

# **Gore Proposed District Plan**

## **Hearing Stream 6**

### **Part 2: District Wide Matters**

#### **Contaminated Land and Hazardous Substances**

##### **Section 42A of the Resource Management Act 1991**

## Section 42A Report – Contaminated Land and Hazardous Substances Chapters

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## Interpretation

### Abbreviations

|                                                                                                              |                      |
|--------------------------------------------------------------------------------------------------------------|----------------------|
| Resource Management Act 1991                                                                                 | RMA or ‘the Act’     |
| Gore District Council                                                                                        | GDC or ‘the Council’ |
| Operative District Plan                                                                                      | ODP                  |
| Proposed District Plan                                                                                       | PDP                  |
| National Planning Standards 2019                                                                             | PS                   |
| Southland Regional Policy Statement 2017                                                                     | RPS                  |
| National Policy Statements                                                                                   | NPS                  |
| National Policy Statement on Highly Productive Land                                                          | NPS-HPL              |
| National Policy Statement for Freshwater Management                                                          | NPS-FM               |
| National Policy Statement for Urban Development                                                              | NPS-UD               |
| National Environmental Standards                                                                             | NES                  |
| National Environmental Standard for Freshwater 2020                                                          | NES-F                |
| National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 | NESCS                |
| Permitted Activity                                                                                           | PA                   |
| Controlled Activity                                                                                          | CA                   |
| Restricted Discretionary Activity                                                                            | RDA                  |
| Discretionary Activity                                                                                       | DA                   |
| Non-complying Activity                                                                                       | NCA                  |
| Hazardous Substances and New Organisms Act 1996                                                              | HSNO                 |
| Health and Safety at Work (Hazardous Substances) Regulations 2017                                            | HSW Act              |

### Submitters and Further Submitters Names Abbreviations

|                                                |                   |
|------------------------------------------------|-------------------|
| Department of Conservation                     | DOC               |
| Environment Southland                          | ES                |
| Fire and Emergency New Zealand                 | FENZ              |
| Kāinga Ora – Homes and Communities             | Kāinga Ora        |
| Mercury NZ Limited                             | Mercury           |
| Ministry of Education                          | MOE               |
| New Zealand Transport Agency Waka Kotahi       | NZTA              |
| Royal Forest & Bird Society of NZ Incorporated | Forest & Bird     |
| Southland District Council                     | SDC               |
| Southland Federated Farmers of New Zealand     | Federated Farmers |
| Transpower New Zealand Limited                 | Transpower        |

### List of Submitters and Further Submitters

| Submitter Number | Submitter Name                                 |
|------------------|------------------------------------------------|
| S148             | Alistair & Bernadette Hunt                     |
| S121 & FS27      | Alliance Group Limited                         |
| FS24             | Contact Energy Ltd                             |
| FS31             | Department of Conservation                     |
| S85              | Environment Southland                          |
| S124             | Fire and Emergency NZ                          |
| S16              | Fuel Companies                                 |
| S122             | Fulton Hogan                                   |
| S139             | Hokonui Rūnanga Inc                            |
| S68              | John Baynes                                    |
| FS28             | Kāinga Ora                                     |
| S115             | Kevin Robertson                                |
| S130             | Mercury NZ Limited                             |
| S95              | Powernet Limited                               |
| S140             | Robina Johnston                                |
| S60              | Ronald Crispin                                 |
| S110             | Royal Forest & Bird Society of NZ Incorporated |
| S143             | Rural Ratepayers Group                         |
| S40 & FS29       | Silver Fern Farms                              |
| S146             | Southland District Council                     |
| S126             | Southland Federated Farmers of New Zealand     |
| S101             | Transpower New Zealand Limited                 |

## 1. Executive Summary

1. The Proposed District Plan (“PDP”) for Gore District was publicly notified on 31 August 2023. The PDP includes a Hazardous Substances Chapter and a Contaminated Land Chapter, submissions on both these chapters are assessed in this report.

### **Contaminated Land**

2. The primary purpose the Contaminated Land Chapter is to provide objectives and policies to align with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS). The Chapter does not include any rules and standards as these are contained within the NESCS
3. 28 submissions were received in relation to the Contaminated Land Chapter and associated definitions. One further submission was received. The submissions were generally supportive of the provisions although the following issues were raised:
  - Southland District Council sought to ensure that the Council compiled more information, including requiring a testing regime, on contaminated land;
  - Environment Southland sought to add a requirement that the Council notify them when a HAIL site is identified;
  - An amendment to CL-O1 was sought to remove reference to ‘monitoring’;
  - An amendment to CL-P1 was sought to ensure sites are identified in accordance with the NESCS;
  - Fulton Hogan sought to add a clause to CL-P3 to ensure that contaminated material taken to landfill is minimised; and
  - Hokonui Rūnanga sought to amend CL-P3 to refine the way in which cultural values and customary uses are expressed.

### **Hazardous Substances**

4. The primary purpose of the Hazardous Substances chapter is to:
  - To manage the establishment of hazardous facilities or activities storing, using or manufacturing hazardous substances adjacent to or within a sensitive environment or an area where sensitive activities are anticipated; and
  - To prevent sensitive or incompatible activities from establishing in areas where hazardous facilities / activities are located or anticipated to prevent reverse sensitivity concerns.
5. 51 submissions were received in relation to the Hazardous Substance Chapter and associated definitions. 10 further submissions were received. The submissions were generally supportive of the provisions although the following issues were raised:
  - Amendments to the definition of ‘sensitive environment’ to remove reference to ‘areas of indigenous biodiversity’;
  - Amendment to the definition of significant hazardous facility to replace freezing works with meat processing and exclude emergency management from the definition;

- Additional provisions relating to the safe storage of hazardous substances including ensuring licensing and a monitoring regime;
  - Amendment to the provisions to refer to natural hazards other than flooding, such as liquefaction;
  - Amendment to HAZS-O1 to more appropriately refer to cultural values which may be adversely affected and delete reference to 'significant' adverse effects because any adverse effect should be managed in any environment;
  - Recognise that flood prone areas may be protected by a stop bank;
  - Clarify HAZS-P1 and HAZS-P2 in terms of their application to particular zones and new activities;
  - Amend HAZS-P3 to provide direction for extensions to significant hazardous facilities where the risks are increased; and
  - Exclude Emergency management from the requirements for HAZS-R2.
6. This report has been prepared in accordance with Section 42A of the RMA and outlines recommendations in response to the issues that have been identified through submissions. This report is intended to assist the Hearings Panel to make decisions on the submissions and further submissions on the PDP, and to provide submitters with an opportunity to understand how their submissions have been evaluated and the recommendations made by officers, prior to the hearing.
7. As a result of submissions, a range of amendments are recommended which are broadly summarised as follows:

#### **Contaminated Land**

- Amend Policy CL-P3 to more clearly articulate cultural values.

#### **Hazardous Substances**

- Amend Policy HAZS-P1 and HAZS-P2 to include a setback from any waterbody; and
- Amend Policy HAZS-P2 to make it clear that it relates to significant hazardous facilities locating outside of the General Industrial Zone and Rural Industry Precinct and consideration should be given to setbacks to sensitive activities.

## **2. Introduction**

### **2.1 Author and qualifications**

8. My name is Victoria Emily Jane Woodbridge, I am the author of this report. I am employed by The Property Group as a Principal Planner. I hold a Bachelor of Arts (Honors) English and Media Studies from the University of Glamorgan, UK and a Masters in Urban and Regional Planning from the University of Westminster, UK. I am an Associate member of the New Zealand Planning Institute (NZPI) and I have over 15 years' experience in planning and resource management, including policy development and associated report and evidence preparation.

9. I have been engaged as a contractor by Gore District Council to assist in the District Plan review and prepare the draft and proposed District Plans. I have been the lead planner on the preparation of the Industrial Zones as well as the Mixed Use Zone and Camp Columba Zone chapters and a number of District Wide Matter Chapters, including the drafting of the Section 32 Evaluation reports. I have been involved in the drafting of the Contaminated Land Chapter and Hazardous Substances Chapters and associated Section 32 Evaluation reports.
10. My other relevant experience includes Council initiated Plan Changes and variations for Tasman District Council and Far North District Council and private Plan Changes for several private clients.

## 2.2 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. Having reviewed the submitters and further submitters relevant to this topic I advise there are no conflicts of interest that would impede me from providing independent advice to the Hearings Panel. The opinions expressed in this evidence are based on my qualifications and experience and are within my area of expertise. If I rely on the evidence or opinions of another my evidence will acknowledge that position.
12. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearing commissioners ("Hearings Panel").

## 3. Scope of report and topic overview

13. This report considers the submissions and further submissions that were received by the Council in relation to Contaminated Land and Hazardous Substances chapters of the PDP. In addition, associated definitions are also assessed.
14. The assessment of submissions will generally follow this format:
  - a. Submission information
  - b. Analysis of submissions
  - c. Recommendation and any amendments
  - d. Where an amendment is recommended a section 32AA assessment is provided.
15. Recommendations are made to either retain provisions without amendment, or delete, add to or amend the provisions which are shown by way of strikeout and underlining. **Appendix A** of this report contains a copy of the Contaminated Land and Hazardous Substances chapters with all recommended amendments shown by way of strikeout and underlining.
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.

17. Clause 10(2)b of the RMA allows decisions on the PDP to include matters relating to consequential alterations to the PDP which are necessary, relevant or arising from submissions.

## **4. Statutory considerations and planning framework**

### **4.1 Resource Management Act 1991**

18. The PDP has been prepared in accordance with the RMA and in particular, the requirements of:
- a. Section 74 – Matters to be considered by territorial authorities; and
  - b. Section 75 – Content of District Plans.
19. As set out in the Section 32 Evaluation Report for Contaminated Land and Hazardous Substances there are a number of higher order planning documents and other relevant plans which have provided direction and guidance for the preparation of the PDP. These documents and a comprehensive assessment of all relevant consultation and statutory considerations prior to public notification of the PDP are outlined in that Section 32 Report. The Section 42A Introduction, General Provisions and Strategic Direction Report also provides an overview of the relevant Statutory considerations, higher order planning documents and other relevant plans and policies.
20. It is not considered necessary to repeat the detail of the relevant RMA sections and higher order documents in this report as these are covered within the relevant Section 32 Evaluation Report. However, where a higher order document is considered particularly relevant to the assessment of submissions or where there have been amendments to higher documents relevant to this topic these are discussed below.

