

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topic 038
Contaminated land**

July 2016

Report to Auckland Council - Hearing topic 038 Contaminated land

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1. Hearing topic overview

1.1. Topic description

Topic 038 addresses the regional plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent hearings Panel reference
038 Contaminated land	Chapter C Auckland wide objectives and policies C5.6 Contaminated land C5.8 Biosolids C5.10 Agrichemicals and vertebrate toxic agents C5.11 Rural production discharges	E30 Contaminated Land E32 Biosolids E34 Agrichemicals and vertebrate toxic agents E35 Rural production discharges
038 Contaminated land	Chapter H Auckland-wide rules H4.5 Contaminated land H4.7 Biosolids H4.9 Agrichemicals and vertebrate toxic agents H4.10 Rural production discharges	
038 Contaminated land	G2.5(5) Accidental discovery protocol	E11 Land Disturbance – District E12 Land disturbance – Regional

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

The Panel is generally supportive of the final form of the provisions agreed to by the Council and the various submitters in Topic 038, subject to additional amendments to:

- i. clarify the relationship of the contaminated land provisions with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health; and
- ii. to address the Panel's plan-wide approach to accidental discovery requirements.

1.3. Overview

By the close of the hearing there were only a limited number of relatively minor issues in Topic 038 that remained outstanding between the Council and submitters.

As set out in Council's closing remarks (19 June 2015), the Council reached agreement with a number of the network utility operators (Auckland Utility Operators Group, Transpower New Zealand Limited, the New Zealand Transport Agency, Auckland International Airport Limited, Ports of Auckland Limited) regarding the contaminated land provisions that affect their activities. The Council also generally reached agreement over the changes the Oil Companies (Z Energy Limited, BP Oil New Zealand Limited, Mobil Oil New Zealand Limited, Wiri Oil Services Limited) sought to the contaminated land provisions.

In terms of the biosolids provisions and the rural production discharges provisions, the parties were in general agreement with these provisions. There were no outstanding matters of any significance requiring further analysis or discussion.

As set out in Council's supplementary closing remarks (4 September 2015), following the close of the hearing the Council continued discussions with the Minister of Conservation, Horticulture New Zealand and Skyworks Helicopters to resolve outstanding issues relating to the agrichemicals and vertebrate toxic agent provisions. As a result of these discussions, the Council has reached agreement with the Minister and Horticulture New Zealand on all of the provisions and many of those of concern to Skyworks Helicopter. The Panel considers that not all the concerns raised by Mr Carkeek from Skyworks Helicopters can be addressed through the Plan provisions.

The Panel is generally supportive of the final form of the provisions agreed with the Council and the various submitters in Topic 038. However, as discussed in Section 2, the Panel is recommending some additional amendments to clarify the relationship of the contaminated land provisions and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health and to address the Panel's plan-wide approach to accidental discovery requirements.

1.4. Scope

The Panel considers that the recommendations in Section 1.2 above and the changes made to the provisions relating to this topic (see Section 1.1 above) are within scope of submissions.

For an explanation of the Panel's approach to scope see the Panel's Report to Auckland Council – Overview of recommendations July 2016.

1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed below in Section 4 Reference documents.

2. Contaminated land

2.1. Statement of issue

2.1.1. National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

There are no outstanding matters of any significance amongst the various parties relating to the contaminated land provisions. However, when deliberating the Panel identified the need to make a number of additional amendments to the provisions to clarify the relationship between the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) and the Plan provisions.

The amendments proposed by the Panel include changes to the Background section to clearly identify the activities subject to the NES and those subject to the Plan's provisions and changes to the standards to better align the thresholds adopted in the Plan with those in the NES.

2.1.2. Accidental discovery protocol

Mr Bayliss, the Council's planning witness, considered the location of the accidental discovery protocol provisions for contaminated land in Chapter G somewhat incongruous given the other content of Chapter G and proposed that the provisions be relocated to the contaminated land chapter. Mr Bayliss also proposed that the provisions be amended so as to be framed as a permitted activity control.

Relocating the accidental discovery protocol provisions to the contaminated land chapter of the Plan is not consistent with the Panel's proposed overall approach to the accidental discovery provisions. This is addressed further in Section 2.2.2 below.

2.2. Panel recommendation and reasons

2.2.1. National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

The Panel is recommending the additional amendments as discussed in Section 2.1.1 above to the contaminated land provisions to better define the relationship of the Plan provisions with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

The Panel does not consider these amendments to be out of scope. The amendments are required to improve the clarity and use of the Plan and there a number of submissions relating to the overall usability of the Plan and requesting the Panel improves the drafting of Plan provisions. The Panel has relied on these submissions in making its recommendations.

2.2.2. Accidental discovery provisions

The Panel does not support the inclusion of accidental discovery provisions in the contaminated land section. This is because the Panel is proposing that all accidental discovery provisions (human remains and kōiwi, archaeological sites, Māori cultural artefacts/taonga tuturu, protected New Zealand objects as defined in the Protected Objects Act 1975, contaminated land and lava caves) be included in the land disturbance sections.

The rationale for this is that land disturbance is the activity most likely to trigger the need to activate the accidental discovery provisions. This matter is addressed more fully in Topic 041 (see the Panel's Report to Auckland Council - Hearing topic 041 Earthworks and minerals July 2016).

The Panel agrees with Mr Bayliss that the accidental discovery provisions should be drafted as a standard, but is recommending that as a standard it should apply to all activities and not just permitted activities. While in many cases the conditions usually imposed on resource consent for earthworks will include accidental discovery provisions, these should also be a standard for all activities to avoid doubt.

3. Consequential changes

3.1. Changes to other parts of the plan

As a result of the Panel's recommendations on this topic, there are consequential changes to other parts of the Plan as listed below.

- i. Inclusion of contaminated land matters in the accidental discovery rule in the land disturbance sections E11 Land disturbance – Regional and E12 Land Disturbance - District.

3.2. Changes to provisions in this topic

There are no changes to provisions in this topic as a result of the Panel's recommendations on other hearing topics.

4. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website (www.aupihp.govt.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

4.1. General topic documents

Panel documents

[038-Submission Point Pathway Report - 26 February 2015](#)

[038-Parties and Issues Report - 17 April 2015](#)

[038 - Mediation Joint Statement - Session 1 & 2 \(8-9 April 2015\)](#)

038 - Mediation Joint Statement - Session 4 (13 April 2015)

038 - Mediation Joint Statement - Session 5 (14 April 2015)

038 - Mediation Joint Statement - Session 6 (14 April 2015)

Auckland Council closing statement

Hearing Evidence - Closing Remarks - Appendix Chapters C5 6H4 5 (21 June 2015)

038 Hrg - Auckland Council - Supplementary Closing Remarks - Appendix (draft provisions post-hearing) (4 September 2015)

4.2. Specific evidence

Auckland Council

Hearing Evidence - Ian Bayliss (Contaminated Land) - LATE (26 April 2015)

Hearing Evidence - Ian Bayliss (Contaminated Land) - REBUTTAL (18 May 2015)