



PROPOSED INVERCARGILL CITY DISTRICT PLAN

Decision No. 9

Contaminated Land

Hearings Committee

Councillor Darren Ludlow (Chair)

Councillor Neil Boniface

Councillor Graham Sycamore

Keith Hovell

11 October 2016

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INTRODUCTION

We have been appointed by the Invercargill City Council to consider and issue decisions on the submissions lodged to the Proposed Invercargill City District Plan. In this decision we consider the submissions lodged in relation to Contaminated Land issues.

The Resource Management Act 1991 sets out various matters that impact on our considerations and deliberations. The key provisions are Sections 5 - 8, 32, 75 and 76 of the Act, and the Second Part of the First Schedule to the Act. The Section 42A Report prepared for the Committee considered these matters in detail and we have had regard to those matters. Where the statutory provisions are of particular significance we have referred to them within this Decision.

In this Decision, the following meanings apply:

"The Council" means the Invercargill City Council.

"FS" means Further Submission.

"Further Submitter" means a person or organisation supporting or opposing a submission to the Proposed Plan.

"HAIL" means Hazardous Substances and Industries List

"Hearings Committee" or "the Committee" means the District Plan Hearings Committee established by the Council under the Local Government Act.

"LIM" means Land Information Memorandum

"The NES" means the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011.

"NZAS" means New Zealand Aluminium Smelters Limited.

"The Oil Companies" means Z Energy Limited, BP Oil NZ Ltd and Mobil Oil NZ Ltd.

"Operative Plan" or "Operative District Plan" means the Invercargill City District Plan 2005.

"Proposed Plan" or "Proposed District Plan" means the Proposed Invercargill City District Plan 2013.

"RMA" means the Resource Management Act 1991.

"Submitter" means a person or body lodging a submission to the Proposed Plan.

At the commencement of the hearings, Crs Boniface and Ludlow declared an interest as Directors of PowerNet Limited, Cr Sycamore declared an interest as a Director of Invercargill City Holdings Limited and Commissioner Hovell declared a conflict of interest in relation to submissions lodged by Cunningham Properties Limited. The Councillors and Commissioner took no part in deliberations in relation to the submissions of the submitters referred to.

THE HEARING TO CONSIDER SUBMISSIONS TO THE PROPOSED DISTRICT PLAN

The hearing to consider the submissions lodged to the matters set out in this decision was held in the Drawing Room of the Civic Theatre on 10 June 2014.

Section 42A Report

The Committee received a report from Joanna Shirley, Policy Planner with the Invercargill City Council. In her report, Mrs Shirley outlined the provisions of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the NES) which came into force on 1 January 2012. She also advised that in preparing the Proposed District Plan, the Council had taken into account its responsibilities in

implementing the NES as part of its functions under Section 31 of the RMA. Under the NES territorial authorities are required to prevent or mitigate any adverse effects of the subdivision, development or use of contaminated land.

Mrs Shirley noted that 11 submitters had lodged 41 submission points in relation to the contaminated land provisions and the majority of these were in support or seeking minor changes. Only two submissions opposed plan provisions. After analysing the submissions and further submissions Mrs Shirley recommended amendments to the Introduction, Issue 2 and Policies 1, 3, and 6 of the contaminated land provisions, and deletion of Policy 4 which she considered unclear. She also recommended a minor change to Policy 10 of the Subdivision provisions which relates to contaminated land.

Submitters Attending the Hearing

No persons appeared at the hearing.

Material Tabled at the Hearing

Z Energy Limited, BP Oil NZ Ltd, Mobil Oil NZ Ltd

Karen Blair of Burton Planning Consultants noted on behalf of the Oil Companies that subject to minor changes in some instances the recommendations in the Section 42A Report generally gave effect to the submissions lodged. However, there were two matters where the Report recommendations were opposed:

- (i) Submission 13.9 opposed Objectives 1 and 3 on the basis that it is unrealistic to avoid creation of new areas of contamination or further contamination of already contaminated land. Mrs Blair stated that seeking to avoid new areas of contaminated land is not appropriate and does not readily relate to the issues identified in the contaminated land section. In her view it will cause confusion between addressing historic contamination issues and managing the effects from that, and the means of appropriately managing ongoing hazardous substance use and storage in a manner that will ensure risk of future contamination is sufficiently mitigated or minimised. She therefore opined that the preventative measures in relation to contaminated land should be found in the hazardous substances chapter of the Plan. She also stated that the provisions which seek to manage land that is already contaminated are appropriately contained in a contaminated land section.

Mrs Blair suggested that the Council shift Objective 1 from the contaminated land provisions to the hazardous substances section, together with other additions and deletions to that section. She considered this would give effect to the Operative and Proposed Regional Policy Statements for Southland.

- (ii) Submission 13.13 supported Policy 6 subject to an amendment referring to human health effects, rather than environmental effects, on the grounds that the role of the District Council in relation to the management of contaminated land is limited to human health effects. Mrs Blair also noted that the wider environmental effects are dealt with by the Regional Council.

Mrs Blair advised that the Oil Companies do not disagree that contamination can have more than human health effects. In her view there is a need to clearly identify the functions of the District Council, bearing in mind the functions of regional and central government. She considered an appropriate solution would be to amend Policy 6 to clearly state which "environmental" matters the District Council has control over. She considered that consistent with the submissions lodged to the Proposed RPS and recommended that Clause (F) in the policy be amended to read:

- (F) *The potential for adverse ~~environmental~~ visual amenity, cultural or public health effects off site or downstream.*

South Port NZ Ltd

Joanne Dowd of Mitchell Partnerships Limited advised on behalf of South Port Limited that it supported the recommendation to retain Rule 3.3.1 without change.