### **4.2 National Planning Instruments and other Relevant Plans and Policies**

#### **Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCO)**

21. The NESCS applies to certain activities undertaken on 'pieces of land' on which any potentially contaminating activity on the Ministry for the Environment's Hazardous Activities and Industries List (the HAIL) is occurring, has occurred, or is more likely than not to have occurred.
22. The NESCS provides a nationally consistent set of planning controls for contaminated land. It ensures that contaminated land is identified, assessed, and (if necessary) made safe for human activity, although it does not address environmental effects of contaminated land. The NESCS does not contain objectives or policies to guide decisions made under its rules. All territorial authorities are required to observe and enforce the requirements of the NESCS.

### 4.3 Section 32AA evaluation

23. Any recommended amendments to provisions since the initial section 32 evaluation was undertaken are evaluated in accordance with section 32AA. Section 32AA states:

#### **32AA Requirements for undertaking and publishing further evaluations**

*(1) further evaluation required under this Act-*

- (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
- (b) must be undertaken in accordance with section 32(1) to (4); and*
- (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and*
- (d) must—*
  - (i) published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or*
  - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.*

*(2) To avoid doubt an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).*

*(3) In this section, proposal means a proposed statement, national planning standard, plan, or change for which a further evaluation must be undertaken under this Act.*

24. The required section 32AA evaluation for changes proposed as a result of consideration of submissions with respect to the topics of this report is contained within the assessment of the relief sought in submissions as required by s32AA(1)(d)(ii).
25. The Section 32AA further evaluation contains a level of detail that corresponds to the scale and significance of the anticipated effects of the changes that have been made. Recommendations on editorial, minor, and consequential changes that improve the effectiveness of provisions without changing the policy approach are not re-evaluated.

## 5. Background

26. The Section 42A Introduction, General Provisions and Strategic Direction Report includes details of the PDP notification, submission statistics etc. The Section 32 Evaluation Report for Contaminated Land and the Section 32 Evaluation Report for Hazardous Substances provide further information on the development of these chapters and an analysis to determine that the objectives are the most appropriate means of achieving the purpose of the Act and the provisions are the most appropriate means of achieving the objectives.

## 6. Consideration of submissions

### 6.1 Structure of the report

27. Submissions on the Contaminated Land and Hazardous Substances Chapters have raised a number of issues which have been grouped by Plan provision within this report, where there are limited submissions on Plan provisions these may be grouped if there are common themes. I have considered substantive commentary on primary submissions contained in further submissions as part of my consideration of the primary submission(s) to which they relate.
28. In accordance with Clause 10(3) of the First Schedule of the RMA, I have undertaken the following evaluation on a provisions-based approach, as opposed to a submission-by-submission approach. I have organised the evaluation in accordance with the layout of chapters of the PDP as notified.
29. Due to the number of submission points, this evaluation is generic only and may not contain specific recommendations on each submission point, but instead discusses the issues generally. This approach is consistent with Clause 10(2)(a) of Schedule 1 to the RMA. Specific recommendations on each submission / further submission point are contained in **Appendix B**.
30. The following evaluation should be read in conjunction with the summaries of submissions and the submissions themselves. Where I agree with the relief sought and the rationale for that relief, I have noted my agreement, and my recommendation is provided in the summary of submission table in **Appendix B**. Where I have undertaken further evaluation of the relief sought in a submission(s), the evaluation and recommendations are set out in the body of this report. I have provided a marked-up version of the Chapter with recommended amendments in response to submissions as **Appendix A**.
31. This report only addresses definitions and submissions on mapping specifically relevant to this topic. Definitions that relate to more than one topic and general mapping submissions have been addressed in the Section 42A Introduction, General Provisions and Strategic Direction Report.

### 6.2 Overview of submissions

32. 28 submissions were received in relation to the Contaminated Land Chapter and associated definitions. One further submission was received. The submissions were generally supportive of the provisions although the following issues were raised:
- Southland District Council sought to ensure that the Council compiled more information, including requiring a testing regime, on contaminated land;
  - Environment Southland sought to add a requirement that the Council notify them when a HAIL site is identified;
  - An amendment to CL-O1 was sought to remove reference to 'monitoring';
  - An amendment to CL-P1 was sought to ensure sites are identified in accordance with the NESCS;

- Fulton Hogan sought to add a clause to CL-P3 to ensure that contaminated material taken to landfill is minimised; and
  - Hokonui Rūnanga sought to amend CL-P3 to refine the way in which cultural values and customary uses is expressed.
33. 51 submissions were received in relation to the Hazardous Substance Chapter and associated definitions. 10 further submissions were received. The submissions were generally supportive of the provisions although, the following issues were raised:
- Amendments to the definition of 'sensitive environment' to remove reference to 'areas of indigenous biodiversity';
  - Amendment to the definition of significant hazardous facility to replace freezing works with meat processing and exclude emergency management from the definition;
  - Include provisions relating to the safe storage of hazardous substances including ensuring licensing and a monitoring regime;
  - Amend the provisions to refer to natural hazards other than flooding, such as liquefaction;
  - Amend HAZS-O1 to more appropriately refer to cultural values which may be adversely affected and delete reference to 'significant' adverse effects because any adverse effect should be managed in any environment;
  - Recognise that flood prone areas may be protected by a stop bank;
  - Clarify HAZS-P1 and HAZS-P2 in terms of their application to particular zones and new activities;
  - Amend HAZS-P3 to provide direction for extensions to significant hazardous facilities where the risks are increased;
  - Exclude Emergency management from the requirements for HAZS-R2.

### 6.3 Format for consideration of submissions

34. For each identified topic, I have considered the submissions that are seeking changes to the PDP in the following format:
- Matters raised by submitters;
  - Assessment;
  - Summary of recommendations; and
  - Section 32AA assessment.
35. The recommended amendments to the relevant chapters are set out in **Appendix A** of this report where all text changes are shown in a consolidated manner.

## 7. Contaminated Land Chapter

### 7.1 Definitions, Mapping and General Submissions and Additional Provisions Sought

#### Matters raised by submitters

##### Definitions

36. FENZ (s124.001) supports the definition of 'contaminated land' and seeks that it is retained as notified.

##### General Submissions

37. Alliance Group (s121.043) and Silver Fern Farms (s40.034) support the Contaminated Land Chapter and seek that it is retained as notified.
38. SDC (s146.014) supports the Contaminated Land Chapter but seeks that the Council compile more information on potentially contaminated land, and a testing regime is used for areas known to have held improperly stored hazardous substances because this would be in the best interests of all parties including SDC and downstream residents of GDC.
39. Fuel Companies (s16.035) support the Contaminated Land Chapter and seek to retain the approach to include an objective and policies but no rules, and the comment under the rules heading regarding the NESCS should be retained.

##### Mapping

40. Alliance Group (s121.002) support the mapped contaminated land sites overlay as it is consistent with the Environment Southland Selected Land Use Sites (SLUS) register. Kāinga Ora (FS28.073) further submitted in support of this submission and seek that it is allowed.

##### Additional Provisions

41. ES (s85.083) seek additional provisions to require GDC to notify ES when identifying a new HAIL site, so that ES can update the SLUS register to enhance regional management of contaminated locations.

#### Assessment

##### Definitions

42. The support from FENZ (s124.001) for the definition of 'contaminated land' is acknowledged and accepted.

##### General Submissions

43. The support from Alliance Group (s121.043), Silver Fern Farms (s40.034) and Fuel Companies (s16.035) for the Contaminated Land Chapter is acknowledged and accepted.

44. In response to SDC (s146.014) the Council will keep information related to contaminated land as it becomes available, for example through resource consent or building consent processes. Whilst a testing regime for sites which have known to hold improperly stored hazardous substances might be a beneficial process this is a matter that would sit outside the PDP. As noted in the overview section of the Contaminated Land Chapter under Section 30 of the RMA, Environment Southland is responsible for identifying and monitoring contaminated land. I acknowledge that there is likely to be some cross over in responsibilities in this regard given Gore District Council (GDC) process resource and building consents, however, any active identification and monitoring outside of a resource consent or building consent process is likely to lie within the responsibilities of ES.

### **Mapping**

45. The support from Alliance Group (s121.002) and further submission support from Kāinga Ora (FS28.073) for the mapped contaminated land sites overlay is acknowledged and accepted.

### **Additional Provisions**

46. In response to ES (s85.083) I agree in principle that providing them with information on a new HAIL site to allow for an update the SLUS register would be a practical and positive outcome. However, I do not necessarily consider this something that needs to be articulated through the PDP as it's unclear who would hold responsibility for this i.e. landowner or decision maker. I understand there is a current process whereby the Council's resource consent processing officer notifies ES on a weekly basis of any resource consent applications received which identify a new HAIL site.

### **Recommendation**

47. For the reasons outlined above I do not recommend any amendments to the definitions or mapping associated with the Contaminated Land Chapter, nor do I recommend any amendments to the Chapter to respond to the above submissions.

48. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

## **7.2 Overview**

### **Matters raised by submitters**

49. Alliance Group (s121.038) and Silver Fern Farms (s40.029) support the overview section and seek that it is retained as notified.

