

# **TAI POUTINI PLAN COMMITTEE**

## **Hearing of Submissions on the Proposed Te Tai O Poutini Plan**

### **Recommendation Report of Hearing Panel**

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#### **Recommendation Report: Topic 5**

**Contaminated Land - Ngā Whenua Tāhawahawa**

**Hazardous Substances - Ngā Matū Mōrearea**

**Hearing Date: 6 December 2023**

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#### **HEARING PANEL**

Paul Rogers (Chair)

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## **PART A – INTRODUCTORY MATTERS**

### **1. PRELIMINARY MATTERS**

#### **1.1. Introduction**

1. Matters to do with my appointment and other preliminary matters applicable to all Hearing Panel’s recommendations on the Proposed Te Tai o Poutini Plan (**pTTPP** or ‘the Plan’) are recorded and addressed in Recommendation Report 1.
2. This Recommendation Report relates to the Contaminated Land - Ngā Whenua Tāhawahawa (**‘CL’**) and Hazardous Substances - Ngā Matū Mōrearea (**‘HS’**) chapters of the Hazards and Risks section in Part 2 – District-Wide Matters of pTTPP.
3. This Recommendation Report contains my evaluations and recommendations to the TTPP Committee on the submissions and further submissions received on the CL and HS chapters.
4. The Section 32 Report<sup>1</sup> on Hazard Substances and Contaminated Land (**‘s32 Report’**) provided an evaluation of the options relating to managing hazardous substances and contaminated land through the pTTPP, including the regulatory framework key resource management issues, the evidence base (research, consultation, information and analysis undertaken) and evaluation of the options. The evaluation concluded that, compared to the status quo, the pTTPP CL and HS provisions represent the most appropriate means of achieving the hazardous substances and contaminated land objectives of the pTTPP.
5. A total of 106 submission points and 28 additional submission points were received for the CL and HS chapters, as well as relevant definitions.
6. The Section 42A Officer’s Report<sup>2</sup> (**‘s42A Report’**), authored by Ms. Lois Easton, a principal planner with Kererū Consultants acting as the Reporting Officer, was circulated to the hearing. The s42A Report summarised the submissions and further submissions received, and relief sought. It analysed the submissions on the CL and HS provisions, and detailed recommendations (summarised in **Appendix 1** of the s42A Report). It also indicated whether individual submission points and further submission points were recommended to be accepted/accepted in part/rejected (see **Appendix 2** of the s42A Report).
7. The matters raised by submitters and further submitters were grouped in the s42A Report in relation to each of the following key issues:
  - (a) CL chapter as a whole;
  - (b) CL objectives;
  - (c) CL policies and definitions;
  - (d) HS chapter as a whole and definitions;
  - (e) HS objectives; and

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<sup>1</sup> Section 32 Evaluation, Report Three – Hazards and Risks Ngā Pūmate me ngā Mōrea, Part Two Hazardous Substances – Ngā Matū Mōrearea Contaminated Land – Ngā Whenua Tāhawahawa

<sup>2</sup> Section 42A Officer’s Report Hazardous Substances and Contaminated Land

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- (f) HS policies.
8. A s32AA evaluation for all recommended amendments was provided at the end of the s42A Report.
  9. After the hearing, Ms. Easton provided a Right of Reply ('Reply') dated 6 December 2023.
  10. This Recommendation Report follows the same structure of the s42A Report. It provides a summary of the issues raised in submissions and further submissions, the s42A Report analysis and recommendations, the submitter's statement or evidence and the Reply, before providing my evaluation and recommendation.
  11. This Recommendation Report should be read in conjunction with the s42A Report and the tracked change version of the notified pTTPP provisions (attached as **Appendix 1** to this Report). The tracked change version of the pTTPP provisions forms an integral part of the decision and records all my recommended amendments (additions and deletions) to the notified pTTPP provisions. The tracked change version of the pTTPP shows my recommended changes to the notified provisions in bold and underlining, indicating additions and strikethroughs, indicating deletions. If there is any discrepancy between this Recommendation Report and the tracked change version of the pTTPP, the tracked change version of the pTTPP shown in **Appendix 1** of this Report must prevail.
  12. This Recommendation Report contains the reasons for my recommendations. These comprise either the adoption of the reasoning and recommendations of the original s42A Reports or the Reply, or a specific rationale.
  13. Where I recommend the pTTPP provisions should remain as notified, it is because:
    - (a) I have adopted the reasoning and recommendation of the s42A Report or the Reply to retain the provision as notified; or
    - (b) I have recommended to retain the provision as notified for reasons set out in this Recommendation Report.
  14. Where there is a recommended change to a notified provision of the pTTPP, it is because:
    - (a) I have recommended an amendment to a provision for reasons set out in this Recommendation Report in response to a submission point, which the s42A Report did not recommend; or
    - (b) I have adopted the reasoning and recommendation of the s42A Report to change the provision to that recommended in the original s42A Report; or
    - (c) I have adopted the reasoning and recommendation as recommended in the Reply; or
    - (d) A consequential change has been necessary, following on from a decision in either (a), (b) or (c).
  15. Where there may be a different recommendation between the s42A Report and the Reply (i.e., the Reporting Officer's recommendation has changed as a result of hearing the statement or evidence of submitters), unless the recommendation specifically adopts the original s42A Report's reasoning and recommendations, the reasoning and recommendations in the (later) reply has been adopted and it must be taken to prevail.

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16. If there are circumstances where I consider that alternative relief is more appropriate than that requested in submissions and further submissions to give effect to the RMA, NZCPS, NPS and/or RPS, but are still within the scope of the relief sought, the relevant recommendation sets out the nature of the change and the reason for the change. This is recorded in this Recommendation Report.
17. If any changes are recommended to the provisions (since the s32A Report was completed), a further evaluation, if required, has been undertaken pursuant to s32AA of the RMA. Any such circumstances are referred to in this Recommendation Report in sufficient detail to demonstrate that a further evaluation was undertaken.
18. Clause 16(2) of Schedule 1 of the RMA enables me to recommend amendments to alter information, where such an alteration is of minor effect, or may correct any minor errors. Any such minor amendments are recorded in the recommendations below each section considered in Part C of this Report and in the tracked change version of the notified Plan provisions (**Appendix 1** of this Report).

### 1.2. Terminology in this Report

19. Throughout this Report, the following abbreviations will be used:

Birchfields	Birchfield Ross Mining Limited and Birchfield Coal Mines Ltd
BCG	Buller Conservation Group
BDC	Buller District Council
Councils	Buller District Council, Grey District Council, and Westland District Council
Director General	Director General of Conservation
DoC	Department of Conservation
EPA	Environmental Protection Authority
EQC	Natural Hazards Commission Toka Tū Ake
FENZ	Fire and Emergency New Zealand
FFNZ	Federated Farmers of New Zealand
Forest & Bird	Royal Forest & Bird Protection Society of NZ Inc
Fuel Companies	Fuel Companies New Zealand
GDC	Grey District Council
Guidance Note	Guidance Note: Managing Hazardous Substances under the Resource Management Act
HAIL	Hazardous Activities and Industries List

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HNZ	Horticultural New Zealand
HSNO	Hazardous Substances and New Organisms Act 1996
HSWA	Health and Safety at Work Act 2015
Manawa Energy	Manawa Energy Limited
MfE	Ministry for the Environment
NES-CS	Resource Management (National Standard for Assessing Contaminants in Soil to Protect Human Health) Regulations 2011.
Ngāi Tahu	Te Rūnanga o Ngāi Tahu, Te Runanga o Ngāti Waewae, Te Rūnanga o Makaawhio
Planning Standards	National Planning Standards
PRL	Papahaua Resources Limited
NPS	National Policy Statements
NZCPS	New Zealand Coastal Policy Statement 2010
RMA or the Act	Resource Management Act 1991
RML	Rocky Mining Limited
RPS	West Coast Regional Policy Statement
SFFL	Silver Fern Farms Limited
SLUS	Selected Land Use Sites
Te Mana Ora	Te Mana Ora (Community and Public Health) of Te Whatu Ora (Health New Zealand)
TiGa	TiGa Minerals and Metals Limited
WCRC	West Coast Regional Council
WCRP	West Coast Regional Plan
WDC	Westland District Council
Westpower	Westpower Limited
Worksafe	Worksafe New Zealand

### 1.3. Hearing Arrangements

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20. The hearing was held via Audiovisual on 6 December 2023. Some submitters appeared by internet connection.

