



Hearing Report on Proposed District Plan Change 69

Contaminated Land

August 2009

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ME HEKE KI PŌNEKE
WELLINGTON CITY COUNCIL

Wellington

REPORT OF THE HEARING COMMITTEE

WELLINGTON CITY COUNCIL REPORT OF THE HEARING COMMITTEE

SUBJECT:

PROPOSED DISTRICT PLAN CHANGE 69 – CONTAMINATED LAND

HEARING PANEL:

COMMISSIONER B HASELL (Chair)

1. RECOMMENDATIONS

As Hearing Commissioner with delegated authority to hear submissions and recommend a decision on Proposed Plan Change 69 and Variations 8, 9 and 10, pursuant to clause 10 of Part 1 of the First Schedule to the Resource Management Act 1991 (“the Act”), I have given careful consideration to the advice from Council officers, the evidence and/or submissions of submitters that appeared, and other submissions, and recommend that Council:

- 1. Receive the information.*
- 2. Adopt the findings as to section 32 considerations set out in section 5 of this report.*
- 3. Approve District Plan Change 69 and Variations 8, 9 and 10 as notified including the amendments arising from the hearing of submissions as detailed in Appendices 1, 2, 3 and 4 of this report.*

4. *Accept and/or reject in whole or in part all submissions and the further submission to the extent that they accord with the above recommendations.*
5. *That the Director of Property, Housing and Consents request that the Greater Wellington Regional Council review their standard letter of response to enquiries and other procedures for the Selected Land Use Register (SLUR) entries relating to the 'Contamination acceptable/ managed/ remedied' classification once the Plan Change becomes Operative.*

2. INTRODUCTION

District Plan Change 69 and Variations 8, 9 and 10 aim to amend the way contaminated land is managed under the District Plan. The change includes:

- a stand-alone chapter that includes specific contaminated land objectives, policies and rules
- new and amended definitions in accordance with national legislation
- permitted activity status for investigations of potentially contaminated land and use, redevelopment, or subdivision of land confirmed as not being contaminated
- a discretionary (restricted) status for any use, redevelopment, or subdivision of contaminated and potentially contaminated land

Proposed Variations 9 and 10 aim to amend two existing plan changes which are not yet operative to make them consistent with Plan Change 69. Variation 8 aims to amend Plan Change 33, which during the course of Plan Change 69 has become operative. Variations 8 and 9 are to align the new contaminated land provisions with the latest proposed amendments to the Rural Area (Plan Change 33) and the Central Area (Plan Change 48) chapters of the District

Plan. Variation 10 makes minor amendments to terminology used in the Airport provisions in Plan Change 57 and inserts relevant assessment criteria from Plan Change 69.

3. THE HEARING

At the hearing on Friday 14 August 2009, the following submitters appeared and spoke in support of their submissions;

3.1 Ministry for the Environment (MfE)

James Court presented evidence in support of the MfE submission.

He described the Ministry's contaminated land work programme and their aim for a close alignment between District Plan objectives and rules and the Ministry's policies. He commended the Council's work in this regard, and advised that the Ministry supports the Plan Change, especially the consolidation of all provisions in one chapter and the encouragement of site investigations to determine whether land is contaminated, by making them a permitted activity.

He advised that the Ministry is developing a series of non statutory Guidelines which amongst other matters will assist Councils and expert consultants investigate sites and make judgements on whether action is needed to remediate and /or manage them. A number of these documents have already been published and are freely available.

He supported the changes to the notified Plan Change recommended in the Officers Report and noted two areas where further consideration was needed. These were:

1. **Land use change.** Where land that had been previously managed, remediated or assessed as being acceptable for its current land use (say, commercial) was proposed to be changed to a more sensitive land use (say, residential).

2. **Underground fuel tanks.** Greater clarity was needed on the permitted activity status of tank pulls and the associated subsurface investigations once the tank or tanks were removed.

Wording changes were suggested for both matters.

3.2 Regional Public Health

Regional Public Health did not wish to be heard. Their submission was in support of the Plan Change. They proposed a number of minor clarifications to the text, particularly corrections to the references to the Ministry of Health.

