

Te Tai o Poutini Plan
Section 42A Officer's Report
Hazardous Substances and
Contaminated Land



Te Tai o Poutini
PLAN

A combined district plan for the West Coast

Table of Contents

LIST OF SUBMITTERS AND FURTHER SUBMITTERS ADDRESSED IN THIS REPORT	3
ABBREVIATIONS	4
1.0 PURPOSE OF REPORT	4
2.0 QUALIFICATIONS AND EXPERIENCE	5
2.1 CODE OF CONDUCT	5
2.2 CONFLICT OF INTEREST	5
3.0 SCOPE OF REPORT AND TOPIC OVERVIEW	5
4.0 STATUTORY REQUIREMENTS	6
4.1 RESOURCE MANAGEMENT ACT	6
4.2 NATIONAL PLANNING STANDARDS	6
4.3 PROCEDURAL MATTERS	6
5.0 CONSIDERATION OF SUBMISSIONS RECEIVED	7
5.1 OVERVIEW OF SUBMISSIONS RECEIVED	7
5.2 STRUCTURE OF THIS REPORT	7
6.0 SUBMISSIONS ON THE CONTAMINATED LAND CHAPTER AS A WHOLE	7
7.0 SUBMISSIONS ON CONTAMINATED LAND OBJECTIVES	8
8.0 SUBMISSIONS ON CONTAMINATED LAND POLICIES AND DEFINITION	10
9.0 SUBMISSIONS ON THE HAZARDOUS SUBSTANCES CHAPTER AS A WHOLE AND ON RELATED DEFINITIONS	12
10.0 SUBMISSIONS ON THE HAZARDOUS SUBSTANCES OBJECTIVES	15
11.0 SUBMISSIONS ON THE HAZARDOUS SUBSTANCES POLICIES	17
12. S32AA EVALUATION FOR ALL RECOMMENDED AMENDMENTS	23
13 CONCLUSION	23

List of Submitters and Further Submitters addressed in this report

Submitter ID	Submitter Name	Abbreviation
S601	Birchfield Coal Mines Ltd	
S604	Birchfield Ross Mining Limited	
S552 FS224.021	Buller Conservation Group	
S538	Buller District Council	
S564	Catherine Smart-Simpson	
S558	Chris & Jan Coll	
S566	Chris J Coll Surveying Limited	
S581	David Ellerm	
FS122.014	Department of Conservation	
S524	Federated Farmers of New Zealand	Federated Farmers
S573	Fire and Emergency New Zealand	FENZ
S553	Frida Inta	
S613	Fuel Companies	
S563	Geoff Volckman	
FS1	Grey District Council	
S140	Heritage New Zealand Pouhere Taonga	Pouhere Taonga
S486 FS55	Horticulture New Zealand	
S614	Karamea Lime Company	
FS68	Katherine Crick	
S577	Koiterangi Lime Co LTD	
S574	Laura Coll McLaughlin	
S438	Manawa Energy Limited	Manawa Energy
S446	Margaret Montgomery	
FS218	Mike Spruce	
S456	Ministry of Education Te Tāhuhu o Te Mātauranga	Ministry of Education
S500	Papahaua Resources Limited	
S615	Peter Langford	
S474	Rocky Mining Limited	
S560	Royal Forest and Bird Protection Society of New Zealand Inc.	Forest and Bird

S441 FS101	Silver Fern Farms Limited by its authorised agents Mitchell Daysh Limited	Silver Fern Farms
S536	Straterra	
S190	Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora	Te Mana Ora
S620	Te Rūnanga o Ngāi Tahu, Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio	Ngāi Tahu
S493	TiGa Minerals and Metals Limited	
S612	Toka Tū Ake EQC	EQC
S299	Transpower New Zealand Limited	
S181	Westland District Council	
FS222	Westpower Limited	
S607	Whyte Gold Limited	
S567	William McLaughlin	
S599	WMS Group (HQ) Limited and WMS Land Co. Limited	WMS

Abbreviations

Abbreviation	Meaning
HSNO	Hazardous Substances and New Organisms
NES	National Environmental Standard
NZCPS	New Zealand Coastal Policy Statement
TTPP	Te Tai o Poutini Plan
RMA	Resource Management Act
WCRPS	West Coast Regional Policy Statement

1.0 Purpose of Report

- This report has been prepared in accordance with Section 42A of the RMA to:
 - assist the Hearings Panel in making their decisions on the submissions and further submissions on the Te Tai o Poutini Plan (TTPP); and
 - provide submitters with an opportunity to see how their submissions have been evaluated and the recommendations being made by officers, prior to the hearing.
- This report responds to submissions on Hazardous Substances and Contaminated Land.
- The report provides the Hearing Panel with a summary and analysis of the submissions received on the Hazardous Substances and Contaminated Land Chapters in Part 2 and associated definitions in Part 1, and to make recommendations on either retaining the TTPP provisions without amendment or making amendments to the TTPP in response to those submissions.
- The recommendations are informed by evaluation undertaken by me as the planning author. In preparing this report I have had regard to the s42A Introduction and General Provisions report that addresses the higher order statutory planning and legal context.
- The conclusions reached and recommendations made in this report are not binding on the Hearing Panel. It should not be assumed that the Hearing Panel will reach the same

conclusions having considered all the information in the submissions and the evidence to be brought before them, by the submitters.