### **1.4. Appearances**

21. The following submitters appeared at the hearing:

**Ms. Frida Inta** (S553 and FS223) for herself and on behalf of the BCG (S552 and FS224);

**Mr. Martin Kennedy**, planner of West Coast Planning Limited, on behalf of Westpower (S547 and FS222); and

**Ms. Lois Easton** as reporting officer.

### **1.5. Overview of submitter evidence received**

22. Evidence from Manawa Energy (S438) dated 8 November 2023 and Westpower (S547 and FS222) dated 6 November 2023 was circulated before the hearing and tabled at the hearing.
23. For those appearing at the hearing, the following evidence and/or statements were received:
  - (a) Statement of evidence by Ms. Easton (undated); and
  - (b) Ms. Inta on behalf of BCG and herself (dated 6 December 2023).

### **1.6. Right of Reply**

24. Ms. Easton provided a Reply responding to questions raised at the hearing and proposing further amendments beyond those recommended in the s42A Report.

### **1.7. Submitter correspondence**

25. On 7 March 2024, the TTPP panel received a letter from Mitchell Daysh, dated 7 November 2023, on behalf of SFFL advising that:
  - (a) SFFL would not file evidence, nor appear at the hearing, in relation to their submission on the CL and HS chapters.
  - (b) SFFL supported Ms. Easton's recommendations, as detailed in her s42A Report.
  - (c) A further submission<sup>3</sup> on HS-O1 was incorrectly attributed to SFFL.

### **1.8. Procedural Steps and Issues**

26. No procedural matters were raised at the hearing.

### **1.9. Site Visits**

27. I undertook site visits throughout the pTTPP process, including those relevant to this hearing.

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<sup>3</sup> Appendix Two details SFFL made a further submission (FS101.009) on the Fuel Companies submission (S613.002) on HS – O1. However, this is not the case. This may be mistaken for SFFL's further submission on the HNZ submission (S486.023) on HS – O1, or another entity's or person's further submission on S613.002

## **PART B - STATUTORY REQUIREMENTS AND DOCUMENTS**

28. The CL and HS chapters are two of three subsections in the Hazards and Risks - Ngā Pūmate me ngā Mōrea section of Part 2 – District Wide Matters – Te Wāhanga 2 – Ngā Kaupapa ā-Rohe Whānui. Each chapter includes objectives and policies: the CL chapter manages contaminated land, while the HS chapter focuses on activities that involve hazardous substances.
29. Neither chapter includes rules. In terms of HS, The Hazardous Substances and New Organisms Act 1996 (HSNO), and related regulations are the principal regulations controlling the introduction, manufacture, use, storage and disposal of hazardous substances. The district councils have limited powers and responsibilities under HSNO, which is administered by other agencies, particularly in terms of the use and application of hazardous substances in working situations.
30. In terms of pTTPP, the approach taken to hazardous substances focused the provisions on major hazardous facilities. An example of major hazardous facilities on the West Coast is Westland Milk Products. The TTPP includes objectives and policies only for hazardous substances. Because there are no rules, these objectives and policies are principally used where a resource consent is triggered for another reason. This might, for example, concern natural hazards, and the natural hazards chapter includes provisions related to hazardous substances.
31. Turning to Contaminated Land, the situation is similar. Land can become contaminated when hazardous substances are not used, stored, or disposed of in a manner that is appropriate and safe. Contaminated land is commonly associated with past activities, such as the manufacture and use of pesticides, timber treatment, sheep dipping, and the disposal of waste in landfills.
32. District councils have significant functions regarding contaminated land; however, the rules governing this are already prescribed in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011(NESCS). The NESCS is a nationally consistent set of planning controls that a District council must enforce under s44A Clause 8 of the RMA. It was developed to achieve a consistent, nationwide approach to managing issues related to the legacy of past chemical use, which has resulted in soil contamination and the disposal of hazardous waste.
33. The NESCS provides the rule framework for managing contaminated land to avoid impacts on human health, so only the objective and policy framework is required to assist in the assessment of resource consents.
34. The s32 Report<sup>4</sup> outlined the relevant statutory considerations for contaminated land and hazardous substances, noting changes to s30 and s31 of the RMA that removed councils' explicit duty to manage hazardous substances. However, it<sup>5</sup> emphasised that councils can still regulate hazardous substances under their broader role of achieving integrated management, especially if the HSNO or HSWA regulations are insufficient to manage environmental effects. The s32 Report<sup>6</sup> also highlighted matters from sections 6, 7 and 8 of the RMA, NES-CS, NPS, WCRPS, iwi management plans, HSNO, HSWA, and the MfE's Guidance Note relevant to the CL and HS chapters, and broadly discussed these considerations as well.

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<sup>4</sup> Above n 1, section 6.2.1

<sup>5</sup> Above n 4

<sup>6</sup> Above n 1, sections 6.2.2 to 6.2.6

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35. The s32 Report<sup>7</sup> indicated that there are three iwi management plans, i.e., Te Rūnanga o Makaawhio Pounamu Management Plan, Ngāti Waewae Pounamu Management Plan, and Lake Māhinapua Management Plan. It<sup>8</sup> noted that while these documents focus on specific issues, they also contain wider information about the overall approach to sustainability and kaitiakitanga of resources, and Poutini Ngāi Tahu values.
36. Clause 10 of Schedule 1 of the RMA states that it is not necessary to provide decisions on individual submissions. Recommendations are made within the scope of requested relief, either individual submissions or groups of submissions making similar requests, as specified in the reasons for recommendation. References to relevant submissions are made in the footers.
37. The Planning Standards mandatory direction 7.9 requires provisions to manage contaminated land to be located in a Contaminated Land chapter of the pTTPP. Mandatory direction 7.12 requires provisions relating to hazardous substances be in a Hazardous Substances chapter under the Hazards and Risks heading of the pTTPP. Lastly, mandatory direction 7.13 requires provisions relating to: managing the land use aspects of hazardous substances; the use, storage and disposal of hazardous substances on land that presents a specific risk to human or ecological health, safety and property; and manage land use near major hazard facilities to manage risk and reverse sensitivity issues be in a Hazardous Substances chapter of the pTTPP. I am satisfied the pTTPP structure is consistent with these national directions.

## PART C – SUBMISSIONS, EVIDENCE, EVALUATION AND RECOMMENDATIONS

### 2. CONTAMINATED LAND

#### 2.1. Whole Chapter

##### Submissions and Further Submissions

38. Seven submission points and one further submission point relating to the **CL chapter (as a whole)** were summarised in a Table on page 7 of the s42A Report. Five submissions supported the retention of the CL chapter as notified, and one other submission supported reference to the NES-CS rules. One submission sought an amendment to the entire chapter, which was opposed by a further submission.
39. I adopt the summary of these submissions detailed in the s42A Report, and I have considered all the relevant submissions.

##### Section 42A Report

40. Ms. Easton acknowledged submissions<sup>9</sup> supporting the retention of the CL chapter as notified. These submissions were recommended to be accepted.
41. She noted the submission<sup>10</sup> supporting a reference to the NES-CS provisions in the chapter.