3.3 Greater Wellington Regional Council

Ling Phang presented evidence in support of the submission. She supported the Plan Change and the recommendations in the Officers Report. She advised that the Plan Change policy framework was consistent with the Proposed Regional Policy Statement 2009.

Assisted by Paul Sorenson, she gave further information on the collaborative work by City and Regional Council staff in identifying and recording sites on the SLUR. Mr Sorenson also provided an example letter of response sent by the Regional Council in regard to a site registered in the category 'Contamination acceptable/ managed/ remediated', the category highlighted by Mr Court of MfE earlier in the Hearing. It was noted that the letter gave information on previous and present uses of the site but did not alert the reader to the issue of future land use change raised by Mr Court.

In response to a question, she advised that in the definition of Contaminated Land the reference to Unverified history of HAIL should be extended to also include Verified history of HAIL, so that all categories of sites in the SLUR were referenced in the definition.

3.4 CentrePort Ltd

Neville Hyde made an oral statement in support of the CentrePort submission. The company supported the Plan Change and he advised that they were generally in agreement with the recommendations in the Officers Report.

However, they remained concerned that encapsulation of contaminated ground should be more clearly recognised as an appropriate outcome.

Also they had a general concern that the Permitted Activity status of sub surface investigations could be frustrated by less permissive earthworks rules.

3.5 Wellington Airport

Wellington Airport did not attend the Hearing and advised by letter that they supported the recommendation in the Planners Report.

3.6 Shell et al

David le Marquand presented evidence in support of the Oil Companies' submissions.

He was assisted by Mr Martin Robertson, an environmental project manager with Shell NZ Ltd who gave evidence on the standard approach to tank removals adopted by the Oil Companies.

Mr le Marquand advised that the Oil Companies were generally supportive of the Plan Change, but sought further confirmation and clarification on a number of matters. These were:

- 1. Definitions.** He supported the recommendations in the Officers Report, and suggested further rewording.
- 2.** He also supported the suggested changes to the definition of **Contaminated Land** put forward by MfE earlier in the Hearing to address the issue of land use change. He further suggested that there

was a need to separate the reference to the RMA definition in the Plan Change definition from the guidance regarding sites identified in the SLUR.

3. He also suggested rewording the definition of **Potentially Contaminated Land** to avoid a circular interpretative argument, and the unnecessary possible inclusion of land currently subject to the hazardous substances provisions of the District Plan. He argued that Contaminated Land and Potentially Contaminated Land were about legacy issues, rather than any current use of hazardous substances at a site.
4. He further argued that the definition of **Contamination** was not needed and that one could rely on the definition of “contaminant” in the RMA, taken with the other definitions in the Plan Change.
5. **Tank Pulls.** Mr le Marquand supported the MfE concern expressed earlier in the Hearing. In his opinion a tank pull has to form part of a subsurface investigation. He supported the MfE suggestions for rewording the Rules in the Plan Change to reinforce that linkage. To provide further certainty, he suggested a specific rule be drafted for tank pulls which would include limits on the Permitted Activity status, such as a 30 cu m limit on soil removal per tank. He had consulted with the Companies and provided a draft rule for consideration.
6. **Duplication of Functions.** Mr le Marquand supported the Officers Report recommendation that an additional assessment criteria be included to make reference to any relevant Regional Council requirements or consent conditions (32.2.1.9), but remained concerned that there was reference in 32.2.1.3 to effects of contamination on water quality. He argued that this was a Regional Council matter and the reference to ‘surface and water quality’ should be removed.
7. **Management of Contaminated Land.** The Oil Companies support the inclusion of a definition as recommended in the Officers Report. In his view, not all land needs to be remediated; it could be managed in a variety of different ways, including capping or encapsulating. There was a need for this to be recognised throughout the plan change. He provided suggested wording to illustrate the changes needed.