### **Assessment and Recommendation**

50. The submissions in support are acknowledged and accepted and no amendments are recommended.

### 7.3 Objective CL-O1

#### Matters raised by submitters

51. Alliance Group (s121.039) and Silver Fern Farms (s40.030) support objective CL-O1 and seek that it is retained as notified because it is well-aligned with the Council's role in implementing the NESCS through the resource consent process.
52. Fuel Companies (s16.036) support in part objective CL-O1 but seek an amendment to delete the word 'monitoring' because they consider that monitoring is outside the scope of the District Council's functions. The submitter states that under s31(1)(b)(iia) of the RMA, the Council's function is for the 'prevention and mitigation' of any adverse effects of the use of contaminated land. Conversely, it is the responsibility of regional council's under s30(1)(ca) of the Act to investigate land for the purposes of identifying and monitoring contaminated land. Additionally, under clause 5(2) of the NESCS, which is regulated by Territorial Authorities, monitoring is not explicitly covered. Use of the term 'managed' in the Objective and 'manage' and 'management' in the policies is sufficient to include monitoring where appropriate. An amendment as follows is requested:

Land that is affected by soil contamination is identified, assessed, and managed ~~and monitored~~ to minimise the risk to human health and protect the environment

#### Assessment

53. The support from Alliance Group (s121.039) and Silver Fern Farms (s40.030) is acknowledged and accepted.
54. In response to the Fuel Companies (s16.036) I agree that it is a regional council function to monitor and investigate contaminated land under s30(1)(ca). However, the Contaminated Land Chapter objectives and policies have been written to align with the provisions under the NESCS which include matters of control and discretion relating to monitoring of contaminants.
55. Regulation 9(2) details the matters of control for a controlled activity removal or replacement fuel storage system, soil sampling or disturbing soil activity. The matters of control include, at clause 2(b)(ii) how the activity must be monitored.
56. Regulation 10 provides the matters of discretion for a restricted discretionary activity and at clause 3(c)(iv) state "the mitigation measures for the piece of land, including the frequency and location of monitoring of specified contaminants."
57. Therefore, whilst it may not be a territorial authority function under section 30 of the RMA to actively monitor all HAIL sites, if the Council was processing a resource consent under the NESCS then conditions of consent may require ongoing or temporary monitoring of contaminated land on the site. In this context, and given the objectives and policies are proposed to align with the NESCS the inclusion of 'monitoring' in CL-O1 is considered appropriate.

## Recommendation

58. For the reasons given above no amendments to CL-O1 are recommended.
59. It is recommended that submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

### 7.4 Policy CL-P1

## Matters raised by submitters

60. Alliance Group (s121.040) and Silver Fern Farms (s40.031) support policy CL-P1 and seek that it is retained as notified because they consider it is appropriate to identify contaminated sites, as the PDP does, through the "for information only" mapping layer relating to contaminated sites.
61. Federated Farmers (s126.063), Kevin Robertson (s115.064), Rural Ratepayers Group (s143.075), Alistair & Bernadette Hunt (s148.076), Ronald Crispin (s60.066) and John Baynes (s68.184) oppose in part CL-P1 because they consider any investigation must be consistent with the NESCS which does not require primary production land investigations for existing primary production land use (s5(9)). The submitters seek an amendment to the policy as follows:

Identify sites, as per the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, that are known to contain contaminated soil as a result of current or historic land uses and activities.

## Assessment

62. The support from Alliance Group (s121.040) and Silver Fern Farms (s40.031) for CL-P1 is acknowledged and accepted.
63. In response to Federated Farmers (s126.063), Kevin Robertson (s115.064), Rural Ratepayers Group (s143.075), Alistair & Bernadette Hunt (s148.076), Ronald Crispin (s60.066) and John Baynes (s68.184) I acknowledge that identification of HAIL sites should be in accordance with the NESCS. However, I do not consider that the policy needs to specify this. I note that CL-O1 also refers to identifying sites and the objectives and policies generally are aligned with the NESCS.
64. The Council's responsibility under s30 of the RMA is not to identify HAIL sites, although identification by the Council may occur through a resource consent process in which case identification would be in accordance with the NESCS. This approach is made clear in the overview section of the Contaminated Land Chapter which states "*Where land has been identified as having actual or potential contamination the provisions of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS) apply.*" This would include clauses 7 and 8 of the NESCS which set out when land is a 'piece of land' under the NESCS. Therefore, I do not consider an amendment to CL-P1 is necessary as the Council is bound by the provisions

of the NESCS and could not require a consent other than under the NESCS given there are no rules within the Contaminated Land Chapter.

### Recommendation

65. For the reasons given above I do not recommend any amendments to CL-P1.
66. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

## 7.5 Policy CL-P2 and CL-P3

### Matters raised by submitters

#### CL-P2

67. Alliance Group (s121.041), Silver Fern Farms (s40.032) and Transpower (s101.040) support policy CL-P2 and seek that it is retained as notified because they consider it provides flexibility to manage potential risks in a manner that corresponds to the site context and intended use.

#### CL-P3

68. Alliance Group (s121.042), Silver Fern Farms (s40.033) and Transpower (s101.042) support policy CL-P3 and seek that it is retained as notified because it provides appropriate policy direction to guide the determination of applications under the NESCS.
69. Fulton Hogan (s122.003) opposes in part policy CL-P3 because they are aware contaminated soil is becoming a significant contribution to waste in landfills and the Waste Minimisation Regulations introduced waste levies to encourage people to avoid sending waste to landfill. Following this principle, the submitter suggests that waste minimisation should also be a key consideration under CL-P3 to encourage sustainable remediation methods for contaminated sites and reduce waste soil to landfill and so the following amendment is sought:

CL-P3 Determine appropriate management action for contaminated land on the basis of:

.....

9. minimisation of waste to landfill, provided that the health and safety of people and protection of the environment are achieved

70. Hokonui Rūnanga (s139.053) support in part the policy but seek an amendment to ensure that wherever possible Plan provisions specify the particular effects of concerns to mana whenua to ensure they are clear and appropriate effects are identified and assessed including when Hokonui Rūnanga may be an affected party. The following amendment is sought:

CL-P3 Determine appropriate management action for contaminated land on the basis of:

.....

3. The values of site - including, heritage, archaeological and biodiversity values ~~and values to Māori communities~~, whakapapa, mauri and effects on any wāhi tapu, mahinga kai or other customary uses.....

## Assessment

### CL-P2

71. The support from Alliance Group (s121.041), Silver Fern Farms (s40.032) and Transpower (s101.040) for CL-P2 is acknowledged and accepted.

### CL-P3

72. The support from Alliance Group (s121.042), Silver Fern Farms (s40.033) and Transpower (s101.042) is acknowledged and accepted.

73. In response to Fulton Hogan (s122.003) I acknowledge that minimising waste to landfill and encouraging sustainable remediation of contaminated soils would be a positive environmental outcome. However, the intent of the policy relates to the management of contaminated land on a site, and I consider the amendment sought goes beyond the intent of the policy and the focus of the Chapter. Furthermore, the purpose of the NESCS is in relation to managing the risks to human health, not waste minimisation, the objectives and policies are intended to align with the outcomes sought through the NESCS.

74. In response to Hokonui Rūnanga (s139.053) I accept that the amended wording sought through the submission may more appropriately identify the potential effects which are of concern to mana whenua. I therefore, accept the submission and recommend that CL-P3 is amended as identified below. However, I acknowledge that there is ongoing discussions with Hokonui Rūnanga in relation to the structure of the PDP and mechanisms for expressing cultural values within objectives and policies. Therefore, whilst I recommend this amendment as part of this report I accept that it may be subject to future consequential amendments to align with the final recommendations from both Hokonui Rūnanga and the reporting officer for Mana Whenua and Sites and Areas of Significance for Māori:

CL-P3 Determine appropriate management action for contaminated land on the basis of:

.....

3. The values of site - including, heritage, archaeological and biodiversity values ~~and values to Māori communities~~, whakapapa, mauri and effects on any wāhi tapu, mahinga kai or other customary uses.....

## Recommendation

75. For the reasons given above I recommend the following amendment to CL-P3:

CL-P3 Determine appropriate management action for contaminated land on the basis of:

.....

3. The values of site - including, heritage, archaeological and biodiversity values ~~and values to Māori communities~~, whakapapa, mauri and effects on any wāhi tapu, mahinga kai or other customary uses.....

76. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

### Section 32AA Evaluation

77. The following evaluates the recommendation to amend CL-P3 under section 32AA of the RMA.

#### Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner because the cultural values which Plan users and decision makers should consider are clearly articulated.

#### Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the amendment.

#### Risk of acting or not acting

There is the potential for a lack of clarity as to what the 'values to Māori communities' are if the proposed amendment is not made.

#### Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to achieve the Objective than the notified version of the PDP.

## 8. Hazardous Substances Chapter

### 8.1 Definitions

#### Matters raised by submitters

##### **Hazardous Substance**

78. Alliance Group (s121.007), Silver Fern Farms (s40.005) and FENZ (s124.005) all support the definition of 'hazardous substance' and seek that it is retained as notified because it aligns with the RMA definition.

##### **Sensitive Environments**

79. Mercury (s130.007) opposes the definition of 'sensitive environments' because it is unclear what an 'area' is or how it is defined. The submitter seeks the following amendment:

Means land identified with: Outstanding Natural Features and Landscapes or Significant Natural Area ~~or Areas of Indigenous Biodiversity~~

80. Transpower (FS30.051) and Contact Energy (FS24.004) both support the submission from Mercury (s130.007) because they also consider that 'area' is not sufficiently understood and therefore creates uncertainty.

81. Powernet (s95.008) opposes the definition of sensitive environments because they consider the definition is uncertain and captures areas that are not defined. The definition should be amended to refer to specifically mapped and identified areas on the district planning maps. The submitter seeks the following amendment:

Means land identified with: Outstanding Natural Features and Landscapes or Significant Natural Area ~~or Areas of Indigenous Biodiversity~~

82. DOC (FS31.006 & FS31.008) further submitted opposing in part the submission from Mercury (s130.007) and Powernet (s95.008) and seek that the submissions are disallowed on the basis that they consider it appropriate to include areas of indigenous biodiversity as a sensitive environment in relation to the use of hazardous substances. Furthermore, they note that areas of indigenous biodiversity may be outside of significant Natural Areas (SNAs) and may not be mapped. DOC states that these areas should be managed by applying the effects management hierarchy in accordance with the NPS-IB clause 3.16. In addition, the submitter identifies that section 31(1)(b)(iii) of the RMA assigns territorial authorities with the function of the control of any actual or potential effects of the use, development, or protection of land for the purpose of the maintenance of indigenous biodiversity. Referring to 'Areas of Indigenous Biodiversity' within the plans policies and indigenous vegetation rules enables the Council to achieve this purpose.

#### **Significant Hazardous Facility**

83. Alliance Group (s121.016) and Silver Fern Farms (s40.014) seek an amendment to the definition to delete reference to 'freezing works' and instead refer to meat processing.

[ ...]

(j). ~~Freezing works~~ Meat processing and rendering plants.

[ ...]

84. Fuel Companies (s16.029) supports the definition and seek that it is retained as notified, particularly in relation to clause (p) and the note excluding underground storage of petrol and diesel and service stations when it is undertaken in accordance with HSNOCOP 44 and HSNOCOP 45.