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<sup>7</sup> Above n 1, section 6.2.5

<sup>8</sup> Above n 7

<sup>9</sup> WDC (S181.004), BCG (S552.045), Ms. Frida Inta (S553.045), Ms. Margaret Montgomery (S446.008), and Mr. David Ellerm (S581.0130)

<sup>10</sup> Te Mana Ora (S190.147)

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42. Ms. Easton recommended rejecting the submission<sup>11</sup> from Forest & Bird, reasoning that since the CL objectives and policies already include “*environment*” (defined to include “*ecosystems and the constituent parts*”), native species and their habitat are inherently addressed as a subset of these ecosystems.
43. Given paragraph [42] above, Ms. Easton recommended accepting the further submission<sup>12</sup> opposing Forest & Bird’s submission.

### **Hearing and Submitter Evidence**

44. Mr. Kennedy<sup>13</sup> advised at the hearing that he generally supported Ms. Easton’s recommendations to accept Westpower’s further submission point opposing Forest & Bird’s submission on the CL chapter (which is detailed in paragraph [43] above).

### **Reporting Officer Reply Evidence**

45. The Reply does not address the CL chapter as a whole.

### **Hearing Panel’s Evaluation**

46. I agree with Ms Easton's recommendations, which support the retention of the CL chapter as notified. I accept her reasoning, that since the CL objectives and policies already include “*environment*” (defined to include “*ecosystems and the constituent parts*”), native species and their habitat are inherently addressed as a subset of these ecosystems, leading to the rejection of the Forest & Bird submission.

### **Recommendation**

47. For the reasons outlined above, and subject to my consideration of Part 2 of the RMA, I recommend the **Contaminated Land chapter as a whole** be retained in the pTTPP.

## **2.2. Contaminated Land Objectives**

### **Submissions and Further Submissions**

48. 11 submission points relating to **CL–O1** were summarised in a Table on pages 8 and 9 of the s42A Report. Eight submissions supported the retention of the CL objectives as notified. One submission<sup>14</sup> sought amendment to the CL objective, yet requested it be retained. Two submission points sought an amendment to the objective.
49. I adopt the summary of these submissions detailed in the s42A Report, and I have considered all the relevant submissions.

### **Section 42A Report**

#### ***Objectives (General)***

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<sup>11</sup> Forest & Bird (S560.184) – incorrectly recorded as S560.104 in the s42A Report

<sup>12</sup> Westpower (FS222.0248)

<sup>13</sup> Mr. Martin Kennedy, Notable Trees planning evidence, dated 6 November 2023, section 7.2

<sup>14</sup> Ms. Catherine Smart – Simpson (S564.009)

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50. Ms. Easton acknowledged submissions<sup>15</sup> supporting the retention of the CL objectives as notified.

### **Objective 1**

51. Ms. Easton noted the submission<sup>16</sup> supporting the retention of CL–O1 as notified.
52. Ms. Easton recommended rejecting the Fuel Companies' submission<sup>17</sup>, arguing it was inappropriate to focus CL–O1 solely on human health while excluding the wider environmental impacts of contaminated land, as councils must manage those effects. She emphasised that all persons must avoid, remedy, or mitigate any adverse effects on the environment under s17 of the RMA.
53. Additionally, Ms. Easton preferred “*avoid or mitigate*” over “*managing to an acceptable level*” for contaminated land, noting this aligns with community expectations (evidenced by numerous submissions). She emphasised that the Councils have a function to prevent or mitigate any adverse effects of the development, subdivision, or use of contaminated land under s31 of the RMA.
54. Ms. Easton recommended accepting SFFL’s submission<sup>18</sup>, supporting the inclusion of “*remedies*” in the objective, as managing contaminated land often requires remedial actions beyond mitigation, such as the removal of contaminated soil and its proper disposal. She recommended the following amendment.

CL - O1 - 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.

### **Pre-Hearing Statement**

55. SFFL’s pre-hearing statement supported Ms. Easton’s recommendations on the CL objective.

### **Hearing and Submitter Evidence**

56. Those present at the hearing did not raise any points relating to the CL objective.

### **Reporting Officer Reply Evidence**

57. The Reply does not address the CL objective.

### **Hearing Panel’s Evaluation**

58. I note the support from submitters for Ms Easton’s recommended amendments to Objective CL-O1, and I accept that these amendments are appropriate for the reasons given in the s42A Report.

### **Hearing Panel’s Recommendation**

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<sup>15</sup> Mr. Geoff Voickman (S563.006), BDC (S538.089, 538.091), Te Mana Ora (S190.143), Koiterangi Lime Co LTD (S577.009), Ms. Catherine Smart-Simpson (S564.009), Mr. William McLaughlin (S567.090), Mr. Chris and Ms. Jan Coll (S558.733), Chris J Coll Surveying Limited (S566.773), and Ms. Laura Coll McLaughlin (S574.733)

<sup>16</sup> Te Mana Ora (S190.256)

<sup>17</sup> Fuel Companies (S613.007)

<sup>18</sup> SFFL (S441.011) – incorrect recorded as S441.001

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59. For the reasons outlined above, and subject to my consideration of Part 2 of the RMA, I recommend the following changes to the **Contaminated Land Objectives**:

Contaminated Land Objective	
CL – O1	To ensure that contaminated land is used, subdivided, developed <sup>19</sup> or managed in a way that avoids <sup>20</sup> <b>remedies</b> <sup>21 22</sup> or mitigates adverse effects on the environment and human health.

### 2.3. Contaminated Land Policies and Definitions

#### Submissions and Further Submissions

60. Nine submission points and one further submission point relating to the **CL policies** (as a whole) were summarised in a Table on pages 10 and 11 of the s42A Report. Eight submissions supported the retention of the CL policies as notified. The further submission opposed Ms. Smart-Simpson's support to retain the CL policies as notified. One submission sought an amendment to the CL policies by inserting a third CL policy.
61. Two submission points and one further submission point relating to **CL-P1** were summarised in a Table on page 10 of the s42A Report. However, one submission point and one further submission point recorded against CL-P1 relate to CL-P2. The correct count is one submission point. The submission supported the retention of the policy as notified.
62. Two submission points and one further submission point relating to **CL-P2** were summarised in a Table on page 10 of the s42A Report. However, as noted in [61] above, there is a third submission point and a second further submission which were incorrectly categorised. One submission supported the retention of the policy as notified. Lastly, two submissions sought an amendment to the policy, both submissions were opposed by the further submissions.
63. Two submission points relating to **Contaminated Land definition** were summarised in a Table on page 11 of the s42A Report. Both submissions supported the retention of the definition as notified.
64. I have considered all the relevant submissions and further submissions, and I adopt the summaries in the s42A Report.

#### Section 42A Report

##### ***Policies (General)***

65. Ms. Easton acknowledged submissions<sup>23</sup> supporting the retention of the CL policies as notified.

##### ***Policy 1***

<sup>19</sup> Clause 16(2) of Schedule 2 RMA

<sup>20</sup> Clause 16(2) of Schedule 2 RMA

<sup>21</sup> SFFL (S441.011)

<sup>22</sup> Clause 16(2) of Schedule 2 RMA

<sup>23</sup> Koiterangi Lime Co LTD (S577.010), Ms. Catherine Smart-Simpson (S564.010), Mr. William McLaughlin (S567.091), Mr. Geoff Volckman (S563.007), Mr. Chris and Ms. Jan Coll (S558.734), Chris J Coll Surveying Limited (S566.734), Ms. Laura Coll McLaughlin (S574.734), and BDC (S538.090)

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66. Ms. Easton noted the submission<sup>24</sup> supporting the retention of CL–P1 as notified.