4. HEARING COMMITTEE ASSESSMENT

ISSUES, RECOMMENDATIONS AND REASONS

4.1 General

All submitters supported the Plan Change in principle and submissions were restricted to matters where they wished further clarification of definitions and process or where they suggested minor wording changes in the explanatory sections of the proposed Plan Change. In general, most of the recommendations in the Officers Report were supported in the statements of evidence given at the Hearing, as detailed above. Prior to the Hearing, some of the submitters had caucused on matters of mutual interest and were able to give mutually supporting statements at the Hearing. In many instances this meant that they had moved on from an earlier position to a new position which was essentially one arrived at by consensus. The Planning Officer also generally supported the changes developed in that way in her comments at the conclusion of the Hearing. I therefore do not intend to record in detail which parts of submissions I recommend be accepted or rejected in the body of the report. For further detail, submitters should refer to the discussion below for reasons for the changes made in response to their submissions, to an updated version of the Plan Change which I am recommending that the Council adopt (Appendices 1, 2, 3 and 4).

The Following Issues were raised in Submissions

4.2 Land Use Change

There was general support for land identified on the Greater Wellington Regional Council's Selected Land Use Register as 'Contamination acceptable/ managed/ remedied' to not be defined as Contaminated Land. However, the Ministry for the Environment, while supporting the exclusion of that category of land in their

submission, at the Hearing raised the issue that this particular classification should be identified as being valid only for the existing use of the land. If a different land use or type of development was being proposed, they submitted that the contamination levels may not be acceptable without the consideration of expert advice.

4.2.1 Discussion and Recommendations

It is clear that the inclusion of land that had been made suitable for its intended use by remediation or management in the definition of Contaminated Land contradicted the RMA definition referenced in the Plan Change. Such land would not 'be reasonably likely to have significant adverse effects on the environment' as in the RMA definition. Inclusion of such land would also lead to people having to obtain unnecessary consents for land that has been adequately remediated or managed. The definition in the Plan Change should therefore exclude land identified on the Greater Wellington Regional Council's Selected Land Use Register as 'Contamination acceptable/ managed/ remedied'.

The exclusion does, however, need to be subject to the existing use of the site continuing into the future. A change to a different, possibly more sensitive use may result in the level of remediation no longer being sufficient or to there being activities on the site that could compromise the management of contaminants, such as possibly damaging the capping of contaminated areas. A qualification statement was suggested by MfE at the Hearing.

This was generally supported by other submitters and the Planning Officer and I recommend that it be adopted and that the following wording be added to the second bullet point in the definition of Contaminated Land:

unless the contamination levels are not acceptable for the proposed land use; and / or where development is proposed that may

compromise the integrity of any methods or procedures to control access and contact to the contaminant.

At the Hearing the Regional Council produced a standard letter of advice used when an enquiry is received about the classification of a site on the Register. In future, such a letter will need to alert an enquirer to the 'Contamination acceptable/ managed/ remedied' classification being only relevant to existing land use and that the land is considered as Contaminated Land for a changed land use, unless expert advice is obtained to the contrary to the satisfaction of the Regional Council.

I recommend that the Greater Wellington Regional Council review their standard letter of response to enquiries and other procedures for the Selected Land Use Register entries relating to the 'Contamination acceptable/ managed/ remedied' classification once the Plan Change becomes Operative

4.3 Definitions of Contaminated and Potentially Contaminated Land – Other Matters

Greater Wellington and MfE asked that where reference was made to the Hazardous Activities and Industries List (HAIL) it should be the history of HAIL that is referenced as that is what determines a site's entry onto the register. Suggested rewording was requested to clarify that some land could be defined as contaminated, even if it was not listed in the Wellington Regional Council's Selected Land Use Register (SLUR). Sites recorded as verified and unverified history of HAIL should be included in the definition to match the categories used in the register.

The Oil Companies in evidence at the Hearing argued that the proposed definition of Potentially Contaminated Land in the Plan Change with its reference to the definition of Contamination created a circular interpretative argument. Both definitions apply to land where

hazardous substances are currently being used as well as to land with a history of use. They argued that this has the potential for all land to be 'potentially contaminated'; the definition is too wide and overlaps with the current hazardous substances provisions of the District Plan which are better able to control existing use. They suggested wording changes to the definitions and possibly the removal of a definition of Contamination relying instead on the definition of "contaminant" in the RMA together with Contaminated Land in the Plan Change.

4.3.1 Discussion and Recommendations

I agree that it is the history of a site that is important. The register is a backward looking document which is used to make decisions on land into the future. There is also a need to reword the definitions to avoid any possible overlap with the management and control of hazardous substances presently being used on a site.

