



## 5.1 Issues

### What is a Contaminated Site?

A contaminated site is:

**“A site at which hazardous substances occur at concentrations above background levels and where assessment indicates it poses or is likely to pose an immediate or long term hazard to human health or the environment”.**

Contamination can occur as a result of industrial, agricultural, or commercial activities, by accident and at sites used for the processing, storage or disposal of hazardous substances or hazardous wastes.

The environmental effects associated with contaminated sites include discharges to the surrounding air, land or water environments, and the effects these have on human health, structures and ecosystems. Pathways for the transfer of contaminants from contaminated sites include:

- ▶ Leaching into groundwater
- ▶ Surface runoff into streams
- ▶ Wind blown dust
- ▶ Ingestion of soil by children or animals
- ▶ Growing food crops in contaminated soil

### Contaminated Sites in the Gisborne Region

In 1992 the Gisborne District Council reviewed the state of contamination in the Gisborne Region. The study identified 368 sites existed within the Gisborne Region which could be contaminated, ranging from former landfill and gasworks sites through to oil depots. Further assessments and reviews have determined that in 1998 over 700 sites are or have been used for the handling of hazardous substances. Furthermore sites which have been confirmed as being contaminated have been mapped as a contaminated site in the District Plan.

Gisborne District Council has also undertaken or commissioned the following works that specifically relate to contaminated sites within the Region:

- ▶ An investigation of sites used in the handling of hazardous substances in the Region and review the scale of any possible contamination.
- ▶ Followed up the initial investigations with a more in depth study on those sites which could pose a risk to human health and the environment.
- ▶ Initiated a chemical collection operation for unwanted/used chemicals.
- ▶ Requested site owners and/or polluters to undertake full site investigations on known contaminated sites.
- ▶ The publication of cleaner production educational material and offered advice to site owners/occupiers/polluters on contaminated sites.

### **Liability for Contaminated Sites**

Determining who is liable for a contaminated site is an issue that is not fully clear. Statutes which assist in clarifying where liability falls with regard to contaminated sites are:

- ▶ The Resource Management Act 1991.
- ▶ The Health Act 1956.
- ▶ The Hazardous Substances and New Organisms Act 1996.

These Acts have the following implications for contaminated site liability:

#### **The Resource Management Act 1991**

The RMA is the primary Act to be used in determining liability and the necessary action to be taken under this plan. The RMA states that no person may discharge contaminants to land air or water unless the discharge is expressly allowed by a rule in a regional plan, a resource consent or regulations (section 15). The Act imposes a strict liability regime (section 341) for any environmental damage caused by a discharge. Under the enforcement provisions of the RMA (section 314), action can be brought against the polluter, as well as the owner and/or occupier of the land by way of either an enforcement order or an abatement notice (section 340) (Christensen et.al 1997<sup>2</sup>).

#### **The Health Act 1956**

Liability provisions for contaminated sites exist within the Health Act 1956. Under the Health Act the owner and the occupier can be required by the District Court to abate a nuisance (section 33). A nuisance is defined as including any accumulation or deposit in such a state as to be offensive or likely to be injurious to health. Under section 33 the local authority or Medical Officer of Health can clean up or arrange the clean up of the site at the expense of the owner and the occupier who are held to be jointly and severally liable for the cost of clean up.

#### **The Hazardous Substances and New Organisms Act 1996**

The HSNO Act establishes a strict liability regime (section 117). Whereby any person whom knowingly and intentionally disposes of hazardous substances (section 109: Offences) in contravention of the HSNO Act causing a contaminated site after 1996, is liable for that contamination.

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<sup>2</sup> Christensen, Partner & Chesterman. 1998 Contaminated Sites – Clean up of the Law Needed? Russell McVeagh McKenzie Bartleet & Co Auckland New Zealand.