HW Richardson Group Ltd

Joanne Dowd of Mitchell Partnerships Limited advised on behalf of HW Richardson Group Ltd that the company accepted the recommendations to retain Objective 4 and delete Policy 4, notwithstanding their support for the latter.

Federated Farmers

David Cooper, Regional Policy Advisor with Federated Farmers, advised that while the submission of Federated Farmers in relation to Policy 6 was not accepted in the precise terms sought, he agreed with the recommended wording in the Section 42A Report.

Transpower

Sarah Shand, Environmental Planner with Transpower, advised that Transpower had no objection to the changes being recommended to Section 3.3.1.

MATTERS REQUIRING PARTICULAR CONSIDERATION

Avoiding Contamination of Land

Objectives 1 and 3 seek to avoid the creation of new areas of contaminated land and further contamination of already contaminated sites. The "Oil Companies" in Submission 13.9 supported by NZ Aluminium Smelters opposed the inclusion of the word "avoid" in these objectives, and their inclusion in this section of the Proposed Plan.

Mrs Blair in her written submissions stated that the objectives do not readily relate to the issues in the contaminated land section, and in any case it is not practical to always avoid contamination of land when hazardous substances are stored, used or transported. In her view the objectives with rewording should be in the hazardous substances chapter of the Plan.

Mrs Shirley in her Section 42A Report accepted that avoidance was not always achievable. However, she opposed any change to the wording considering at an objective level the word "avoid" is appropriate. In her report she also opposed relocating the provisions to the hazardous substances section as they "set a more direct and clear goal for avoidance of contamination, than what is provided in the hazardous substances provisions". However, at the hearing, Mrs Shirley stressed that the wording of the provisions was more important than where they were located, noting that they could fit within either the hazardous substances or contaminated land sections. She opposed the deletion of the word "avoid" on the basis that this would weaken the objectives.

The Hearings Committee considered that Mrs Blair raised a valid point in that the issues and policies in this section of the Proposed Plan do not lead to or flow from Objectives 1 or 3. It also noted that sites become contaminated through the use, storage or transportation of hazardous substances, and as a consequence it was more appropriate for these provisions to be in the hazardous substances section of the Proposed Plan.

The Hearings Committee also agreed with Mrs Shirley that at an objective level the word "avoid" can be used. It particularly noted that in considering the storage of hazardous substances, conditions can be imposed in order to avoid contamination of land.

Management Action

Policy 6 seeks to determine appropriate management action for contaminated land on a site by site basis. The Oil Companies in Submission 13.13 consider that the role of the Council in relation to the management of contaminated land is limited to human health effects and sought changes to the policy to reflect that.

Mrs Shirley in her Section 42A Report did not agree that the Council's role in relation to the management of contaminated land is limited to human health. She noted that the NES is restricted to the effects of contaminated land on human health, but opined that does not limit the ability of the Council to develop objectives and policies addressing the wider issues of contamination. She referred to the Ministry for the Environment "Users Guide: NES for Assessing and Managing Contaminants in Soil to Protect Human Health" (2012) which at page 10 states "*Councils ... may impose additional controls under the RMA to address any potential or actual effects on these receptors or other matters they have control over*". Mrs Shirley also advised that in her opinion RMA Section 31(1)(a) gave authority for such consideration.

Mrs Blair on behalf of the Oil Companies in written material she forwarded to the Committee did not disagree that contamination can have more than human health effects, but sought clarity as to which "environmental" matters the Council would have regard to, requesting that Clause (F) in the policy be amended to read:

(F) The potential for adverse ~~environmental~~ visual amenity, cultural or public health effects off site or downstream.

The Hearings Committee noted the agreement between Mrs Shirley and Mrs Blair that regard can be had to more than human health effects. The matter in dispute related to how that should be expressed in the Proposed Plan. Mrs Shirley preferred a generic approach, while Mrs Blair sought specificity.

The Committee noted that while regional councils have responsibility to manage and set standards for particular matters such as air and water quality, in adopting an integrated management approach that does not prevent the City Council from having regard to effects on those matters. For example, the impact of odour beyond the site is a relevant matter for the City Council to consider in assessing a resource consent. In addition, an effect such as noise associated with remediation work is also a valid consideration. Adopting the change sought by Mrs Blair would exclude regard being given to these matters, and also other matters that in a particular case may be relevant. As a consequence, the Committee concluded that a generic approach was appropriate. It did consider however that a minor wording change was desirable to improve the flow of the provision.

On-Site Containment

Policy 4 promotes "on-site containment of contamination as part of a 'best practical means' approach to addressing it unless the contaminated material can be removed to an accredited disposal facility". The Oil Companies in Submission 13.12 opposed this provision as it established a hierarchy of management approaches and on-site containment may not be the best management approach. The Oil Companies sought deletion of Policy 4. This was opposed by NZAS.

Mrs Shirley in her Section 42A Report accepted the arguments of the Oil Companies and recommended the deletion of the policy. NZAS did not appear at the hearing and did not forward any additional material for the Committee to consider.

The Hearings Committee accepted that it was inappropriate for the policy to establish a hierarchy of management approaches, concluding that each situation must be considered on a case by case basis. It also noted that the interpretation given to the policy by NZAS did not match the intent. Regard was given to revising the policy but the Committee concluded that Policy 6 already provided an appropriate management approach. As a consequence, Policy 4 was not needed and should be deleted. Consequential to that, a minor amendment is also required to the fourth paragraph of the Policy 1 explanation.

Mapping HAIL Sites

Submission 117.3 Southern District Health Board sought the inclusion of all HAIL sites on the District Planning Maps. Mrs Shirley in her Section 42A Report did not consider this feasible as potentially every site that has been used for an activity other than residential or commercial use is a potential HAIL site. She noted that although information on these sites is becoming more available, it would be misleading and inaccurate to map only some of the HAIL sites. She also noted that the effect on property values and marketability of a site identified as being on the HAIL must also be considered. Incorrect information could have a negative effect on property values and may expose the Council to legal liability.