While the intention is for the SLUR to be the major source of information, the definition of Contaminated Land should encompass the possibility of information on some sites being available outside that register. For sites that are listed in the SLUR the list of categories in the District Plan should mirror those in the SLUR.

I agree that there is no need for a separate definition of Contamination after other definitions are made clearer, as this could potentially lead to a circular argument that may confuse rather than assist in achieving good resource management outcomes.

I recommend adoption of the following definitions in 3.10 which includes the matters relating to land use change discussed above, along with wording changes in 31.1 consistent with the definitions.

I also recommend deletion of the definition of Contamination.

CONTAMINATED LAND: has the same meaning as in the Resource Management Act 1991. For sites on the Wellington Regional Council's Selected Land Use Register, it is limited to that part of a site(s) that is identified as being contaminated and is registered as:

- Contamination confirmed (report provided)

Contaminated land does not include land identified on the Wellington Regional Council's Selected Land Use Register as:

- Contamination acceptable / managed / remediated unless the contamination levels are not acceptable for the proposed land use; and / or where development is proposed that may compromise the integrity of any methods or procedures to control access and contact to the contaminant.
- Verified history of HAIL (Hazardous Activities and Industries List)
- Unverified history of HAIL (Hazardous Activities and Industries List)
- No identified contamination
- Entered onto register in error

POTENTIALLY CONTAMINATED LAND: means land that by virtue of its historical use and the types of activities previously undertaken upon it may be contaminated land. It includes land uses identified in the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) and land that is classified on the Wellington Regional Council's Selected Land Use Register as Verified and Unverified history of HAIL

4.4 Management of Contaminated Land

MfE asked that there should be greater distinction made between remediation and on-site management (e.g. containment of contaminants, behavioural control). This was supported by CentrePort and the Oil Companies, who also were concerned that in some parts of the Plan Change remediation was the only response noted.

4.4.1 Discussion and Recommendations

I agree that both remediation and management responses are appropriate, separately and together. Both are equally valid. Changes were suggested by the Planning Officer and submitters to that effect. They are *recommended for adoption as set out below*:

A definition of Management of Contaminated Land in 3.10 :

MANAGEMENT OF CONTAMINATED LAND: means limiting the exposure of people or environmental receptors to a hazardous substance by using various methods and / or procedures to control access and contact to the contaminant.

Changes to the definition of Remediation of Contaminated and Potentially Contaminated Land in 3.10 to remove references to management responses:

REMEDICATION OF CONTAMINATED AND POTENTIALLY CONTAMINATED LAND: means the process of removing, dispersing, destroying, or reducing the concentrations of hazardous substances to such low levels as to be considered acceptable for the intended land use.

Inclusion of on-going management in contaminated land policies and methods.

31.2.1.3 Encourage the remediation *and/or ongoing management* of contaminated or potentially contaminated land as is appropriate for any likely future use of the land.

31.2.1.4 Ensure that the exposure from the ongoing use of land affected by soil contaminants is managed in a manner that avoids or mitigates the risk of adverse effects on human health and the environment.

Also at the end of the italicised explanatory statement, amend the last two lines to read:

The environmental result will be the identification, remediation and / or on-going management and appropriate future use of contaminated land.

4.5 Development, Redevelopment and Subdivision

CentrePort Ltd in their submission requested a number of changes to the definition of Use, Redevelopment and Subdivision of Contaminated or Potentially Contaminated Land. They were concerned that the definition should more clearly exclude changes that would not be a change in the use or a disturbance to the ground. They also requested the use of the term Development in place of Redevelopment. These requests were supported by the Oil Companies in their further submission, other than the replacement of Redevelopment with Development which they suggested could have the unintended consequence that additional works associated with an existing activity may be affected.

The Oil Companies in their submission sought a new permitted activity for use, redevelopment or subdivision of land identified in the SLUR as 'contamination acceptable/ managed/ remediated'. At the Hearing they advised that they withdrew this request so long as the definition of Contaminated Land was amended as suggested by MfE.

4.5.1 Discussion and Recommendations

I agree that wording more aligned to the RMA would be an improvement and would clarify the intent of the definition. Thus 'existing use' is preferable to 'same activity'. Also the requested qualification of subdivision as 'not associated with a change in use or disturbance of the ground' will provide greater clarity. Any subsequent development and new permitted activities would be classified as a new development and subject to assessment under Rule 32.1.3.