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### **The Australian and New Zealand Environment and Conservation Council Guidelines (1992)**

The Australian and New Zealand Environment and Conservation Council guidelines, (or ANZECC). Guidelines are referred to substantially in the contaminated sites chapter of this Plan. The main purpose of the ANZECC guidelines is to provide a framework for the proper assessment and management of contaminated sites. The guidelines aim to inform and educate government, industry and the general community about the issues and factors to be considered in the assessment and management of contaminated land.<sup>3</sup>

### **Database of known Contaminated Sites**

The use of a database for recording contaminated sites is seen as a useful mechanism with which to facilitate the management of these sites. A database enables the Gisborne District Council to meet its obligations under the RMA and Local Government Official Information and Meetings Act to provide accurate and timely information on the status of contaminated land in response to queries from public about specified locations.

The database enables the Council to appreciate the size of the overall problem. The database of known contaminated sites contains sites that have been confirmed contaminated. Some of these have had, or are currently undergoing remediation work. This information about the specific sites enables the Council to work with responsible parties on strategies for each site.

The database of known contaminated sites will be used in conjunction with the Hazardous Substance Site Register<sup>4</sup>, to identify sites that need be assessed for potential contamination.

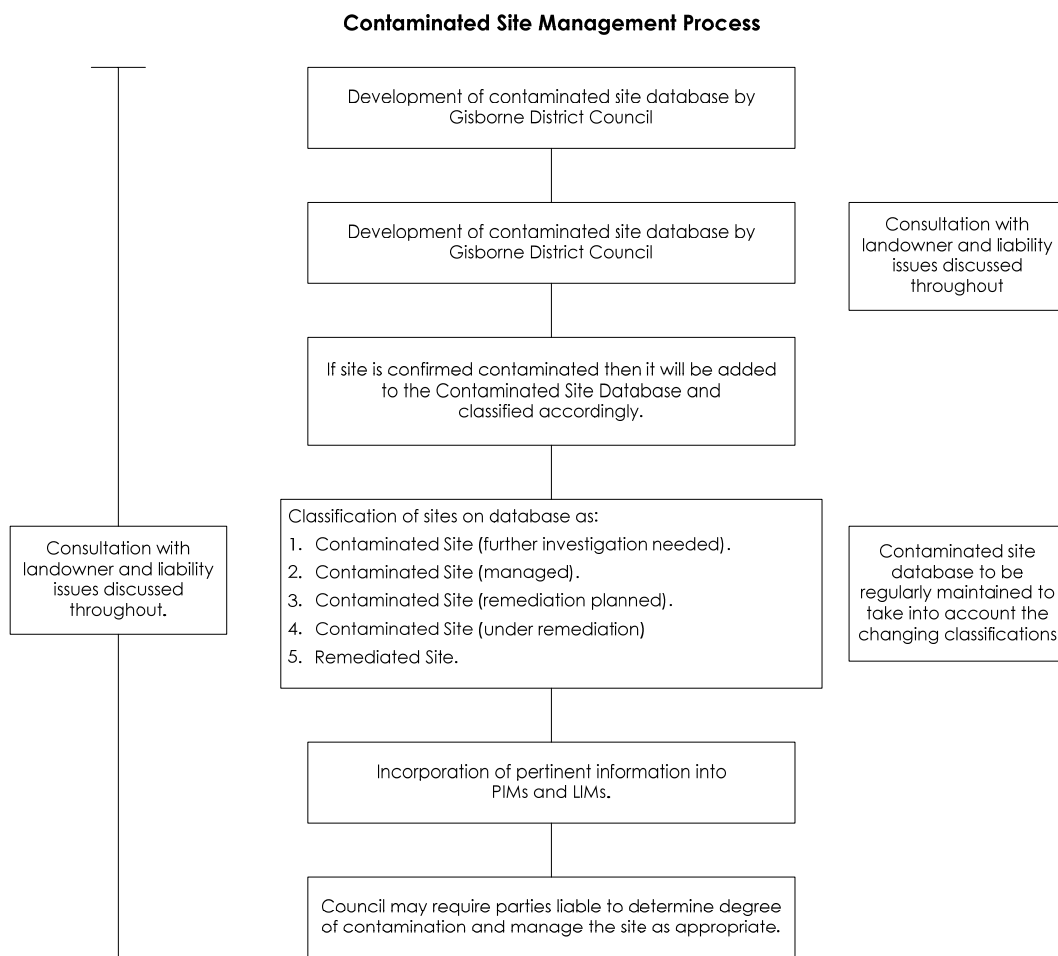
### **Management of Contaminated Sites under This Plan**

This chapter describes a process by which the Gisborne District Council can approach contaminated site management in a practical manner. The following chart explains how the methods form a process to facilitate the management of contaminated sites and the relevant issues, by Council.