The Southern District Health Board did not submit any additional material to the hearing or appear in person to discuss this issue.

The Hearing Committee agreed with the assessment of Mrs Shirley, and also noted that when a LIM is requested for any property the Council is required to disclose any information it holds, including details of any HAIL activities known to have occurred on the land. It concluded that it is neither practical nor appropriate to include details of known or potential HAIL sites in the Proposed Plan.

SECTION 32 MATTERS

Requirements

The Committee was advised by Mrs Shirley that Section 32 of the RMA establishes the framework for assessing objectives, policies and rules proposed in a Plan, and that a Report was released at the time of notification of the Proposed Plan in compliance with those provisions. The Committee was also advised that Section 32AA of the RMA requires a further evaluation to be released with decisions outlining the costs and benefits of any amendments made after the Proposed Plan was notified, with the detail of the assessment corresponding with the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the changes made to the Proposed Plan.

As the Committee understands its obligations, it is required to:

- (i) Assess any changes made to objectives to determine whether they are the most appropriate way to achieve the purpose of the RMA.
- (ii) Examine any changes made to the policies and rules to determine whether they are the most appropriate way to achieve the objectives of the Proposed Plan. This includes:
 - Identifying the costs of the environmental, economic, social, and cultural effects

that are anticipated from the implementation of the provisions (including effects on employment and economic growth); and

- Identifying other reasonably practicable options for achieving the objectives; and
- Assessing the efficiency and effectiveness of the provisions in achieving the objectives.

The Committee however, is not required to assess in accordance with Section 32 of the RMA any changes to the issues and/or explanatory text of provisions.

Assessment

Mrs Shirley advised the Committee that in her view, the changes recommended in her Report are within the scope of the original evaluation findings and do not raise any additional matters of consideration. She also stated:

The removal of the expectation that contaminated land be remediated on site will mean that the best practical approach is taken on a site by site basis. This may on occasions be economically and environmentally beneficial. Other changes are intended to aid in the interpretation of the policies and make for a more user friendly document. Overall the environmental, economic, social or cultural effects anticipated to arise as a consequence of the changes are minor. A detailed assessment or quantification of costs and benefits is not practical or necessary in this instance.

For those decisions that reflect the recommendations made by Mrs Shirley in her Section 42A Report, the Committee agrees with that approach and adopts it.

This decision merges 2.52 Objectives 1 and 3 and moves this merged Objective into the Hazardous Substances section of the Plan. This differs from Mrs Shirley's recommendations and as such requires further assessment under Section 32. Due to the minor nature of this change it is not necessary or practical to evaluate in detail or quantify the economic, social, cultural, environmental and employment effects of the changes. The Objective responds to a valid resource management issue, being the sustainable use of the District's resources. The Objective seeks to protect the health and well-being of the environment and the wider community. Merging the two Objectives into one does not change the intention of the Objective. Also, it is moved to the Hazardous Substances section of the Plan as it is relevant to the Issues in the Hazardous Substances section of the Plan and is better given effect to through the Hazardous Substances policies.

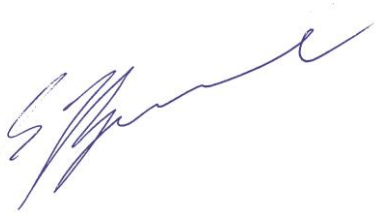
Dated at Invercargill this 11th day of October 2016



Councillor Darren Ludlow (Chair)



Councillor Neil Boniface

A handwritten signature in blue ink, appearing to read 'G Sycamore', written in a cursive style.

Councillor Graham Sycamore

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Keith Hovell

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APPENDIX 1 - DECISIONS ON SUBMISSIONS

Submission	Decision
GENERAL	
<p>117.2 - Southern District Health Board The submitter agrees with the identified issues, objectives, policies and rules, and in particular supports Policies 1, 3 and 5.</p> <p>18.40 - Environment Southland The submitter supports the issues, objectives, policies and methods of implementation. Retain.</p> <p>87.7 - Transpower NZ Ltd The submitter supports the issues, objectives and policies as notified. Retain.</p>	<p>Decision 9/1 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The submitters support the provisions in the Proposed Plan and do not seek any changes to them. 2. Minor amendments are made however to Issue 2 and Policies 1, 3 and 6 and Policy 4 has been deleted.
<p>105.1 - ICC Environmental Health and Compliance Services The submitter supports the issues, objectives and policies and notes the reference to the NES for Assessing and Managing Contaminated Sites in the Soil to Protect Human Health.</p> <p><u>Decisions Sought:</u></p> <ol style="list-style-type: none"> a The Council works in partnership with Environment Southland to have a common database for collection and data sharing of information. b Objective 2 - the information on the database should be made available and forwarded to the Council and passed on to the public. c A more specific reference and detail relating to what is defined as a permitted activity, controlled activity, restricted activity, discretionary activity for a contaminated land activity in the Proposed District Plan. 	<p>Decision 9/2 This submission is rejected.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The submitter supports various provisions in the Proposed Plan. 2. Method 1 provides for a common database between councils. 3. Method 2 provides for the provision of advice and Council held information to landowners and occupiers. 4. Details as to activity status in the NES are contained in Appendix XII and it is not necessary to repeat this information in the note.
SECTION TWO ISSUES, OBJECTIVES AND POLICIES	
2.5 Contaminated Land	
Introduction	
<p>18.39 - Environment Southland The submitter believes Section 2.5 does not provide a clear distinction between land contamination and contaminated land, which has a high threshold of having to have “significant adverse effects” under the RMA. They suggest it would be</p>	<p>Decision 9/3 This submission is accepted in part.</p>