The use of the term Development is preferable as it is defined in the RMA and some land may only be being developed for the first time. It could usefully be noted that Development includes Redevelopment.

I recommend that the definition of Use, Redevelopment and Subdivision of Contaminated or Potentially Contaminated Land in 3.10 be:

USE, DEVELOPMENT AND SUBDIVISION OF CONTAMINATED OR POTENTIALLY CONTAMINATED LAND: The use, development (including redevelopment) and subdivision of contaminated and potentially contaminated land excludes:

- any ongoing activities or occupation of the land of an existing use;
- subdivision which is not associated with a change in use or a disturbance of the ground;
- landscaping, fencing (but not retaining walls), and other minor actions where they involve a minimum level of soil disturbance and
- internal and external additions and alterations to existing buildings that occur above ground level and do not disturb the ground.

4.6 Subsurface Investigations and Earthworks Provisions

CentrePort Ltd asked that subsurface investigations as a Permitted Activity not be frustrated by any need to obtain resource consent for earthworks and suggested a cross reference to PC 70 which has yet to be heard.

4.6.1 Discussion and Recommendations

I agree with the conclusion in the Officers Report that it is likely that most subsurface investigations will not trigger the need for resource consent for earthworks. There may be cases where earthworks consent is required, such as land stability issues, and I do not support restricting the possibility of consents being required for such sites.

I recommend that the submission not be accepted.

4.7 Removal of Underground Fuel Tanks

The Oil Companies supported the intention of the Plan Change to make subsurface investigations a Permitted Activity and that the removal of fuel storage systems (tank pulls) remains a Permitted Activity, subject only to providing Council with the associated subsurface investigation reports. At the Hearing and in response to the recommendations in the Officers Report, MfE and the Oil Companies asked for greater clarity and suggested various wording changes, including the addition of a new Rule in 32.1 Permitted Activities dealing with tank pulls. Suggested wording was provided, based in part on an Auckland Regional Council rule. Changes to other rules were also requested by the Port Companies and MfE to clarify the matter and include references to development (in place of redevelopment) and land use, discussed above.

4.7.1 Discussion and Recommendations

It is clear from the evidence for the Oil Companies that the removal of fuel storage systems is well managed and this was confirmed by MfE. The companies have joined together to develop procedures and work in terms of the MfE Guidelines for Assessing and Managing Petroleum Hydrocarbon Sites in New Zealand (1999). I was advised that the removals on non oil company controlled sites were few (perhaps 10% of the total) and were managed in the same way; the consultants involved being the same for both types of site.

It is not feasible to carry out effective subsurface investigations with the tanks in place as for safety reasons drilling cannot be done close to the tanks and would be prohibitively expensive if all areas were to be sampled at depth, inhibiting the desirable removal of potentially contaminating infrastructure. Removal of tanks is therefore necessary before subsurface investigations can be carried out.

The Rules therefore need to clearly allow the activity as a Permitted Activity, subject to specified conditions. The removal of fuel storage

systems is a valuable part of the management of legacy contamination or possible contamination and needs to be clearly identified in the District Plan. Wording changes are also required for consistency with the response to the issues of possible change of use and development discussed earlier above.

I recommend that a new Rule 32.1.2 and an amended Rule 32.1.3 (formerly 32.1.2) be adopted as follows:

32.1.2 The removal of underground petroleum storage systems is a Permitted Activity, provided that:

32.1.2.1 No more than 30m³ of soil in aggregate per tank shall be removed .

32.1.2.2 All removed soil shall be disposed of at a facility authorised and / or consented to receive such waste.

32.1.2.3 The tank removal investigation, remediation, validation and management processes shall be carried out in accordance with the Ministry for the Environment “Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand” (1999) and “Contaminated Land Management Guidelines for Reporting on Contaminated Sites in New Zealand” (November, 2003). This shall include the preparation of a tank removal report, a copy of which shall be provided to the Council prior to works commencing.

32.1.2.4 A report detailing the results of validation sampling shall be provided to the Council within 60 days of receipt of laboratory results.

