



**PROPOSED DISTRICT PLAN – COMPARISON OF THE
CONTAMINATED LAND PROVISIONS WITH THE
NATIONAL ENVIRONMENTAL STANDARD FOR
ASSESSING AND MANAGING CONTAMINANTS IN
SOIL TO PROTECT HUMAN HEALTH**

Prepared for Kapiti Coast District Council

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Executive Summary

Kapiti Coast District Council (Council) notified its Proposed District Plan (PDP) in November 2012 which contained policies and provisions relating to contaminated land. The purpose of this report is to compare the provisions in the PDP with those contained in the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the NES). The NES came into force on 1 January 2012. This pre-dated the notification of the PDP which was notified on 29 November 2012. The PDP was required to comply with Section 44A requirements before it was notified.

The NES provides a nationally consistent set of planning controls and soil contaminant values and is intended to ensure that land affected by contaminants in soil is appropriately identified and assessed before it is developed - and if necessary the land is remediated or the contaminants contained to make the land safe for human use.

The NES classifies as permitted activities:

- Removal or replacement of fuel storage systems and associated soil, and associated subsurface soil sampling.
- Soil sampling.
- Small-scale (no greater than 25 cubic metres per 500 square metres of affected land) and temporary (two months' duration) soil disturbance activities.
- 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.

Activities requiring a resource consent under the NES include:

- The development of land where the risk to human health from soil contamination does not exceed the applicable soil contaminant value (classified as a controlled activity, meaning resource consent must be granted).
- The development of land where the risk to human health from soil contamination exceeds the applicable soil contaminant value (classified as a restricted discretionary activity).
- The development of land where the activity does not meet the requirements to be a restricted discretionary, controlled or permitted activity (classified as a discretionary activity).

Section 44A of the Resource Management Act (RMA) sets out the relationship between national environmental standards and district plan rules. All territorial authorities (district and city councils) are required to give effect to and enforce the requirements of the NES. Essentially a plan is not permitted to conflict or duplicate a rule in an NES. Section 43A(5) of the RMA outlines the conditions whereby a plan or proposed plan may restate rules in an NES but this only relates to permitted activities.

The rules pertaining to contaminated land are contained in Section 9 of the PDP. The PDP contains rules relating to a limited range of activities associated with contaminated land. They are the same as those outlined in the NES:

- Disturbing the soil of contaminated or potentially contaminated land.
- Soil sampling of contaminated or potentially contaminated land.
- Removal or replacement of a fuel storage system.
- Change of land use of contaminated or potentially contaminated land.
- Subdivision of contaminated or potentially contaminated land.

There is a high degree of duplication between the PDP and the NES. The activities listed in Section 9.1.3 of the PDP are the same as those addressed by the NES. The standards in the PDP and NES are largely the same for permitted activities with only minor differences.

The most significant difference is that subdivision of contaminated and potentially contaminated land is a restricted discretionary activity in the PDP whereas it is a permitted activity in the NES. Subdivision has the imposition of financial contributions in accordance with Chapter 12 of the Plan listed as a matter over which discretion is restricted, but this is not listed in the NES.

Where there is a difference in standards, the PDP has a broader consideration of effects eg minimising adverse effects (PDP) versus minimising the exposure of humans to mobilised contaminants (NES).

The NES refers to Regulation 7 as a standard, whereas the PDP specifies the Ministry for the Environment document: Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values.

The discretionary activities in the PDP and NES are quite different. The PDP identifies removing or replacing fuel storage system, sampling soil, disturbing soil or change of use that does not meet one of the permitted activity standards and does not provide a detailed site investigation to the Council as a discretionary activity. The NES discretionary activity is more of a catch-all for activities that are not identified as a permitted activity, controlled activity, or restricted discretionary activity.

The NES does not have a policy framework (only rules), but the PDP has Objective 2.10 and Policies 9.29-9.34 which address contaminated land. The PDP policy framework has a much wider applicability than the NES. In addition to recognising the risks to human health, the objective and policies seek to mitigate environmental effects and risks. The NES rules are primarily concerned with protecting human health

The PDP does not meet the requirements of Section 44A of the RMA as it does contain provisions which conflict or duplicate a rule in an NES. Section 44A requires the council to amend the PDP to remove the duplication or conflict without using the Schedule 1 process.

Kapiti Coast District Council

Proposed District Plan - Comparison of the Contaminated Land Provisions with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

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1 Introduction

The past use of chemicals (hazardous substances) in industry, agriculture and horticulture has left a legacy of soil contamination in New Zealand. This contamination is mainly caused by past practices including storage and use of hazardous substances, and disposal of hazardous wastes. These contaminants are a problem when the hazardous substances are at a concentration and a place where they have, or are reasonably likely to have, an adverse effect on human health and the environment. Contaminants are a greater problem in environments where food is grown or in close proximity to buildings, people, water bodies and important habitats.

Kapiti Coast District Council (Council) notified its Proposed District Plan (PDP) in November 2012 and included policies and provisions relating to contaminated land in Chapter 9.

The purpose of this report is to compare the provisions contained in the PDP pertaining to contaminated land with those standards contained in the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the NES).

1.1 What is the NES?

The NES provides a nationally consistent set of planning controls and soil contaminant values and is intended to ensure that land affected by contaminants in soil is appropriately identified and assessed before it is developed - and if necessary the land is remediated or the contaminants contained to make the land safe for human use. The NES enables the safe use of affected land by:

- Establishing regulations for five activities that ensure district planning controls relevant to assessing and managing public health risks from contaminants in soil are appropriate and nationally consistent
- Establishing soil contaminant standards protective of human health and requiring their use when decisions are made under the NES
- Ensuring best practice and consistent reporting on land affected or potentially affected by contaminants is applied that enables efficient information gathering and consistent decision-making.

The NES does not affect existing land uses however.

The NES classifies as permitted activities (meaning no resource consent required if stated requirements are met):

- Removal or replacement of fuel storage systems and associated soil, and associated subsurface soil sampling
- Soil sampling
- Small-scale (no greater than 25 cubic metres per 500 square metres of affected land) and temporary (two months' duration) soil disturbance activities
- 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.

Activities requiring a resource consent under the NES include:

- The development of land where the risk to human health from soil contamination does not exceed the applicable soil contaminant value (classified as a controlled activity, meaning resource consent must be granted)

- The development of land where the risk to human health from soil contamination exceeds the applicable soil contaminant value (classified as a restricted discretionary activity)
- The development of land where the activity does not meet the requirements to be a restricted discretionary, controlled or permitted activity (classified as a discretionary activity).

1.2 Relationship of the NES with the PDP

Section 44A of the RMA sets out the relationship between national environmental standards and district plan rules. All territorial authorities (district and city councils) are required to give effect to and enforce the requirements of the NES.