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Submission	Decision
<p>helpful to plan users to highlight the link between HAIL sites and the NES and the RMA, which establishes shared functions relating to contaminated land. It should also clarify the reason for need for co-operation with Environment Southland over the collection and sharing of information. The submitter believes it would also be helpful to highlight the SAHS register held by Environment Southland. Amend Section 2.5 as follows [or similar]:</p> <p>2.5 CONTAMINATED LAND</p> <p>New Zealand has a legacy of <u>land</u> contamination that needs to be identified and addressed. This <u>issue</u> has been identified by the Ministry for the Environment as <u>being one an issue</u> of national importance. The Ministry has produced a list of Hazardous Activities and Industries (HAIL) likely to cause <u>have a higher risk of</u> land contamination resulting from hazardous substance use, storage, or disposal.</p> <p>The Council is required to implement the National Environmental Standard for Assessing and Managing Contaminants in the Soil to Protect Human Health which establishes obligations on land owners and regional and territorial authorities.</p> <p>Territorial authorities are required to:</p> <p>(A) Prevent or mitigate any adverse effects of the storage, use, disposal or transportation of hazardous substances, and</p> <p>(B) Prevent or mitigate any adverse effects of the subdivision, development or use of contaminated land.</p> <p>There is a lack of information, and therefore monitoring and management, of contaminated <u>contamination</u> in Invercargill. Because of its history and role as a rural servicing city, every site that is being, or at some stage is likely to have been, used for anything other than residential activity, or most commercial activities is potentially a HAIL site. There will be cooperation with Environment Southland over the collection and sharing of information <u>on HAIL sites</u>. <u>The Regional Council also has discharge rules relating to land contamination.</u></p> <p>FS34.1 - ICC Environmental Health and Compliance Services supports Submission 18.39 and considers that that the submission highlights the shared functions relating to a contaminated land and the need to share information of contaminated sites with the Regional Council. The further submitter also considers it reasonable to mention the link between HAIL sites, the NES and the RMA which establishes the shared functions of agencies when relating to a</p>	<p>Amendments to District Plan</p> <p>Amend Section 2.5 to read:</p> <p>New Zealand has a legacy of <u>land</u> contamination that needs to be identified and addressed. This <u>issue</u> has been identified by the Ministry for the Environment as being one an issue of national importance. The Ministry has produced a list of Hazardous Activities and Industries (HAIL) likely to cause land contamination resulting from hazardous substance use, storage, or disposal.</p> <p><u>Under Section 44A of the Resource Management Act 1991</u> The Council is required to implement the National Environmental Standard for Assessing and Managing Contaminants in the Soil to Protect Human Health which establishes obligations on land owners and regional and territorial authorities. <u>The NES regulations apply when a person wants to do one of five activities described in Regulation 5 (2) to (6) of the NES, on a piece of land that has, currently or previously, had a HAIL activity or industry undertaken on it.</u></p> <p><u>Under Section 31 of the RMA</u> territorial authorities are required to:</p> <p>(A) Prevent or mitigate any adverse effects of the storage, use, disposal or transportation of hazardous substances, and</p> <p>(B) Prevent or mitigate any adverse effects of the subdivision, development or use of contaminated land.</p> <p>There is a lack of information, and therefore monitoring and management, of contaminated land in Invercargill. Because of its history and role as a rural servicing city, every site that is being, or at some stage is likely to have been, used for anything other than residential activity, or most commercial activities is potentially a HAIL site. There will <u>need to be</u> cooperation with Environment Southland over the collection and sharing of information <u>on HAIL sites</u>. <u>Environment Southland also has discharge rules relating to land contamination.</u></p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The changes made assist in understanding the law and will be of benefit to plan users. 2. Reference to "higher risk" is not consistent with the RMA or MfE Guidelines. 3. As set out in the Section 42A Report, other changes sought are adequately provided for by the Proposed Plan.

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Submission	Decision
contaminated land in the Proposed District Plan.	
<p>65.10 - ICC Environmental and Planning Services The submitter supports the introduction with minor amendment to typo.</p> <p><u>Decision Sought:</u> Amend the last sentence of the Introduction to read: “There will <u>need to</u> be cooperation with ES over the collection and sharing of information.”</p>	<p>Decision 9/4 This submission is accepted.</p> <p>Amendments to District Plan Amend the last sentence of the introduction as follows: There will <u>need to</u> be cooperation with ES over the collection and sharing of information.</p> <p>Reason The change corrects a minor error.</p>
2.5.1 Issues	
<p>77.13 - Te Runaka o Waihopai and Te Runaka o Awarua The submitter supports references to human health within the issues. Retain the issues.</p>	<p>Decision 9/5 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reasons The submitter supports the provision and does not seek any change to it.</p>
<p>65.11 - ICC Environmental and Planning Services The submitter supports Issue 2 with an amendment to typo.</p> <p><u>Decision Sought:</u> Amend Issue 2 to read: “Subdivision, ground disturbance, use and development of contaminated land can have adverse effects on human health.”</p>	<p>Decision 9/6 This submission is accepted.</p> <p>Amendments to District Plan Amend Issue 2 as follows: Subdivision, ground disturbance, use and development of contaminated land can have adverse effects on human health.</p> <p>Reason The change corrects a minor error.</p>
2.5.2 Objectives	
<p>88.55 - Federated Farmers The submitter supports Objectives 1 and 3. The submitter considers these objectives can best be achieved through the provision of timely and accurate</p>	<p>Decision 9/7 These submissions are accepted in part.</p> <p>Amendments to District Plan</p>

