evaluates the proposed objectives as to whether they are the most appropriate to achieve the purpose of the Act.

Existing Objective	Appropriateness to achieve the purpose of the Act
There are no specific objectives relating to contaminated land in the ODP. However, there are high level objectives which have broad relevance to the management of contaminated land including: Objective 3.3.2 – Ensure that the effects of land use activities do not adversely affect the quality of the environment and are compatible with the characteristics and amenity values of each locality. Objective 3.3.7 – Ensure that the effects of earthworks and other land disturbance are avoided, remedied or mitigated.	These objectives provide high level guidance to decision makers around the expectations for maintaining, enhancing and managing adverse effects on amenity values within the District and in this respect they are broadly consistent with RMA Section 5(2)(c) but are not considered to fully achieve the purpose of the Act due to the lack of specific clarity and direction. Relevance Due to the broad nature of these objectives they are of limited relevance and provide little guidance and direction specific to contaminated land. Usefulness: The objectives are of limited usefulness to decision makers due to their broad nature and lack of specific relevance to contaminated land. Reasonableness: The provisions will not result in unjustifiably high costs to the community or specific parties due to a nationally consistent approach to consenting being maintained under the NESCS. However, the lack of detail and specificity in relation to contaminated land may lead to increased uncertainty in situations where there is dispute over the best approach to deal with more complex contaminated land situations (e.g. Discretionary Activity applications under the NESCS). Achievability: The objectives seek high level outcomes that can realistically be achieved, but they are not specifically measurable in relation to contaminated land and do not entirely give effect to the aspirations of mana whenua in relation to integrated land and water management.

Proposed Objective	Appropriateness to achieve the purpose of the Act
CL-O1 - Land that is affected by soil contamination is identified, assessed, managed and monitored to minimise the risk to human health and protect the environment.	The objective is considered the most appropriate way to achieve the purpose of the Act because it: - Enables people and communities to provide for their social, economic, and cultural well-being in a sustainable manner while safeguarding the life-supporting resources of air, water, soil and ecosystems and requires adverse effects associated with contaminated land (including on human health) to be avoided, remedied or mitigated (Section 5(2)). - Recognises and provides for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga through its broad purpose (Section 6(e)). - Has regard to kaitiakitanga (section 7(a)); the efficient use and development of natural and physical resources (section 7(b)); and the maintenance and enhancement of the quality of the environment through its broad purpose (sections 7(c) and 7(f)). Relevance The objective is relevant to and addresses the resource management issue identified by seeking the management of risks to human health and the environment associated with the use and development of contaminated land. The objective supports Council in undertaking its functions under Section 31 of the RMA in terms of the management of effects of the use and development of land. The objective gives effect to the higher level provisions contained in the Southland Regional Policy Statement. Usefulness: The objective guides decision makers by providing clear direction on how contaminated land should be dealt with, and why it needs to be appropriately managed i.e. to protect human health and the environment. Reasonableness: The objective will not result in an unjustifiable cost to the community and will support consenting processes under the NESCS by providing greater clarity and direction. Achievability: The objectives are consistent with identified mana whenua values and community outcomes and can realistically be achieved within the Council's powers, skills and resources.

9. Evaluation of Options to Achieve the Objectives

9.1 Introduction

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.

For each potential approach an evaluation has been undertaken relating to the costs, benefits and the certainty and sufficiency of information (as informed by Section 4 of this report) in order to determine the effectiveness and efficiency of the approach, and whether it is the most appropriate way to achieve the relevant objective(s). For the purpose of this evaluation, the Council has considered the following potential options:

- Option A - The proposed provisions
- Option B - The ‘status quo’ provisions

9.2 Quantification of Costs and Benefits

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

Based on the scale and significance of the proposed changes, specifically the degree of change from the ODP, level of policy risk and scale of effects, it is considered that quantifying costs and benefits is unnecessary. Therefore, exact quantification of the benefits and costs identified in this report was not considered necessary, beneficial or practicable. Rather, the table below generally identifies where there may be additional cost(s) and benefit(s).

9.3 Evaluation of Options

Option A – Proposed Provisions	
Objective CL-O1 – Land that is affected by soil contamination is identified, assessed, managed and monitored to reduce the risk to human health and protect the environment.	
Policies which give effect to the objective –	
CL-P1.	Identify sites that are known to contain contaminated soil as a result of current or historic land uses and activities.
CL-P2.	Require applicants proposing subdivision, use and development of land that is contaminated or potentially contaminated to manage the risk to human health and the environment to a level that is appropriate for the intended use.
CL-P3.	Determine appropriate management action for contaminated land on the basis of: 1. The type of contaminants involved. 2. The degree of contamination. 3. The values of site – including, heritage, archaeological and biodiversity values and values to Māori communities. 4. The use of appropriate technology for assessment, containment, remediation and monitoring. 5. Existing and likely future use of the site and surrounding land. 6. Where the contamination is contained within the site, mechanisms to ensure future owners are made aware of the contamination and its ongoing containment. 7. National standards or guidelines. 8. The potential for offsite or downstream adverse effects on human health and other adverse environmental effects.