44A Local authority recognition of national environmental standards

- (1) *Subsections (3) to (5) apply if a local authority's plan or proposed plan contains a rule that duplicates a provision in a national environmental standards*
- (2) *Subsections (3) to (5) apply if a local authority's plan or proposed plan contains a rule that conflicts with a provision in a national environmental standard. A rule conflicts with a provision if-*
 - (a) *Both of the following apply:*
 - (i) *The rule is more stringent than the provision in that it prohibits or restricts an activity that the provisions permits or authorises; and*
 - (ii) *The standard does not expressly say that a rule may be more stringent than it; or*
 - (b) *The rule is more lenient than the provision.*
- (3) *If the duplication or conflict is dealt within the national environmental standard in one of the ways described in section 43(A)(1)(e), the local authority must amend the plan or proposed plan to remove the duplication or conflict-*
 - (a) *Without using the process in Schedule 1; and*
 - (b) *In accordance with the specification in the national environmental standard.*
- (4) *If the duplication or conflict arises as described in Section 43A(5)(c), the local authority must amend the plan or proposed plan to remove the duplication or conflict*

43A Contents of national environmental standards

....

- (4) *A national environmental standard that allows an activity—*
 - (a) *may state that a resource consent is not required for the activity; or*
 - (b) *may do one or both of the following:*
 - (i) *state that the activity is a permitted activity, but only on the terms or conditions specified in the standard; and*
 - (ii) *require compliance with the rules in a plan or proposed plan as a term or condition.*
- (5) *If a national environmental standard allows an activity and states that a resource consent is not required for the activity, or states that an activity is a permitted activity, the following provisions apply to plans and proposed plans:*
 - (a) *a plan or proposed plan may state that the activity is a permitted activity on the terms or conditions specified in the plan; and*
 - (b) *the terms or conditions specified in the plan may deal only with effects of the activity that are different from those dealt with in the terms or conditions specified in the standard; and*
 - (c) *if a plan's terms or conditions deal with effects of the activity that are the same as those dealt with in the terms or conditions specified in the standard, the terms or conditions in the standard prevail.*

(6) A national environmental standard that allows a resource consent to be granted for an activity—

- (a) may state that the activity is—*
 - (i) a controlled activity; or*
 - (ii) a restricted discretionary activity; or*
 - (iii) a discretionary activity; or*
 - (iv) a non-complying activity; and*
- (b) may state the matters over which—*
 - (i) control is reserved; or*
 - (ii) discretion is restricted.*

(7) A national environmental standard may specify the activities for which the consent authority—

- (a) must give public notification of an application for a resource consent:*
- (b) is precluded from giving public notification of an application for a resource consent:*
- (c) is precluded from giving limited notification of an application for a resource consent.*

The NES came into force on 1 January 2012. This pre-dated the notification of the PDP on 29 November 2012. The PDP was required even prior to its notification to comply with Section 44A requirements.

1.3 PDP Activities Pertaining to Contaminated Land

The rules pertaining to contaminated land are contained in Section 9 of the PDP. The PDP contains rules relating to a limited range of activities associated with contaminated land. They are the same as those outlined in the NES:

- Disturbing the soil of contaminated or potentially contaminated land.
- Soil sampling of contaminated or potentially contaminated land.
- Removal or replacement of a fuel storage system.
- Change of land use of contaminated or potentially contaminated land.
- Subdivision of contaminated or potentially contaminated land.

The NES applies to assessing and managing the actual or potential adverse effects of contaminants in soil on human health from five activities. The NES defines land use as meaning:

- (a) the current use, if the activity the person wants to do is—*
 - (i) to remove a fuel storage system from the piece of land or replace a fuel storage system in or on the piece of land;*
 - (ii) to sample the soil of the piece of land;*
 - (iii) to disturb the soil of the piece of land;*
- (b) the intended use, if the activity the person wants to do is—*
 - (i) to subdivide land;*
 - (ii) to change the use of the piece of land*

2 Comparison of the PDP with NES

2.1 Policy Framework

There are no objectives or policies in the NES, however the PDP contains one objective and six policies relating to contaminated land. These are outlined below:

Objective 2.10 – Contaminated land

To prevent or mitigate any adverse environmental effects, including risks to human health, the environment and physical assets, arising from past, present or future activities.

Policy 9.29 – Identify

Contaminated and potentially contaminated land in the District will be identified through the consent or plan change process, to enable the land to be managed or remediated to eliminate any unacceptable risk to the environment.

Policy 9.30 – Criteria for Identification

Contaminated and potentially contaminated land in the District will be identified using the following criteria:

- a) *was used, is presently used, or is likely to have been used for an activity appearing on the Hazardous Activities and Industries List; or*
- b) *identified as contaminated by the Kaitiaki Coast District Council or the Wellington Regional Council's SLUR database.*

Policy 9.31 – Site Investigations

Site investigations of contaminated land will be carried out in accordance with national best practice, including the Ministry for the Environment's Contaminated Land Management Guidelines No.1 to No. 5.

Policy 9.32 – Management or Remediation

Any development, subdivision or change in land use on HAIL land, or land identified as contaminated or potentially contaminated by the Kaitiaki Coast District Council or the Wellington Regional Council's SLUR database, that is reasonably likely to increase the risk of exposing people or the environment to contaminants, will be managed or remediated to eliminate any unacceptable risk to the environment.

Policy 9.33 – Ensure fit for use

The remediation and/or on-going management of contaminated or potentially contaminated land will be undertaken in a manner that is appropriate for any likely future use of that land.

Policy 9.34 – Assessment Criteria

When considering whether contaminated or potentially contaminated land is safe for its intended use, subdivision or development, Council will have regard to the following:

- a) *the nature and extent of any contamination of soil or groundwater and the potential sources of contamination;*
- b) *the approach to any proposed remediation, and/or ongoing management of the contamination, including:*
 - i. *extent of earthworks or removal of materials undertaken, including any method to control the release of contaminants into the environment;*
 - ii. *treatment or disposal methods for contaminated or potentially contaminated materials, soil or water;*
 - iii. *measures employed to prevent or mitigate any adverse effects on human health, water quality, or the downstream receiving environment are appropriate;*
 - iv. *methods to address the risk of the contamination to public health and safety and that of workers involved in site works;*
- c) *the extent to which the effects of remediation are acceptable;*
- d) *the suitability of the land for its intended use;*
- e) *whether adequate measures will be taken to ensure the safe operation of the proposal on the land.*

2.2 Activities

The areas of difference are highlighted by red text and organised in terms of the activity status. In many cases the standards in the PDP are worded slightly differently from the standards of the NES. These scenarios have not been highlighted where the intent / outcome is the same despite the slightly different wording. For clarity, only those matters considered to be significantly different have been highlighted.