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Submission	Decision
<p>advice to landowners. Adopt the objectives as proposed.</p> <p>13.9 - Z Energy Limited, BP Oil NZ Ltd, Mobil Oil NZ Ltd The submitter opposes Objectives 1 and 3. The submitter considers that it is unrealistic to expect to avoid the creation of new areas of contamination and believe that the objectives should focus on managing the risk of contamination. They consider it more realistic to identify and manage contaminated land (as provided in Objectives 2 and 4) and manage the use and storage of hazardous substances as part of the hazardous substances provisions. They consider this to already be provided for in Section 2.7. Delete Objectives 1 and 3, and rely on the policy provisions in the hazardous substances section of the policy framework (Section 2.7).</p> <p>FS2.22 - NZAS Ltd supports Submission 13.9 and agrees it is unrealistic to expect that new or further contaminated land can be avoided. However, any further contamination should be contained on site and be appropriately managed. Amend Objectives 1 and 3 to recognise that the creation of contaminated land, or further contaminated land should be “avoided <i>where possible</i>”.</p>	<p>(i) Delete Objectives 1 and 3.</p> <p>(i) Add the following to Section 2.7 Hazardous Substances: Objective 2: Avoid creating new areas of contaminated land and further contamination of already contaminated land.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. Objectives 1 and 3 do not relate to the Issues and Policies in this section of the Proposed Plan. They do however refer to a matter that is relevant to Section 2.7 Hazardous Substances. 2. As set out on page 3 of this decision, the word "avoid" is appropriate in an objective. 3. The intent of the objectives is clear within a single objective. 4. Federated Farmers advised of its acceptance to delete the Objectives. 5. Use of "where possible" would result in uncertainty. Anything is "possible", but not necessarily practical.
<p>88.56 Federated Farmers The submitter supports Objective 2 in part. The submitter is concerned that the extent of the problem of contaminated land in rural Invercargill is currently unknown, and the wording of the objective may be read as a commitment to actively identify suspected hazardous sites. The labelling of “contaminated land” can have negative connotations, both in terms of the value of the property and the value of production from that property. The submitter considers that the NES does not require territorial authorities to actively identify land affected, so if this is not the intent of the policy Council could clarify this by removal of the word “identified” from the objective.</p> <p>The submitter believes that it is only really the risk of the land use activity itself that poses the risk to human health or the environment and if this Objective were interpreted widely then investigations and monitoring may be required in a number of sites where there is very little risk.</p> <p>Amend the wording of the objective as follows: “Objective 2: Land that is affected by soil contamination is identified, monitored</p>	<p>Decision 9/8 This submission is rejected.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The Objective does not intend for the Council to actively investigate sites. Under the NES it is the responsibility of the individual wishing to undertake an activity described in Regulation 5 to identify whether or not their piece of land has, currently or previously, had an activity or industry described on the HAIL undertaken on it. If this is established, then the proposal will need to be assessed against the NES regulations which may involve soil testing. 2. Under Section 31 of the RMA it is a function of the territorial authority to prevent or mitigate any adverse effects of the development, subdivision or use of contaminated land. In order to carry out this function, land that is contaminated or potentially contaminated needs to be identified. This will be done through the implementation of the NES and through collaboration

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Submission	Decision
<p>and managed.”</p> <p>FS30.3 - Southern District Health Board opposes Submission 88.56 and considers that the Objective is based on the significant resource management issues of land contamination not being adequately identified. Identifying historical, current and further HAIL sites is considered to be an integral part in the process that manages potential risk to community health and the environment. The further submitter considers that transparency of information enables individuals and businesses to make informed decisions. Retain the word “identified” in Objective 2.</p>	<p>and sharing of information with Environment Southland and other agencies on contamination issues.</p> <p>3. Federated Farmers advised of its acceptance to reject this submission.</p>
<p>13.10 - Z Energy Limited, BP Oil NZ Ltd, Mobil Oil NZ Ltd The submitter supports Objectives 2 and 4. Retain objectives.</p> <p>90.3 - H W Richardson Group Ltd The submitter supports Objective 4. The submitter considers that it is appropriate to ensure that potential adverse effects associated with contaminated land are remedied or mitigated. Retain Objective 4.</p>	<p>Decision 9/9 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitters support the provisions and do not seek any changes to them.</p>
2.5.3 Policies	
<p>13.11 - Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd The submitter supports policies 1 – 3 and 5. Retain these policies.</p> <p>88.57 and 59 - Federated Farmers The submitter supports Policies 1 and 5. Adopt the Policies as proposed.</p> <p>77.14 and 15 - Te Runaka o Waihopai and Te Runaka o Awarua The submitter supports Policies 3 and 5. Retain.</p>	<p>Decision 9/10 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The submitters support the provisions and do not seek any changes to them. 2. Minor amendments are made to Policies 1 and 3, but these do not alter their intent.
<p>65.12 ICC Environmental and Planning Services Support with amendment to typo</p> <p><u>Decision Sought</u>: Amend Policy 1 to read: “To promote public awareness <u>and</u> understanding, and to make available ...”</p>	<p>Decision 9/11 This submission is noted.</p> <p>Amendments to District Plan Amend Policy 1 as follows:</p>