### **Policy 2**

67. Ms. Easton noted the submission<sup>25</sup> supporting the retention of CL–P2 as notified.
68. Ms. Easton recommended rejecting submissions<sup>26</sup> from HNZ and the Fuel Companies, and the further submission<sup>27</sup> from SFFL.
69. She was unsupportive of the Fuel Companies’ request to remove “*avoids or mitigates adverse effects on the environment and*” which would limit the policy’s focus to human health for the same reasons as detailed in [52] above.
70. Given [68] and [69] above, Ms. Easton recommended accepting the further submission<sup>28</sup> from the Director General.
71. Ms. Easton was also unsupportive of HNZ’s request to limit identification to only when required by the NES-CS, noting that while NES-CS rules manage soil contamination for human health protection, activities on contaminated land may require resource consent under other pTTPP rules, making assessment against CL objectives and policies appropriate.

### **New CL policy**

72. Ms. Easton recommended accepting Te Mana Ora’s<sup>29</sup> submission as she supported their proposed new CL policy, citing recent experiences where severe weather events adversely affected closed landfills, and recognising the environmental and human health risks posed by activities on or near used or closed landfills. She recommended the following policy.

#### **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.**

### **Contaminated Land definition**

73. Ms. Easton acknowledged submissions<sup>30</sup> supporting the retention of the Contaminated Land definition as notified.

### **Pre-Hearing Statement**

74. SFFL’s pre-hearing statement supported Ms. Easton’s recommendations on the CL policies.

### **Hearing and Submitter Evidence**

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<sup>24</sup> Te Mana Ora (S190.145)

<sup>25</sup> Te Mana Ora (S190.146)

<sup>26</sup> HNZ (S486.022) and Fuel Companies (S613.008)

<sup>27</sup> Silver Fern Farms Limited (FS101.003)

<sup>28</sup> Director General (FS122.014)

<sup>29</sup> Te Mana Ora (S190.144)

<sup>30</sup> Fire and Emergency New Zealand (S573.002) and Transpower New Zealand Limited (S299.001)

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75. Those present at the hearing did not raise any points relating to the CL policies or the Contaminated Land definition.

### **Reporting Officer Reply Evidence**

76. In response to my hearing queries, Ms. Easton<sup>31</sup> advised the following:
- (a) The pTTPP does not specify how to identify contaminated land, nor if the NES-CS applies to a site.
  - (b) It would be helpful if the pTTPP advised readers that the WCRC holds information about whether a site is contaminated. This advice, along with an electronic link to the WCRC website information on the HAIL and the SLUS register, could be included in the CL chapter Overview section as a minor amendment.
77. She recommended the following amendment.

### **Contaminated Land**

#### **Overview**

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#### **Role of West Coast Regional Council**

Information on the locations of known Contaminated Land on the West Coast is held by the West Coast Regional Council. In some instances activities in or on Contaminated Land may also require a resource consent from the West Coast Regional Council.

**The West Coast Regional Council also holds the information on whether a site is on the Hazardous Activities and Industries List – known as HAIL. The West Coast Regional Council has an electronic register – the Selected Land Use Sites (SLUS) register. Sites that are included on this register may be affected by the rules in NESCS and also the policies that apply in this chapter. An electronic link to the West Coast Regional Council webpage and how to access the SLUS register can be found here: [insert link]**

#### **Hearing Panel's Evaluation**

78. I agree with Ms Easton's recommendations on the notified policies, including her rejection of submissions seeking amendments for the reasons she provides in her s42A.
79. I also agree with her recommendation to include a new policy addressing closed landfills, CL-P3, for the reasons she details. I have made a minor amendment to aid the readability of the new policy.
80. Additionally, I support the inclusion of information within the overview advising plan users where they can find and access additional relevant information related to contaminated land. I have made minor changes to that information to aid readability.

#### **Hearing Panel's Recommendation**

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<sup>31</sup> Lois Easton, s42A Author Right of Reply Contaminated Land and Hazardous Substances, dated 6 December 2023, page 1 and 2, points 3 to 5

## Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel

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81. For the reasons outlined above, and subject to my consideration of Part 2 of the RMA, I recommend the following changes to the **Contaminated Land Role of West Coast Regional Council section** and the inclusion of a new policy to the **Contaminated Land Policies**:

### Contaminated Land - Ngā Whenua Tāhawahawa

#### Role of West Coast Regional Council

Information on the locations of known Contaminated Land on the West Coast is held by the West Coast Regional Council. **The West Coast Regional Council holds information on the locations of known Contaminated Land on the West Coast**<sup>32</sup>. In some instances,<sup>33</sup> activities in or on Contaminated Land may also require a resource consent from the West Coast Regional Council.

**The West Coast Regional Council also holds the information on whether a site is on the Hazardous Activities and Industries List – known as HAIL. The West Coast Regional Council has an electronic register – the Selected Land Use Sites (SLUS) register. Sites that are included on this register may be affected by the rules in NESCS and also the policies that apply in this chapter. An electronic link to the West Coast Regional Council webpage and how to access the SLUS register can be found here: [insert link]**<sup>34</sup>

### Contaminated Land Policies

CL – P3	<p><b><u>Protect the environment and population health from adverse effects of contaminated land, particularly used and closed landfills by:</u></b></p> <ol style="list-style-type: none"><li><b><u>1. Taking a precautionary approach to subdivision, development, or activities within the margins of a used or closed landfill; and</u></b><sup>35</sup></li><li><b><u>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></b><sup>36</sup></li></ol>
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## 3. HAZARDOUS SUBSTANCES

### 3.1. Whole Chapter and Definitions

#### Submissions and Further Submissions

82. A Table on pages 12 to 14 of the s42A Report records four submission points and one further submission point relating to the **HS chapter (as a whole)** but includes two errors. The submissions<sup>37</sup> from RML and PRL relate to the whole HS chapter, not only HS–P3. The correct count is six submission points and one further submission. Two submissions supported the chapter as notified. Four submissions sought the chapter be amended, with Forest & Bird’s proposed amendment opposed by a further submission.

<sup>32</sup> Clause 16(2) of Schedule 2 RMA

<sup>33</sup> Clause 16(2) of Schedule 2 RMA

<sup>34</sup> Consequential change from HNZ (S486.022)

<sup>35</sup> Clause 16(2) of Schedule 2 RMA

<sup>36</sup> Te Mana Ora (S190.144)

<sup>37</sup> RML (S474.029) and PRL (S500.018)

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83. A Table on page 13 of the s42A Report records one submission point supporting the **HS Overview** section, yet that submission<sup>38</sup> sought an amendment.
84. A Table on pages 12 to 14 of the s42A Report records seven submission points and two further submission points related to HS **definitions**. Six submissions sought a new “*major hazard facility*” term included in the pTTPP, with the submission from Manawa Energy and the Fuel Companies each supported by one of the further submissions. One submission sought to amend the definition of “*hazardous substances*.”
85. I adopt the summary of these submissions detailed in the s42A Report, and I have considered all the relevant submissions.

### **Section 42A Report**

86. Ms. Easton acknowledged submissions<sup>39</sup> supporting the retention of the HS chapter as notified.
87. She recommended rejecting the submissions<sup>40</sup> from Ms. Montgomery and Forest & Bird. She was unresponsive of including risks to native species and their habitats in the HS objectives and policies, as sought by Forest & Bird, for the same reasons detailed in [42]. She was also unresponsive of Ms. Montgomery’s proposed HSNO insertion in the HS provisions, noting it is already referred to in the HS Overview section and covers various activities.
88. Given [87] above, Ms. Easton recommended accepting the further submission<sup>41</sup> opposing Forest & Bird’s submission.
89. Ms. Easton recommended rejecting the submission<sup>42</sup> from Forest & Bird, reasoning that since the CL objectives and policies already include “*environment*” (defined to include “*ecosystems and the constituent parts*”), native species and their habitat are inherently addressed as a subset of these ecosystems.
90. Ms. Easton recommended accepting FENZ’s submission<sup>43</sup>, supporting the inclusion of the Planning Standards “*hazardous substance*” definition in the pTTPP. She recommended inserting the following definition into the pTTPP.