2.2.1 Permitted Activities

Table 1 Comparison of the standards in the PDP and NES for permitted activities

Activity	PDP Standards	NES Standards
<p>Removing or replacing fuel storage system</p>	<ol style="list-style-type: none"> 1. The removal, investigation, remediation, validation and management processes shall be undertaken in accordance with the current edition of the Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand. 2. Within 3 months of the activity being completed the Council shall be provided with a copy of the results required by the guidelines. 3. Prior to the activity commencing the Council shall be advised in writing of: <ol style="list-style-type: none"> a) The location and address of the activity; b) The dates the activity will begin and end; c) The name of the authorised facility where any removed soil will be disposed of. 4. No more than 30m³ of soil per tank shall be disturbed or removed from the site. 5. The duration of the activity shall be no longer than 2 months. 	<ol style="list-style-type: none"> (a) the activity must be done in accordance with the current edition of Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand, Wellington, Ministry for the Environment: (b) the territorial authority of the district where the system is located must be notified of— <ol style="list-style-type: none"> (i) the place where the activity is to be done; (ii) the dates on which it is intended that the activity begin and end; (iii) the facility at which it is intended that soil taken away in the course of the activity be disposed of: (c) notification under paragraph (b) must be done no sooner than 1 month and no later than 1 week before the activity begins: (d) the volume of soil disturbed must be no more than 30 m³ for each tank in the system: (e) the volume of soil taken away in the course of the activity must be no more than 30 m³ for each tank in the system: (f) soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind: (g) the duration of the activity must be no longer than 2 months: (h) the results of the investigation of the piece of

Activity	PDP Standards	NES Standards
		land required by the guidelines described in paragraph (a) must be reported to the territorial authority within 3 months after the activity ends.
Sampling soil	<ol style="list-style-type: none"> 1. Controls shall be put in place to minimise any potential adverse environmental effects during the disturbance works. 2. The soil shall be reinstated to an erosion resistant state within one month of completing the sampling or subsurface works. 3. Soil shall be only removed from the land as samples for the purpose of laboratory analysis. 4. Where there is a structure in place designed to contain contaminants the integrity of the structure shall not be compromised. 	<ol style="list-style-type: none"> (a) controls to minimise the exposure of humans to mobilised contaminants must— <ol style="list-style-type: none"> (i) be in place when the activity begins: (ii) be effective while the activity is done: (iii) be effective until the soil is reinstated to an erosion-resistant state: (b) the soil must be reinstated to an erosion-resistant state within 1 month after the end of the course of sampling for which the activity was done: (c) soil must not be taken away in the course of the activity except as samples taken for the purpose of laboratory analysis: (d) the integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.
Disturbing soil	<ol style="list-style-type: none"> 1. Controls shall be put in place to minimise any potential adverse environmental effects during the disturbance works. 2. The soil shall be reinstated to an erosion resistant state within 1 month of completing the sampling or subsurface works. 3. Where there is a structure in place designed to contain contaminants the integrity of the structure shall not be compromised. 4. Removed soil shall be disposed at a facility 	<ol style="list-style-type: none"> (a) controls to minimise the exposure of humans to mobilised contaminants must— <ol style="list-style-type: none"> (i) be in place when the activity begins: (ii) be effective while the activity is done: (iii) be effective until the soil is reinstated to an erosion-resistant state: (b) the soil must be reinstated to an erosion-resistant state within 1 month after the serving of the purpose for which the activity was done: (c) the volume of the disturbance of the soil of the piece of land must be no more than 25 m³ per

Activity	PDP Standards	NES Standards
	<p>authorised to receive such waste.</p> <p>5. The volume of soil disturbance shall be less than or equal to 25m³ per 500m².</p> <p>6. A maximum of 5m³ per 500m² of soil shall be removed from the site per year, excluding soil taken for samples.</p> <p>7. The duration of soil disturbance shall be no longer than 2 months.</p>	<p>500 m²:</p> <p>(d) soil must not be taken away in the course of the activity, except that,—</p> <p>(i) for the purpose of laboratory analysis, any amount of soil may be taken away as samples:</p> <p>(ii) for all other purposes combined, a maximum of 5 m³ per 500m² of soil may be taken away per year:</p> <p>(e) soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind:</p> <p>(f) the duration of the activity must be no longer than 2 months:</p> <p>(g) the integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.</p>
Subdividing or changing use	<p>Changing use only</p> <p>1. A preliminary site investigation of the site has been undertaken confirming that the contamination levels are acceptable for the purposed land use.</p> <p>2. The report is provided to the Council within 1 month of being completed.</p> <p>3. The proposed use complies with the relevant rules in the underlying zone.</p>	<p>(a) a preliminary site investigation of the land or piece of land must exist:</p> <p>(b) the report on the preliminary site investigation must state that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land:</p> <p>(c) the report must be accompanied by a relevant site plan to which the report is referenced:</p> <p>(d) the consent authority must have the report and the plan.</p>
Consequence of not meeting permitted standards	Controlled activity	Controlled activity

As can be seen in Table 1, the standards in the PDP and Regulation 8 of the NES are largely the same for permitted activities with some minor differences. For removing or replacing fuel storage systems, there is a difference in the standards. While the PDP has a requirement that the Council be advised in writing *prior* to the activity commencing, the NES is more specific about this notification being *between 1 month and 1 week before* the activity begins. The NES also requires the soil to be disposed of at a facility authorised to receive soil of that kind. This is implied in standard 3(c) of the PDP standards which requires the name of the authorised facility where any removed soil will be disposed of.

For sampling soil, NES standard (a) seeks to minimise the *exposure of humans* to mobilised contaminants. The PDP standard is significantly broader and seeks to minimise *any potential adverse environmental effects*. The NES standard is more specific requiring the controls to be in place when the activity begins, while the activity is being done and when the soil is being reinstated. The PDP just states that the controls must be in place *during* the disturbance works.

For the activity of disturbing soil, NES standard (a) seeks to minimise the *exposure of humans* to mobilised contaminants. The PDP standard is significantly broader and seeks to minimise *any potential adverse environmental effects*. The NES standard is more specific requiring the controls to be in place when the activity begins, while the activity is being done and when the soil is being reinstated. The PDP just states that the controls must be in place during the disturbance works. The PDP excludes soil for sampling in terms of the maximum volume, whereas the NES is more explicit about any amount of soil being taken as samples. The outcome is the same; that the volume of soil required for testing is not limited, although the language is different.

The most significant difference is that subdivision of contaminated or potentially contaminated land is not listed as a permitted activity in the PDP.

In terms of changing use, the PDP standards require that contamination levels be *acceptable for the purposed land use*. This contrasts with the NES which requires the land be *highly unlikely that there will be a risk to human health*. The PDP standard is significantly broader in that it does not solely apply to human health. The NES requires a *report and site plan* whereas the PDP only requires a *report*. The PDP requires a report being provided to Council *within 1 month* of being completed but the NES merely states that the consent authority must have the report and plan and does not put any time limits on it. The PDP also requires that the proposed use complies with the relevant rules of the underlying zone but there is no such requirement in the NES.