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Submission	Decision
	<p>To promote public awareness <u>and</u> understanding, and to make available ...</p> <p>Reason The change corrects a minor error.</p>
<p>117.3 - Southern District Health Board The submitter supports Policy 1. They believe that making information available and the sharing of information allows for transparency of historic/arising HAIL sites and contaminated land. This process is important to promote future monitoring and management allowing for sustainable use of land while avoiding adverse health effects on humans.</p> <p><u>Decision Sought:</u> Support Policy 1 but also recommend that mapping of HAIL sites and contaminated land is included within the District Plan.</p>	<p>Decision 9/12 This submission is rejected.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The submitter supports the Policy and does not seek any changes to it. 2. An electronic database has already been developed by Environment Southland, and is available to the public on their website. 3. As discussed on pages 4 -5 of this Decision, showing potential HAIL sites on the District Planning Maps is not feasible. It would be misleading and inaccurate and potentially impact unreasonably on property values and marketability of a site. 4. The Proposed Plan provides for advice to land owners and occupiers on information held by the Council in Method 2.
<p>88.58 - Federated Farmers The submitter supports Policy 2. The submitter believes there is a need for a district and region-wide database to which all authorities have on-line access and to which all can contribute as information comes to hand, and to record and map historical patterns of land use and garnish greater information so that current and future landowners can make informed decisions on land use options. Adopt the Policy as proposed.</p>	<p>Decision 9/13 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The submitter supports the Policy and does not seek any changes to it. 2. An electronic database has already been developed by Environment Southland and is available through their website.
<p>65.13 - ICC Environmental and Planning Services The submitter supports Policy 3 with minor amendment to include the date for the NES.</p> <p><u>Decision Sought:</u> Amend reference to the NES in both the policy and the</p>	<p>Decision 9/14 This submission is accepted.</p> <p>Amendments to District Plan Amend Policy 3 as follows:</p>

APPENDIX 1 - DECISIONS ON SUBMISSIONS

Submission	Decision
<p>explanation to read:</p> <p>“National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health <u>2011</u>”</p>	<p>National Environmental Standard for Assessing and Managing Contaminants in the Soil to Protect Human Health <u>2011</u></p> <p>Reason The addition amends a minor omission.</p>
<p>71.12 - NZAS Ltd The submitter supports Policy 4. Some of the submitter’s wastes, that are not reused, are disposed of on-site at their landfill which is controlled and monitored. Retain Policy 4 as notified.</p> <p>90.4 - H W Richardson Group Ltd Support in part Policy 4. The submitter considers it appropriate to consider “best practicable means” approach to addressing issues associated with contaminated land. Retain Policy 4.</p> <p>13.12 - Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd The submitter opposes Policy 4. The submitter believes the policy promotes the excavation of contaminated land (and its off-site disposal) and then, as a second method, the containment of contaminated material on site. They do not consider that it is appropriate to establish a hierarchy of management approaches and that the best practical option should be assessed and adopted on a case by case basis. Further, the submitter considers that the management of contamination on site may not always be the best practical option. Delete Policy 4.</p> <p>FS2.23 - NZAS Ltd opposes Submission 13.12 and supports Policy 4, as set out in submission 71.12 and notes that the smelter uses hazardous substances which could result in contamination if not used or disposed of properly. Where it is disposed of, it is controlled and monitored. The further submitter acknowledges that in some cases on-site contamination may not be the “best practicable option” to address contamination. If this is correct then the further submitter suggests that Policy 4 be amended to acknowledge this rather than be deleted. Retain Policy 4 as notified.</p>	<p>Decision 9/15</p> <ol style="list-style-type: none"> 1. Submissions 71.12 NZAS Ltd and 90.4 H W Richardson Group Ltd are rejected. 2. Submission 13.12 is accepted. <p>Amendments to District Plan</p> <ol style="list-style-type: none"> 1. Section 2.5.3 Policy 4 is deleted. 2. Delete from the 4th paragraph of the explanation to Policy 1: Where contamination exists, the best approach is normally to first contain it and second to carry out remedial work aimed at isolating the contamination from the ongoing use of the site. In most cases a practical solution is possible. 3. Delete from the explanation to Policy 5: Contaminated land can, and in many cases should, continue to be used but the overall consideration is to prevent the contamination getting worse. <p>Reasons</p> <ol style="list-style-type: none"> 1. NZAS Ltd and H W Richardson Group support the provision. The latter however advised of its acceptance to delete the policy. 2. As discussed on page 4 of this Decision, the policy is unclear and overlooks the complexity of contaminants and the need for site specific assessment. Policy 6 sufficiently provides for management of contaminated land. 3. Contaminants vary widely in complexity; physical and chemical characteristics and the potential risk that they may pose to human health and the environment. The best practical means approach requires assessment on a case by case basis. 4. Consequential changes are required to other Plan provisions for consistency.

APPENDIX 1 - DECISIONS ON SUBMISSIONS

Submission	Decision
<p>13.13 - Z Energy Limited, BP Oil NZ Ltd, Mobil Oil NZ Ltd The submitter supports Policy 6 subject to an amendment. The submitter considers that the role of the Council in relation to the management of contaminated land is limited to human health effects.</p> <p><u>Decision Sought:</u> Amend Policy 6 as follows:</p> <p><u>With regard to human health effects, to determine appropriate management action...</u></p> <p>...</p> <p>4. The potential for adverse environmental or public health effects offsite or downstream..."</p>	<p>Decision 9/16 This submission is rejected.</p> <p>Amendments to District Plan Amend clause (F) in Policy 6 to read:</p> <p>(F) <i>The potential for <u>offsite or downstream</u> adverse <u>public health and other environmental or public health effects offsite or downstream.</u></i></p> <p>Reason As discussed on pages 3 - 4 of this Decision it is appropriate and valid under the RMA for the Council to have regard to more than effects on human health. A minor rewording made under Clause 16(2) of the First Schedule will however add clarity to the provision.</p>
<p>71.13 - NZAS Ltd The submitter supports Policy 6. Some of the submitter's wastes, that are not reused, are disposed of on site at their landfill which is controlled and monitored. Retain Policy 6.</p> <p>88.60 - Federated Farmers The submitter supports Policy 6 but questions the extent to which "likely future use of land" should be considered, particularly as Council will have clear ability to address issues upon any change of land use. Amend the wording of the policy as follows:</p> <p>To determine appropriate management action for contaminated land on the basis of:</p> <p>... (D) Existing and likely future use of the site and surrounding land use.</p>	<p>Decision 9/17</p> <ol style="list-style-type: none"> Submission 17.13 NZAS Ltd is noted. Submission 88.60 Federated Farmers is accepted in part. <p>Amendments to District Plan Amend Policy 6 as follows:</p> <p>(D) Existing and likely future <u>proposed</u> use of the site and surrounding land use.</p> <p>Reasons</p> <ol style="list-style-type: none"> NZAS Ltd supports the policy and does not seek any change to it. The amendment clarifies the intent of the policy.
2.5.4 Methods of Implementation	
<p>77.16 - Te Runaka o Waihopai and Te Runaka o Awarua The submitter supports the methods of implementation. Retain all.</p> <p>88.61 - Federated Farmers The submitter supports the methods of implementation. They consider that the best approach to dealing with contaminated land is through the provision of information to landowners and land occupiers. Adopt methods as notified.</p>	<p>Decision 9/18 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitters support the Plan provisions and do not seek any changes to them.</p>