2.0 Qualifications and experience.

6. My full name is Lois Margaret Easton, and I am Principal Consultant for Kereru Consultants, an environmental science and planning consultancy engaged by the West Coast Regional Council to support the development of Te Tai o Poutini Plan (TTPP).
7. I hold a Master of Science (Environmental Science and Botany) with first class honors from Auckland University, Auckland which I obtained in 1995.
8. I have 25 years' experience in planning and resource management including 10 years at the Waitakere City Council and five years at the Gisborne District Council. The remaining time I have worked as an environmental and planning consultant primarily providing policy advice to local government and not for profit organisations.
9. My experience involves policy development, writing district plans and regional plans. I have written Section 32 and 42A reports and appeared at hearings for the development of several plans involving matters principally around the natural environment, Māori issues and rezoning of land. I have represented the Waitakere District Council and Gisborne District Council in mediation on appeals and have presented planning evidence to the Environment Court.
10. In recent years I have been involved in the development of TTPP. I have either led or been a member of the planning team who developed the provisions of TTPP and s32 reports in relation to all parts of the plan. In relation to the Hazardous Substances and Contaminated Land I was the team lead.

2.1 Code of Conduct

11. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
12. I am authorized to give this evidence on behalf of the Tai o Poutini Plan Committee to the TTPP hearings commissioners (Hearings Panel).

2.2 Conflict of Interest

13. To the best of my knowledge, I have no real or perceived conflict of interest.

3.0 Scope of Report and Topic Overview

14. This report considers the submissions and further submissions that were received in relation to Part 2 – Hazardous Substances Chapter and Contaminated Land Chapter of the proposed TTPP.
15. Recommendations are made to either retain provisions without amendment, or delete, add to or amend the provisions. All recommended amendments are shown by way of strikeout and underlining in Appendix 1 of this Report. Footnoted references to a submitter number, submission point and the abbreviation for their title provide the scope for each recommended change. Where it is considered that an amendment may be appropriate, but it would be beneficial to hear further evidence before making a final recommendation, this is made clear within the report. Where no amendments are recommended to a provision, submission points that sought the retention of the provision without amendment are not footnoted.
16. Clause 16(2) of the RMA allows a local authority to make an amendment to a proposed plan without using a Schedule 1 process, where such an alteration is of minor effect, or may correct any minor errors. A number of alterations have already been made to the TTPP using cl.16(2) and these are documented on the TTPP website. Where a submitter

has requested the same or similar changes to the TTPP that fall within the ambit of cl.16(2), then such amendments will continue to be made and documented as cl.16(2) amendments in this s42A report.

17. The assessment of submissions generally follows the following format:

- Submission Information
- Analysis
- Recommendation and Amendments

4.0 Statutory Requirements.

18. TTPP must be prepared in accordance with the Council's functions under section 31 of the RMA; Part 2 of the RMA; the requirements of sections 74 and 75, and its obligation to prepare, and have particular regard to, an evaluation report under section 32 of the RMA, any further evaluation required by section 32AA of the RMA; any national policy statement, the New Zealand Coastal Policy Statement (NZCPS), national planning standards; and any regulations. Regard is also to be given to the West Coast Regional Policy Statement (WCRPS), any regional plan, district plans of adjacent territorial authorities, and the Iwi Management Plans.
19. As set out in the Section 32 and Section 42A Overview Reports, there are a number of higher order planning documents and strategic plans that provide direction and guidance for the preparation and content of TTPP. These documents are discussed in more detail within this report where relevant to the assessment of submission points.
20. The assessment of submission points is made in the context of the Section 32 reports already undertaken with respect to this topic, being:
- Hazardous Substances and Contaminated Land

4.1 Resource Management Act

21. TTPP must be prepared in accordance with the functions of a district council under section 31 of the RMA; Part 2 of the RMA; the requirements of sections 74 and 75, and its obligation to prepare, and have particular regard to, an evaluation report under section 32 of the RMA, any further evaluation required by section 32AA of the RMA; any national policy statement, the New Zealand coastal policy statement, national planning standards; and any regulations. Regard is also to be given to the WCRPS, any regional plan, district plans of adjacent territorial authorities, and any IMP.
22. As set out in the 'Overview' Section 32 Report, and 'Introduction and Overview' s42a Report, there are a number of higher order planning documents and strategic plans that provide direction and guidance for the preparation and content of TTPP. These documents are discussed in more detail within this report where relevant to the assessment of submission points. This report also addresses any definitions that are specific to this topic, but otherwise relies on the s42A report that addresses definitions more broadly.

4.2 National Planning Standards

23. The National Planning Standards requires that if a district plan addresses hazardous substances the objectives, policies and rules must be contained in a chapter called Hazardous Substances. It has a similar direction for Contaminated Land.

4.3 Procedural Matters

24. At the time of writing this s42A report there has not been any pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on this topic.

5.0 Consideration of Submissions Received

5.1 Overview of Submissions Received

25. A total of 106 submissions points and 28 further submissions points were received on the Hazardous Substances chapter, the Contaminated Land Chapter and relevant definitions.

5.2 Structure of this Report

26. The structure of this report is that submissions on the contaminated land topic are dealt with first then those on hazardous substances topic. Within the topic, general submissions on the whole chapter, where a submission has raised an issue that does not relate to a proposed objective or policy or overarching submissions are dealt with first. Then submissions are addressed by the objective and policy order as listed in TTPP.

27. Where an amendment is recommended the applicable s32AA assessment for that issue is located in Section 11 of this report.

28. Recommended amendments are contained in Appendix 1: Recommended Amendments to Hazardous Substances and Contaminated Land Chapters.

29. A full list of submissions and further submissions is contained in Appendix 2: Submissions and Further Submissions on the Hazardous Substances and Contaminated Land Chapters

30. Additional information can be obtained from the:

- Section 32 report on Hazards and Risks.

6.0 Submissions on the Contaminated Land Chapter as a Whole

Submissions

Submitter Name /ID	Submission Point	Position	Decision Requested
Westland District Council (S181)	S181.004	Support	Retain the objectives, policies and rules
Buller Conservation Group (S552)	S552.045	Support	retain
Frida Inta (S553)	S553.045	Support	retain
Margaret Montgomery (S446)	S446.008	Support	retain
David Ellerm (S581)	S581.013	Support	retain
Royal Forest and Bird Protection Society of New Zealand Inc. (Forest & Bird) (S560)	S560.184	Amend	Amend Objectives, polices and rules so environment explicitly includes risks to native species and their habitat
<i>Westpower Limited</i>	<i>FS222.0248</i>	<i>Oppose</i>	<i>Disallow</i>
Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.147	Support	We support reference to the rules from the Resource Management (National Standard for Assessing Contaminants in Soil to Protect Human Health) Regulations 2011.