2.2.2 Controlled Activities

Table 2 Comparison of the standards and matters over which control is reserved for controlled activities

Activity	PDP Standards	NES Standards	PDP Matters Over Which Control is Reserved	NES Matters Over Which Control is Reserved
Removing or replacing fuel storage system, sampling soil, or disturbing soil	<ol style="list-style-type: none"> 1. A detailed site investigation shall be provided to the Council. 2. The detailed site investigation, including a risk 	<ol style="list-style-type: none"> (a) a detailed site investigation of the piece of land must exist: (b) the report on the detailed site investigation must 	<ol style="list-style-type: none"> 1. Adequacy of site investigation including: <ol style="list-style-type: none"> a) Site sampling; b) Laboratory analysis; c) Risk Assessment. 	<ol style="list-style-type: none"> a) the adequacy of the detailed site investigation, including— <ol style="list-style-type: none"> (i) site sampling; (ii) laboratory analysis; (iii) risk

Activity	PDP Standards	NES Standards	PDP Matters Over Which Control is Reserved	NES Matters Over Which Control is Reserved
	<p>assessment undertaken for all receptors, shall follow the hierarchy of guideline values in the Ministry for the Environment's Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values.</p> <p>3. The conditions of the investigation are compiled with.</p>	<p>state that the soil contamination does not exceed the applicable standard in regulation 7:</p> <p>(c) the consent authority must have the report:</p> <p>(d) conditions arising from the application of subclause (2), if there are any, must be complied with.</p>	<p>2. Adequacy of Management Practices including:</p> <p>a) A site management plan;</p> <p>b) Monitoring;</p> <p>c) Reporting.</p> <p>3. The transport, disposal and tracking of soil and other materials taken away in the course of the activity.</p> <p>4. The timing and nature of the review of the conditions in the resource consent.</p> <p>5. The duration of the resource consent.</p> <p>6. Imposition of conditions in accordance with section 102 and 108 of RMA.</p>	<p>assessment:</p> <p>(b) how the activity must be—</p> <p>(i) managed, which may include the requirement of a site management plan;</p> <p>(ii) monitored;</p> <p>(iii) reported on:</p> <p>(c) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity;</p> <p>(d) the timing and nature of the review of the conditions in the resource consent;</p> <p>(e) the duration of the resource consent</p>
Subdividing or changing use	<p>Only change of use</p> <p>1. A detailed site investigation shall be provided to the</p>	<p>a) a detailed site investigation of the piece of land must exist:</p>	<p>Only change of use</p> <p>1. Adequacy of site investigation including:</p>	<p>The adequacy of the detailed site investigation, including—</p> <p>(a) site sampling:</p>

Activity	PDP Standards	NES Standards	PDP Matters Over Which Control is Reserved	NES Matters Over Which Control is Reserved
	<p>Council.</p> <p>2. The detailed site investigation, including a risk assessment undertaken for all receptors, shall follow the hierarchy of guideline values in the Ministry for the Environment’s Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values.</p> <p>3. The conditions of the investigation are compiled with.</p>	<p>(b) the report on the detailed site investigation must state that the soil contamination does not exceed the applicable standard in regulation 7:</p> <p>(c) the consent authority must have the report:</p> <p>(d) conditions arising from the application of subclause (4), if there are any, must be complied with.</p>	<p>a) Site sampling; b) Laboratory analysis; c) Risk Assessment.</p> <p>2. Adequacy of Management Practices including: a) A site management plan; b) Monitoring; c) Reporting.</p> <p>3. The transport, disposal and tracking of soil and other materials taken away in the course of the activity.</p> <p>4. The timing and nature of the review of the conditions in the resource consent.</p> <p>5. The duration of the resource consent.</p> <p>6. Imposition of conditions in accordance with section 102 and 108 of RMA.</p>	<p>(b) laboratory analysis; (c) risk assessment.</p>

Activity	PDP Standards	NES Standards	PDP Matters Over Which Control is Reserved	NES Matters Over Which Control is Reserved
Consequence if requirements are not met	Restricted Discretionary	Restricted Discretionary		

Removing or replacing fuel storage system, sampling soil, or disturbing soil is grouped together in both the PDP and Regulation 9 of the NES. In terms of standards, the PDP is more explicit about requiring a risk assessment be undertaken for all receptors, following the hierarchy of guideline values in the Ministry for the Environment’s Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values. By comparison, the NES merely requirement the report confirm that the soil contamination does not exceed the applicable standard in regulation 7. Regulation 7 standard of the NES is whichever of the following is more appropriate in the circumstances:

- a) the guideline value derived in accordance with the methods and guidance on site-specific risk assessment provided in the Methodology:
- (b) a guideline value for the protection of human health that is chosen in accordance with the current edition of Contaminated Land Management Guidelines No. 2–Hierarchy and Application in New Zealand of Environmental Guideline Values, Wellington, Ministry for the Environment.

The matters over which control is reserved are very similar except that the PDP reserves control over the adequacy of management practices and the imposition of conditions in accordance with sections 102 and 108 of the RMA. These matters of control are not contained in the NES.

The most significant difference is that subdivision is not listed as a controlled activity in the PDP.

For changing use activities, the PDP standard is more explicit about requiring a risk assessment be undertaken for all receptors, following the hierarchy of guideline values in the Ministry for the Environment’s Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values. By comparison, the NES merely requirement the report confirm that the soil contamination does not exceed the applicable standard in regulation 7.

The matters over which control is reserved for changing use are significantly different, with the PDP having considerably more matters listed than the NES.

2.2.3 Restricted Discretionary Activities

Table 3 Comparison of the standards and matters over which discretion is restricted

Activity	PDP Standards	NES Standards	PDP Matters Over Which Discretion is Restricted	NES Matters Over Which Discretion is Restricted
Removing or replacing fuel storage system, sampling soil, disturbing soil or change of land use	1. A detailed site investigation shall be provided to the Council.	(a) a detailed site investigation of the piece of land must exist:	1. Adequacy of site investigation including: a) Site sampling; b) Laboratory	(a) the adequacy of the detailed site investigation, including—

Activity	PDP Standards	NES Standards	PDP Matters Over Which Discretion is Restricted	NES Matters Over Which Discretion is Restricted
	<p>2. The detailed site investigation, including a risk assessment undertaken for all other receptors shall follow the hierarchy of guideline values in the Ministry for the Environment's Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values.</p> <p>3. The conditions of the investigation are compiled with.</p>	<p>(b) the report on the detailed site investigation must state that the soil contamination does not exceed the applicable standard in regulation 7:</p> <p>(c) the consent authority must have the report:</p> <p>(d) conditions arising from the application of subclause (3), if there are any, must be complied with.</p>	<p>c) analysis; Risk Assessment.</p> <p>2. Adequacy of Management Practices including:</p> <p>a) A site management plan;</p> <p>b) Monitoring;</p> <p>c) Reporting.</p> <p>3. Adequacy of the methods of mitigation, remediation or on-going management.</p> <p>4. Suitability of land for proposed activity.</p> <p>5. Requirements for and conditions of a financial bond.</p> <p>6. The transport, disposal and tracking of soil and other materials taken away in the course of the activity.</p> <p>7. The timing and nature of the review of the conditions in the</p>	<p>(i) site sampling;</p> <p>(ii) laboratory analysis;</p> <p>(iii) risk assessment:</p> <p>(b) the suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination:</p> <p>(c) the approach to the remediation or ongoing management of the piece of land, including—</p> <p>(i) the remediation or management methods to address the risk posed by the contaminants to human health;</p> <p>(ii) the timing of the remediation;</p> <p>(iii) the standard of the remediation on completion;</p> <p>(iv) the mitigation methods to address the risk posed by the contaminants to human health;</p>