APPENDIX 1 - DECISIONS ON SUBMISSIONS

Submission	Decision
2.14 Subdivision	
Policy 10 Contaminated Land	
<p>65.38 - ICC Environmental and Planning Services Support in part subject to amendment. This Policy should be reworded to be consistent in terminology with the other policies in the Plan.</p> <p><u>Decision Sought: Amend Policy 10 as follows:</u> “Subdivision design to have regard to any history of site contamination. To have regard to any history of site contamination as part of the subdivision process”</p>	<p>Decision 9/19 This submission is accepted.</p> <p>Amendments to District Plan Amend 2.14 Subdivision Policy 10 as follows: Subdivision design <u>To have regard to any history of site contamination as part of the subdivision process.</u></p> <p>Reason The change provides consistency with the wording of other Plan provisions.</p>
<p>77.43 - Te Runaka o Waihopai and Te Runaka o Awarua Support. Retain.</p> <p>88.13 - Federated Farmers Support. The submitter considers addressing any concerns regarding land contamination at the time of subdivision or a change in land use is a more useful approach than mapping potentially contaminated land where there are no identified adverse effects arising from the current land use. Adopt the Policy as proposed.</p>	<p>Decision 9/20 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitters support the policy and do not seek any changes to it. It should be noted however that as a consequence of Decision 9/19 the policy, but not its intent, is amended.</p>
SECTION 3.3 RULES	
<p>13.14 - Z Energy Limited, BP Oil NZ Ltd, Mobil Oil NZ Ltd and 24.60 South Port NZ Ltd The submitters support Rule 3.3. Retain the note.</p> <p>88.78 - Federated Farmers and 87.42 Transpower NZ Ltd The submitters support Rule 3.3. Adopt the rule as notified.</p>	<p>Decision 9/21 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitters support the rule and do not seek any changes to it.</p>
<p>117.4 - Southern District Health Board The submitter believes that the National Environmental Standard for Assessing</p>	<p>Decision 9/22 This submission is rejected.</p>

APPENDIX 1 - DECISIONS ON SUBMISSIONS

Submission	Decision
<p>and Managing Contaminants in Soil to protect Human Health 2011 should be cross referenced to Soil, Minerals and Earthworks.</p> <p><u>Decision Sought:</u> Cross reference the NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 to Soil, Minerals and Earthworks</p>	<p>Amendments to District Plan None required.</p> <p>Reason Section 3.3.1 advises plan users that the NES is included in Appendix XII of the Proposed Plan. Additional cross-referencing is not required here as well.</p>
SECTION FOUR DEFINITIONS	
<p>13.8 - Z Energy Limited, BP Oil NZ Ltd, Mobil Oil NZ Ltd The submitter supports the definition of “contaminated land” as notified. Retain without modifications,</p>	<p>Decision 9/23 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitter supports the definition and does not seek any changes to it.</p>
Appendix XII NES For Assessing and Managing Contaminants in Soil to Protect Human Health	
<p>13.15 - Z Energy Limited, BP Oil NZ Ltd, Mobil Oil NZ Ltd The submitter supports inclusion of the NES in Appendix XII. Retain.</p>	<p>Decision 9/24 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitter supports the provision and does not seek any changes to it.</p>
<p>65.126 - ICC Environmental and Planning Services The submitter considers that it would be useful to include the HAIL in the District Plan.</p> <p>FS2.47 - NZAS Ltd oppose Submission 65.126 The further submitter opposes the inclusion of the HAIL list within the District Plan as it is a “living document” that will be updated as further HAIL sites are identified. The further submitter considers that it would be impractical and unnecessary for the Proposed Plan to continually be updated to reflect any changes to the list.</p>	<p>Decision 9/25 This submission is rejected.</p> <p>Amendments to District Plan None required.</p> <p>Reasons The NES defines the “HAIL” as the current edition of the Hazardous Activities and Industries List published on the Ministry for the Environment’s website. This changes over time and as a consequence it is not appropriate to include the list in the Plan.</p>

APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

SECTION TWO – ISSUES, OBJECTIVES AND POLICIES

2.5 Contaminated Land¹

New Zealand has a legacy of land contamination that needs to be identified and addressed. This issue has been identified by the Ministry for the Environment as being one an issue of national importance. The Ministry has produced a list of Hazardous Activities and Industries (HAIL) likely to cause land contamination resulting from hazardous substance use, storage, or disposal.

Under Section 44A of the Resource Management Act 1991 the Council is required to implement the National Environmental Standard for Assessing and Managing Contaminants in the Soil to Protect Human Health which establishes obligations on land owners and regional and territorial authorities. The NES regulations apply when a person wants to do one of five activities described in Regulation 5 (2) to (6) of the NES, on a piece of land that has, currently or previously, had a HAIL activity or industry undertaken on it.

Under Section 31 of the RMA territorial authorities are required to:

- (A) Prevent or mitigate any adverse effects of the storage, use, disposal or transportation of hazardous substances, and
- (B) Prevent or mitigate any adverse effects of the subdivision, development or use of contaminated land.