32.1.3 The use, development or subdivision of potentially contaminated land that has been confirmed as not being contaminated land for its intended use following subsurface investigations and the removal of underground petroleum storage systems to facilitate the collection of subsurface soil samples is a Permitted Activity, provided that:

32.1.3.1 A subsurface sampling report prepared by a suitably qualified environmental scientist shall be provided to the Council.

4.8 Discretionary Activities (Restricted)

MfE, CentrePort and the Oil Companies asked for changes to Rule 32.2.1 to clarify it and correct unclear wording, in particular to confirm that resource consent is not required where land has been confirmed as not being contaminated following investigations or for activities involving very minor soil disturbance, such as fencing. They also asked for changes to the assessment criteria to be more explicit in relation to Regional Council requirements or conditions. At the hearing the Port Companies also argued that the reference to 'surface and groundwater quality' in 32.2.1.3 should be deleted as this should be left to the Regional Council as that body rather than the City Council has the function of controlling the discharge of contaminants into water.

Other changes requested included inclusion of reference to the provision of a Remediation Plan or Site Management Plan as a matter for a possible condition, corrections to the references to the Ministry of Health and its Guidelines, and reference to the tracking and safe transport of contaminated soil removed from a site. Removal of the former landfill site at Seatoun as an example of a site requiring specific management was also requested.

4.8.1 Discussion and Recommendations

In as far as they are still relevant in the light of other changes recommended to the Plan Change, I am of the view that the requests be accepted or accepted in part. Wording changes to clarify the respective responsibilities of the City and Regional Councils are appropriate, including new assessment criteria (see 32.2.1.9 below) concerning Regional Council requirements or conditions.

The reference to the Seatoun site in the explanatory text is unnecessary as its development has now been largely completed and Rule 5.4.7 which provides for subdivision of the site should also be deleted.

I recommend:

- that Rule 5.4.7 be deleted
- that amended Rule 32.2 Discretionary Activities (Restricted) be adopted as below

32.2.1 Except as provided for in the Airport Precinct Rules, the remediation, use, development and subdivision of any contaminated land, or potentially contaminated land (unless it has been confirmed as not being contaminated through investigations in a report forwarded in accordance with Rule 32.1.3.1), is a discretionary activity (restricted) in respect of:

32.2.1.1 The level, nature and extent of contamination in relation to the proposed use, development or subdivision

32.2.1.2 The methods to address the risks posed by contaminants to public health and safety

32.2.1.3 The effects of contamination on built structures, ecological and amenity values, soil quality, and the wider environment

32.2.1.4 The approach to the remediation and / or on-going management of the contaminated land and the

mitigation measures (including monitoring) proposed to avoid adverse effects on public health, safety and the environment including the provision of a Remediation Plan or a Site Management Plan

[.....]

32.2.1.5 The proposed methodology for the remediation of the land, including as appropriate the provision of a Remediation Plan that addresses:

- How any adverse effects on the surrounding environment resulting from earth moving or removal and any potential discharges from the site will be managed (eg sediment control, site covering and dust control),
- Where soil is to be removed from the land, the appropriate tracking and safe transport to land that is authorised and / or consented for the disposal of any contaminated soils.
- How the health and safety of the workers and the wider community will be provided for during works, including, if necessary, the presence of public exclusion zones, site security and location of worker amenity facilities.
- The standard of remediation on completion.
- The potential for recontamination to occur, where the land may become contaminated due to the presence of contamination on adjacent land or sites.
- Any alternatives to remediation, where there are more appropriate mitigation techniques to remediation that

will avoid risk to public health and safety and prevent exposure to the contaminated soil.

- Any potential long-term or cumulative effects of discharges from the land.

32.2.1.6 The extent to which any proposal for the remediation and/or ongoing management of contaminated land meets the Ministry for the Environment's Contaminated Land Management Guidelines 1 to 5, any relevant Ministry for the Environment industry-specific contaminated land guidelines, the Ministry of Health's Guidelines for Public Health Services for Managing Lead Exposed Persons and the Management of Asbestos in the Non-Occupational Environment, and the Department of Labour's Health and Safety Guidelines on the Cleanup of Contaminated Sites.