Analysis

31. Westland District Council (S181.004), Buller Conservation Group (S552.045), Frida Inta (S553.045), Margaret Montgomery (S446.008) and David Ellerm (S581.0130 support the chapter as a whole. This support for the chapter is noted.
32. Te Mana Ora (S190.147) supports the reference to the rules from the Resource Management (National Standard for Assessing Contaminants in Soil to Protect Human Health) Regulations 2011. This support is noted.
33. Forest and Bird (S560.104) seek that the chapter be amended so that they explicitly include risks to native species and their habitat. I do not consider that amendment is needed – the objective and policies refer to the term “environment” as is defined under the RMA. This is a very wide definition and includes ecosystems and their constituent parts and all natural and physical resources. I consider that native species and their habitat is a subset of “ecosystems and their constituent parts” so is already covered in the objective and policies.

Recommendations

34. That no amendments are made as a result of these submissions.
35. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in Appendix 2.

7.0 Submissions on Contaminated Land Objectives

Submissions

Submitter Name /ID	Submission Point	Position	Decision Requested
Geoff Volckman (S563)	S563.006	Support	Retain objectives as notified
Buller District Council (S538)	S538.089 S538.091	Support	Retain as notified.
Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.143	Support	Retain objective.
Koiterangi Lime Co LTD (S577)	S577.009	Support	Retain
Catherine Smart-Simpson (S564)	S564.009	Amend	Retain
William McLaughlin (S567)	S567.090	Support	Retain
Chris & Jan Coll (S558)	S558.733	Support	Retain
Chris J Coll Surveying Limited (S566)	S566.733	Support	Retain
Laura Coll McLaughlin (S574)	S574.733	Support	Retain
Fuel Companies (S613)	S613.007	Amend	Amend Objective CL-O1 as follows: To ensure that e Contaminated land is used, subdivided, developed or managed in a way that avoids or

			mitigates <u>manages</u> adverse effects on the environment and human health <u>to an acceptable level</u> .
Silver Fern Farms Limited by its authorised agents Mitchell Daysh Limited (S441)	S441.011	Support in part	Amend as follows: To ensure that contaminated land is used, subdivided, developed or managed in a way that avoids, <u>remedies</u> or mitigates adverse effects on the environment and manages the risk to human health to a level that is appropriate for the intended use.

Analysis

36. Geoff Voickman (S563.006), Buller District Council (S538.089, 538.091), Te Mana Ora (S190.143), Koiterangi Lime Co LTD (S577.009) Catherine Smart-Simpson (S564.009) William McLaughlin (S567.090) Chris & Jan Coll (S558.733), Chris J Coll Surveying Limited (S566.773) and Laura Coll McLaughlin (S574.733) support the objectives. This support is noted.
37. The Fuel Companies (S613.007) seek that the objective be amended to alter the emphasis to managing rather than avoiding or mitigating adverse effects, to remove any reference to the environment, and add a qualifier around managing to an acceptable level. I do not support these amendments. Firstly, I consider it inappropriate to exclude the wider environment from the objective and focus it solely on Human Health. Contaminated land can have effects on the environment, and aspects of this are the responsibility of district councils to manage. While the rules around contaminated land are solely those in the NES for assessing and managing contaminants in soil to protect human health, there may be activities that occur on contaminated land that trigger consent, and consideration of the contaminated land objectives and policies is appropriately undertaken in these circumstances. Section 17 of the RMA outlines a duty for every person to avoid, remedy or mitigate any adverse effects on the environment. Secondly, I do not consider that "managing to an acceptable level" is what community expectation is around contaminated land. I consider that the "avoid or mitigate" wording is more appropriate and fits with community expectation, as is evidenced by the large number of submissions in support of the proposed Plan wording. Section 31 of the RMA outlines a function of District Councils is control of any actual or potential effects of the use, development, or protection of land, including for the purpose of, the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land.
38. Silver Fern Farms (S441.001) seek that the word "remedies" be included in the objective. Dealing with contaminated land often involves remedial work e.g. removal of contaminated soil to an appropriate disposal facility or containment within a hardstand etc. This type of management would appear to be more remedial than mitigation. I therefore support this submission.

Recommendations

39. That Objective CL- O1 be amended as follows:
To ensure that contaminated land is used, subdivided, developed or managed in a way that avoids, remedies or mitigates adverse effects on the environment and manages the risk to human health to a level that is appropriate for the intended use.
40. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in Appendix 2.

8.0 Submissions on Contaminated Land Policies and Definition

Submissions on the Policies

Submitter Name /ID	Submission Point	Position	Decision Requested
Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.145	Support	Retain Policy CL – P1
Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.146	Support	Retain policy CL – P2
Koiterangi Lime Co LTD (S577)	S577.010	Support	Retain
Catherine Smart-Simpson (S564)	S564.010	Support	Retain
William McLaughlin (S567)	S567.091	Support	Retain
Geoff Volckman (S563)	S563.007	Support	Retain
Chris & Jan Coll (S558)	S558.734	Support	Retain
Chris J Coll Surveying Limited (S566)	S566.734	Support	Retain
Laura Coll McLaughlin (S574)	S574.734	Support	Retain
Buller District Council (S538)	S538.090	Support	Retain as notified.
Horticulture New Zealand (S486)	S486.022	Support in part	Amend CL-P2 as follows: At the time of subdivision, change of use or development, <u>if required by the Resource management (National Environmental Standard for assessing and Managing contaminants in Soil to Protect Human Health) Regulations 2011</u> , identify sites that may be subject to potential contamination as a result of historical land use and activities and investigate the risks to human health and the environment.
<i>Silver Fern Farms Limited</i>	<i>FS101.003</i>	<i>Support</i>	<i>Allow</i>
Fuel Companies (S613)	S613.008	Amend	Amend Policy CL-P2 as follows: Ensure that when contaminated land is used, subdivided and/or developed, the land is managed or remediated in a way that avoids or mitigates adverse effects on the environment and manages the risk to human health to a