85. FENZ (s124.008) supports in part the definition but seeks an amendment to ensure that emergency management is not a significant hazardous facility as follows:

.....

g) Emergency management is not a significant hazardous facility.

.....

86. FENZ support the inclusion of 'Any Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 as a 'Major Hazardous Facilities'. FENZ considers that any activity of this scale should be evaluated by the Council to ensure that adverse effects from the activity can be managed appropriately. The submitter states that fire stations and associated firefighting activities involve the use and storage of hazardous substances at quantities that are considered minor. However, there are circumstances where Fire and Emergency needs to temporarily store large quantities of product in an emergency.

## Assessment

### Hazardous Substance

87. The submissions from Alliance Group (s121.007), Silver Fern Farms (s40.005) and FENZ (s124.005) are acknowledged and accepted and no amendments to the definition are recommended.

### Sensitive Environments

88. In response to Mercury (s130.007) and Powernet (s95.008) and the further submitters Transpower (FS30.051) and Contact Energy (FS24.004) I note that the term 'sensitive environments' is only used in the PDP within the Hazardous Substances (HAZS) Chapter. The term is defined as follows:

*Means land identified with: Outstanding Natural Features and Landscapes or Significant Natural Area or Areas of Indigenous Biodiversity*

89. The intent of the definition was to provide a streamlined means of referring to the individual areas, landscapes, and features which relate to Section 6 matters covered in the Ecosystem and Indigenous Biodiversity (ECO) Chapter and Natural Features and Landscapes (NFL) Chapter. However, I note that whilst other chapters, such as the Energy Chapter have not used the term 'sensitive environments' instead includes a disaggregated version of the definition to reference the relevant Section 6 matters.
90. In this report I will consider the submissions on the definition only as they relate to the HAZS Chapter.
91. The term 'sensitive environments' is used in the following places within the HAZS Chapter:

### Overview

.....However, resource management issues are not considered through this other legislation, therefore, the purpose of the Hazardous substances Chapter is to manage the effects of hazardous substances on **sensitive environments** and on environments where sensitive activities are located in higher densities.

#### HAZS-O1

Locate, design and operate significant hazardous facilities to prevent significant adverse effects on the health of people, the values of **sensitive environments**.....

#### HAZS-P1

Manage adverse effects from new significant hazardous facilities locating in the General Industrial Zone and Rural Industry Precinct by:

.....

2. locating significant hazardous facilities outside of, and setback from, **sensitive environments**.....

#### HAZS-P2

Avoid adverse effects from new significant hazardous facilities by:

.....

2. locating significant hazardous facilities outside of, and setback from, **sensitive environments**.....

#### HAZS-P3

Allow extensions of existing significant hazardous facilities located outside of **sensitive environments** where the risks associated with hazardous substance storage, use or disposal are not increased.

#### HAZS-R1

Extension or upgrade of existing significant hazardous facility are permitted where the site is not located within a **sensitive environment**.

92. The rule framework within the HAZS Chapter is intended to manage the effects from significant hazardous facilities and through the framework encourage facilities to locate within the General Industrial Zone or Rural Industry Precinct. These areas have been assessed through the PDP process as being more suitable for accommodating these facilities which may generate higher degrees of noxious discharge or effects<sup>1</sup>.

93. I acknowledge that 'areas of indigenous biodiversity' are not defined within the PDP. However, while any landowner could obtain an ecologist report to provide guidance on the levels of biodiversity present on site, in the context of the PDP it may be unclear whether the levels of biodiversity constitute an 'area'.

94. In reviewing the Indigenous Biodiversity and Ecosystems (ECO) Chapter I note that it refers variously to the following:

- Areas of significant indigenous biodiversity (ECO-P7(4) & (5))

---

<sup>1</sup> Section 32 Evaluation Report: Industrial Zones, Section 32 Evaluation Report: Rural Zones and Section 32 Evaluation Report: Hazardous Substances.

- Areas of indigenous vegetation or habitat (ECO-P9(4))
- Areas of indigenous biodiversity (ECO-P10(4))

95. ECO-R1 gives effect to the policies and provides restrictions on the clearance of indigenous vegetation. Indigenous vegetation is defined in the PDP as follows:

*“Has the same meaning as per the National Planning Standard for Indigenous Biodiversity – means vascular and non-vascular plants that, in relation to a particular area, are native to the ecological district in which that area is located.”*

96. Removing the reference to ‘areas of indigenous biodiversity’ from the definition of ‘sensitive environments’ would mean that extensions to existing facilities where the location or quantity of hazardous substance storage, use or disposal does not change would be permitted even if it were in an area of indigenous biodiversity. However, there would be no change in relation to new significant hazardous facilities which would still require either a discretionary or non-complying resource consent and as decision makers are not limited in the range of matters they can consider the PDP would be read as a whole and the objectives and policies of other Chapters, such as ECO, would be relevant.
97. Therefore, in response to the submissions and further submissions from Mercury (s130.007), Powernet (s95.008), Transpower (FS30.051) and Contact Energy (FS24.004) I accept that it is difficult to know where these ‘areas’ are. Furthermore, I note that there are rules within the ECO Chapter (ECO-R1) which will aid in maintaining indigenous biodiversity through managing indigenous vegetation clearance which would apply regardless of any provisions within the HAZS. Accordingly, it may be the case that the provisions within the HAZS Chapter do not need to further manage adverse effects on areas of indigenous biodiversity because ECO-R1 will apply to any land to be developed for a new significant hazardous facility and will also apply to any indigenous vegetation clearance required to extend an existing facility.
98. In response to DOC (FS31.006 & FS31.008), I accept that areas of indigenous biodiversity may be outside an SNA; that Council has obligations under section 31(1)(b)(iii) of the RMA to maintain indigenous biodiversity/biological; and that under the NPS-IB areas of indigenous biodiversity should be managed by applying the effects management hierarchy in accordance with clause 3.16. However, until the submissions on the ECO Chapter have been assessed and considered there is some degree of uncertainty as to how these obligations will be achieved through the PDP.
99. Given the hearing on the ECO Chapter is not until early 2025 it is unclear what amendments to that Chapter may be recommended in response to submissions. Therefore, references to ‘areas of indigenous biodiversity’ may evolve through definitions and/or clearer articulation. In which case it may be appropriate to retain the reference in the definition of ‘sensitive environment’.
100. Therefore, in summary, for the purposes of this report I accept the submissions and further submissions from Mercury (s130.007), Powernet (s95.008), Transpower (FS30.051) and Contact Energy (FS24.004) and reject the submission from DOC (FS31.006 & FS31.008) on the basis that there is a rule (ECO-R1) in the ECO Chapter which will achieve the purpose of maintaining indigenous biodiversity regardless of provisions in the HAZS. Furthermore, as the

PDP does not currently make it expressly clear where areas of indigenous biodiversity are I accept that it would be difficult for Plan users to understand if they are compliant with the rules. However, I recommend that the panel reserve final decisions on these submissions until the ECO Chapter has been considered as part of hearing stream 9.

### **Significant Hazardous Facility**

101. In response to Alliance Group (s121.016) and Silver Fern Farms (s40.014) I accept the submission on the basis that the updated term is more appropriate and currently relevant. I therefore, recommend the definition is amended as follows:

[ ...]

(j). ~~Freezing works~~ Meat processing and rendering plants.

[ ...]

102. The support from the Fuel Companies (s16.029) is acknowledged and accepted in part subject to the recommended amendment to address other submissions.
103. In response to FENZ (s124.008) I acknowledge that an emergency response management operation may involve storage of greater quantities of hazardous substances than normal.
104. The PDP does not include a definition of 'emergency management' and so without a definition I consider it would be problematic interpreting whether an activity fell within the remit of 'emergency management' and who might be undertaking the emergency management. I note the example provided by FENZ within their submission states that for the Nelson Fires in 2019 approximately 5600kg of fire retardant and foam was used per day. However, in a major event FENZ would aim to have approximately 15-30,000kg of product on site. The submitter is concerned that the definition does not provide for this volume of product to be stored on site.
105. The definition of 'significant hazardous facility' is as follows:

*Means the use of land and/or buildings (or any part of) for one or more of the following activities:*

- (a) Manufacturing and associated storage of hazardous substances (including manufacture of agrichemicals, fertilisers, acids/alkalis or paints).*
- (b) Petroleum exploration and petroleum production.*
- (c) The storage/use of more than 50,000L of petrol.*
- (d) The storage/use of more than 100,000L of diesel.*
- (e) The storage/use of more than 6 tonnes of LPG.*
- (f) Galvanising plants.*
- (g) Electroplating and metal treatment.*
- (h) Tanneries.*
- (i) Timber treatment.*
- (j) Freezing works and rendering plants.*
- (k) Wastewater treatment plants.*
- (l) Metal smelting and refining (including battery refining or recycling).*
- (m) Milk processing plants (except where milk processing plant is specifically designed to contain and store milk so that any reasonably potential spillage of milk is contained*

*within the site of the plant until it can be disposed of to an approved wastewater system).*

*(n) Fibreglass manufacturing.*

*(o) Polymer foam manufacturing.*

*(p) Any Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016.*

*For (c) and (d), it does not include the underground storage of petrol and diesel at service stations undertaken in accordance with HSNO COP 44 Below Ground Stationary Container Systems for Petroleum – Design and Installation and HSNO COP 45 Below Ground Stationary Containers Systems for Petroleum – Operation*

106. In my opinion I do not consider that storage of fire retardant and foam of larger than normal quantities would actually trigger the definition. Instead, the storage of the substance would be managed under HSNO legislation, rather than the PDP. The definition does not specify quantities of hazardous substances, other than in relation to petrol, diesel and LPG, and therefore if the activity does not fit the definition of significant hazardous facility the rules would not be triggered.

107. I note also that Section 330 of the RMA provides for Emergency Works with section 9 (restrictions on the use of land) not applying to any activity undertaken to remove the cause of, or mitigate any actual or likely adverse effects of, the emergency.

108. For these reasons I do not consider the exemption necessary as I do not consider storage of fire retardant and foam for an emergency response would be captured by the definition and therefore trigger a need to comply with the relevant PDP rules. Further, I consider the RMA provides separately for emergency works under section 330.

