

Proposed Selwyn District Plan



Right of Reply Report

Contaminated Land and Hazardous Substances

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1. Purpose of Report

- 1.1 The purpose of this report is to respond to the questions raised by the Hearings Panel during Hearing 6: Contaminated Land and Hazardous Substances, and for the Officer to propose any further amendments to the notified version of the Proposed District Plan above those recommended in the Officer's original s42a report.

2. Hearing Panel's Questions to the s42a Reporting Officer and their Response

- 2.1 The following questions were received from the Hearings Panel in relation to the s42a report and the submitter evidence.
- 2.2 On review of the submitter's evidence and the matters raised within the Hearing, amendments to the proposed provisions are recommended. For a full summary of all proposed amendments to provisions see **Appendix 2**.

[1] If the Panel are to agree that issues of biosecurity are to be addressed in the Hazardous Substances Chapter, in order to make this clearer, can you please advise if there is any reason why the Hazardous Substances Chapter cannot be renamed "Hazardous Substances and Biosecurity" (i.e. due to Planning Standards requirements)?

- 2.3 Having reviewed Standard 7. District-wide Matters of the National Planning Standards, I now consider that the mandatory direction about the matters that must be located in the Hazardous substances chapter do not support the inclusion of provisions related to biosecurity matters. However, the Standard does provide for additional chapters to address other hazards and risks, to be included alphabetically under the *Hazards and Risks* heading.
- 2.4 As such, I consider that it is more appropriate to incorporate a new chapter into the PDP, rather than change the name of the Hazardous Substances chapter. As such, I recommend that all of the relevant provisions relating to biosecurity matters proposed in the s42a report, the Officer's Response to Panel's Questions, and in this report (as discussed below), be moved into a new chapter within the Hazards and Risk section of the PDP called BIOS – Biosecurity, as set out in **Appendix 1**.
- 2.5 I note here that in my cursory investigations of other District Plans around the country I found that, where biosecurity matters have been included, they are generally provided for in either a rural¹ or earthworks² chapter. As discussed in paragraph 8.55 of the s42a report, as the relief sought is more than earthworks, and could be required in more than the rural environment, I do not consider that is appropriate, hence the recommendation that these matters be addressed in the Hazardous Substances chapter. However, as discussed above, on further reflection, I now consider that it is more appropriate that these provisions be contained in their own chapter. I note that the size of the chapter is consistent with that of the Contaminated Land chapter.

¹ Opotiki District Plan 2021 Chapter 8 Rural Zones

<https://www.odc.govt.nz/repository/libraries/id:2bpcqtp1b1cxby3k9b0b/hierarchy/sitecollectiondocuments/our-council/policies-plans-bylaws/operative-district-plan/Chapters%202021/Chapter%2008%20-%20Rural%20Zone>

² Dunedin 2GP Chapter 8A Earthworks Appeals Version)

<https://2gp.dunedin.govt.nz/plan/pages/plan/book.aspx?exhibit=DCC2GP&hid=35259&s=Biosecurity>

- 2.6 Scope is provided for this proposed amendment through the submission of HortNZ (DPR-0353), specifically Section 13.3 seeking “*all consequential amendments required to address the concerns raised in this submission and ensure a coherent, robust and fair plan*”. Additional scope can be found in the Statement of Evidence provided by Lynette Wharfe for HortNZ, specifically paragraph 8.15 (b)
- 2.7 No further s32aa assessment is deemed necessary beyond that which was provided in the s42a report.
- 2.8 I do note that advice was sought from the Ministry for the Environment in relation to this matter, however no response has been received.

[2] In addition to your recommended amendments (including those contained in your Response to Panel’s Questions) regarding the management of biosecurity risk, can you please provide draft wording for:

- a. **The inclusion of an additional sentence in the Overview relating to the management of biosecurity risk; and**
 - b. **The inclusion of a new objective specifically relating to biosecurity, such as that proposed in the evidence of Lynette Wharf (at her paragraph 8.17).**
- 2.9 Having regard to the recommendation in paragraph 2.4 above to incorporate a new chapter to address biosecurity matters, the following text is recommended to be included in the Overview for the chapter relating to the management of biosecurity risk within the PDP:

BIOS-Overview

In the event of a biosecurity incursion, where material such as flora or fauna is infected by an unwanted organism, there is a need to respond rapidly. Responses may include earthworks for burying infected material or clearance of infected vegetation so as to stop the destruction and spread of materials from the unwanted organism.

The provisions of this chapter recognise the urgency required in the event of a biosecurity emergency as declared either in accordance with the Biosecurity Act 1993 or by a Ministry of Primary Industries Chief Technical Officer.

- 2.10 In response to the s42a report, the Statement of Evidence provided by Lynette Wharfe for HortNZ, provided the following objective for consideration:

“Take an integrated management approach to managing activities to ensure that biosecurity risks and incursions of unwanted organisms do not adversely affect the efficient use of land and resources in the district.”