**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. **(ii) flammability:**

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<sup>38</sup> Manawa Energy (S438.059)

<sup>39</sup> Mr. David Ellerm (S581.013) and SFFL (S441.012)

<sup>40</sup> Ms. Margaret Montgomery (S446.009) and Forest & Bird (S560.185)

<sup>41</sup> Westpower (S222.0249)

<sup>42</sup> Forest & Bird (S560.184) – incorrectly recorded as S560.104 in the s42A Report

<sup>43</sup> FENZ (S573.004)

- iii. **(iii) a capacity to oxidise:**
- iv. **(iv) corrosiveness:**
- v. **(v) toxicity (including chronic toxicity):**
- vi. **(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)**

91. Ms. Easton recommended accepting or accepting in part submissions<sup>44</sup> from Manawa Energy, Fuel Companies, Whyte Gold Limited, Birchfields, SFFL, HNZ, and FFNZ, and further submissions<sup>45</sup> from Westpower and GDC. She agreed that including a “*major hazard facility*” definition would improve clarity of the pTTPP, and she preferred the wording from FFNZ and HNZ for its greater clarity over other submissions. Ms. Easton recommended inserting the following definition into the pTTPP.

**Major Hazard Facility: means any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016.**

92. She also recommended accepting the second submission<sup>46</sup> from Manawa Energy to provide a cross-reference to the new “*major hazard facility*” definition in the HS chapter Overview section.
93. Ms. Easton’s recommendations on the submissions from RML and PRL are detailed in paragraph [129] of this report.

#### **Pre-Hearing Statement**

94. SFFL’s pre-hearing statement supported Ms. Easton’s recommendations on the HS chapter.

#### **Hearing and Submitter Evidence**

95. Mr. Kennedy<sup>47</sup> advised at the hearing that he generally supported Ms. Easton’s recommendations to accept Westpower’s further submission points on the HS chapter.
96. Manawa Energy<sup>48</sup> indicated that they supported Ms. Easton’s recommendation to include a definition for “*major hazard facility*” in the pTTPP and inserting a cross-reference to this definition in the HS chapter Overview section.

#### **Reporting Officer Reply Evidence**

97. The Right of Reply did not address the submissions on the HS chapter (as a whole).

#### **Hearing Panel’s Evaluation**

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<sup>44</sup> Manawa Energy (438.021), Fuel Companies (S613.003), Whyte Gold Limited (S607.093), Birchfield Ross Mining Limited (S604.111), Birchfield Coal Mines Ltd (S601.119), SFFL (S441.007), HNZ (S486.024) and FFNZ (S524.040)

<sup>45</sup> Westpower (S222.0173) and GDC (FS1.216)

<sup>46</sup> Manawa Energy (438.059)

<sup>47</sup> Mr. Martin Kennedy, Notable Trees planning evidence, dated 6 November 2023, section 7.2

<sup>48</sup> Ms. Nicola Foran (08 November 2023), Statement of Evidence on behalf of Manawa Energy Limited in the matter of pTTPP Topic 6: Contaminated Land and Hazardous Substances, paras. 4-7

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98. I accept Ms Eason's recommendations relating to HS whole chapter, and the inclusion in the pTTPP of both the Planning Standards “*hazardous substance*” definition, and a “*major hazard facility*” definition, (using the wording from FFNZ and HNZ), as well as a cross reference to the new “*major hazard facility*” definition in the HS chapter Overview section, for all of the reasons contained in her s42A.
99. I have amended “*Major Hazardous facility*” to read *Major Hazard Facility* for readability reasons, and where this text appears in the Overview, I have used the word facilities for the same reason.

**Recommendation**

100. For the reasons outlined above, and subject to my consideration of Part 2 of the RMA, I recommend the following changes to the **Definitions chapter** and the **Hazardous Substances chapter**.

Term	Definition
<p><b><u>Hazardous Substances</u></b></p>	<p><b><u>has the same meaning as in section 2 of the RMA (as set out below):</u></b></p> <p><b><u>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—</u></b></p> <p><b><u>(a) with 1 or more of the following intrinsic properties:</u></b></p> <ul style="list-style-type: none"> <li><b><u>i) explosiveness:</u></b></li> <li><b><u>ii) flammability:</u></b></li> <li><b><u>iii) a capacity to oxidise:</u></b></li> <li><b><u>iv) corrosiveness:</u></b></li> <li><b><u>v) toxicity (including chronic toxicity):</u></b></li> <li><b><u>vi) ecotoxicity, with or without bioaccumulation; or</u></b></li> </ul> <p><b><u>(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)</u></b><sup>49</sup></p>
<p><b><u>Major Hazard Facility</u></b></p>	<p><b><u>means any facility deemed a Major Hazard Facility under the Health and Safety at Work (Major Hazardous Facilities) Regulations 2016.</u></b><sup>50</sup></p>

<sup>49</sup> FENZ (S573.004)

<sup>50</sup> Manawa Energy (438.059 and S438.021), Fuel Companies (S613.003), Whyte Gold Limited (S607.093), BRML (S604.111), BCML (S601.119), SFFL (S441.007), Horticulture New Zealand (S486.024) and FFNZ (S524.040)

## Hazardous Substances - Ngā Matū Mōrearea

### Overview

Hazardous substances are used for many agricultural, industrial and some domestic activities. Hazardous substances of various kinds are in widespread use on the West Coast/Te Tai o Poutini and for some activities are an essential part of everyday life. By their nature, hazardous substances carry an inherent risk of adverse effects on people and the environment, should an accident occur, **with the risk greater at major hazard facilities.**<sup>51</sup>

The Hazardous Substances and New Organisms Act 1996 (HSNO) and related regulations are the principal legislation controlling the introduction, manufacture, use, storage and disposal of hazardous substances. The District Councils have limited powers and responsibilities under HSNO, which is administered by other agencies, including the West Coast Regional Council particularly in terms of the use and application of hazardous substances in working situations.

The chapter contains an objective and policies, which will be referenced when resource consents are applied for activities that involve hazardous substances (for example in relation to natural hazards).

## 3.2. Hazardous Substances Objectives

### Submissions and Further Submissions

101. 15 submission points and six further submission points relating to **HS–O1** were summarised in a Table on pages 15 and 16 of the s42A Report. 12 submissions supported the retention of the objective as notified, with HNZ’s submission supported by one further submission. Three submissions sought an amendment to the objective. The amendment sought by BCG and Ms. Inta was opposed by two separate further submissions. The amendment sought by the Fuel Companies was supported by one further submission but opposed by two further submissions.
102. Two submission points and three further submission points relating to a **new HS policy (HS–O2)** were summarised in a Table on pages 16 and 17 of the s42A Report. The two submissions proposed the same policy, with BCG’s submission opposed by two further submissions and Ms. Inta’s submission opposed by the third further submission.
103. I adopt the summary of these submissions and further submissions detailed in the s42A Report, and I have considered all the relevant submissions and further submissions.

### Section 42A Report

#### **Objective 1**

104. Ms. Easton acknowledged a submission<sup>52</sup> supporting the retention of HS–O1 as notified.

<sup>51</sup> Manawa Energy (S438.059)

<sup>52</sup> Mr. Geoff Volckman (S563.008), BDC (S538.092), Te Mana Ora (S190.149), Mr. Peter Langford (S615.025), Karamea Lime Company (S614.025), Ms. Catherine Smart Simpson (S564.011), Mr. William McLaughlin (S567.092), Mr. Chris and Ms. Jan Coll (S558.735), Chris J Coll Surveying Limited (S566.735), Ms. Laura Coll McLaughlin (S574.735), HNZ (S486.023) and FFNZ (S524.039)

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105. She recommended rejecting submissions<sup>53</sup> from BCG and Ms. Inta to amend the objective, arguing that the phrase “*or any other*” activities would inappropriately broaden the objective to include activities not suitable for pTTPP regulation (i.e., refuelling a lawn mower with petrol).
106. Ms. Easton recommended rejecting the Fuel Companies' submission<sup>54</sup>, arguing it is inappropriate to remove environmental references from the objective and limit focus to major hazard facilities. She noted hazardous substances have environmental effects and councils must help manage those effects. While the HS chapter does not contain rules (relying primarily on HSNO), she highlighted activities involving hazardous substances may require resource consent under other pTTPP sections, making consideration of the HS objectives and policies appropriate in those circumstances.
107. Given [105] and [106] above, Ms. Easton recommended accepting the further submissions<sup>55</sup> opposing the amendments proposed to the objective proposed by Ms. Inta, BCG, and the Fuel Companies.
108. No recommendation was detailed in the s42A Report regarding the further submissions<sup>56</sup> on the Fuel Companies' submission to amend the objective.