			level that is appropriate for the intended use.
<i>Department of Conservation</i>	<i>FS122.014</i>	<i>Oppose</i>	<i>Disallow</i>
Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.144	Amend	We recommend the following policy is added: <u>CL-P3 - Protect the environment and population health from adverse effects of contaminated land, particularly used and closed landfills by: 1). Taking a precautionary approach to subdivision, development, or activities within the margins of a used or closed landfill; 2). Ensuring that new and future landfill sites are developed in areas that have lower risk of being impacted by natural hazards, including flooding.</u>

Submissions on the Definition of Contaminated Land

Submitter Name /ID	Submission Point	Position	Decision Requested
Fire and Emergency New Zealand (S573)	S573.002	Support	No amendment sought
Transpower New Zealand Limited (S299)	S299.001	Support	Retain the definition

Analysis

41. Te Mana Ora (S190.145, S190.146), Koiterangi Lime Co LTD (S577.010) Catherine Smart-Simpson (S564.010) William McLaughlin (S567.091) Geoff Volckman (S563.007) Chris & Jan Coll (S558.734) Chris J Coll Surveying Limited (S566.734) Laura Coll McLaughlin (S574.734) and Buller District Council (S538.090) support the policies. This support is noted.
42. Fire and Emergency New Zealand (S573.002) and Transpower New Zealand Limited (S299.001) support the definition of Contaminated Land. This support is noted.
43. Horticulture New Zealand (S486.022) seeks an amendment to Policy 2 to provide a qualifier that it is only triggered during an assessment under the NES for assessing and managing contaminants in soil to protect human health.
44. Fuel Companies New Zealand (S613.008) seek an amendment to Policy 2 that removes reference to adverse effects on the environment.
45. I do not support these amendments. Contaminated land can have effects on the environment, and aspects of this is the responsibility of district councils to manage. See Section 31 of the RMA. While the rules around contaminated land are solely those in the NES for assessing and managing contaminants in soil to protect human health, there may be activities that occur on contaminated land that trigger consent requirements under other rules in the Plan, and consideration of the contaminated land objectives and policies is appropriately undertaken in these circumstances.
46. Te Mana Ora (S190.144) seeks the addition of an additional policy that reflects the recent experiences of closed landfills being adversely affected by severe weather events. They also seek that this new policy recognise the risks to the environment and human

health where activities occur on or within the margins of used or closed landfills. I consider that these points have considerable merit and support the addition of a further policy as proposed by Te Mana Ora.

Recommendations

47. That the Contaminated Land Policies be amended to include a further policy as follows: CL-P3 - Protect the environment and population health from adverse effects of contaminated land, particularly used and closed landfills by:
- 1). Taking a precautionary approach to subdivision, development, or activities within the margins of a used or closed landfill;
 - 2). Ensuring that new and future landfill sites are developed in areas that have lower risk of being impacted by natural hazards, including flooding.
48. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in Appendix 2.

9.0 Submissions on the Hazardous Substances Chapter as a Whole and on related definitions

Submissions

Submitter Name /ID	Submission Point	Position	Decision Requested
David Ellerm (S581)	S581.013	Support	retain
Silver Fern Farms Limited by its authorised agents Mitchell Daysh Limited (Silver Fern Farms) (S441)	S441.012	Support	Retain as notified
Margaret Montgomery (S446)	S446.009	Amend	Amend provisions to directly refer to the HSNO Act.
Royal Forest and Bird Protection Society of New Zealand Inc. (Forest & Bird) (S560)	S560.185	Amend	Amend Objectives, polices and rules so environment explicitly includes risks to native species and their habitat
<i>Westpower Limited</i>	<i>FS222.0249</i>	<i>Oppose</i>	<i>Disallow</i>
Fire and Emergency New Zealand (S573)	S573.004	Amend	Include a definition of Hazardous Substances as follows: Hazardous Substances has the same meaning as in section 2 of the RMA: includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance. The Hazardous Substances and New Organisms Act 1996 defines hazardous substances as meaning, unless expressly provided otherwise by regulations or an EPA notice, any substance— a) with 1 or more of the following intrinsic properties: i. explosiveness: ii. flammability: iii. a capacity to oxidise: iv. corrosiveness:

			v. toxicity (including chronic toxicity): vi. ecotoxicity, with or without bioaccumulation; or which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any 1 or more of the properties specified in paragraph (a).
Manawa Energy Limited (Manawa Energy) (S438)	S438.059	Support	Cross reference to new definition of the term 'major hazard facility' in Overview requested.
Fuel Companies (S613)	S613.003	Amend	Introduce a definition of Major Hazard Facility as follows: <u>Major Hazard Facility: has the same meaning as in regulation 4 of the Health and Safety at Work Act 2015.</u>
<i>Grey District Council</i>	<i>FS1.216</i>	<i>Support in part</i>	<i>Allow in part</i>
Whyte Gold Limited (S607)	S607.093	Amend	Insert <u>MAJOR HAZARD FACILITY: Has the same meaning as the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20</u>
Birchfield Ross Mining Limited (S604)	S604.111	Amend	Insert <u>MAJOR HAZARD FACILITY: Has the same meaning as the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20</u>
Birchfield Coal Mines Ltd (S601)	S601.119	Amend	Insert <u>MAJOR HAZARD FACILITY: Has the same meaning as the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20</u>
Silver Fern Farms Limited by its authorised agents Mitchell Daysh Limited (Silver Fern Farms) (S441)	S441.007	Amend	Silver Fern Farms requests that a definition be included for a major hazard facility, as this term is referred to in the TTPP (see Rule HS - P4).
Manawa Energy Limited (Manawa Energy)	S438.021	Not Stated	Insert <u>MAJOR HAZARD FACILITY: Has the same meaning as</u>