### Recommendation

109. For the reasons given above I recommend that the definition of significant hazardous facility is amended as follows:

Means the use of land and/or buildings (or any part of) for one or more of the following activities:

- (a) Manufacturing and associated storage of hazardous substances (including manufacture of agrichemicals, fertilisers, acids/alkalis or paints).
- (b) Petroleum exploration and petroleum production.
- (c) The storage/use of more than 50,000L of petrol.
- (d) The storage/use of more than 100,000L of diesel.
- (e) The storage/use of more than 6 tonnes of LPG.
- (f) Galvanising plants.
- (g) Electroplating and metal treatment.
- (h) Tanneries.
- (i) Timber treatment.
- (j) ~~Freezing works~~ meat processing and rendering plants.
- (k) Wastewater treatment plants.
- (l) Metal smelting and refining (including battery refining or recycling).

(m) Milk processing plants (except where milk processing plant is specifically designed to contain and store milk so that any reasonably potential spillage of milk is contained within the site of the plant until it can be disposed of to an approved wastewater system).

(n) Fibreglass manufacturing.

(o) Polymer foam manufacturing.

(p) Any Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016.

For (c) and (d), it does not include the underground storage of petrol and diesel at service stations undertaken in accordance with HSNOCOP 44 Below Ground Stationary Container Systems for Petroleum – Design and Installation and HSNOCOP 45 Below Ground Stationary Containers Systems for Petroleum – Operation

110. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

### Section 32AA Evaluation

111. The following evaluates the recommendation to amend the definition of significant hazardous facility under section 32AA of the RMA.

#### Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner by ensuring correct terminology is used.

#### Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the proposal.

#### Risk of acting or not acting

There is the potential for confusion over what constitutes a freezing works given this is not a currently used term to identify meat processing activities if the proposed amendment is not made.

#### Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to achieve the Objectives than the notified version of the PDP.

## 8.2 General submissions

### Matters raised by submitters

112. Robina Johnston (s140.010) submits that the Hazardous Substances Chapter does not mention hazardous products being stored in safe, maintained and earthquake strengthened buildings.

The submitter considers that resource consents should include information on building occupancy and buildings should be manned. The submitter seeks that consideration is given to the safe storage of hazardous products, reporting and the risk to people and the community and emergency services.

113. SDC (s146.030) supports in part the chapter but considers that other areas such as those prone to liquefaction should also be considered. The submitter also seeks provisions enabling a licensing and monitoring regime for hazardous substance storage may be of use for mitigating risk.
114. Alliance Group (FS27.011) and Silver Fern Farms (FS29.036) oppose in part the submission from Southland District Council (s146.030) and seek that it is disallowed in part because hazardous substances are already appropriately managed under non-RMA regulations and provisions related to other natural hazards are addressed in the Natural Hazards Chapter of the PDP as required by the National Planning Standards.

### Assessment

115. In response to Robina Johnston (s140.010) the submission raises issues on safe storage of hazardous materials and earthquake prone buildings. I accept that risk to people and community should be managed from the use, transportation and storage of hazardous substances. However, these matters are generally controlled by Hazardous Substances and New Organisms Act (HSNO) and the Health and Safety at Work (Hazardous Substances) (HSW Act) Regulations. The Section 32 Report for Hazardous Substances explains that the 2017 RMA amendment legislation removed the requirement under Section 31 for territorial authorities to control land uses in relation to hazardous substances. Therefore, District Plans should focus only on resource management related effects which are not dealt with through other legislation, this is interpreted to mean those residual environmental effects such as on sensitive environments and sensitive activities.
116. In response to SDC (s146.030) I have reviewed the Natural Hazards Chapter to assess how liquefaction risk is dealt with in that Chapter and note that the only rules managing development in relation to liquefaction risk are for areas of 'high liquefaction risk' and for critical infrastructure.
117. However, I note that NH-P5 states *"manage subdivision, use and development in areas subject to risks of slope instability, subsidence and high liquefaction risk to demonstrate the appropriateness of the site for subdivision, use or development in a way that can avoid or mitigate hazard risks to people and property."*
118. Reviewing the PDP planning maps I note that there are relatively few areas of high liquefaction risk, and all areas are within the rural zones (refer to figure 1)

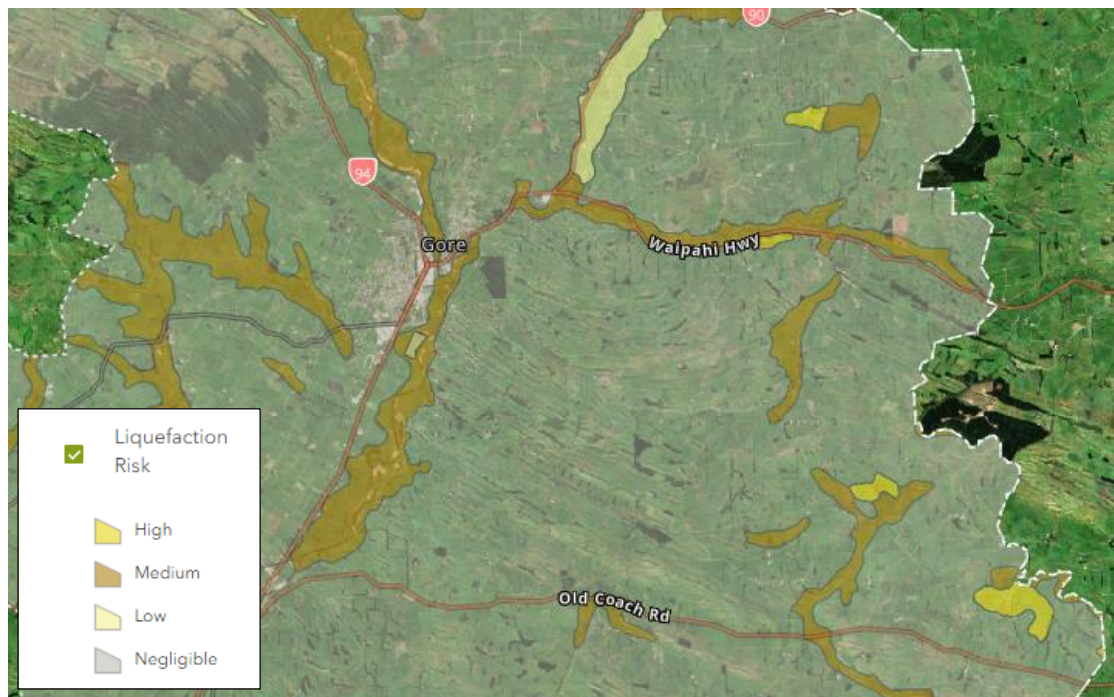


**Figure 1 – High Liquefaction Risk Areas**

119. As the Natural Hazard Chapter only focuses on high liquefaction risk areas I consider it would only be appropriate to consider development which may be in a high liquefaction risk area to adopt a consistent approach. Given resource consent will be required for any new significant hazardous facilities as at least a discretionary activity and the PDP should be read as a whole, consideration would be given to the policies of the natural hazard chapter where appropriate, i.e. if a development was located in a natural hazard area.
120. However, notwithstanding the above the Natural Hazards Chapter is the subject of a future hearing (hearing stream 9) and may, through that hearing process, adopt a different approach to management of liquefaction areas given these areas are also managed through the Building Act. I do not recommend any amendments to the Hazardous Substance Chapter in response to the submission but note any amendments to Natural Hazards Chapter may impact on the assessment provided above.
121. In response to the request to include provisions enabling licensing and monitoring for hazardous substances I accept the further submissions from Alliance Group (FS27.011) and Silver Fern Farms (FS29.036) because other legislation adequately manages the storage of hazardous substances, and it is not appropriate to duplicate this requirement within the PDP. The RMA no longer includes, in section 31, a requirement for Territorial Authorities to manage hazardous substances given these are controlled by HSNO and HSW Act.
122. Overall, it is not recommended to accept the submission from SDC (s146.030) as liquefaction risk would be managed through a resource consent process with policies within the Natural Hazards Chapter providing guidance and direction. The further submissions from Alliance Group (FS27.011) and Silver Fern Farms (FS29.036) are therefore accepted.

## Recommendation

123. For the reasons detailed above I do not recommend any amendments to the Hazardous Substance Chapter to respond to those submissions addressed above.

124. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

### 8.3 Overview

#### Matters raised by submitters

125. The following submitters support the Hazardous Substance Overview and seek that it is retained as notified:

| Submission point | Submitter                  | Reason                                                                                                                                                                                                                                                                    |
|------------------|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| s121.029         | Alliance Group             | The submitters agree with the approach, outlined in this section and at pp. 14-15 of the s32 report, of confining these provisions to: matters not already covered by other legislation; and the management of proposed activities near significant hazardous facilities. |
| s40.019          | Silver Fern Farms          |                                                                                                                                                                                                                                                                           |
| s126.064         | Federated Farmers          | Support is given to the focus on managing effects of hazardous substance on sensitive environments and on environments where sensitive activities are located in higher densities. The focus should be on the management of significant hazardous facilities.             |
| s115.065         | Kevin Robertson            |                                                                                                                                                                                                                                                                           |
| s143.076         | Rural Ratepayers Group     |                                                                                                                                                                                                                                                                           |
| s148.077         | Alistair & Bernadette Hunt |                                                                                                                                                                                                                                                                           |
| s60.067          | Ronald Crispin             |                                                                                                                                                                                                                                                                           |
| s68.185          | John Baynes                |                                                                                                                                                                                                                                                                           |

126. ES (s85.098) submits that hazardous substances quantity limits similar to other district plans should be included. ES notes that the PDP advises "*Duplication of the HSNO & HSW Act requirements in the Plan is not efficient and does not add any effective control over hazardous substance.*" The submitter considers that this statement misses the point of such rules, e.g. the storage of deadly poisons or explosives may not be appropriate in a residential zone. HSNO does not necessarily restrict such activities in sensitive areas.

127. Fuel Companies (FS12.001) further submit in opposition to the submission from ES (s85.098) and seek that it is disallowed because they consider it would be inefficient and ineffective for the District Plan to have controls that duplicate the HSNO and HSW Act provisions.

#### Assessment

128. The support from Alliance Group (s121.029), Silver Fern Farms (s40.019), Federated Farmers (s126.064), Kevin Robertson (s126.064), Rural Ratepayers Group (s143.076), Alistair & Bernadette Hunt (s148.077), Ronald Crispin (s60.067), John Baynes (s68.185) for the overview is acknowledged and accepted.