### ***New HS objective***

109. Ms. Easton recommended rejecting submissions<sup>57</sup> from BCG and Ms. Inta seeking a **new HS objective**, noting that hazardous substance handling and disposal are already managed under the HSNO and WCRP, largely falling outside the pTTPP remit.
110. Given [109] above, Ms. Easton recommended accepting the further submissions<sup>58</sup> opposing the new HS objective proposed by BCG and Ms. Inta.

### **Hearing and Submitter Evidence**

111. Ms. Inta<sup>59</sup> acknowledged hazardous substances are regulated elsewhere, but argued Ms. Easton's rejection of the new HS objective (proposed by herself and BCG) was flawed. She contended that hazardous substances affect well-being, a focus of both the HS chapter and RMA. Given the widespread use of hazardous substances throughout West Coast, Ms. Inta maintained that the pTTPP should address safe and efficient handling and disposal of hazardous substances. She requested that either include the proposed new objective “To encourage and promote the safe and efficient handling and disposal of hazardous substances throughout the district” or amend HS-O1 to cover “any other activities”.
112. Mr. Kennedy<sup>60</sup> advised at the hearing that he generally supported Ms. Easton's recommendations to accept Westpower's further submission points on the HS objectives.

### **Reporting Officer Reply Evidence**

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<sup>53</sup> Ms. Frida Inta (S553.046) and Fuel Companies (S613.002)

<sup>54</sup> Fuel Companies (S613.002)

<sup>55</sup> Westpower (FS222.0123, FS222.012 and FS222.013), SFFL (FS101.005 and FS101.009), Ms. Frida Inta (FS223.021) and BCG (FS224.021)

<sup>56</sup> Ms. Frida Inta (S223.021) and BCG (FS224.021)

<sup>57</sup> BCG (S552.047) and Ms. Frida Inta (S553.047)

<sup>58</sup> SFFL (FS101.005) and Westpower (FS222.012 and FS222.0124)

<sup>59</sup> Ms. Frida Inta (06 December 2023), Notes for Hearing Contaminated Land, Hazardous Substances, Notable Trees, pp. 1-2

<sup>60</sup> Mr. Martin Kennedy, Notable Trees planning evidence, dated 6 November 2023, section 7.2

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113. In paragraphs [6] to [11] of the Reply, Ms. Easton explained the following.
- (a) Hazardous substances are not extensively covered in the pTTPP because they are primarily regulated under the HSNO (administered by the EPA) and the HSWA (administered by WorkSafe), which govern their life cycle and workplace management. MfE's Guidance Note advises councils not to duplicate the HSNO and HSWA regulations, and any additional local controls must be justified under s32 of the RMA.
  - (b) Accordingly, the pTTPP focuses on local matters such as the siting of major hazard facilities near sensitive activities and zoning. Ms. Easton viewed the new HS objective proposed by Ms. Inta and BCG as a duplication of function and inappropriate under the MfE's Guidance Note.
114. For clarification, paragraph [10] of the Reply incorrectly stated that a policy from the operative Buller District Plan was proposed for inclusion, when it was an objective Ms. Inta and BCG sought to replicate in the pTTPP.

### **Hearing Panel's Evaluation**

115. I agree with Ms Easton's reasons for recommending rejection of submissions seeking amendments to HS-O1 and her reasons for accepting further submissions that opposed original submissions for the reasons given in the s42A Report.
116. I agree with her rejection of the submission from BCG and Ms. Inta seeking a **new HS objective**, noting that hazardous substance handling and disposal are already managed under the HSNO and WCRP, largely falling outside the pTTPP remit. I also support and agree with the explanation included within the Reply

### **Hearing Panel's Recommendation**

117. For the reasons outlined above, and subject to my consideration of Part 2 of the RMA, I recommend the **Hazardous Substances objective** be retained as notified.

## **3.3. Hazardous Substances Policies**

### **Submissions and Further Submissions**

118. A Table on pages 17 and 18 of the s42A Report records 10 submission points and two further submission points relating to the **HS policies (as a whole)**. Seven submissions supported the HS policies (as a whole) as notified. Three submissions proposed a new HS policy, with BCG's submission opposed by two further submissions.
119. Six submission points and two further submission points relating to **HS-P1** were summarised in a Table on pages 18 and 19 of the s42A Report. Three submissions supported the policy as notified. Three submissions proposed amendments to the policy, with the submissions from BCG and Ms. Inta both opposed by separate further submissions.
120. Seven submission points relating to **HS-P2** were summarised in a Table on page 19 of the s42A Report. Five submissions supported the policy as notified, and two submissions proposed amendments to the policy.

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121. A Table on pages 19 and 20 of the s42A Report records 12 submission points and five further submission points relating to **HS-P3** but includes two errors. The submissions<sup>61</sup> from RML and PRL related to the entire HS chapter, not specifically HS-P3. The correct count is 10 submission points and five further submissions. Five submissions supported the policy as notified, although one sought an amendment. One submission supported in part the policy, seeking an amendment. Four submissions sought an amendment to the policy, with TiGa's proposed amendment opposed by five further submissions.
122. Seven submission points relating to **HS-P4** were summarised in a Table on page 21 of the s42A Report. Six submissions supported the policy as notified, and one submission sought an amendment to the policy.
123. I have considered all the relevant submissions and further submissions, and I adopt the summaries in the s42A Report.

### **Section 42A Report**

#### ***Policies (General)***

124. Ms. Easton acknowledged submissions<sup>62</sup> supporting the retention of the HS policies as notified.

#### ***Policy 1***

125. Ms. Easton noted the submission<sup>63</sup> supporting the retention of HS-P1 as notified.
126. She recommended rejecting the submissions<sup>64</sup> from BCG and Ms. Inta on HS-P1, arguing it is inappropriate to require avoiding residual risk since such risk cannot be completely avoided in most circumstances.
127. Ms. Easton also recommended rejecting the Fuel Companies' submission<sup>65</sup>, arguing it is inappropriate to focus the policy only on major hazard facilities as hazardous substances have environmental effects that councils must manage. She opposed replacing "*minimising*" with "*managing*" residual risk, noting "*manage*" lacks a standard to measure against and provides less certainty of outcome than "*minimising*," which better meets community expectations.

#### ***Policy 2***

128. Ms. Easton noted the submission<sup>66</sup> supporting the retention of HS-P2 as notified.
129. She recommended accepting EQC's submission<sup>67</sup>, supporting the policy applying to all hazardous facilities, which Ms. Easton believes should be located away from significant natural hazards. She also endorsed clarifying the term "*significant natural hazard*" by referencing natural hazard overlays instead.