Activity	PDP Standards	NES Standards	PDP Matters Over Which Discretion is Restricted	NES Matters Over Which Discretion is Restricted
			<p>resource consent.</p> <p>8. The duration of the resource consent.</p> <p>9. Imposition of conditions in accordance with section 102 and 108 of RMA.</p>	<p>(v) the mitigation measures for the piece of land, including the frequency and location of monitoring of specified contaminants:</p> <p>(d) the adequacy of the site management plan or the site validation report or both, as applicable:</p> <p>(e) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity:</p> <p>(f) the requirement for and conditions of a financial bond:</p> <p>(g) the timing and nature of the review of the conditions in the resource consent:</p> <p>(h) the duration of the resource consent.</p>

Activity	PDP Standards	NES Standards	PDP Matters Over Which Discretion is Restricted	NES Matters Over Which Discretion is Restricted
<p>Subdivision of contaminated or potentially contaminated land</p>	<ol style="list-style-type: none"> 1. A detailed site investigation shall be provided to the Council. 2. The detailed site investigation, including a risk assessment undertaken for all other receptors shall follow the hierarchy of guideline values in the Ministry for the Environment’s Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values. 3. The conditions of the investigation are compiled with. 	<ol style="list-style-type: none"> (a) a detailed site investigation of the piece of land must exist: (b) the report on the detailed site investigation must state that the soil contamination does not exceed the applicable standard in regulation 7: (c) the consent authority must have the report: (d) conditions arising from the application of subclause (3), if there are any, must be complied with. 	<ol style="list-style-type: none"> 1. Adequacy of site investigation including: <ol style="list-style-type: none"> a) Site sampling; b) Laboratory analysis; c) Risk Assessment. 2. Adequacy of Management Practices including: <ol style="list-style-type: none"> a) A site management plan; b) Monitoring; c) Reporting. 3. Adequacy of the methods of mitigation, remediation or on-going management. 4. Suitability of land for proposed activity. 5. Requirements for and conditions of a financial bond. 6. The transport, disposal and tracking of soil and other materials taken away in the course of the activity. 7. The timing and nature of the review of the conditions in the resource consent. 	<ol style="list-style-type: none"> (a) the adequacy of the detailed site investigation, including— <ol style="list-style-type: none"> (i) site sampling; (ii) laboratory analysis; (iii) risk assessment: (b) the suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination: (c) the approach to the remediation or ongoing management of the piece of land, including— <ol style="list-style-type: none"> (i) the remediation or management methods to address the risk posed by the contaminants to human health; (ii) the timing of the remediation; (iii) the standard of the remediation on completion; (iv) the mitigation

Activity	PDP Standards	NES Standards	PDP Matters Over Which Discretion is Restricted	NES Matters Over Which Discretion is Restricted
			<p>8. The duration of the resource consent.</p> <p>9. Imposition of conditions in accordance with section 102 and 108 of RMA.</p> <p>10. Imposition of financial contributions in accordance with Chapter 12 of the Plan</p>	<p>methods to address the risk posed by the contaminants to human health:</p> <p>(v) the mitigation measures for the piece of land, including the frequency and location of monitoring of specified contaminants:</p> <p>(d) the adequacy of the site management plan or the site validation report or both, as applicable:</p> <p>(e) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity:</p> <p>(f) the requirement for and conditions of a financial bond:</p> <p>(g) the timing and nature of the review of the conditions in the</p>

Activity	PDP Standards	NES Standards	PDP Matters Over Which Discretion is Restricted	NES Matters Over Which Discretion is Restricted
				resource consent: (h) the duration of the resource consent.
Consequence of requirement not met	Discretionary	Discretionary		

Subdivision of contaminated or potentially contaminated land is listed in the PDP as a restricted discretionary activity, whereas it is listed as a permitted, controlled and restricted discretionary activity in the NES (dependent on compliance with certain standards).

Removing or replacing fuel storage system, sampling soil, disturbing soil, changing the use and subdivision are grouped together in both the PDP and Regulation 10 of the NES. In terms of standards, the PDP is more explicit about requiring a risk assessment be undertaken for all receptors, following the hierarchy of guideline values in the Ministry for the Environment’s Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values. By comparison, the NES merely requirement the report confirm that the soil contamination does not exceed the applicable standard in regulation 7.

The matters over which control is reserved are quite different. The PDP reserves control over the *adequacy of management practices* and the imposition of conditions in accordance with *sections 102 and 108* of the RMA. Neither of these matters of control are contained in the NES. The NES however has 5 specific matters listed under the approach to *remediation or ongoing management of the land* which is not reflected in the PDP. In addition, subdivision has imposition of financial contributions in accordance with Chapter 12 of the Plan listed as a matter over which discretion is restricted, but this is not listed in the NES.

2.2.4 Discretionary Activities

Table 4 Comparison of the discretionary activities in the PDP and NES

	Activity	Assessment Criteria
PDP	Any activity not meeting activity standard 9E.2.2.1.	Consistency with the relevant Plan policies, including (but not limited to): a) Natural Environment Policies 3.1, 3.3-3.5, 3.8 and 3.12-3.15 b) Coastal Environment Policies 4.3-4.5 c) Hazards Policies 9.3, 9.11, 9.14, 9.16, 9.18, 9.19, and 9.29-9.34 d) Infrastructure Services and Associated Resource Use Policy 11.23.

NES	<p style="color: red;">This regulation applies to an activity removing or replacing a fuel storage system, sampling the soil, disturbing the soil, subdividing land, and changing the use of the piece of land that is not a permitted activity, controlled activity, or restricted discretionary activity.</p>	
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The discretionary activities in the PDP and NES are quite different. The PDP identifies removing or replacing fuel storage system, sampling soil, disturbing soil or change of use that does not meet one of the permitted activity standards and does not provide a detailed site investigation to the Council as a discretionary activity. The NES discretionary activity outlined in Regulation 11 is more of a catch-all for activities that are not identified as a permitted activity, controlled activity, or restricted discretionary activity. The PDP list *policies* as assessment criteria whereas none are listed in Regulation 11 of the NES. In Regulation 11, there is no restriction on the discretion of the assessment of the activity, or the conditions that may be imposed – the consent authority must have regard to any relevant matter as directed in section 104 of the RMA.

2.2.5 Non Complying Activities

There are no non complying activities identified in either Section 9.6.4 of the PDP or the NES.

3 Implications for the PDP

The NES does not say that a district rule can be more stringent than the NES and so all regulations in the NES prevail over any district rule that applies to assessing and managing contaminants in soil to protect human health (Section 43B(1) of the RMA).

As specified by Section 43B(3) of the RMA, a district rule cannot be more lenient than any NES. If the district rule is more lenient, the NES prevails.

A district rule can permit an activity that is permitted by the NES, but the rule can only restrict effects that are not dealt with in the NES (Section 43A(5) of the RMA).

All district plans have rules regulating subdivision and land use. Those district rules will continue to have effect in as far as they apply to controlling effects other than assessing and managing contaminants in soil to protect human health. For example, it is appropriate for district plans to have rules that require a resource consent to subdivide, or to change the land use, which deal with effects on other aspects eg amenity or traffic. The requirements of those rules will still apply.

