

**Before the Hearings Panel
At Waimakariri District Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Waimakariri District Plan

Between **Various Submitters**

And **Waimakariri District Council**

Respondent

**District Council reply on Matū mōrearea - Hazardous Substances
on behalf of Waimakariri District Council**

Date: 17 August 2023

INTRODUCTION:

- 1 My full name is Jessica Anneka Manhire. I am employed as a Policy Planner for Waimakariri District Council.
- 2 I have read the evidence and tabled statements provided by submitters relevant to the Section 42A Report - Matū mōrearea - Hazardous Substances AND Whenua paitini - Contaminated Land.
- 3 I have prepared this District Council reply on behalf of the Waimakariri District Council (District Council) in respect of matters raised through Hearing Stream 3 on the Hazardous Substances Chapter.
- 4 I am authorised to provide this evidence on behalf of the District Council.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

- 5 Appendix C of my section 42A report sets out my qualifications and experience.
- 6 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023.

SCOPE OF REPLY

- 7 This reply follows Hearing Stream 3 held on 25 to 26 July 2023. Minute 7 of the Hearing Procedures allows for s42A report authors to submit a written reply by 18th August 2023.
- 8 The main topics addressed in this reply include:
 - Answers to questions posed by the Hearings Panel (refer to Minute 7, issued 28 July 2023).
 - Matters remaining in contention;
 - Changes to recommendations in the s42A report

- Recommendations on general submissions that were not contained in the s42A report.

9 **Appendix 1** has a list of materials provided by submitters including expert evidence, legal submissions, submitter statements etc. This information is all available on the Council website.

10 **Appendix 2** has recommended amendments to PDP provisions with respect to the HS chapter, with updated recommendations differentiated from those made in Appendix A of the s42A report.

11 **Appendix 3** has an updated table of recommended responses to submissions and further submissions, with updated recommendations differentiated from those made in Appendix B of the s42A report.

Answers to questions posed by the Hearings Panel

12 A preliminary set of responses was provided to questions from the Panel at its hearing on 25 July 2023. This right of reply is in response to questions from the Hearings Panel in Minute 7. I have also responded to additional questions that arose during the hearing.

General submissions

13 Clampett Investments Ltd (CIL) [284.1] and Rolleston Industrial Developments Ltd (RIDL) [326.2 and 326.3] seek that all controlled and restricted discretionary activities are amended to preclude them from limited or public notification. Royal Forest and Bird Protection Society Inc. (Forest and Bird) [FS78] oppose this relief on the basis that there may be instances where notification is appropriate. Andrea Marsden [FS199] and Christopher Marsden [FS120] both oppose RIDL [326.2] as they consider all applications should be open for community consultation to give communities a voice and removing this could risk the system being exploited. The Ohoka Residents Association [FS84 and FS137] oppose RIDL [326.2] and [326.3] on the basis that it is inconsistent with national policy direction and contrary to the

Operative Plan and Proposed Plan. They oppose the “inappropriate satellite town” proposed in Ohoka.

- 14 RIDL [326.1] seeks that all provisions in the Proposed Plan are amended to delete the use of absolutes such as ‘avoid’, ‘maximise’ and ‘minimise’. There are four further submissions on RIDL [326.1], all opposed, from the Ohoka Residents Association [FS84], Andrea Marsden [FS119], and Christopher Marsden [FS120], and Forest and Bird [FS78]. Andrea Marsden [FS119] and Christopher Marsden [FS120] state that these absolutes have the purpose of ensuring compliance and removing them would open the system up for potential abuse. The Ohoka Residents Association [FS84 and FS137] reiterate their opposition to the “inappropriate satellite town” proposed in Ohoka and state that the RIDL submission is inconsistent with national policy direction. Forest and Bird’s [FS78] reasoning did not relate to this submission point, rather it stated that there may be instances where it is appropriate to notify consents.
- 15 These submissions have been considered in the subsequent reports following Hearing Streams 1 and 2. However, I did not consider these submissions in my Hazardous Substances and Contaminated Land s42A Report but have considered them since.
- 16 In regard to the Hazardous Substances Chapter, there is one restricted discretionary rule (HS-R2) within the notified version of chapter. HS-R1 is a permitted activity which goes to restricted discretionary activity status if there is a non-compliance with the activity standards. The RMA contains a specific process for determining notification on a case-by-case basis and, in my opinion, a non-notification clause should only be used where it is clear that potential adverse effects will not affect other parties. Non-compliance with these two rules may have potential health and safety implications on potentially affected parties, thus I do not agree with this request for a blanket clause preventing notification for these activities.

- 17 The Hazardous Substances Chapter uses 'avoid' in terms of "avoiding unacceptable risk to sensitive activities". As Policy 18.3.1 of the RPS requires the avoidance of actual or potential adverse effects from the storage and use of hazardous substances on a number of sensitive locations, I consider the term 'avoid' is appropriate.
- 18 The term 'minimise' is also used. The provisions aim to minimise risk through the appropriate location of hazardous substances. The chapter gives effect to RPS Policy 18.3.2 which requires territorial authorities to "avoid, remedy or mitigate adverse effects on the environment associated with the storage, use, transportation or disposal of hazardous substances". I consider the use of the terms 'minimise' and 'avoid' to be appropriate in the context of the Hazardous Substances Chapter.