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<sup>61</sup> RML (S474.029) and PRL (S500.018)

<sup>62</sup> Ms. Catherine Smart-Simpson (S564.012), Mr. William McLaughlin (S567.093), Mr. Geoff Volckman (S563.009), Mr. Chris and Ms. Jan Coll (S558.736), Chris J Coll Surveying Limited (S566.736), Ms. Laura Coll McLaughlin (S574.736), and BDC (S538.093)

<sup>63</sup> Mr. Peter Langford (S615), Karamea Lime Company (S614), and Te Mana Ora (S190.150)

<sup>64</sup> BCG (S552.049) and Ms. Frida Inta (S553.049)

<sup>65</sup> Fuel Companies (S613.004, S613.015, and S613.016)

<sup>66</sup> Fuel Companies (S613.005), Heritage New Zealand Pouhere Taonga (S140.013), Te Mana Ora (S190.151), Mr. Peter Langford (S615.027) and Karamea Lime Company (S614.027)

<sup>67</sup> EQC (S612.020)

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130. Ms. Easton recommended accepting in part Ngāi Tahu's submission<sup>68</sup>, supporting the location of new or expanded major hazard facilities away from surface water due to the specific risks hazardous substances pose to waterbodies and wetlands.
131. She recommended the following amendment.

HS–P2 - 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.

### **Policy 3**

132. Ms. Easton acknowledged submissions<sup>69</sup> supporting the retention of HS–P3 as notified.
133. She recommended accepting submissions<sup>70</sup> from WMS Group, TiGa, Birchfield Coal Mines Ltd, Straterra, RML, and PRL, supporting the recognition of hazardous substance facilities located at mining operations. Ms. Easton indicated that inserting the Mineral Extraction Zone and Buller Coalfield Zone in the policy would correct the mistaken omission.
134. Ms. Easton recommended accepting SFFL's submission<sup>71</sup> to limit reverse sensitivity effects from sensitive activities to only those that exist, aligning with the pTTPP's broader approach to protect important employment and economic activities from reverse sensitivity effects. She recommended the following amendment.

HS – P3 - 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.

### **Policy 4**

135. Ms. Easton acknowledged submissions<sup>72</sup> supporting the retention of HS–P4 as notified.
136. She recommended rejecting Straterra's submission<sup>73</sup>, opposing the replacement of "avoided" with "remediated, mitigated or offset" in the policy. She found it entirely inappropriate for residential or visitor accommodation activities to be located near major hazard facilities, as the policy aims to protect these facilities from reverse sensitivity effects.

### **New HS policy**

137. Ms. Easton recommended rejecting the submissions<sup>74</sup> from Ms. Inta, and BCG, and the Fuel Companies.

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<sup>68</sup> Ngāi Tahu (S620.097)

<sup>69</sup> Fuel Companies (S613.005), Heritage New Zealand Pouhere Taonga (S140.014), Te Mana Ora (S190.152), Mr. Peter Langford (S615.028) and Karamea Lime Company (S614.028)

<sup>70</sup> WMS Group (S599.035), TiGa (S493.031), Birchfield Coal Mines Ltd (S601.029), Straterra (S536.065), RML (S474.029) and PRL (S500.018)

<sup>71</sup> SFFL (S441.013)

<sup>72</sup> Fuel Companies (S613.005), Te Mana Ora (S190.153), Mr. Peter Langford (S615.029), Karamea Lime Company (S614.029), SFFL (S441.014) and Ministry of Education (S456.014)

<sup>73</sup> Straterra (S536.066)

<sup>74</sup> Ms. Friday Inta (S553.048), BCG (552.048), and the Fuel Companies (S613.006)

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138. Ms. Easton acknowledged that while following approved codes and national guidelines for using, storing, and transporting hazardous substances (as proposed by Ms. Inta and BCG) is desirable, this is not a pTTPP matter. She noted that no implementation method was proposed, the Councils lack hazardous substance expertise for implementation or compliance management, and that Worksafe has the appropriate expertise with HSNO regulations being the suitable framework for this issue.
139. Ms. Easton was unsupportive of the Fuel Companies' proposed policy, noting that the HSNO does not cover all environmental matters and the HSWA and regulations are not focused on environmental effects.
140. Also, she considered the Fuel Companies' proposed policy unnecessary as the Councils have already minimised regulatory duplication by limiting HS provisions, have avoided overlapping with WCRC functions, and only apply the HS objectives and policies when resource consent is required by other pTTPP sections.

### Pre-Hearing Statement

141. SFFL's pre-hearing statement supported Ms. Easton's recommendations on the HS policies.

### Hearing and Submitter Evidence

142. Ms. Inta<sup>75</sup> opposed Ms. Easton's rejection of the new HS policy (proposed by herself and BCG) requiring compliance with approved codes, guidelines, and standards for hazardous substance activities. She argued this policy directly supports HS–01, and such compliance would minimise environmental and health risks from subdivision, use, and development involving hazardous substances, making the proposed policy appropriate.
143. Ms. Inta<sup>76</sup> objected to Ms. Easton's recommended amendment to HS–P2, arguing that "*significant natural hazards*" encompasses natural hazard overlays, but the overlays may not account for all natural hazards, which can be dynamic. She also noted a grammatical error. She proposed further amendments to Ms. Easton's recommended policy wording as detailed below.

HS–P2 - Ensure that new or expanded major hazard facilities are located away from natural, historic and cultural overlay, 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

### Reporting Officer Reply Evidence

144. Ms. Easton's Reply does not directly address the proposed HS policy from Ms. Inta and BCG, as paragraph [10] refers to their proposed HS objective. However, Ms. Easton's conclusions are summarised in paragraphs [(a)] and [(b)] of that report, also apply to the proposed HS policy.
145. Additionally, Ms. Easton noted that Worksafe:

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<sup>75</sup> Ms. Frida Inta (06 December 2023), Notes for Hearing Contaminated Land, Hazardous Substances, Notable Trees, p. 2

<sup>76</sup> Ms. Frida Inta (06 December 2023), Notes for Hearing Contaminated Land, Hazardous Substances, Notable Trees, p. 3

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- (a) Provides guidance, certification regime, and detailed, technical rules for some hazardous substances;
- (b) Enforces the ecotoxic and disposal requirements in the workplace, which are set out in the HSNO; and
- (c) Help businesses meet their obligations.

146. Ms. Easton considered that the inclusion of the proposed HS policy would also be a duplication of function and inappropriate under the MfE's Guidance Note.

### Hearing Panel's Evaluation

147. For the reasons detailed within Ms Easton's s42A and Reply reports I agree no amendments are required for HS-P1.
148. I agree with her recommendations for amendments to HS-P2 and HS-P3, as detailed in her s42A and reply reports.
149. I agree with Ms Easton's reasons for why a new policy is not required.

### Hearing Panel's Recommendation

150. For the reasons outlined above, and subject to my consideration of Part 2 of the RMA, I recommend the following changes to the **Hazardous Substances Policies**:

Hazardous Substances Policies	
<b>HS - P2</b>	Ensure that new or expanded major hazard facilities are located away from natural, historic, and cultural overlay areas, <u>as well as surface waterbodies and wetlands</u> <sup>77</sup> <u>and, that where practicable, all major hazard facilities are located outside of natural hazard overlays</u> <sup>78, 79</sup> away from locations that are subject to significant natural hazards, where practicable, <sup>80</sup> taking into account the operational and functional needs of activities to locate in these areas.
<b>HS - P3</b>	Provide for the establishment and expansion of major hazard facilities within the Industrial, Port, <b>Mineral Extraction, Buller Coalfield</b> <sup>81</sup> and General Rural Zones, where adequate separation distances are maintained from <u>existing</u> <sup>82</sup> sensitive activities and valued natural, cultural and historic heritage features.