129. In response to ES (s85.098) as part of Resource Legislation Amendment Act 2017, Sections 30 and 31 of the RMA were amended to remove the control of hazardous substances as an explicit Council function. This means Councils no longer have an explicit obligation to manage hazardous substances in RMA Plans, or policy statements.
130. However, Councils still have a broad function of achieving integrated management in relation to hazardous substances and may exercise this function by placing additional controls on hazardous substances under the RMA if HSNO or HSW Act controls inadequately address the environmental effects of hazardous substances. Further, Section 142 of the HSNO Act provides that RMA plans can only include more stringent requirements in circumstances when these are considered 'necessary' for RMA related purposes.
131. Therefore, the approach taken within the PDP is consistent with the approach taken by other comparable district plans developed after the 2017 RMA amendments<sup>2</sup> in that the provisions seek to manage only the residual environmental effects of significant hazardous facilities rather than the storage of hazardous substances. This is expressed in the framework within the chapter which makes it clear that the PDP seeks to manage and avoid the adverse effects of significant hazardous facilities on sensitive environments and sensitive activities.
132. I therefore reject the submission as I consider the PDP adopts a best practice approach to manage actual and potential adverse effects from the use, storage or disposal of hazardous substances on the environment without duplicating the requirements of other legislation (HSNO & HSW Act). Accordingly, I accept the further submission from Fuel Companies (FS12.001).

### Recommendation

133. For the reasons detailed above I do not recommend any amendments to the overview.
134. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

## 8.4 Objectives HAZS-O1 and HAZS-O2

### Matters raised by submitters

#### HAZS-O1

135. Alliance Group (s121.030) and Silver Fern Farms (s40.020) support HAZS-O1 and seek that it is retained as notified because the objective seeks to prevent 'significant' adverse effects and appropriately retains flexibility to apply management measures to other adverse effects which are not significant.
136. Hokonui Rūnanga (s139.052) support in part HAZS-O1 and seek an amendment because they consider that the PDP provisions should, wherever possible, specify the particular effects of

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<sup>2</sup> Section 32 Evaluation Report: Hazardous Substances page 18

concern to mana whenua to ensure provisions are clear and that appropriate effects are identified and assessed. This includes identifying where Hokonui Rūnanga may be an affected party. The submitter seeks the following amendment:

~~Locate, design and operate~~ significant hazardous facilities are designed and located to prevent significant adverse effects on the health of people, the values of sensitive environments and ~~the underlying relationship Ngāi Tahu hold with the natural environment. the mauri of whenua and wai, wāhi tapu, access to and use of mahinga kai, and other values associated with the natural environment.~~

137. ES (s85.099) supports in part HAZS-O1 but seeks that alignment with the Regional Policy Statement is required.

138. Forest & Bird (s110.022) seek an amendment to HAZS-O1 because they consider adverse effects should not have to be significant to justify a change in location, design or operation. Any effects should be minimised to no more than minor regardless of whether the environment is sensitive or not. The submitter seeks the following amendment:

Locate, design and operate significant hazardous facilities to prevent ~~significant~~ adverse effects on the health of people, the ~~values of sensitive~~ environments and the underlying relationship Ngāi Tahu hold with the natural environment.

139. Hamish Weir (FS5.31) opposes the submission from Forest & Bird (s110.022) and seeks that it is disallowed because it is overly restrictive.

## HAZS-O2

140. The following submitters support HAZS-O2 and seek that it is retained as notified:

| Submission point | Submitter         | Reason                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| s121.031         | Alliance Group    | The submitters agree with the s32 analysis, including the identification of reverse sensitivity issues under the "Issue 2" sub-heading, and the note that this objective " <i>Will allow for communities to provide for their economic wellbeing by providing for significant hazardous facilities which generate employment and support the local economy (section 5(2)) whilst avoiding and mitigating adverse effects on the amenity values of the community (section 5(2)(c))</i> ". |
| s40.021          | Silver Fern Farms |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| s125.014         | MOE               | The submitter acknowledges the risks significant hazardous facilities pose to its assets, Tamariki, Rangatahi and Kaimahi. Given this objective seeks to avoid unacceptable risks to sensitive activities whilst still recognising the benefits of significant hazardous facilities by minimising reverse sensitivity effects the submitter supports the objective.                                                                                                                      |

|         |                |                                                                                                                                                                                                                                                                   |
|---------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| s16.037 | Fuel Companies | The submitter supports the inclusion of an objective that addresses reverse sensitivity effects on significant hazardous facilities and agrees with the s32 analysis, including the identification of reverse sensitivity issues under the "Issue 2" sub-heading. |
|---------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Assessment

### HAZS-O1

141. The support of Alliance Group (s121.030) and Silver Fern Farms (s40.020) is acknowledged and accepted.
142. In response to Hokonui Rūnanga (s139.052) I accept the submission in part on the basis that the submitter has mana whenua in the district. The amendments will ensure that the appropriate cultural values are considered in relation to any proposal, however, I note that within the PDP the Mana Wheuna Chapter at section 2.3 articulates cultural values and associations within the district. I note also that Hokonui Rūnanga have submitted widely on the PDP to amend how cultural values are articulated throughout the PDP. In her supplementary evidence for Hearing Stream 3 (Mana Whenua Chapter) Ms Bennett provided some alternative wording for objectives. In my view though it is somewhat unclear whether this amended wording is appropriate in the context of all objectives. In particular HAZS-O1 refers to the relationship between Ngāi Tahu and the natural environment rather than cultural values.
143. Further, I do not agree that the word 'operate' should be deleted at the start of the objective. I think it is appropriate to retain reference to operate because conditions of consent may be required to manage the ongoing operation of the activity.
144. In response to the submission, I encourage Hokonui Rūnanga to consider whether the amendment sought through the submission reflects the more recent approach to articulating the relationship between Ngāi Tahu and the natural environment and provide further expert evidence in this regard. Therefore, I recommend the objective remain as notified with further consideration to be given during the evidence exchange prior to the hearing.
145. In response to ES (s85.099) the Section 32 Evaluation Report for Hazardous Substances provides an overview of the relevant RPS provisions.<sup>3</sup> The report identified that the RPS includes 1 objective (HAZ.1 "*protection of the environment (including human health & safety)*") and seven policies which are relevant which relate to the following:
- hazardous substance storage facilities and containers
  - accidents involving hazardous substances
  - transportation of hazardous substances
  - disposal of hazardous substances
  - alternatives to hazardous substances

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<sup>3</sup> Section 32 Evaluation Report for Hazardous Substances para 3.5 pages 7-8

- f. improvement of knowledge
- g. new contaminated land

146. The RPS became operative in 2017, however, as noted elsewhere in this report the 2017 RMA amendments removed the requirement under section 30<sup>4</sup> of the RMA for regional councils to control the use of land for the purposes of *‘prevention or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances.’*<sup>5</sup>
147. In my view, whilst there is a requirement under section 75(3) of the RMA to give effect to a regional policy statement, the RPS is now out of date in respect of the management of hazardous substances given it has not itself given effect to the 2017 RMA amendments. Section 61 of the RMA requires that regional councils must prepare and change their regional policy statement in accordance with their functions under section 30<sup>6</sup>. This does not appear to have occurred as yet.
148. In response to Forest & Bird (s110.022) it is important to recognise that significant Hazardous facilities, by their nature are more likely to generate adverse effects which are on the significant scale of effects due to the potential for noxious discharges, increased noise and general larger scale of the activity. In my opinion significant adverse effects are distinguished from adverse effects in relation to the scale and degree of adverse effect.
149. In the context of the less than minor, minor, more than minor hierarchy of effects assessed through a resource consent process, it is my opinion that significant adverse effects would generally have more than minor effects, unless those effects were mitigated or remedied. The policy direction sets out how those adverse effects can be mitigated or remedied and there are no permitted activity pathways for new significant hazardous facilities.
150. The use of the word significant should also be viewed in the context of the word ‘prevent’ in the objective. Requiring that adverse effects generally are prevented may, in my opinion, present too stringent a control. It should also be noted that the objective is given effect to by policies HAZS-P1 and HAZS-P2 which seek to manage adverse effects where the facilities are located within the General Industrial Zone and Rural Industry Precinct and avoid adverse effects where they are located elsewhere.
151. Furthermore, zone provisions would also apply to these activities and the zone Chapters contain clear directions on which activities should be enabled, managed and avoided. In the context of this Chapter therefore, I consider the objective direction to prevent significant adverse effects versus preventing adverse effects more generally is appropriate.
152. In respect of the relief sought to delete ‘values of sensitive’ before environments I do not accept that this would be appropriate. ‘Sensitive environments’ are a defined term which makes it clear that the adverse effects should be prevented on locations and areas with section

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<sup>4</sup> RMA 1991 Section 30 Functions of regional councils under this Act.

<sup>5</sup> RMA 1991 Section 30(c)(v) as at 1 March 2017 prior to Resource Legislation Amendment Act 2017

<sup>6</sup> RMA 1991 Section 61(1)(a)

6 areas rather than the environment as a whole. I consider use of the word 'environment' would be too broad and would lack direction for Plan users and decision makers.

153. For the above reasons I do not accept the submission from Forest & Bird (s110.022) and accept the further submission from Hamish Weir (FS5.31).

## HAZS-O2

154. The support from Alliance Group (s121.031), Silver Fern Farms (s40.021), MOE (s125.014) and Fuel Companies (s16.037) is acknowledged and accepted.

## Recommendation

155. For the reasons given above I do not recommend any amendments to the objectives and recommended that they are retained as notified.

156. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

## 8.5 Policy HAZS-P1

### Matters raised by submitters

157. Forest & Bird (s110.023) seek an amendment to HAZS-P1 because the definition of sensitive environments does not include water bodies and therefore it is important to include this as a policy because significant hazardous facilities have the potential to cause severe impacts on water quality and aquatic environments. The submitter seeks the following amendment:

Manage adverse effects from new significant hazardous facilities located in the General Industrial Zone and Rural Industry Precinct by:

...