- 2.11 Having considered this objective, and the Drafting Protocol adopted in respect of the PDP, I consider that a more appropriate objective is as follows:

“Land and resources in the district are protected from the adverse effects of materials infected by unwanted organisms.”

- 2.12 I consider that the s32AA evaluation provided in the s42A report is sufficient to include the recommended objective above.

2.13 Scope for these proposed amendments is provided through the original submission of HortNZ (DPR-0353), specifically:

- Section 10, paragraph 8 – “... *exclusions be provided for within the policy and planning framework which allow for the clearance of any vegetation (including indigenous and that of significance) in the event of a biosecurity emergency declared under the Biosecurity Act or by a declaration of a Chief Technical Officer*”;
- Section 13, bullet point 7 – “*Provisions that enable a rapid response to biosecurity incursions*”; and
- Section 13.3 – “*All consequential amendments required to address the concerns raised in this submission and ensure a coherent, robust and fair plan*”.

2.14 Forest & Bird made a further submission in opposition to the submission of HortNZ seeking the inclusion of provisions related to biosecurity matters. They considered that there were no reasonable grounds for indigenous vegetation clearance to be permitted to enable the disposal of infected material. They further considered that disposal in an SNA was inappropriate and that permitting clearance could in itself be problematic as this may cause the spread of the disease, such as with Kauri dieback disease in the upper North Island for example.

2.15 I consider that the suite of provisions as proposed in the s42a report, the Officer’s Response to Panel’s Questions, and in this report, adequately address the concerns of Forest & Bird.

[3] Can you please confirm the reason for your latest recommended amendments to EIB-R1.6(g), as shown in your attachment to the Officer’s Response to Questions from the Hearings Panel?

2.16 The latest amendment to EIB-R1.6(g) has been proposed to clarify and strengthen the provision, which was proposed as a consequential amendment in response to the HortNZ submission point³.

2.17 Following discussions with the relevant topic leads in response to the Questions from the Hearing Panel, it was considered that as originally proposed, the wording could be misconstrued to permit the clearance of any indigenous vegetation necessary for the clearance of materials infected by unwanted organisms. Therefore, it could be construed that, should a track be required to access infected materials that might pass through an area of indigenous vegetation that was not infected, this could also be cleared, in order to access the infected material.

2.18 The amendment proposed in the Response to Questions from the Hearing Panel seeks to clarify that it is only indigenous vegetation that is infected by unwanted organisms that is permitted to be cleared. EIB-R1.6(g), as amended, would therefore read as:

*g. indigenous vegetation clearance **that is** clearance of material infected by unwanted organisms*

2.19 Scope is provided for this proposed amendment through the submission of HortNZ (DPR-0353), specifically Section 13.3 seeking “*all consequential amendments required to address the concerns raised in this submission and ensure a coherent, robust and fair plan*”.

³ DPR-0353.119

3. Conclusion

- 3.1 For the reasons included throughout this report, I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA.

Appendix 1: Recommended amendments

Original amendments were identified by way of underline or strikethrough. Double underlining has been used to identify defined terms that were proposed in the s42A report.

Additional amendments proposed in response to the Hearing Panels questions continue the above identification but are also shown in [blue text](#).

Additional amendments proposed in this Right of Reply report are **highlighted in yellow** and underlining or strikethrough is used where appropriate.

Definitions

Definitions	
POTENTIALLY CONTAMINATED LAND⁴	That part of a site where: a. an activity or industry described in Schedule 3 of the Canterbury Land and Water Regional Plan that has or is likely to be undertaken or is currently being undertaken; and b. where no detailed site investigation has been completed and reported, which shows that any contaminants within or on the site are at, or below, background concentrations.
<u>MATERIAL INFECTED BY UNWANTED ORGANISMS</u>⁵	<u>means material infected by unwanted organisms as declared by MPI Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993.</u>

⁴ DPR-0171.001 Eliot Sinclair; DPR-0353.065 HortNZ and DPR-0422.072 NCCF

⁵ DPR-0353.111 HortNZ

Hazardous Substances

HAZS-Rules		
HAZS-R1	Use and/or Storage of Hazardous <u>Hazardous</u> ⁶ Substances, excluding a Major Hazard Facility	
HAZS-R2	Major Hazard Facility	
All Zones <u>GIZ</u> <u>DPZ</u> ⁷	Activity Status: DIS 1. Major hazard facility. Where: a. The facility is within the GIZ or DPZ	Activity status when compliance not achieved: <u>N/A</u> When compliance with HAZS-R2.1.a is not achieved: NC
All zones except <u>GIZ</u> <u>DPZ</u>	Activity Status: <u>NC</u> 2. <u>Major hazard facility.</u>	Activity status when compliance not achieved: <u>N/A</u>

⁶ Clause 16(2) amendment to correct spelling error

⁷ DPR-0370.049 Fonterra

Biosecurity

BIOS-Overview

In the event of a biosecurity incursion, where material such as flora or fauna is infected by an unwanted organism, there is a need to respond rapidly. Responses may include earthworks for burying infected material or clearance of infected vegetation so as to stop the spread of and destruction from the unwanted organism.