<sup>77</sup> Ngāi Tahu (S620.097)

<sup>78</sup> EQC (S612.020)

<sup>79</sup> Clause 16(2) of Schedule 2 RMA

<sup>80</sup> EQC (S612.020)

<sup>81</sup> WMS (S599.035), TiGa (S493.031), BCML (S601.029), Straterra (S536.065), RML (S474.029) and PRL (S500.018)

<sup>82</sup> SFFL (S441.013)

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Contaminated Land - Ngā Whenua Tāhawahawa and Hazardous Substances - Ngā Matū Mōrearea

**Paul Rogers**



**Hearings Panel - Chair**

**Date: 26/06/2025**

**APPENDIX 1 – RECOMMENDATIONS ON PLAN PROVISIONS**

Term	Definition
<p><b><u>Hazardous Substances</u></b></p>	<p><b><u>has the same meaning as in section 2 of the RMA (as set out below):</u></b></p> <p><b><u>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—</u></b></p> <p><b><u>(c) with 1 or more of the following intrinsic properties:</u></b></p> <p><b><u>vii) explosiveness:</u></b></p> <p><b><u>viii) flammability:</u></b></p> <p><b><u>ix) a capacity to oxidise:</u></b></p> <p><b><u>x) corrosiveness:</u></b></p> <p><b><u>xi) toxicity (including chronic toxicity):</u></b></p> <p><b><u>xii) ecotoxicity, with or without bioaccumulation; or</u></b></p> <p><b><u>(d) 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)</u></b><sup>83</sup></p>
<p><b><u>Major Hazard Facility</u></b></p>	<p><b><u>means any facility deemed a Major Hazard Facility under the Health and Safety at Work (Major Hazardous Facilities) Regulations 2016.</u></b><sup>84</sup></p>

**Contaminated Land - Ngā Whenua Tāhawahawa**

**Overview**

Contaminated land is land that has a hazardous substance in or on it that could have an adverse effect on human health or the environment.

Land can become contaminated when hazardous substances are not used, stored or disposed of in an appropriate way. Contaminated land is commonly associated with past activities such as the manufacture and use of pesticides, timber treatment, sheep dipping sites and the disposal of wastes in landfills. While industrial activities are the predominant users of hazardous substances, and therefore lead to greater likelihood of contamination, certain commercial, agriculture/forestry or mining activities can cause contamination.

<sup>83</sup> FENZ (S573.004)

<sup>84</sup> Manawa Energy (438.059 and S438.021), Fuel Companies (S613.003), Whyte Gold Limited (S607.093), BRML (S604.111), BCML (S601.119), SFFL (S441.007), Horticulture New Zealand (S486.024) and FFNZ (S524.040)

People can be exposed to contaminated land by direct contact with contaminated soil, swallowing food or water from contaminated environments and breathing vapours or contaminated dust. As well as endangering health, contamination can limit the use of land or cause corrosion that may threaten buildings and property.

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS) provides a rule framework for managing certain activities on land affected or potentially affected by soil contaminants and references the Hazardous Activities and Industries List (HAIL). The HAIL is a compilation of activities and industries that are considered likely to cause land contamination resulting from hazardous substance use, storage or disposal. The HAIL is intended to identify most situations in New Zealand where hazardous substances could cause, and in many cases have caused, land contamination

The District Councils are responsible for administering the NESCS. Any proposal to subdivide, use or develop contaminated or potentially contaminated land may require consent under the NESCS.

This chapter provides an objective and policy direction for the assessment of any resource consent application made under the NESCS.

#### **Role of West Coast Regional Council**

~~Information on the locations of known Contaminated Land on the West Coast is held by the West Coast Regional Council.~~ **The West Coast Regional Council holds information on the locations of known Contaminated Land on the West Coast**<sup>85</sup>. In some instances,<sup>86</sup> activities in or on Contaminated Land may also require a resource consent from the West Coast Regional Council.

**The West Coast Regional Council also holds the information on whether a site is on the Hazardous Activities and Industries List – known as HAIL. The West Coast Regional Council has an electronic register – the Selected Land Use Sites (SLUS) register. Sites that are included on this register may be affected by the rules in NESCS and also the policies that apply in this chapter. An electronic link to the West Coast Regional Council webpage and how to access the SLUS register can be found here: [insert link]**<sup>87</sup>

#### **Contaminated Land Objective**

<b>CL-O1</b>	To ensure that contaminated land is used, subdivided, developed, <sup>88</sup> or managed in a way that avoids, <sup>89</sup> <b>remedies</b> <sup>90, 91</sup> or mitigates adverse effects on the environment and human health.
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#### **Contaminated Land Policies**

<b>CL-P1</b>	At the time of subdivision, change of use or development, 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.
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<sup>85</sup> Clause 16(2) of Schedule 2 RMA

<sup>86</sup> Clause 16(2) of Schedule 2 RMA

<sup>87</sup> Consequential change from HNZ (S486.022)

<sup>88</sup> Clause 16(2) of Schedule 2 RMA

<sup>89</sup> Clause 16(2) of Schedule 2 RMA

<sup>90</sup> SFFL (S441.011)

<sup>91</sup> Clause 16(2) of Schedule 2 RMA

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CL-P2	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.
CL-P3	<p><b><u>Protect the environment and population health from adverse effects of contaminated land, particularly used and closed landfills by:</u></b></p> <ol style="list-style-type: none"> <li>1. <b><u>Taking a precautionary approach to subdivision, development, or activities within the margins of a used or closed landfill; and</u></b><sup>92</sup></li> <li>2. <b><u>Ensuring that new and future landfill sites are developed in areas that have lower risk of being impacted by natural hazards, including flooding.</u></b><sup>93</sup></li> </ol>
<b>Contaminated Land Rules</b>	
Refer to the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011	

### Hazardous Substances - Ngā Matū Mōrearea

#### Overview

Hazardous substances are used for many agricultural, industrial and some domestic activities. Hazardous substances of various kinds are in widespread use on the West Coast/Te Tai o Poutini and for some activities are an essential part of everyday life. By their nature, hazardous substances carry an inherent risk of adverse effects on people and the environment, should an accident occur, **with the risk greater at major hazard facilities.**<sup>94</sup>

The Hazardous Substances and New Organisms Act 1996 (HSNO) and related regulations are the principal legislation controlling the introduction, manufacture, use, storage and disposal of hazardous substances. The District Councils have limited powers and responsibilities under HSNO, which is administered by other agencies, including the West Coast Regional Council particularly in terms of the use and application of hazardous substances in working situations.

The chapter contains an objective and policies, which will be referenced when resource consents are applied for activities that involve hazardous substances (for example in relation to natural hazards).

#### Hazardous Substances Objective

<b>HS-O1</b>	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 are minimised.
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<sup>92</sup> Clause 16(2) of Schedule 2 RMA

<sup>93</sup> Te Mana Ora (S190.144)

<sup>94</sup> Manawa Energy (S438.059)

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Hazardous Substances Policies	
<b>HS-P1</b>	Activities and facilities involving the use and storage of hazardous substances shall be designed, located, constructed and operated so as to minimise residual risk to people and the environment.
<b>HS-P2</b>	Ensure that new or expanded major hazard facilities are located away from natural, historic, and cultural overlay areas, <u>as well as surface waterbodies and wetlands</u> <sup>95</sup> <u>and, that where practicable, all major hazard facilities are located outside of natural hazard overlays</u> <sup>96 97</sup> away from locations that are subject to significant natural hazards, where practicable, <sup>98</sup> taking into account the operational and functional needs of activities to locate in these areas.
<b>HS-P3</b>	Provide for the establishment and expansion of major hazard facilities within the Industrial, Port, <b>Mineral Extraction, Buller Coalfield</b> <sup>99</sup> and General Rural Zones, where adequate separation distances are maintained from <u>existing</u> <sup>100</sup> sensitive activities and valued natural, cultural and historic heritage features.
<b>HS-P4</b>	Avoid locating sensitive activities adjacent to major hazard facilities unless it can be demonstrated that any reverse sensitivity effects and residual risks are avoided.

<sup>95</sup> Ngāi Tahu (S620.097)

<sup>96</sup> EQC (S612.020)

<sup>97</sup> Clause 16(2) of Schedule 2 RMA

<sup>98</sup> EQC (S612.020)

<sup>99</sup> WMS (S599.035), TiGa (S493.031), BCML (S601.029), Straterra (S536.065), RML (S474.029) and PRL (S500.018)

<sup>100</sup> SFFL (S441.013)