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<sup>3</sup> Australian and New Zealand Environment and Conservation Council (ANZECC), 1992. Australian and New Zealand Guidelines for the Assessment and Management of Contaminated sites. Australian and New Zealand Environmental and Conservation Council National Health and Medical Research Council.

<sup>4</sup> Section 4.3.2 of this Plan.



## 5.2 Issues

1. There remain a number of sites within the Gisborne Region where hazardous substances have been used where the degree of contamination, if any, has yet to be confirmed. Studies by Council have indicated that there may be still a number of unidentified sites contaminated with hazardous substances within the Region. While sites remain unidentified council cannot fully appreciate the extent of the actual or potential problems associated with contaminated sites.
2. Contaminated Sites May Cause Adverse Effects on the Environment and Human Health  
Contaminated sites can discharge contaminants into land, water and air in the region. They can contaminate soils, pollute surface water and groundwater and have impacts on human health, ecosystems and structures.
3. There has been no formal strategy for identifying, managing and remediating contaminated sites in the Gisborne Region. The lack of a formal and public strategy for identifying, managing and remediating contaminated sites means that contaminated sites are unable to be dealt with in a transparent efficient and effective manner.

## 5.3 Objectives

See Chapter 9.A of the Combined District Plan.

1. To reduce the risk posed by contaminated sites to human and environmental health. The objective seeks to render all sites acceptable and safe for the long term continuation of their existing use, mitigate or remedy the environmental and health risks both on and off the site, and to maximise to the extent practicable the future options of the site.
2. To identify all contaminated sites within the Gisborne Region  
Once all contaminated sites are identified then Council will have an enhanced ability to manage (including remediation where appropriate) sites.
3. Minimise the risk of any further sites within the Gisborne Region becoming contaminated from the disposal of contaminated material from one site onto or into another site. This objective seeks to avoid or minimise the creation of contaminated sites that may arise from existing contaminated sites throughout the Region.

## 5.4 Policies

1. The Gisborne District Council will require management of the Region's contaminated sites in a manner that best reflects the characteristics of that contaminated site, and appropriately avoids, remedies or mitigates any adverse effects.

### **Explanation and Principal Reason**

Each contaminated site has different characteristics therefore discharge characteristics will be unique to each site. As a result each contaminated site should be managed in a way that reflects the specific nature of the contaminated site, and best avoids, mitigates or remedies adverse environmental effects.

2. The consent authority will have particular regard to the nature of the receiving environment when assessing applications for consent to discharge contaminants from contaminated sites or from remediation trials to land or water. In particular consideration will be given to the following:
  - a) The hydro-geological conditions at or near the site.
  - b) Any values placed on the site by tangata whenua.
  - c) Any uses or values of the site and surrounding area.
  - d) Any areas of significant indigenous vegetation and significant habitats of indigenous fauna.
  - e) The margins of lakes, rivers, wetlands and the coast.
  - f) Classification of receiving waters pursuant to section 69 of the Resource Management Act and/or any Transitional, Proposed, Notified or Operative Regional Plan.

### Principal Reason

This policy contains criteria against which applications for discharges will be considered. It allows the specific components of a proposal to be considered in relation to the particular characteristics of the site.

The criteria are considered to be those needed to address the issues in a way that is consistent with the Act, the New Zealand Coastal Policy Statement, the Gisborne District Regional Policy Statement and Proposed Gisborne District Regional Coastal Environment Plan. The nature of the receiving environment is important when determining the adverse effects that may arise from a discharge, especially in consideration of section 70 of the RMA.