The provisions of this chapter recognise the urgency required in the event of a biosecurity emergency as declared either in accordance with the Biosecurity Act 1993 or by a Ministry of Primary Industries Chief Technical Officer.

HAZSBIOS-Objectives

HAZS-P4BIOS-O1⁸	Land and resources in the district are protected from the adverse effects of <u>materials infected by unwanted organisms.</u>
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HAZSBIOS -Policies

HAZS-P5BIOS-P1⁹	<u>Enable the removal and destruction of material infected by unwanted organisms that are being managed as part of Bbiosecurity response under the Biosecurity Act 1993.</u>
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[Grammatical amendment proposed to removed inappropriate capitalization]

⁸ DPR-0353.117 HortNZ

⁹ DPR-0353.117 HortNZ

HAZS BIOS-Rules	
HAZS-R4 BIOS-R1 ¹⁰	Materials Infected by Unwanted Organisms
All Zones	<div> <p>Activity Status: PER</p> <p><u>1. Earthworks necessary for the burying of material infected by unwanted organisms.</u></p> <p>Where:</p> <p><u>a.-The earthworks:</u></p> <ul style="list-style-type: none"> <u>i. do not involve indigenous vegetation clearance;</u> <u>ii. are outside of an area identified in SASM-SCHED1;</u> <u>iii.. are outside of the Coastal Environment Overlay;</u> <u>iv. are outside of the Significant Natural Areas Overlay; and</u> <p><u>b. Within 5 working days of the completion of the works, the Council’s Chief Executive is notified in writing by the landowner or their representative of:</u></p> <ul style="list-style-type: none"> <u>i. the specific location and extent of any earthworks necessary of the burying of material infected by unwanted organisms;</u> <u>ii. the nature of the material infected by unwanted organisms; and</u> <u>iii. any ongoing management requirements.</u> <p>And where the activity complies with the following rule requirements:</p> <p><u>NH-REQ4 Natural Hazards and Earthworks</u></p> <p><u>NFL-REQ9 Volume and Area of Earthworks</u></p> <p><u>NATC-REQ1 Setback from Surface Water Bodies – Earthworks and Earthworks Stockpiles</u></p> </div> <div> <p>Activity status when compliance not achieved:</p> <p><u>2. When compliance with HAZS-R4 BIOS-R1.1.a.i is not achieved: DIS</u></p> <p><u>3. When compliance with HAZS-R4 BIOS-R1.1.ba.ii is not achieved: Refer to SASM-R2</u></p> <p><u>4. When compliance with HAZS-R4 BIOS-R1.1.ca.iii is not achieved: Refer to CE-R5</u></p> <p><u>4.5. When compliance with HAZS-R4 BIOS-R1.1.ca.iv is not achieved: Refer to EIB-R2</u></p> <p><u>5.6. When compliance with any rule requirement listed in this rule is not achieved: Refer to NH-Rule Requirements the relevant rule requirement</u></p> </div>

¹⁰ DPR-0353.119 HortNZ

All Zones	<p>Activity status: PER</p> <p><u>47. Vegetation clearance necessary for the clearance of material infected by unwanted organisms</u></p> <p>Where:</p> <p><u>a. The activity does not involve indigenous vegetation clearance.</u></p>	<p>Activity status when compliance not achieved:</p> <p><u>58. When compliance with HAZS-R4.1 BIOS-R1.7.a is not achieved: Refer EIB-R1</u></p>
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Consequential Amendments – EIB-R1		
EIB-R1	Indigenous Vegetation Clearance and Earthworks	
CMUZ DPZ GRAZ GIZ KNOZ PORTZ RESZ TEZ SKIZ	<p>Activity Status: PER</p> <p>1. Indigenous vegetation clearance</p> <p>Where:</p> <p>...</p> <p><u>e. the indigenous vegetation clearance is necessary for the clearance of material infected by unwanted organisms¹¹</u></p>	...
GRUZ MPZ EIB Management Overlay	<p>Activity status: PER</p> <p>4. Indigenous vegetation clearance</p> <p>Where:</p> <p>The works are:</p> <p>...</p>	...

¹¹ Consequential Amendments following DPR-0353.0119 HortNZ

	k. necessary in the course of removing pest plants and pest animals in accordance with any regional pest management plan, the Biosecurity Act 1993 or <u>for the clearance of material infected by unwanted organisms</u> ¹² .	
EIB Significant Natural Areas Overlay	<p>Activity status: PER</p> <p>6. Indigenous vegetation clearance within a Significant Natural Area identified on the Planning Maps and listed in EIB-SCHED4</p> <p>Where:</p> <p>The works are:</p> <p><u>g. indigenous vegetation clearance that is necessary for the clearance of material infected by unwanted organisms</u>¹³</p>	...

¹² Consequential Amendments following DPR-0353.0119 HortNZ

¹³ Consequential Amendments following DPR-0353.0119 HortNZ