The NES does not contain any policy guidance so it is appropriate for district plans to contain objectives and policies to support the NES. Any objectives or policies would be referred to in a resource consent process (eg a discretionary activity consent) so care would need to be taken to ensure that the policy direction in the PDP was consistent with the NES.

Councils must assess any consent applications under the NES in accordance with the requirements of section 104 of the RMA. When considering an application for a resource consent required by regulation 9, regulation 10, or regulation 11 of the NES, the local authority must have regard to any relevant provisions in the district plan or proposed district plan (Section 104 of the RMA).

The assessment of applications, and granting or declining of the resource consent, will relate only to the activity as described in the NES, and only insofar as that activity relates to assessing and managing contaminants in soil to protect human health.

3.1 Removal of Plan Rules that Duplicate or Conflict with the NES

The NES does not specify how it affects rules made before the NES came into force and so section 44A(3) of the RMA does not apply. Section 44A(3) refers back to section 43A(1)(e) which enables an NES to the extent to which, or the time period during which, rules made before the commencement of the NES continue to apply.

If a district rule (permitted activity) deals with assessing and managing contaminants in soil to protect human health and duplicates or is in conflict with the NES, the territorial authority must amend the plan to remove the duplication or conflict without using Schedule 1 (Section 44A(4) of the RMA).

In every other case of duplication or conflict, the territorial authority must amend the plan to remove the duplication or conflict without using Schedule 1 (Section 44A(5) of the RMA).

A rule is deemed to conflict with a standard's provision if:

- The plan rule is more restrictive than the standard's provision, or
- A plan rule is more lenient than the standard's provision.

The PDP does not meet the requirements of Section 44A of the RMA as it does contain provisions which conflict or duplicate a rule in an NES.

Where a district plan does not contain rules that address contaminated land provisions to the extent addressed by the regulations, the council may amend its plan to include references to the NES (for

example, where better alignment of a rule with the NES may be appropriate) without having to use the Schedule 1 process.

In relation to the regulations, sections 44A(7) and (8) of the RMA require that:

(7) Every local authority and consent authority must observe national environmental standards.

(8) Every local authority and consent authority must enforce the observance of national environmental standards to the extent to which their powers enable them to do so.

3.2 Policy Framework

Objective 2.10 has a much wider applicability than the NES. In addition to recognising the risks to human health, Objective 2.10 seeks to mitigate environmental effects including risks to the environment and physical assets. The NES rules by comparison are focused on protecting human health. The table below compares the relevant PDP policies with the standards in the NES.

Table 5 Comparison of the PDP policies with the NES rules

PDP Policies	Alignment with NES
<p>Policy 9.29 – Identify Contaminated and potentially contaminated land in the District will be identified through the consent or plan change process, to enable the land to be managed or remediated to eliminate any unacceptable risk to the environment.</p>	<p>This policy partially aligns with the NES in terms of contaminated and potentially contaminated land being identified through consents. Disturbing soil and sampling soil are permitted activities in the NES including provided they meet the specified requirements. The more significant activities such as subdividing or changing use can be permitted provided a preliminary site investigation demonstrates that it is highly unlikely that there will be a risk to human health. Where preliminary investigations demonstrate a level of soil contamination, a resource consent will be required.</p> <p>The plan change process identified in Policy 9.29 is outside the scope of the NES.</p>
<p>Policy 9.30 – Criteria for Identification Contaminated and potentially contaminated land in the District will be identified using the following criteria:</p> <ul style="list-style-type: none"> a) was used, is presently used, or is likely to have been used for an activity appearing on the Hazardous Activities and Industries List; or b) identified as contaminated by the Kaitiaki Coast District Council or the Wellington Regional Council's SLUR database. 	<p>Clause 5(7) of the NES identifies the land covered by the NES as being:</p> <ul style="list-style-type: none"> a) <i>an activity or industry described in the HAIL is being undertaken on it;</i> b) <i>an activity or industry described in the HAIL has been undertaken on it;</i> c) <i>it is more likely than not that an activity or industry described in the HAIL is being or has been undertaken on it.</i> <p>HAIL is defined in Clause 3 of the NES as being: <i>HAIL means the current edition of the Hazardous Activities and Industries List, Wellington, Ministry for the Environment</i></p> <p>The references to the Wellington Regional Council's SLUR database is not reflected in the NES.</p>

<p>Policy 9.31 – Site Investigations Site investigations of contaminated land will be carried out in accordance with national best practice, including the Ministry for the Environment’s Contaminated Land Management Guidelines No.1 to No. 5.</p>	<p>This largely aligns with the NES. Clause 3 of the NES defines detailed site investigations as an investigation:</p> <p>...</p> <p>b) <i>is done in accordance with the current edition of Contaminated Land Management Guidelines No. 5–Site Investigation and Analysis of Soils, Wellington, Ministry for the Environment; and</i></p> <p>(c) <i>is reported on in accordance with the current edition of Contaminated Land Management Guidelines No. 1–Reporting on Contaminated Sites in New Zealand, Wellington, Ministry for the Environment;</i></p> <p>Clause 7(4)(b) contains references to Guidelines No. 2.</p> <p>The NES does not appear to contain references to Guidelines No. 3 or 4.</p>
<p>Policy 9.32 – Management or Remediation Any development, subdivision or change in land use on HAIL land, or land identified as contaminated or potentially contaminated by the Kaitiaki Coast District Council or the Wellington Regional Council’s SLUR database, that is reasonably likely to increase the risk of exposing people or the environment to contaminants, will be managed or remediated to eliminate any unacceptable risk to the environment.</p>	<p>Clause 5(7) identifies the land covered by the NES as being associated with a HAIL activity or industry.</p> <p>The references to the Wellington Regional Council’s SLUR database is not reflected in the NES.</p> <p>This PDP policy has a broader application than the NES in that it addresses the risk to the environment whereas the NES is primarily concerned with protecting human health.</p>
<p>Policy 9.33 – Ensure fit for use The remediation and/or on-going management of contaminated or potentially contaminated land will be undertaken in a manner that is appropriate for any likely future use of that land.</p>	<p>This policy is aligned with matters over which discretion is restricted for restricted discretionary activities in the NES:</p> <p>Regulation 10(3)</p> <p>(b) <i>the suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination</i></p> <p>(c) <i>the approach to the remediation or ongoing management of the piece of land...</i></p>