(S438)			<u>the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20</u>
<i>Westpower Limited</i>	<i>FS222.0173</i>	<i>Support</i>	<i>Allow</i>
Horticulture New Zealand (S486)	S486.024	Support in part	Include a definition for major hazard facilities: <u>Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016</u>
<i>Silver Fern Farms Limited</i>	<i>FS101.007</i>	<i>Support</i>	<i>Allow</i>
Federated Farmers of New Zealand (S524)	S524.040	Support in part	Include a definition for major hazard facilities: <u>Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016</u>
<i>Grey District Council</i>	<i>FS1.260</i>	<i>Support</i>	<i>Allow</i>
<i>Horticulture New Zealand</i>	<i>FS55.22</i>	<i>Support</i>	<i>Allow</i>

Analysis

49. David Ellerm (S581.013) and Silver Fern Farms (S441.012) support the provisions. This support is noted.
50. Margaret Montgomery (S446.009) seeks that the provisions be amended to directly refer to the HSNO Act. Forest and Bird (S560.185) seek that the provisions be amended to explicitly include risks to native species and their habitat.
51. I do not consider a specific reference to the HSNO Act is necessary in the provisions. There are a range of requirements for activities under that Act and it is already referenced in the Overview to the section. I also do not consider that an amendment to explicitly include risks to native species and their habitat is needed. The objective and policies refer to the term "environment" as is defined under the RMA. This is a very wide definition and includes ecosystems and their constituent parts and all natural and physical resources. I consider that native species and their habitat is a subset of "ecosystems and their constituent parts" so is already covered in the objective and policies.
52. Fire and Emergency New Zealand (S573.004) seek inclusion of a definition of Hazardous Substances. Hazardous substances is defined in the National Planning Standards, and the definition proposed by FENZ is the same as the National Planning Standards definition. I support its inclusion.
53. Manawa Energy (438.059), Fuel Companies (S613.003), Whyte Gold Limited (S607.093), Birchfield Ross Mining Limited (S604.111), Birchfield Coal Mines Ltd (S601.119), Silver Fern Farms (S441.007), Manawa Energy (S438.021), Horticulture New Zealand (S486.024) and Federated Farmers of New Zealand (S524.040) seek that a definition of Major Hazard Facility be included. These submitters all propose essentially the same definition. This is supported as it will add clarity of interpretation to the Plan. In terms of definition, I prefer the wording of Federated Farmers of New Zealand and Horticulture New Zealand as this is clear without being complex.

Recommendations

54. Amend the Plan to include a definition of Hazardous Substances as follows: Hazardous Substances: has the same meaning as in section 2 of the RMA (as set out below):

includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance. The Hazardous Substances and New Organisms Act 1996 defines hazardous substances as meaning, unless expressly provided otherwise by regulations or an EPA notice, any substance—

(a) with 1 or more of the following intrinsic properties:

i) explosiveness:

(ii) flammability:

(iii) a capacity to oxidise:

(iv) corrosiveness:

(v) toxicity (including chronic toxicity):

(vi) ecotoxicity, with or without bioaccumulation; or

(b) which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any 1 or more of the properties specified in paragraph (a)

55. Amend the Plan to include a definition of Major Hazard Facility as follows: Major Hazard Facility: means any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016.
56. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in Appendix 2.

10.0 Submissions on the Hazardous Substances Objectives

Submissions

Submitter Name /ID	Submission Point	Position	Decision Requested
Geoff Volckman (S563)	S563.008	Support	Retain the objective
Buller District Council (S538)	S538.092	Support	Retain as notified.
Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.149	Support	Retain objective.
Peter Langford (S615)	S615.025	Support	Retain
Karamea Lime Company (S614)	S614.025	Support	Retain
Catherine Smart-Simpson (S564)	S564.011	Support	Retain
William McLaughlin (S567)	S567.092	Support	Retain
Chris & Jan Coll (S558)	S558.735	Support	Retain
Chris J Coll Surveying Limited (S566)	S566.735	Support	Retain

Laura Coll McLaughlin (S574)	S574.735	Support	Retain
Horticulture New Zealand (S486)	S486.023	Support	Retain HS-O1
<i>Silver Fern Farms Limited</i>	<i>FS101.004</i>	<i>Support</i>	<i>Allow</i>
Federated Farmers of New Zealand (S524)	S524.039	Support	Retain HS-O1
Buller Conservation Group (S552)	S552.046	Amend	HS - 01 The benefits associated with the use of hazardous substances are recognised while ensuring that risks to the environment and human health arising from subdivision use and development <u>or any other</u> activities involving hazardous substances are minimised.
<i>Westpower Limited</i>	<i>FS222.013</i>	<i>Oppose</i>	<i>Disallow</i>
Frida Inta (S553)	S553.046	Amend	HS - 01 The benefits associated with the use of hazardous substances are recognised while ensuring that risks to the environment and human health arising from subdivision use and development <u>or any other</u> activities involving hazardous substances are minimised.
<i>Westpower Limited</i>	<i>FS222.0123</i>	<i>Oppose</i>	<i>Disallow</i>
Fuel Companies (S613)	S613.002	Amend	Amend Objective HS-O1 as follows: The benefits associated with the use of hazardous substances are recognised while ensuring that risks to the environment and human health arising from subdivision use and development activities involving hazardous substances <u>at major hazard facilities</u> are minimised.
<i>Silver Fern Farms Limited</i>	<i>FS101.009</i>	<i>Support</i>	<i>Allow</i>
<i>Frida Inta</i>	<i>FS223.021</i>	<i>Oppose</i>	<i>Not stated</i>
<i>Buller Conservation Group</i>	<i>FS224.021</i>	<i>Oppose</i>	<i>Not stated</i>
Buller Conservation Group (S552)	S552.047	Support	Add O2 <u>To encourage and promote the safe and efficient handling and disposal of hazardous substances throughout the District.</u>
<i>Silver Fern Farms Limited</i>	<i>FS101.005</i>	<i>Oppose</i>	<i>Disallow</i>
<i>Westpower Limited</i>	<i>FS222.012</i>	<i>Oppose</i>	<i>Disallow</i>