3. The consent authority will have particular regard to any adverse effects arising from the discharge, when assessing applications for consent to discharge contaminants from contaminated sites or from remediation trials to land, or water, paying particular consideration to:
  - a) The nature of the contaminants being discharged.
  - b) Any actual or potential adverse effects on ground, surface and coastal waters (excluding the Coastal Marine Area).
  - c) The potential for any long term contamination or other long term and cumulative adverse effects arising from the discharge.
  - d) Any steps taken, or planned, to reduce the quantity of contaminants discharged, or to otherwise avoid, remedy or mitigate any adverse effects of the discharge.

Principal Reason

This policy contains criteria against which applications for discharges will be considered. It allows the specific components of a proposal to be considered in relation to the particular characteristics of the discharge. The criteria are considered to be those needed to address the issues in a way that is consistent with the Act, New Zealand Coastal Policy Statement and the Regional Policy Statement.

4. The consent authority will have particular regard to the ANZECC guidelines and may consider any other suitable guidelines when assessing applications for consent to discharge contaminants from contaminated sites, or from remediation trials to land or water.

Principal Reason

The ANZECC guidelines are the most recent and comprehensive guidance available to Council at present on the treatment of contaminated sites. Other national guidelines may also be appropriate for specific situations, such as the 'Draft Health and Environmental Guidelines for Selected Timber treatment Chemicals' (MFE 1993), the Guidelines for the Assessment of the Management of Petroleum Hydrocarbon Contaminated Sites, and others. Use of suitable guidelines will aid the Council in carrying out their statutory requirements more effectively.

5. To promote and where necessary require the adoption of management practices, through resource consent conditions, that avoid or mitigate the potential for further contamination from contaminated sites.

Principal Reason

By minimising the risk of contamination in future by adopting good management practices is an essential part of achieving the objective. Preventing contamination is more efficient and effective than remediation of contaminated sites in the future.

## **5.5 Methods of Implementation**

### **RESEARCH, EDUCATION and ADVOCACY**

1. The Council will work with National agencies, other Regional Councils and Territorial Local Authorities, and other organisations to develop appropriate contaminated site investigation, risk assessment remediation and management strategies.

2. The Council will encourage and provide for education opportunities for industry and communities and disseminate information on contaminated sites.

#### Principal Reason (5.5.1 and 5.5.2)

As contaminated sites are a national issue it is sensible for Council, and the Gisborne Region as a whole, to benefit from the growing body of knowledge about them. Knowledge is necessary in order to gain community support for the Councils measures outlined in the Plan. This will also help prevent new contaminated sites from occurring.

3. The Council will carry out research in conjunction with industry and communities to develop, implement and maintain records of contaminated sites that identify, evaluate and prioritise sites confirmed contaminated in the Region, and will involve appropriate landowners accordingly.

#### Principal Reason

The contaminated site register will enable the Council to appreciate the size of the overall problem. The information about the specific sites will enable the council to work with responsible parties on strategies for each site. The register contains those sites that, through preliminary investigations, are proven to be contaminated.

4. The Council will carry out preliminary investigations of sites on the Hazardous Substances Site Register to determine if they are contaminated sites. This may include taking soil, water (ground, surface and/or coastal) samples. This will commence with sites of the greatest concern.

#### Principal Reason

Preliminary investigations will determine if there are any contaminants present at the site, and the need for further investigation.

5. If a contaminated site is confirmed as a result of the preliminary investigation, the site will be added to the contaminated site database, after due consultation with the owner/occupier and classified according to its contamination/remediation status.

#### Principal Reason

Once sites are proven contaminated they should be classified as such so that their classification actively reflects their status.

6. All site investigations will be carried out using appropriate techniques and by appropriately trained and experienced staff.

Principal Reason

Ensuring that appropriate techniques are used will mean that the testing carried out will be in a manner that is best suited for the type of site (i.e. Draft Health and Environmental Guidelines for Selected Timber Treatment Chemicals (Ministry for the Environment 1993)), and will be robust enough to provide certainty in their results. Where there are no applicable guidelines, standard practice for assessment will be used, by Council staff proficient in carrying these out.