<p>Policy 9.34 – Assessment Criteria When considering whether contaminated or potentially contaminated land is safe for its intended use, subdivision or development, Council will have regard to the following:</p> <ul style="list-style-type: none"> a) the nature and extent of any contamination of soil or groundwater and the potential sources of contamination; b) the approach to any proposed remediation, and/or ongoing management of the contamination, including: <ul style="list-style-type: none"> i. extent of earthworks or removal of materials undertaken, including any method to control the release of contaminants into the environment; ii. treatment or disposal methods for contaminated or potentially contaminated materials, soil or water; iii. measures employed to prevent or mitigate any adverse effects on human health, water quality, or the downstream receiving environment are appropriate; iv. methods to address the risk of the contamination to public health and safety and that of workers involved in site works; c) the extent to which the effects of remediation are acceptable; d) the suitability of the land for its intended use; e) whether adequate measures will be taken to ensure the safe operation of the proposal on the land. 	<p>This policy appears to address the change in use and subdivision activities in particular which are addressed by the NES.</p> <p>Subsection a) is achieved through the need for detailed site investigations although the PDP is considerably more explicit about soil and groundwater.</p> <p>Subsection b) is reflected in Regulation 10(3)(c) Clauses (i) to (iv) in the PDP are not reflected in the matters of which control is reserved or discretion is restricted in the NES. The PDP is considerably broader in scope; relating to the environment, contaminated materials, soil, downstream receiving environments, water quality, public health and safety and workers.</p> <p>Subsection c) Closely aligns with Regulation 10(3)(c) which addresses the approach to remediation or ongoing management of the piece of land.</p> <p>Subsection d) This policy is aligned with matters over which discretion is restricted for restricted discretionary activities in the NES Regulation 10(3)(b)</p> <p>Subsection e) there is no corresponding matter over which control is reserved or discretion is restricted. The closest is Regulation 3(c) regarding the approach to the remediation or ongoing management of the piece of land.</p>
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3.3 Relevant Submissions

There was one submission received on the PDP from The Oil Companies which addresses the NES and is summarised below:

- 512-15 Amend the paragraphs under the heading section 9.6.4 Hazardous Substances and Contaminated land Rules and Standards to remove duplication with the Regional Council functions and to include NES in the District Plan as an appendix, by deleting the text "disturbance or use of contaminated or potentially contaminated land, or" and "The District Plan rules apply to managing other effects, including the effects of contaminants on eco systems." and adding the text "and is included in Appendix X", as set out in the submission.
- 512-16 Remove rules which duplicate those in the NES, i.e. Rules 9E.1.3-9E.1.6, 9E.2.2, 9E.3.1 and 9E.3.2.

4 Conclusions

In conclusion, there is a high degree of duplication between the PDP and the NES. The activities listed in Section 9.1.3 of the PDP are the same as those addressed by the NES. The standards in the PDP and NES are largely the same for permitted activities with only minor differences.

The most significant difference is that subdivision is a restricted discretionary activity in the PDP whereas it is a permitted activity in the NES. Subdivision has imposition of financial contributions in accordance with Chapter 12 of the Plan listed as a matter over which discretion is restricted, but this is not listed in the NES.

Where there is a difference in standards, the PDP has a broader consideration of effects e.g. minimising adverse effects versus minimising the exposure of humans to mobilised contaminants.

The NES refers to Regulation 7 as a standard, whereas the PDP specifies the Ministry for the Environment document Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values.

The discretionary activities in the PDP and NES are quite different. The PDP identifies removing or replacing fuel storage system, sampling soil, disturbing soil or change of use that does not meet one of the permitted activity standards and does not provide a detailed site investigation to the Council as a discretionary activity. The NES discretionary activity is more of a catch-all for activities that are not identified as a permitted activity, controlled activity, or restricted discretionary activity.

Similarly Objective 2.10 and Policies 9.29-9.34 of the PDP have a much wider applicability than the NES. In addition to recognising the risks to human health, the objective and policies seek to mitigate environmental effects including risks to the environment and physical assets. The NES rules by comparison are focused on protecting human health.

The PDP does not meet the requirements of Section 44A of the RMA as it does contain provisions which conflict or duplicate a rule in an NES. Section 44A requires the council to amend the PDP to remove the duplication or conflict without using the Schedule 1 process.

Appendix A PDP Provisions as Notified

9.1.3 All Hazards (Natural and Man-made) Rules and Standards
Summary table

The following table is intended as a guide only and does not form part of the District Plan. Refer to specified rules for detailed requirements. Pe refers to Permitted Activities, C to Controlled Activities, RD to Discretionary Activities (Restricted), D to Discretionary Activities (Unrestricted), NC to Non Complying and Pr to Prohibited Activities.

Soil disturbance or sampling, removal or replacement of an underground fuel storage system, or change of land use, subject to permitted activity standards	9E.1.3 9E.1.4 9E.1.5 9E.1.6						
Soil disturbance or sampling, removal or replacement of an underground fuel storage system, or r change of land use, subject to controlled activity standards	9E.2.2						
Soil disturbance or sampling, removal or replacement of an underground fuel storage system, or change of land use, not meeting controlled activity standards 9E.2.2.2 and 9E.2.2.3.	9E.3.1						
Subdivision of contaminated or potentially contaminated land	9E.3.2						
Any activity not controlled under clause (1) of the controlled activity rules	9E.4.2						

Rules and Standards – Hazardous substances and Contaminated land

Rule 9E.0. Applicability of Rules 9E.1 – 9E.5

Rules 9E.1 to 9E.5 shall apply to all land and activities in all Zones unless otherwise specified.

- Notes:** [1] Notwithstanding the activity category defined by Rules 9E.1 to 9E.5 for any activity, attention is also drawn to the rules:
- [a] in Chapters 3, 9, 11 and 12 which apply to matters which apply across all zones in the District – for example, transport and hazardous substances; and
 - [a] in Chapters 5, 6, 7 and 8 that apply to specific land use Zones in the District – for example the Rural Plains Zone and the Open Space (Recreation) Zone.

The rules in these chapters may identify the activity as (or result in the activity being) a different activity category than expressed below. Additional clarity on activity category determination is provided in Chapter 1 (Section 1.1).

Rule 9E.1 Permitted Activities

The following activities are **permitted** activities, provided that they comply with all corresponding permitted standards (unless otherwise specified).

Permitted Activities	Standards	Reference
1. Any activities which are not specified as Permitted, Controlled, Restricted Discretionary, Discretionary or Non		All policies in this chapter

Rule 9E.1 Permitted Activities

The following activities are **permitted** activities, provided that they comply with all corresponding permitted standards (unless otherwise specified).

Permitted Activities	Standards	Reference
Complying activity and complies with all permitted activity standards in this chapter.		
3. Disturbing the soil of contaminated or potentially contaminated land.	<ol style="list-style-type: none"> 1. Controls shall be put in place to minimise any potential adverse environmental effects during the disturbance works. 2. The soil shall be reinstated to an erosion resistant state within 1 month of completing the sampling or subsurface works. 3. Where there is a structure in place designed to contain contaminants the integrity of the structure shall not be compromised. 4. Removed soil shall be disposed at a facility authorised to receive such waste. 5. The volume of soil disturbance shall be less than or equal to 25m³ per 500m². 6. A maximum of 5m³ per 500m² of soil shall be removed from the site per year, excluding soil taken for samples. 7. The duration of soil disturbance shall be no longer than 2 months. 	Policies 9.22, 9.23, 9.24, 9.25, 9.26, 9.27, 11.11 & 11.22
4. Soil sampling of contaminated or potentially contaminated land.	<ol style="list-style-type: none"> 1. Controls shall be put in place to minimise any potential adverse environmental effects during the disturbance works. 	Policies 9.22, 9.23, 9.24, 9.25, 9.26,

Rule 9E.1 Permitted Activities

The following activities are **permitted** activities, provided that they comply with all corresponding permitted standards (unless otherwise specified).