1. locating significant hazardous facilities outside of, and setback from, water bodies, sensitive environments and avoiding adverse effects on Ngāi Tahu cultural values;

158. Silver Fern Farms (s40.022) opposes the policy and seeks an amendment to clarify the zoning / precinct that engages the policy. The submitter also considers that the policy should enable consideration of other management measures where complete avoidance of adverse effects cannot be achieved. This approach reflects the chapeau direction to 'manage' and not 'avoid' adverse effects. The submitter seeks clarification that existing significant hazardous facilities are not required to be relocated out of the Maitai River Floodway and mapped district inundation areas (the latter applies to Silver Fern Farms site). The following amendments are sought:

Manage adverse effects from new significant hazardous facilities locating in the General Industrial Zone or ~~and~~ Rural Industry Precinct by:

2. locating significant hazardous facilities outside of, and setback from, sensitive environments and avoiding or mitigating adverse effects on Ngāi Tahu cultural values;
3. locating new significant hazardous facilities outside the Maitara River Floodway and all mapped district inundation areas to avoid the effects of natural hazards and protect the environment; and

159. Alliance Group (s121.032) seek an amendment to the policy because some mapped inundation areas are protected by stop banks, the benefits of which should be recognised in relation to the management of significant hazardous facility similar to that provided for other activities protected by stop banks for example NH-P2. The submitter seeks an amendment to clause 3 of the policy or a similar relief to address the matter raised.

160. Amendments are also sought to improve clarity and align the policy with HAZS-O1 which requires the prevention of significant adverse effects on the underlying relationship Ngāi Tahu hold with the environment. The submitter seeks the following amendments:

Manage adverse effects from new significant hazardous facilities locating in the General Industrial Zone or and Rural Industry Precinct by:  
(...)

2. locating significant hazardous facilities outside of, and setback from, sensitive environments and avoiding significant adverse effects on Ngāi Tahu cultural values;
3. locating significant hazardous facilities outside the Maitara River Floodway and all mapped district inundation areas not protected by the mapped Stop Bank Flood Protection Area to avoid the effects of natural hazards and protect the environment; and

161. SDC (s146.028) support in part the policy but considers it could be broadened to include other hazardous areas such as areas prone to liquefaction. A provision enabling a licensing and monitoring regime for hazardous substances may be of use for mitigating risks.

## Assessment

162. In response to Forest & Bird (s110.023) I do not accept the request to amend the word 'locating' to 'located' in the policy chapeau, 'located' implies a past tense when the purpose of the policy is to manage and guide the location of future activities which would be the subject of a resource consent under HAZS-R2. In relation to the request to include a reference to 'water bodies' I agree that it would be appropriate that new significant hazardous facilities are setback from water bodies given the potential for noxious discharges.

163. The reference also aligns with the zone provisions which require buildings to be setback from streams and rivers, for example GIZ-S5. Any new building constructed as part of a significant hazardous facility would be required to comply with the underlying zone provisions and therefore the stream and river setback. Whilst these zones also include policies which relate to the setback, I consider it appropriate to also include reference with HAZS-P1 to allow for specific consideration of significant hazardous facilities in relation to water bodies.

164. However, I recommend a slight amendment to the relief sought by Forest and Bird to align with PDP terminology, and particularly the definition of waterbody. Therefore, I recommend the following amendment:

Manage adverse effects from new significant hazardous facilities locating in the General Industrial Zone and Rural Industry Precinct by:

...

1. locating significant hazardous facilities outside of, and setback from, any waterbody or, sensitive environments and avoiding adverse effects on Ngāi Tahu cultural values;.....

165. In response to Silver Fern Farms (s40.022) I accept that the amendment to the policy chapeau to replace 'and' with 'or' in respect of the General Industrial Zone and Rural Industry Precinct would improve the interpretation of the policy. I also accept the amendment sought to HAZS-P1(2) to refer to 'or mitigating' as it may be possible to mitigate adverse effects and this would align with the policy chapeau to 'manage' adverse effects.

166. Finally, I accept the amendment to HAZS-P1(3) to refer to 'new' significant hazardous facilities as this makes it clear that the policy is applicable to new facilities and is given effect to by HAZS-R2.

Manage adverse effects from new significant hazardous facilities locating in the General Industrial Zone or ~~and~~ Rural Industry Precinct by:

2. locating significant hazardous facilities outside of, and setback from, sensitive environments and avoiding or mitigating adverse effects on Ngāi Tahu cultural values;
3. locating new significant hazardous facilities outside the Maitere River Floodway and all mapped district inundation areas to avoid the effects of natural hazards and protect the environment; and

167. In response to Alliance Group (s121.032) I consider that the amendment sought by Silver Fern Farms (s40.022) addresses a similar matter as it seeks to provide an alternative to the 'avoid' direction. Although the Alliance Group submission seeks to avoid 'significant' adverse effects I prefer the amendment sought by Silver Fern Farms as it allows for adverse effects to be mitigated and does not confine avoidance of adverse effects to those which are significant as proposed by Alliance Group.

168. For this reason, I accept in part the submission from Alliance Group (s121.032) as I consider the amendment already recommended to respond to Silver Fern Farms achieves a similar purpose to that sought by Alliance Group.

169. In response to the submission from Alliance Group (121.032) seeking to amend HAZS-P1(3) as follows:

locating significant hazardous facilities outside the Maitere River Floodway and all mapped district inundation areas not protected by the mapped Stop Bank Flood Protection Area to avoid the effects of natural hazards and protect the environment; and

170. I accept the submission that areas protected by stop banks may have a reduced risk of flood hazard. However, looking at the mapped inundation areas which are protected by a stop bank this area falls outside of the General Industrial Zone and Rural Industry Precinct. The area protected is primarily existing urban environment within Gore where the Chapter directs that significant hazardous facilities should be avoided.
171. As part of hearing stream 4 Tonkin & Taylor prepared a specific flood hazard assessment for the General Industrial Zone in south Gore, which is an area where significant hazardous facilities are provided for as a discretionary activity through the HAZS Chapter. The T&T report recommended that in the south Gore area (which is mapped as an inundation area) may be suitable for industrial activities (which would include significant hazardous facilities) subject to mitigation measures such as elevated floor levels on the basis that these activities are not sensitive to flood hazard effects.
172. Having reviewed the planning maps in relation to mapped inundation risk and considered the submission I note that it would actually be difficult to achieve the policy direction of locating significant hazardous facilities within the General Industrial Zone or Rural Industry Precinct and locating outside of mapped inundation areas. However, I note that Environment Southland have advised they will shortly be releasing flood hazard mapping that may amend PDP mapping as part of hearing stream 9.
173. I therefore, recommend that the submission is rejected for the purposes of this report as I do not recommend an amendment. However, I recommend that the matter of the policy wording in relation to mapped inundation areas is reconsidered as a potential consequential amendment following the Section 42A recommendations and expert evidence on the Natural Hazard Chapter for hearing stream 9.
174. In response to SDC (s146.028) as noted at paragraphs 116-122 I do not consider it necessary to refer to liquefaction risk within the policy.

### Recommendation

175. For the reasons detailed above I recommend the following amendment to HAZS-P1

Manage adverse effects from new significant hazardous facilities locating in the General Industrial Zone or and Rural Industry Precinct by:

2. locating significant hazardous facilities outside of, and setback from any waterbody or sensitive environments and avoiding or mitigating adverse effects on Ngāi Tahu cultural values;
3. locating new significant hazardous facilities outside the Maitere River Floodway and all mapped district inundation areas to avoid the effects of natural hazards and protect the environment; and

176. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

## Section 32AA Evaluation

177. The following evaluates the recommendation to amend HAZS-P1 under section 32AA of the RMA.

### Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner by making it clear that there may be opportunities to mitigate adverse effects on cultural values and requiring a setback to a waterbody, consistent with the zone provisions.

### Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the proposal.

### Risk of acting or not acting

There is the potential for difficulty in achieving the policy direction and confusion between the chapeau manage direction and clause avoid direction if the proposed amendment is not made.

### Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to achieve the Objective than the notified version of the PDP.

## 8.6 Policy HAZS-P2

### Matters raised by submitters

178. Forest & Bird (s110.024) seeks an amendment to the policy because the definition of sensitive environments does not include water bodies and so it is important this is included within the policy because significant hazardous facilities have the potential to cause severe impacts on water quality and aquatic environments. The submitter seeks an amendment as follows:

Avoid adverse effects from new significant hazardous facilities by:

...

2. locating significant hazardous facilities outside of, and setback from, water bodies and sensitive environments and

179. Alliance Group (s121.033) and Silver Fern Farms (s40.023) seek an amendment to the policy because when read in conjunction with HAZS-P1 the drafting is not entirely clear that the policy does not apply to the General Industrial Zone or Rural Industry Precinct where HAZS-P1 applies. A minor amendment is suggested to ensure the different effects management direction of each policy are applied correctly. The submitter seeks the following amendment:

Avoid adverse effects from new significant hazardous facilities locating outside the General Industrial Zone or Rural Industry Precinct by: (...)

180. SDC (s146.029) supports in part the policy because locating significant hazardous facilities outside the Mataura River Floodway and all mapped inundation areas will reduce risks posed by hazardous substance storage. However, the submitter considers that the submission could be broadened to include other hazardous areas such as liquefaction areas. A provision enabling a licensing and monitoring regime for hazardous substance storage may be of use for mitigating risk.

181. Fuel Companies (s16.040) support the policy and seek that it is retained as notified because they acknowledge that buffers are just one way of ensuring risk is managed to acceptable levels.

182. MOE (s125.015) support in part the policy but seek to include sensitive activities within the policy to ensure that protection is afforded for their assets, Tamariki, rangatahi and kaimahi:

Avoid adverse effects from new significant hazardous facilities by::

...

2. locating significant hazardous facilities outside of, and setback from sensitive environments and sensitive activities and

183. Alliance Group (FS27.012) and Silver Fern Farms (FS29.037) oppose in part the submission from MOE (s125.015) and seek that it is disallowed in part because if sensitive activities are included, the definition of sensitive environment needs to exclude 'seasonal workers accommodation'.

## Assessment

184. In response to Forest & Bird (s110.024), as assessed at paragraphs 162-164 in response to their submission on HAZS-P1 I accept the amendment sought. The following amendment to HAZS-P2(2) is therefore recommended:

Avoid adverse effects from new significant hazardous facilities by:

...