Frida Inta (S553)	S553.047	Support	Add O2: <u>To encourage and promote the safe and efficient handling and disposal of hazardous substances throughout the District.</u>
<i>Westpower Limited</i>	<i>FS222.0124</i>	<i>Oppose</i>	<i>Disallow</i>

Analysis

57. Geoff Volckman (S563,008), Buller District Council (S538.092), Te Mana Ora (S190.149), Peter Langford (S615.025), Karamea Lime Company (S614.025), Catherine Smart-Simpson (S564.011), William McLaughlin (S567.092), Chris & Jan Coll (S558.735), Chris J Coll Surveying Limited (S566.735), Laura Coll McLaughlin (S574.735), Horticulture New Zealand (S486.023) and Federated Farmers of New Zealand (S524.039) support the objective. This support is noted.
58. Buller Conservation Group (S552.046) and Frida Inta (S553.046) seek that the phrase "or any other" activities be added after "subdivision, use and development" in the objective. I do not consider that this addition is appropriate as it would appear to very substantially widen the objective – for example putting petrol in a lawn mower could be considered as "any other activity" that uses a hazardous substance and this is not something that is appropriately regulated in a district plan.
59. Fuel Companies (S613.002) seek to remove the reference to the environment from the objective and focus it entirely on major hazard facilities. I do not consider this to be appropriate. Hazardous substances can have effects on the environment, and aspects of this is the responsibility of district councils to manage. While the chapter does not include specific rules for hazardous substances – relying on the HSNO framework largely for this, there may be activities that involve hazardous substances that trigger consent in relation to rules in other parts of the Plan, and consideration of the hazardous substances objectives and policies is appropriately undertaken in these circumstances.
60. Buller Conservation Group (S552. 047) and Frida Inta (S553.047) seeks an additional objective be included around safe and efficient handling and disposal of hazardous substances. I do not consider that handling and disposal of hazardous substances are matters that fall much within the ambit of the district plan. They are managed via the HSNO regulations, and also through discharge provisions administered by the West Coast Regional Council.

Recommendations

61. That no amendments to the Plan are made as a result of these submissions.
62. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in Appendix 2.

11.0 Submissions on the Hazardous Substances Policies

Submissions

Submitter Name /ID	Submission Point	Position	Decision Requested
Catherine Smart-Simpson (S564)	S564.012	Support	Retain
William McLaughlin (S567)	S567.093	Support	Retain
Geoff Volckman (S563)	S563.009	Support	Retain
Chris & Jan Coll (S558)	S558.736	Support	Retain
Chris J Coll Surveying Limited (S566)	S566.736	Support	Retain

Laura Coll McLaughlin (S574)	S574.736	Support	Retain
Buller District Council (S538)	S538.093	Support	Retain as notified.
Buller Conservation Group (S552)	S552.048	Amend	Add: <u>P5 Compliance with approved codes of practice and national guidelines and standards shall be required for all activities involving the use, storage and transport of hazardous substances.</u>
<i>Silver Fern Farms Limited</i>	<i>FS101.008</i>	<i>Oppose</i>	<i>Disallow</i>
<i>Westpower Limited</i>	<i>FS222.014</i> <i>FS222.0125</i>	<i>Oppose</i>	<i>Disallow</i>
Frida Inta (S553)	S553.048	Amend	Add: <u>P5 Compliance with approved codes of practice and national guidelines and standards shall be required for all activities involving the use, storage and transport of hazardous substances.</u>
Fuel Companies (S613)	S613.006	Amend	Introduce a new policy (Policy HS-P5) as follows: <u>Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the Plan.</u>
HS – P1			
Peter Langford (S615)	S615.026	Support	Retain
Karamea Lime Company (S614)	S614.026	Support	Retain
Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.150	Support	Retain policy.
Buller Conservation Group (S552)	S552.049	Amend	HS - P1 Activities and facilities involving the use and storage of hazardous substances shall be designed, located, constructed and operated so as to <u>avoid minimise residual risk to people and the environment</u>
<i>Silver Fern Farms Limited</i>	<i>FS101.006</i>	<i>Oppose</i>	<i>Disallow</i>

Frida Inta (S553)	S553.049	Amend	HS - P1 Activities and facilities involving the use and storage of hazardous substances shall be designed, located, constructed and operated so as to avoid <u>minimise residual</u> risk to people and the environment
<i>Westpower Limited</i>	<i>FS222.015</i> <i>FS222.0126</i>	<i>Oppose</i>	<i>Disallow</i>
Fuel Companies (S613)	S613.004, S613.015, S613.016	Amend	Amend Policy HS – P1 as follows: Activities and facilities involving the use and storage of hazardous substances <u>at major hazard facilities</u> shall be designed, located, constructed and operated so as to minimise <u>manage</u> residual risk to people and the environment.
HS – P2			
Fuel Companies (S613)	S613.005	Support	Retain Policies HS-P2, HS-P3, HS-P4 as notified
Heritage New Zealand Pouhere Taonga (S140)	S140.013	Support	Retain policy as proposed
Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.151	Support	Retain policy.
Peter Langford (S615)	S615.027	Support	Retain
Karamea Lime Company (S614)	S614.027	Support	Retain
Toka Tū Ake EQC (EQC) (S612)	S612.020	Amend	Include hazardous facilities within the policy, and define what constitutes a significant natural hazard
Te Runanga o Ngai Tahu, Te Runanga o Ngati Waewae, Te Runanga o Makaawhio (Ngāi Tahu) (S620)	S620.097	Amend	Amend the policy wording as follows: Ensure that new or expanded major hazard facilities are located away from natural, historic and cultural overlay areas, <u>surface water</u> and away from locations that are subject to significant natural hazards, where practicable, taking into account the operational and functional needs of activities to locate in these areas.
HS – P3			
Fuel Companies (S613)	S613.005	Support	Retain Policies HS-P2, HS-P3, HS-P4 as notified
Heritage New Zealand Pouhere Taonga (S140)	S140.014	Support	Retain policy as proposed

Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.152	Support	Retain policy.
Peter Langford (S615)	S615.028	Support	Retain
Karamea Lime Company (S614)	S614.028	Support	Retain
WMS Group (HQ) Limited and WMS Land Co. Limited (WMS Group) (S599)	S599.035	Amend	Amend HS - P3 as follows: Provide for the establishment and expansion of major hazard facilities within the Industrial, Port, <u>Minerals Extraction</u> and General Rural Zones, where adequate separation distances are maintained from sensitive activities and valued natural, cultural and historic heritage features.
TiGa Minerals and Metals Limited (S493)	S493.031	Amend	Amend HS - P3 as follows: Provide for the establishment and expansion of major hazard facilities within the Industrial, Port, <u>Minerals Extraction</u> and General Rural Zones, where adequate separation distances are maintained from sensitive activities and valued natural, cultural and historic heritage features.
<i>Katherine Crick</i>	<i>FS68.014</i>	<i>Oppose</i>	<i>Disallow</i>
<i>Suzanne Hill</i>	<i>FS72.014</i>	<i>Oppose</i>	<i>Disallow</i>
<i>Annie Inwood</i>	<i>FS147.014</i>	<i>Oppose</i>	<i>Disallow</i>
<i>Mike Spruce</i>	<i>FS218.016</i>	<i>Oppose</i>	<i>Disallow</i>
<i>Melissa McLuskie</i>	<i>FS144.014</i>	<i>Oppose</i>	<i>Disallow</i>
Birchfield Coal Mines Ltd (S601)	S601.029	Amend	Amend HS - P3 as follows: Provide for the establishment and expansion of major hazard facilities within the Industrial, Port, <u>Minerals Extraction</u> and General Rural Zones, where adequate separation distances are maintained from sensitive activities and valued natural, cultural and historic heritage features.
Straterra (S536)	S536.065	Amend	Add, "at mining operations".
Rocky Mining Limited(S474)	S474.029	Amend	Provide specific recognition of hazardous substance facilities associated with mining
Papahaua Resources Limited (S500)	S500.018	Support	Provide specific recognition of hazardous substance facilities associated with mining

Silver Fern Farms Limited by its authorised agents Mitchell Daysh Limited (Silver Fern Farms) (S441)	S441.013	Support in part	Amend as follows: Provide for the establishment and expansion of major hazard facilities within the Industrial, Port and General Rural Zones, where adequate separation distances are maintained from <u>existing</u> sensitive activities and valued natural, cultural and historic heritage features.
HS – P4			
Fuel Companies (S613)	S613.005	Support	Retain Policies HS-P2, HS-P3, HS-P4 as notified
Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190)	S190.153	Support	Retain policy.
Peter Langford (S615)	S615.029	Support	Retain
Karamea Lime Company (S614)	S614.029	Support	Retain
Silver Fern Farms Limited by its authorised agents Mitchell Daysh Limited (Silver Fern Farms) (S441)	S441.014	Support	Retain as notified.
Ministry of Education Te Tāhuhu o Te Mātauranga (Ministry of Education) (S456)	S456.014	Support	Retain as proposed
Straterra (S536)	S536.066	Amend	Delete "avoided" and replace with "remedied", "mitigated" or "offset".

Analysis

63. Catherine Smart-Simpson (S564.012), William McLaughlin (S567.093), Geoff Volckman (S563.009), Chris & Jan Coll (S558.736), Chris J Coll Surveying Limited (S566.736), Laura Coll McLaughlin (S574.736) and Buller District Council (S538.093) support the policies. This support is noted.
64. Buller Conservation Group (S552.048) and Frida Inta (S553.048) seek that an additional policy be added, that requires compliance with approved codes of practice and national guidelines and standards for all activities involving the use, storage and transport of hazardous substances. I consider that while this is a desirable outcome, it is not a district plan matter. There are no proposed methods that would enable such a policy to be implemented by the district councils, and little or no expertise around hazardous substances in the Councils to implement or undertake compliance for such a method. This expertise lies with Worksafe who implement the HSNO regulations, and I consider that that is the appropriate place for such matters.
65. The Fuel Companies (S613.006) seek a further policy seeking to avoid unnecessary duplication of regulation with HSNO and Health and Safety regulations. I consider this policy is unnecessary. The Councils have already ensured that there is not unnecessary duplication of regulation, by restricting the TTPP provisions to an objective and four policies. The Councils are responsible for environmental effects as relates to matters under their jurisdiction. Many but not all of these matters are dealt with through the HSNO legislation – Health and Safety legislation and regulations is not focused on environmental effects. Within the jurisdiction of the RMA, the Councils have been

careful to avoid duplication of function with the Regional Council, and the objectives and policies will only be considered when a resource consent is triggered under another part of the TTPP.