Benefits	Costs
Environmental The provisions will have environmental benefits by providing a specific framework for assessing the effects of contaminated land on activities including subdivision. The objectives and policies focus on the identification, assessment and management of contaminated land. This aligns with the focus and rules contained in the NESCS. The provisions require applicants proposing subdivision and land use activities to demonstrate that contaminated land can be made suitable for development. A range of environmental factors for assessing the appropriate management of contaminated land are referenced, including the degree of contamination and potential for offsite and downstream effects.	Environmental Providing for the use and development of contaminated land poses risks to the environment, and where monitoring is required this may come at a cost to Council and the landowner. However, the use and development of contaminated land (subject to appropriate management) is common practice across New Zealand and is provided for in the rules of the NESCS.
Economic The objectives and policies provide clear direction with respect to the use and development of contaminated land and align with the provisions of the NESCS, which should reduce costs for consent processing.	Economic The provisions focus on the appropriate investigation and management of contaminated land which will have costs for applicants/landowners, however this aligns with what is already required under the NESCS and so there will be no significant increase in cost compared to the existing regulatory framework.
Social The provisions promote the protection of human health and the environment which has social benefits by not placing members of the community at risk when contaminated land is used and developed.	Social There are no social costs anticipated with the provisions requiring the appropriate investigation and management of contaminated land.
Cultural The provisions protect both human health and the environment which in turn protects cultural values. Specific reference to cultural considerations has been included in one of the policies as a factor to take into consideration when determining how contaminated land should be managed.	Cultural Cultural costs are not anticipated.
Efficiency	
There are improved efficiency outcomes associated with the PDP provisions by improving clarity through more specific objectives and policies which provides greater certainty for applicants and decision makers. This will improve efficiency compared to the status quo option which includes limited provisions specific to contaminated land.	
Effectiveness	
The provisions are effective at meeting the objective as they directly link to the focus of the objective and outline how risks to human health and the environment should be managed. They enable Council to fulfil its statutory obligations, including duties imposed on the Council under Section 31(b)(iia) of the RMA. The provisions complement the rules of the NESCS and provide a robust framework for making decisions in relation to contaminated land. Overall, the provisions address an identified resource management issue and will enable the Council to effectively administer its District Plan in a clear and consistent manner.	
Risk of acting or not acting	
There is no risk of acting to include the PDP provisions and providing more specific direction in relation to the management of contaminated land as sufficient information is available through the NESCS and associated guidance document. The risk of not acting is that the status quo is retained which is reliant on broad district wide objectives which are not specific to contaminated land. This creates additional uncertainty and cost and will potentially result in worse environmental and human health outcomes.	
Overall Evaluation	
The preferred option is the PDP provisions which will achieve the purpose of the Act with greater clarity and direction to applicants and decision makers, providing for the sustainable management of contaminated land consistent with Section 5 of the RMA. The provisions provide clear direction for the management of contaminated land and associated adverse effects on human health and the environment, and the provisions do not conflict with the NESCS.	

Option B – Status Quo
There are no specific objectives and policies relating to contaminated land in the ODP, except for one policy in the subdivision chapter referencing the NESCS. There are high level objectives and policies which have broad relevance to the management of contaminated land including: Objective 3.3.2 – Ensure that the effects of land use activities do not adversely affect the quality of the environment and are compatible with the characteristics and amenity values of each locality.

Objective 3.3.7 – Ensure that the effects of earthworks and other land disturbance are avoided, remedied or mitigated. There are no rules relating to contaminated land in the ODP	
Benefits	Costs
Environmental Provides a general framework for assessing environmental effects and seeks that the quality of the environment is not adversely affected.	Environmental There is no specific focus on potential environmental effects specifically associated with contaminated land and a lack of clarity and direction in relation to managing environmental effects which may lead to increased consent processing costs.
Economic There are no specific economic benefits to the status quo because landowners / applicants still need to comply with the NESCS.	Economic The lack of specificity in relation to contaminated land may lead to increased uncertainty and processing costs for some consent applications.
Social Provides a general framework for assessing land use and earthworks applications to maintain existing amenity values.	Social The lack of specific focus on contaminated land may give rise to inadequate consideration of effects on human health which may have social effects.
Cultural There are no specific cultural benefits to the status quo.	Cultural There is no specific recognition of the potential impacts of not adequately managing contaminated land including on cultural values.
Efficiency	
The status quo provisions are not efficient in relation to contaminated land as they are broad general objectives relevant to a range of activities and do not allow for an efficient assessment of effects actually related to the potential adverse effects arising from development of contaminated land.	
Effectiveness	
The status quo provisions are not particularly effective in relation to contaminated land as there is nothing specific to this topic and so they don't address the identified resource management issue or support the NESCS which is a higher order document.	
Risk of acting or not acting	
There is no risk of acting to provide more specific focused contaminated land provisions. The risk of not acting and retaining the status quo is that there will be inadequate assessment and management of contaminated land which could lead to adverse effects on human health and the environment, particularly in the case of more complex consent applications under the NESCS.	
Overall Evaluation	
Overall, the current status quo provisions are not considered appropriate as they do not contain objectives and policies specific to contaminated land. The existing provisions lack clarity and direction on this issue and do not provide adequate guidance for applicants and decision makers in relation to contaminated land. The provisions do not adequately support the NESCS or give effect to the RPS.	