2. locating significant hazardous facilities outside of, and setback from, any waterbody and sensitive environments and...

185. In response to Alliance Group (s121.033) and Silver Fern Farms (s40.023) I accept the amendment to HAZS-P1 sought through the submissions as I consider the amendment would make it clear that the policy only relates to significant hazardous facilities located outside of the General Industrial Zone and Rural Industry Precinct which aligns with the non-complying activity status in HAZS-R2 for activities outside of those areas. I therefore recommend the following amendment to the chapeau for HAZS-P2:

Avoid adverse effects from new significant hazardous facilities locating outside the General Industrial Zone or Rural Industry Precinct by: (...)

186. In response to SDC (s146.029) as assessed at paragraphs 116-122 in response to their submission on HAZS-P1 I do not consider any amendments are necessary to include reference to other natural hazards as these are covered by the Natural Hazard Chapter.

187. The support from the Fuel Companies (s16.040) is acknowledged and accepted.

188. In response to MOE (s125.015) as policy HAZS-P2 relates to new significant hazardous facilities which are located outside the General Industrial Zone and Rural Industry Precinct and consent is required as a non-complying activity directing consideration of setbacks to sensitive activities may be appropriate. Therefore, I accept the submission and recommend the following amendment:

Avoid adverse effects from new significant hazardous facilities by::

...

2. locating significant hazardous facilities outside of, and setback from sensitive environments and sensitive activities and

189. I note that the further submission from Alliance Group (FS27.012) and Silver Fern Farms (FS29.037) relates to their submission to exclude 'seasonal workers' accommodation in the definition of sensitive activities in association with their other submissions to include provisions and a definition for seasonal workers within the General Industrial Zone. I assessed the submissions relating to seasonal workers accommodation in hearing stream 4<sup>7</sup> and recommended that seasonal workers accommodation provisions were not included in the PDP as they were not an appropriate activity within the Industrial Zones and would be inconsistent with the way in which secondary dwellings are managed in the Rural Zones. Therefore, I do not accept the further submissions.

### Recommendation

190. I recommend, for the reasons given above, that HAZS-P2 is amended as follows:

Avoid adverse *effects* from new *significant hazardous facilities* locating outside the General Industrial Zone or Rural Industry Precinct by:

1. internalising *effects* through *site* layout and design, including the use of buffers;
2. locating *significant hazardous facilities* outside of, and setback from, any waterbody, sensitive environments and sensitive activities;
3. addressing adverse *effects on* Ngāi Tahu cultural values;
4. locating *significant hazardous facilities* outside the Maitai River Floodway and all mapped district inundation areas; and
5. managing cumulative *effects* of multiple separate *significant hazardous facilities* locating in close proximity.

191. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

### Section 32AA Evaluation

192. The following evaluates the recommendation to amend HAZS-P2 under section 32AA of the RMA.

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<sup>7</sup> Section 42A Evaluation Report – Industrial Zones paragraphs 261-264

### Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner ensuring that the application of the policy is clear for Plan users and decision makers and that there is a need to consider proximity to both waterbodies and sensitive activities.

### Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the amendment given the rule framework does not provide a permitted activity pathway and significant hazardous facilities are directed to areas where there are limited sensitive activities.

### Risk of acting or not acting

There is the potential for a lack of direction for Plan users and decision makers as to when the policy is applicable and in respect of water body setbacks and management of adverse effects on sensitive activities if the proposed amendment is not made.

### Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to achieve the Objective than the notified version of the PDP.

## **8.7 Policies HAZS-P3 and HAZS-P4**

### **Matters raised by submitters**

#### **HAZS-P3**

193. Silver Fern Farms (s40.024) supports HAZS-P3 and seeks that it is retained as notified because it is an enabling framework for activities that do not include risk which is efficient and appropriate.

194. Alliance Group (s121.109) seeks an amendment to HAZS-P3 to provide guidance on extensions to significant hazardous facilities that do potentially increase the risk. The submitter notes that the policy is implemented through HAZS-R1, however, there is no policy direction for a discretionary activity under HAZS-R1.

#### **HAZS-P4**

195. Alliance Group (s121.034), Silver Fern Farms (s40.025), MOE (s125.016) and Fuel Companies (s16.038) support HAZS-P4 and seek that it is retained as notified because it addresses reverse sensitivity effects.

### **Assessment**

#### **HAZS-P3**

196. The support from Silver Fern Farms (s40.024) for HAZS-P3 is acknowledged and accepted.

197. In response to Alliance Group (s121.109) I do not propose amendments as I consider that the policy already provides sufficient guidance for decision makers in respect extensions to facilities where compliance with the permitted activity standard is not achieved.

198. HAZS-R1 states that extensions or upgrades to existing significant hazardous facilities are permitted where:

1. *The extension and/or upgrade does not alter the existing (pre-extension/upgrade) location where hazardous substances are stored, used or disposed of onsite or increase the quantity of hazardous substances stored, used or disposed of onsite.*

199. The policy directs that extensions are allowed where the risk is not increased. This means that whilst the volume of hazardous substance stored on site might increase and so resource consent would be required under HAZS-R1, if the consent demonstrates that the risk will not be increased then the policy indicates that the extension should be allowed. The policy is intended to apply a risk based approach which is considered appropriate in the context of hazardous substance management through the PDP.

#### **HAZS-P4**

200. The support from Alliance Group (s121.034), Silver Fern Farms (s40.025), MOE (s125.016) and Fuel Companies (s16.038) for HAZS-P4 is acknowledged and accepted.

#### **Recommendation**

201. For the reasons detailed above no amendments are recommended to HAZS-P3 & HAZS-P4.

202. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

### **8.8 Rules**

#### **Matters raised by submitters**

##### **HAZS-R1**

203. Alliance Group (s121.035) and Silver Fern Farms (s40.026) support HAZS-R1 and seek that it is retained as notified.

##### **HAZS-R2**

204. Alliance Group (s121.036) and Silver Fern Farms (s40.027) support HAZS-R2 and seek that it is retained as notified.

205. FENZ (s124.020) support in part the rule but seek an amendment because fire stations and associated firefighting activities involve the use and storage of hazardous substances at quantities that are considered minor. However, there are circumstances where Fire and Emergency needs to temporarily store large quantities of product in an emergency:

.....Exclude Emergency management from these facilities.

### HAZS-R3

206. Alliance Group (s121.036), Silver Fern Farms (s40.027) and Fuel Companies support HAZS-R3 and seek that it is retained as notified.

### Assessment

### HAZS-R1

207. The support from Alliance Group (s121.035) and Silver Fern Farms (s40.026) for HAZS-R1 is acknowledged and accepted.

### HAZS-R2

208. The support from Alliance Group (s121.036) and Silver Fern Farms (s40.027) for HAZS-R2 is acknowledged and accepted.

209. In response to FENZ (s124.020) as noted above at paragraphs 103-108 without a definition of emergency management it is unclear what this may entail, furthermore, as noted above I consider it unlikely that emergency management response would trigger the definition and therefore the rule would not be triggered.

210. Accordingly, I do not recommend any amendments to HAZS-R2 to respond to the submitter as I consider in the first instance the rule would not be triggered by an emergency management response and secondly because there are other provisions in the PDP relating to temporary activities and also within the RMA relating to emergency works (section 330).

### HAZS-R3

211. The support from Alliance Group (s121.036), Silver Fern Farms (s40.027) and Fuel Companies for HAZS-R3 is acknowledged and accepted.

### Recommendation

212. For the reasons outlined above I do not recommend any amendments to the Hazardous Substance Chapter rules.

213. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

## 9. Consequential Amendments

214. I do not consider there are any consequential amendments required to either the Contaminated Land or Hazardous Substance Chapter to reflect amendments recommended through other Section 42A reports presented to date.

215. However, I consider that there may need to be some future consequential amendments to the Contaminate Land and Hazardous Substance Chapter provisions as follows:

- a. Definition of 'Sensitive Environments'<sup>8</sup>
- b. HAZS Chapter Generally and HAZS-P1 in relation to management of areas prone to liquefaction<sup>9</sup>
- c. HAZS-P1 in relation to mapped district inundation areas<sup>10</sup>
- d. CL-P3 and HAZS-O1 to reflect the final agreed position for how cultural values are expressed<sup>11</sup>

216. I recommend that these specific submissions and assessment in response are therefore revisited in light of the Section 42A recommendations and expert evidence for the ECO and Natural Hazard Chapter and where appropriate consequential amendments are made to align with the revised chapter provisions and approach to managing these matters.

## 10. Conclusions

### 10.1 Conclusions

217. This report has provided an assessment of submissions received on the Contaminated Land and Hazardous Substances Chapters and associated definitions of the PDP.

218. There were a range of submissions generally in support of the chapter, however, some minor amendments to the associated definitions, objectives and policies for both chapters were sought.

219. Overall, I recommend that the provisions are amended as shown in **Appendix A** for the reasons set out in this report. The main changes recommended include:

- Amendments to Policy CL-P3 to more clearly articulate cultural values to be considered.
- Amendments to HAZS-P1 to reference a setback to waterbodies and recognise that adverse effects on cultural values could be mitigated as well as avoided.
- Amendment to HAZS-P2 to clarify that the policy applies to significant hazardous facilities outside of the General Industrial Zone and Rural Industry Precinct and advise that facilities should be setback from waterbodies and sensitive activities.

220. I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA, the relevant objectives of the PDP and other relevant statutory documents, for the reasons set out in the Section 32AA evaluations undertaken throughout this report.

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<sup>8</sup> Submissions from Mercury (s130.007), Powernet (s95.008) and further submissions from DOC (FS31.006 & FS31.008), Transpower (FS30.051) and Contact Energy (FS24.004).

<sup>9</sup> Submissions from SDC (s146.030 & s146.028)

<sup>10</sup> Submission from Alliance Group (s121.032)

<sup>11</sup> Submission from Hokonui Rūnanga (s139.052 & s139.053)

## 10.2 Closing Recommendation

221. The Hearing Panel accept, accept in part, or reject all submissions (and associated further submissions) as outlined in **Appendix B** of this report.

Signed:

| Name and Title                            | Signature                                                                          | Date                 |
|-------------------------------------------|------------------------------------------------------------------------------------|----------------------|
| Victoria Woodbridge<br>Consultant Planner |  | 16 September<br>2024 |