Permitted Activities	Standards	Reference
	<ol style="list-style-type: none"> 2. The soil shall be reinstated to an erosion resistant state within on month of completing the sampling or subsurface works. 3. Soil shall be only removed from the land as samples for the purpose of laboratory analysis. 4. Where there is a structure in place designed to contain contaminants the integrity of the structure shall not be compromised. 	<p>9.27, 11.11 & 11.22</p>
<ol style="list-style-type: none"> 5. Removal or replacement of a fuel storage system. 	<ol style="list-style-type: none"> 1. The removal, investigation, remediation, validation and management processes shall be undertaken in accordance with the current edition of the Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand. 2. Within 3 months of the activity being completed the Council shall be provided with a copy of the results required by the guidelines. 3. Prior to the activity commencing the Council shall be advised in writing of: <ol style="list-style-type: none"> a) The location and address of the activity; b) The dates the activity will begin and end; c) The name of the authorised facility where any removed soil will be disposed of. 4. No more than 30m³ of soil per tank shall be disturbed or removed from the site. 5. The duration of the activity shall be no longer than 2 months. 	<p>Policies 9.22, 9.23, 9.24, 9.25, 9.26, 9.27, 11.11 & 11.22</p>

Rule 9E.1 Permitted Activities

The following activities are **permitted** activities, provided that they comply with all corresponding permitted standards (unless otherwise specified).

Permitted Activities	Standards	Reference
6. Change of land use of contaminated or potentially contaminated land.	<ol style="list-style-type: none"> 1. A preliminary site investigation of the site has been undertaken confirming that the contamination levels are acceptable for the purposed land use. 2. The report is provided to the Council within 1 month of being completed. 3. The proposed use complies with the relevant rules in the underlying zone. 	Policies 9.22, 9.23, 9.24, 9.25, 9.26, 9.27, 11.11 & 11.22

Rule 9E.2 Controlled Activities

The following activities are **controlled** activities, provided that they comply with all corresponding controlled standards (unless otherwise specified).

Controlled Activities	Standards	Matters over which Council reserves control	Reference
2. Removing or replacing fuel storage system, sampling soil, disturbing soil or change of use that does not meet one of the permitted activity standards under Rules 9E.1.3, 9E.1.4, 9E.1.5. and 9E.1.6.	<ol style="list-style-type: none"> 1. A detailed site investigation shall be provided to the Council. 2. The detailed site investigation, including a risk assessment undertaken for all receptors, shall follow the hierarchy of guideline values in the Ministry for the Environment's Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values. 	<ol style="list-style-type: none"> 1. Adequacy of site investigation including: <ol style="list-style-type: none"> a) Site sampling; b) Laboratory analysis; c) Risk Assessment. 2. Adequacy of Management Practices including: <ol style="list-style-type: none"> a) A site management plan; b) Monitoring; c) Reporting. 	Policies 9.29, 9.30, 9.31, 9.32 & 9.33

Rule 9E.2 Controlled Activities

The following activities are **controlled** activities, provided that they comply with all corresponding controlled standards (unless otherwise specified).

	<p>3. The conditions of the investigation are compiled with.</p>	<p>3. The transport, disposal and tracking of soil and other materials taken away in the course of the activity.</p> <p>4. The timing and nature of the review of the conditions in the resource consent.</p> <p>5. The duration of the resource consent.</p> <p>6. Imposition of conditions in accordance with section 102 and 108 of RMA.</p>	
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Rule 9E.3. Restricted Discretionary Activities

The following activities are **restricted discretionary** activities, provided that they comply with all corresponding restricted discretionary standards (unless otherwise specified)

Restricted Discretionary Activities	Standards	Matters over which Council will restrict its discretion	Reference
<p>2. Removing or replacing fuel storage system, sampling soil, disturbing soil, or change of land use that does not meet controlled activity standards 9E.2.2.2 or 9E.2.2.3.</p>	<p>1. A detailed site investigation shall be provided to the Council.</p> <p>2. The detailed site investigation, including a risk assessment undertaken for all other receptors shall follow the hierarchy of guideline values in the Ministry for the Environment's Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values.</p> <p>3. The conditions of the investigation are compiled with.</p>	<p>10. Adequacy of site investigation including:</p> <ul style="list-style-type: none"> a) Site sampling; b) Laboratory analysis; c) Risk Assessment. <p>11. Adequacy of Management Practices including:</p> <ul style="list-style-type: none"> a) A site management plan; b) Monitoring; c) Reporting. <p>12. Adequacy of the methods of mitigation, remediation or on-going management.</p> <p>13. Suitability of land for proposed activity.</p> <p>14. Requirements for and conditions of a financial bond.</p> <p>15. The transport, disposal and tracking of soil and other materials taken away in the course of the activity.</p> <p>16. The timing and nature of the review of the conditions in the resource consent.</p> <p>17. The duration of the resource consent.</p>	<p>Policies 9.29, 9.30, 9.31, 9.32 & 9.33</p>

		<p>18. Imposition of conditions in accordance with section 102 and 108 of RMA.</p>	
<p>3. Subdivision of contaminated or potentially contaminated land</p>	<p>1. A detailed site investigation shall be provided to the Council.</p> <p>2. The detailed site investigation, including a risk assessment undertaken for all other receptors shall follow the hierarchy of guideline values in the Ministry for the Environment's Contaminated Land Management Guidelines No. 2 – Hierarchy and Application in New Zealand of Environmental Guideline Values.</p> <p>3. The conditions of the investigation are compiled with.</p>	<p>1. Adequacy of site investigation including:</p> <ul style="list-style-type: none"> a) Site sampling; b) Laboratory analysis; c) Risk Assessment. <p>2. Adequacy of Management Practices including:</p> <ul style="list-style-type: none"> a) A site management plan; b) Monitoring; c) Reporting. <p>3. Adequacy of the methods of mitigation, remediation or on-going management.</p> <p>4. Suitability of land for proposed activity.</p> <p>5. Requirements for and conditions of a financial bond.</p> <p>6. The transport, disposal and tracking of soil and other materials taken away in the course of the activity.</p> <p>7. The timing and nature of the review of the conditions in the resource consent.</p> <p>8. The duration of the resource consent.</p> <p>9. Imposition of conditions in accordance with section 102 and 108 of RMA.</p> <p>10. Imposition of financial contributions in accordance with Chapter 12 of the Plan</p>	<p>Policies 9.29, 9.30, 9.31, 9.32 & 9.33</p>

9E.4 Discretionary Activities

The following activities are **discretionary** activities.

Discretionary Activities	Assessment Criteria	Reference
2. Any activity not meeting activity standard 9E.2.2.1.	1. Consistency with the relevant Plan policies, including (but not limited to): <ul style="list-style-type: none">a) Natural Environment Policies 3.1, 3.3-3.5, 3.8 and 3.12-3.15b) Coastal Environment Policies 4.3-4.5, 4.8, and 4.11-4.14c) Hazards Policies 9.3, 9.11, 9.14, 9.16, 9.18, 9.19, and 9.29-9.34d) Infrastructure Services and Associated Resource Use Policy 11.23.	Policies 9.29, 9.30, 9.31, 9.32, 9.33 & 9.34