32.2.1.7 The extent to which any potential adverse effects of remediation and / or ongoing management are acceptable.

32.2.1.8 The suitability of the land for its proposed end use, including whether adequate measures are proposed to ensure the on-going safe use of the land.

32.2.1.9 The nature of any relevant Regional Council requirements or consent conditions.

Activities on contaminated land are controlled for two reasons. First, to prevent the contamination adversely affecting occupiers of the land, the community or the environment, and second, to ensure that such land is remediated and / or managed as appropriate to a degree that is suitable for its future intended use.

Applications for consents relating to contaminated land will probably become more common in Wellington as it is discovered through the environmental

monitoring procedures of both the City and Regional Councils and as land that may be potentially contaminated through past practices is identified through the use of the Ministry for the Environment's Hazardous Industries and Activities List (HAIL).

While the use, development and subdivision of contaminated land is a Discretionary Activity (restricted), this will not be used as a barrier to the remediation of the land. Council desires to see such land remediated and / or ongoing management as appropriate and will facilitate this process to the best of its ability. Council will seek remediation in accordance with the guidelines of the Ministry for the Environment, Ministry of Health and Department of Labour.

4.9 Other Changes

A number of minor wording changes to the explanatory sections of the Plan Change have been requested by submitters or are necessary for consistency with the recommendations above. These will be apparent from Appendix 2, the Annotated Version of PC 69 showing recommended amendments.

The changes include changes to the table giving a Guide to Rules in other chapters of the District Plan. These tables, which are a guide only and not part of the District Plan, have been amended to delete reference to Rule 5.4.7 Seatoun and to include Rules 32.1.1, 32.1.2, and 32.1.3 as now recommended.

Changes have also been made to the introduction of 31.1 to make the wording of this section compatible with other changes recommended in this report.

It is recommended that the submissions requesting minor wording changes, not covered elsewhere in the report but included in the recommended PC 69 be accepted or accepted in part, as appropriate.

4.10 Changes to Variations 8,9,10

One submitter, CentrePort Ltd asked for their submission on PC 69 to also be made as relevant to Variations 8, 9 and 10.

4.10.1 Discussion and Recommendations

Wording changes are needed to all three Variations, consistent with the recommendations relating to Plan Change 69. Not all of CenterPort's submissions have been recommended to be accepted, but to the extent that they have been

I recommend that this submission be accepted in part

The changes needed to Variations 8, 9 and 10 are the changes to the Guide to Rules as for all other Chapters of the District Plan.

For Variation 10 only, the word 'land' has been substituted for 'site' where ever it occurs. Also, the Assessment Criteria in PC 57 (11.2.4.5 – 9) have been made identical to those recommended for Chapter 32 – see 4.8.1 above.

5. STATUTORY CONSIDERATIONS

The Committee has given consideration to all the matters under s74 of the RMA and concludes as follows:

Section 32 of the RMA requires that the proposed objectives, policies, rules, and other methods need to be evaluated as to whether they are the most appropriate way to achieve the objectives of the plan, assist the territorial authority to carry out its functions and are in accordance with Part 2.

Section 32 does not have an explicit requirement to consider alternatives. However, in practice, in order to evaluate what is 'the most appropriate', a comparative assessment needs to be undertaken which requires an evaluation of at least two options. The Council has prepared an analysis of four alternatives and concluded that the plan change is the most appropriate way

of amending the District Plan consistent with the purpose of the RMA. There were no comments from submitters on the Section 32 analysis.

I am satisfied that the plan change is the most appropriate way to achieve the objectives of the District Plan, that it will assist the Council to carry out its functions, and it is in accordance with Part 2 of the RMA.

6. CONCLUSION

- 6.1 The plan change has been initiated by the Council in response to changes to the RMA and experience with the existing provisions of the District Plan with regard to contaminated land.
- 6.2 The Plan Change is not inconsistent with or contrary to the objectives and policies of the District Plan or Regional Policy Statement and is broadly consistent with the direction of government policy.
- 6.3 The Plan Change in the form now recommended is an appropriate way to manage the effects of the use, development or protection of land and its associated natural and physical resources in accordance with sustainable management principles.
- 6.4 The Plan Change and associated Variations in the form now recommended should be approved and incorporated into the District Plan.

Brian Hasell

Resource Management Commissioner

28 August 2009