There is a lack of information, and therefore monitoring and management, of contaminated land in Invercargill. Because of its history and role as a rural servicing city, every site that is being, or at some stage is likely to have been, used for anything other than residential activity, or most commercial activities is potentially a HAIL site. There will need to² be cooperation with Environment Southland over the collection and sharing of information on HAIL sites. Environment Southland also has discharge rules relating to land contamination.

2.5.1 Issues

The significant resource management issues for contaminated land:

1. Contaminated land that has not been adequately identified, assessed or managed may contribute to increased risk to community health and the environment.
2. Subdivision, ground disturbance,³ use and development of contaminated land can have adverse effects on human health.

2.5.2 Objectives

Objective 1: ~~Creation of new areas of contaminated land is avoided.~~⁴

¹ Decision 9/3 (unless otherwise stated)

² Decision 9/4

³ Decision 9/6

⁴ Decision 9/7

Note: Underline indicates additions, strikethrough indicates deletions.

APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

Objective 21: Land that is affected by soil contamination is identified, monitored and managed.

~~**Objective 3:** Further contamination of already contaminated land is avoided.~~⁵

Objective 2: The adverse effects of contamination on subdivision, use and development of contaminated land are remedied or mitigated.

2.5.3 Policies

Policy 1 Public awareness and information: To promote public awareness and⁶ understanding, and to make available to the public information on sites known to be associated with hazardous substances (SAHS).

Explanation: *The potential exists for contamination on any site where hazardous substances have been stored or used. In Invercargill, such sites may be identified either because:*

(A) *At some stage they have been used for an activity on the HAIL list published by the Ministry for the Environment, or*

(B) *The site has been specifically identified by Environment Southland as a site associated with hazardous substances (SAHS).*

~~*Where contamination exists, the best approach is normally to first contain it and second to carry out remedial work aimed at isolating the contamination from the ongoing use of the site. In most cases a practical solution is possible.*~~⁷
Development (or redevelopment) of a site normally involves shifting quantities of soil and digging holes which can expose the contamination. It is much easier to address contamination issues before development or redevelopment takes place. It is in everyone's interest that any contamination issues are known at the planning stage of any development.

Policy 2 Collaboration: To develop and maintain an integrated and collaborative approach among Central Government, regional and local authorities, landowners, developers and the community to the management of contaminated land.

Explanation: *An open sharing of information is the best way of ensuring that contamination issues are acknowledged and addressed.*

Policy 3 National Environmental Standard: To implement and require compliance with the provisions and requirements of the National Environmental Standard for Assessing and Managing Contaminants in ~~the~~ Soil to Protect Human Health 2011.⁸

Explanation: *The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 requires that if land is potentially contaminated it must be shown to be safe for its intended use,*

⁵ Decision 9/7

⁶ Decision 9/11

⁷ Decision 9/15

⁸ Decision 9/14

APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

subdivision or development. Detailed information about the nature and scope of any contamination on a particular site, and how that contamination is best addressed, is a necessary input into the planning of any development proposal.

Policy 4 ~~**On-site containment:** To favour on-site containment of contamination as part of a “best practical means” approach to addressing it unless the contaminated material can be removed to an accredited disposal facility capable of receiving the contaminated material.~~

~~**Explanation:** If contamination can be successfully contained and managed on-site it avoids the creation of another area of contamination elsewhere.~~⁹

Policy 5 **Human Health:** To manage the subdivision, land use and development of land that is potentially, or known to be, contaminated land so as to protect human health.

~~**Explanation:** Contaminated land can, and in many cases should, continue to be used but the overall consideration is to prevent the contamination getting worse.~~¹⁰ If land is contaminated or potentially contaminated then it must be shown to be safe for its intended use, subdivision and/or development.

Policy 6 **Management:** To determine appropriate management action for contaminated land on the basis of:

- (A) The type of contaminants involved.
- (B) The degree of contamination.
- (C) The availability and practicality or appropriate technology for monitoring or remediation.
- (D) Existing and ~~likely future~~ proposed¹¹ use of the site and surrounding land use.
- (E) National standards or guidelines.
- (F) The potential for offsite or downstream adverse public health and other environmental ~~or public health effects offsite or downstream.~~¹²

Explanation: *Management of contaminated land should be done on a site by site basis on the basis of nationally accepted good practice.*

2.5.4 Methods of Implementation

Method 1 Identification and documentation of known and potentially contaminated land, in collaboration with other relevant agencies, including Environment Southland.

Method 2 Advice to landowners and occupiers on information held by the Council.

⁹ Decision 9/15

¹⁰ Decision 9/15

¹¹ Decision 9/17

¹² Decision 9/16

APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

Method 3 Implementing regulatory methods required by the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011.¹³

2.7 Hazardous Substances:

Objective 2: Avoid creating new areas of contaminated land and further contamination of already contaminated land.¹⁴

2.14 Subdivision

Policy 10 Contaminated Land: ~~Subdivision design~~ To have regard to any history of site contamination as part of the subdivision process¹⁵

Explanation: *This is standard practice under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011.*

SECTION THREE - RULES

3.3 Contaminated Land

3.3.1 Note: All activities, including removing or replacing a fuel tank, soil sampling, soil disturbance, subdivision or change in land use, undertaken on a “piece of land”, are required under the RMA to comply with the requirements of Clause 8 of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 contained in Appendix XII. The National Environmental Standard sets out what can be undertaken as a permitted activity and where resource consent will be required.

Where the need for resource consent is triggered by the National Environmental Standard, any relevant matters should be addressed in the Assessment of Effects.

¹³ Minor amendment made under Clause 16(2) of the RMA First Schedule

¹⁴ Decision 9/7

¹⁵ Decision 9/19

Note: Underline indicates additions, strikethrough indicates deletions.