HS – P1

66. Peter Langford (S615), Karamea Lime Company (S614) and Te Mana Ora (S190.150) support Policy 1. This support is noted.
67. Buller Conservation Group (S552.049) and Frida Inta (S553.049) seek to amend the policy so that residual risk is "avoided" rather than "minimized". I consider this amendment is inappropriate. In most circumstances residual risk cannot be completely avoided. For example, the Alpine Fault crosses through the West Coast. A rupture of the fault may mean storage facilities are compromised, but best practices will be implemented to reduce the residual risk.
68. The Fuel Companies (S613.004, S613.015 and S613.016) seek that the policy be amended to focus only on major hazard facilities, and "manage" rather than "minimize" residual risk. I do not consider this to be appropriate. Hazardous substances can have effects on the environment, and aspects of this is the responsibility of district councils to manage, not just at major hazard facilities. The chapter does not include specific rules for hazardous substances – relying on the HSNO framework largely for this. There may be activities however that involve hazardous substances that trigger consent in relation to rules in other parts of the Plan, and consideration of the hazardous substances objectives and policies is appropriately undertaken in these circumstances. I consider that the term "manage" does not provide any limit as to what any risk should be "managed" against – whereas minimize does. In addition community expectation is that residual risks will be minimized, as "management" gives a lower degree of certainty of outcome.
69. The Plan proposes that management of hazardous substances should be led by those agencies with expertise who are implementing the HSNO regulations.

HS – P2

70. Fuel Companies (S613.005), Heritage New Zealand Pouhere Taonga (S140.013), Te Mana Ora (S190.151), Peter Langford (S615.027) and Karamea Lime Company (S614.027) support this policy. This support is noted.
71. EQC (S612.020) seek that all hazardous facilities be included within the policy, and that the policy define what constitutes a significant natural hazard. EQC are concerned that other (less than major) hazardous facilities should be located away from significant natural hazards. I support this. The natural hazard provisions for the Earthquake Hazard overlay should identify all hazardous facilities by including hazardous or explosive material storage in the definition of Critical Response Facilities. These Critical Response Facilities will require a resource consent to locate in Coastal Tsunami, Earthquake, Flood Severe, Flood Susceptibility, Coastal Severe, Coastal Alert and Westport Hazard Overlays. I support the proposed amendment and in terms of clarifying what a significant natural hazard is, defining this as a natural hazard overlay area as identified in the plan. I propose amending the policy to clarify this submission point.
72. Ngāi Tahu (S620.097) seek that surface water be added to the list of locations that new or expanded major hazard facilities should be located away from. I support this amendment as hazardous substances create particular risks as relate to waterbodies and wetlands.

HS – P3

73. Fuel Companies (S613.005), Heritage New Zealand Pouhere Taonga (S140.014), Te Mana Ora (S190.152), Peter Langford (S615.028) and Karamea Lime Company (S614.028) support this policy. This support is noted.
74. WMS Group (S599.035), TiGa Minerals and Metals Limited (S493.031), Birchfield Coal Mines Ltd (S601.029), Straterra (S536.065), Rocky Mining Ltd (S474.029) and Papahaua

Resources Ltd (S500.018) all seek recognition that hazardous substance facilities are located at mining operations. I consider this is an error of omission and that both the Mineral Extraction Zone and Buller Coalfield Zone should be referred to in the policy.

75. Silver Fern Farms (S441.013) seek that "existing" sensitive activities are identified in the policy – recognizing that reverse sensitivity issues can arise if these are not recognised in this policy. I support this amendment as it is consistent with the wider approach in the plan around protecting important employment and economic activities from the impacts of reverse sensitivity.

HS – P4

76. Fuel Companies (S613.005), Te Mana Ora (S190.153), Peter Langford (S615.029), Karamea Lime Company (S614.029), Silver Fern Farms (S441.014) and Ministry of Education (S456.014) support this policy. This support is noted.
77. Straterra (S536.066) seek that "avoided" be deleted and replaced with "remedied, mitigated or offset". I do not support this submission. This policy is about protecting major hazard facilities from reverse sensitivity from new sensitive development locating adjacent to the facility. I consider it entirely inappropriate that residential or visitor accommodation activities should be located next to major hazard facilities.

Recommendations

78. That policy HS – P2 be amended as follows: Ensure that new or expanded major hazard facilities are located away from natural, historic, ~~and~~ cultural overlay areas, surface waterbodies and wetlands and, that where practicable, all hazard facilities are located outside of natural hazard overlays away from locations that are subject to significant natural hazards, where practicable, taking into account the operational and functional needs of activities to locate in these areas.
79. That Policy HS – P3 be amended as follows: Provide for the establishment and expansion of major hazard facilities within the Industrial, Port, Mineral Extraction, Buller Coalfield and General Rural Zones, where adequate separation distances are maintained from existing sensitive activities and valued natural, cultural and historic heritage features.
80. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in Appendix 2.

12. S32AA Evaluation for all Recommended Amendments

81. Section 32AA of the RMA requires a further evaluation to be undertaken in accordance with s32(1)- (4) if any amendment has been made to the proposal (in this case TTPP) since the original s32 evaluation report was completed. Section 32AA requires that the evaluation is undertaken in a level of detail that corresponds to the scale and significance of the changes.
82. I consider that the recommended changes are of a minor nature and are intended to improve the workability of TTPP, and therefore further evaluation under s32AA is not required.

13 Conclusion

83. This report has provided an assessment of submissions received in relation to the Contaminated Land and Hazardous Substances Topic.
84. The report considers and provides recommendations on the decisions requested in submissions. I consider that the submissions on the Contaminated Land and Hazardous Substances Chapters should be accepted, accepted in part, rejected or rejected in part, as set out in my recommendations of this report and contained in Appendix 2 of this report.

85. I recommend that the provisions for the Contaminated Land and Hazardous Substances Chapters be amended for the reasons set out in this report.
86. I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA (especially for changes to objectives), the relevant objectives of this plan and other relevant statutory documents.