7. The Council will classify the sites in the contaminated site database in accordance with the investigation/remediation status of each site. Sites will be classified into one of the following five categories, depending on their status:
  1. Contaminated Site (further investigation needed)
  2. Contaminated Site (managed)
  3. Contaminated Site (remediation planned)
  4. Contaminated Site (under remediation)
  5. Remediated Site

Principal Reason

The purpose of classifying sites is to ensure that sites are picked up during consent applications, and to provide a label to put in a LIM or PIM. These classifications are explained in full in Appendix 4 of this plan. The classification and position of a contaminated site on the register, should describe its contamination or remediation status.

8. The contaminated site database will be maintained regularly to ensure that the changes in the status/classification of the sites contained in the database are recorded and that the database is always up to date.

Principal Reason

Analysis of legal liability issues associated with contaminated site information has highlighted the need for the District Council to ensure that the information contained in the register is accurate and maintained regularly.

9. Pertinent information contained in the contaminated site database will be incorporated into Project and Land Information Memoranda systems.

Principal Reason

Occupiers of sites and possible purchasers of them need access to information about contamination that may relate to previous occupants. Information will only be released to external individuals or agencies in response to written and signed information requests. Description of location should be comprehensive to ensure that the correct information is supplied. This information will be released with due regard for the Local Government Official Information and Meetings Act 1987 (LGOIMA) and Privacy Act 1993. The Privacy Act applies to any request by an individual for personal information concerning them. LGOIMA applies to all other requests for information.

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## **LIABILITY and REMEDIATION**

10. Where liability for a contaminated site is unclear the Council may use those methods most legally relevant, in assisting current owners/occupiers to identify those parties responsible for their contamination.

### Principal Reason

Responsibility for contaminated sites is primarily with the site owners, this being consistent with the liability provisions for contaminated sites in the RMA (s314), the Health Act 1956 (s33), the Hazardous Substances and New Organisms Act 1996 and the assumptions of liability for discharges of contaminants under the RMA. A more flexible approach will be adopted for sites where liability is more complex to reflect 'natural justice'.

11. Council may require parties liable for a contaminated site, to determine the degree of contamination and the environmental effects and risks of discharges, in accordance with the ANZECC Guidelines, or any other relevant guidelines. If necessary, parties liable become responsible for the remediation of sites to levels specified by Council.

### Principal Reason

The ANZECC guidelines are a comprehensive and recognised guide to identifying, investigating and remediating contaminated sites. Where the parties do not investigate and report on contaminated sites voluntarily, Council may need to commence the investigation to decide what further steps are required. If liable parties do not choose to clean up sites that are causing adverse impacts upon the environment or human health, then it may be necessary for Council to require enforcement action to be taken.

## **PLANNING MECHANISMS**

12. Council will manage the use of contaminated or remediated sites under the District Plan. Once a contaminated site has been identified then Council will determine the classes of use suitable for that site and ensure that the site is appropriately provided for in the District Plan.

### Principal Reason

Contaminated sites can pose serious health risks for people entering them and especially if they come in contact with soil. For instance residential or recreational use can be particularly unsuitable, to sites remediated to levels consistent with industrial zoning standards.

13. The discharge of contaminants from contaminated sites will be regulated through rules in this plan.

### Principal Reason

Under the Resource Management Act 1991 such discharges should either be eliminated or the effects avoided remedied or mitigated. Consent is necessary to impose limits and on-going monitoring requirements.

## **5.6 Rules for Contaminated Sites**

### **Discretionary Activity**

#### **Rule 5.6.1 Discharges from contaminated sites**

Discharges of contaminants from contaminated sites, including those that arise from remediation activities, to land or water shall be discretionary activities.

**Note:** Refer policies 5.4.3 and 5.4.4.

#### Principal Reason for Rule 5.6.1

Contaminated sites vary in the nature of their discharges. Remediation techniques are evolving all the time and their impacts are largely unknown. These rules apply a precautionary principle in allowing all such situations to be assessed on their merits, in the light of Council's policies.