Alignment of the Hazardous Substances Chapter with the Natural Hazards Chapter

- 19 In my s42A report, I recommended the inclusion of the High Coastal Flood Hazard Area in HS-P3. I acknowledge that the Natural Hazards s42A report author Mr Willis made a late change, based on ECan advice, to recommend deletion of the High Coastal Flood Hazard Area definition and it be replaced by the term High Hazard Area, as outlined in ECan's evidence. At this point in time, if specific terms were to be included in the policy, I recommend the High Coastal Flood Hazard Area be replaced with High Hazard Area in HS-P3. However, I am aware that the naming of this term is still being considered by Mr Willis so a consequential amendment would need to be made if this changes. A consequential amendment may also be required for HS-P1(4) which refers to any high hazard area. HS-R2 refers to High Flood Hazard Area and High Coastal Flood Hazard Area, which I recommend be amended to High Hazard Area to be consistent with the recommendations in the Natural Hazards s42A. I note that this may also change depending on the outcome of the naming of these terms.

- 20 The Coastal Flood Assessment Overlay could also be included in the HS-P3. However, an alternative option, which I prefer, is to refer broadly to the flood assessment overlays, to future proof the policy if there is any change to the naming of the natural hazards definitions or overlays.
- 21 I recommend that HS-P3 be amended as follows:
- 22 “Within ~~the Non Urban Flood Assessment Overlay, Urban Flood Assessment Overlay and the Kaiapoi Fixed Minimum Finished Floor Level Overlay~~ and ~~High Coastal Flood Hazard Area~~ any flood hazard overlays, any hazardous substance shall be stored to minimise the risk of spillage or leakage and contamination of land and water in a flood event or from sea water inundation.”
- 23 In regards to rule HS-R1, I have checked with Mr Willis, and the Coastal Flood Assessment Overlay is recommended to be retained. The ‘High Hazard Area’ is not an overlay, but is a defined term, so cannot be included in the left column of rule HS-R1, as sought by ECan, as it would not link to the planning maps in E-plan and would, therefore, not be functional in an e-plan context. As Mr Willis recommends removing the Kaiapoi Fixed Minimum Floor Level Overlay, I recommend this is also removed from the left column of the rule.

HS-R1 – Underground storage of hazardous substances

If the Panel was to accept the “fuel companies” relief and make underground tanks permitted, would you recommend that there be any conditions required for a permitted activity? Please explain why or why not.

- 24 Fuel Companies [276.5] requested HS-R1 only apply to the above ground storage of hazardous substances and provided further evidence for Hearing Stream 3.

- 25 Quality Planning guidance¹ (2019) is that, where the risk of a natural hazard is greater, councils may place additional controls on the location of hazardous substances within the specified natural hazard risk area.
- 26 Mr Rowe, on behalf of the Fuel Companies, was asked by the panel at the stream 3 hearing whether there is a difference in groundwater versus floodwater effects. He was not aware of any difference in effect as dewatering is undertaken when tanks are installed, and the tanks are properly anchored.
- 27 Mr Rowe stated that the dewatering aspect may involve a regional council consent. I agree a resource consent from the Regional Council may be required. The Land and Water Regional Plan (LWRP) rules 5.179 and 5.180 permit portable storage of hazardous substances 20m or more from a surface water body, bore or Community Drinking-Water Protection Zone, and requires consent as a restricted discretionary activity where the standards are not met. LWRP rule 5.181 sets out requirements for non-portable hazardous substances storage, including a 20m setback from waterbodies and bores, and a 250m setback from an active fault where the land is over an aquifer or near a river or lake. The conditions also include reporting requirements for spillage, HSNO approval of substances, inspection and storage in a Community Drinking-water Protection Zone.
- 28 Mr Rowe was also asked about the risk from alternate fuels. He stated that it's a sector that is highly regulated and has to meet relevant legislative requirements for the fuel types.
- 29 As I was asked by the panel about other substances such as biofuels, I have considered storage requirements for other hazardous liquids as well as petroleum. Informal advice provided from compliance certifiers when drafting the plan was that, where thresholds are exceeded for a substance, a Compliance Certifier will visit to check the site and/or container certification requirements. I further understand that the

¹ Quality Planning Plan (2019). *Topics: Hazardous Substances under the RMA*, retrieved from <https://www.qualityplanning.org.nz/node/695>

Certifier checks things including storage, secondary containment and emergency management plan but not necessarily natural hazards which regulations do not address or define.

- 30 I have looked at the requirements under the Health and Safety at Work (Hazardous Substances) Regulations 2017 for below ground storage, specifically at the anchoring, and containment requirements mentioned in the hearing by Mr Rowe.
- 31 I note that containers, as defined in regulations made under the Health and Safety at Work Act 2015, are not a building under the Building Act².
- 32 Mr Rowe stated, when asked in what cases underground fuel tanks wouldn't be resilient to inundation, that new storage tanks are resilient to inundation as they are all double skinned.
- 33 Under clause 10.30, where threshold quantities are exceeded (Table 9 in Schedule 9), there are secondary containment requirements for if the main container breaks or leaks which can involve spill trays, liners, double-skinned tanks, or bunds.³ Therefore, I consider containment aspects are covered by other legislation, where the threshold quantities are exceeded.
- 34 In my s42A Report, I recognised that underground petroleum facilities designed and installed in accordance with the Codes of Practices HSNOCOP 44 and HSNOCOP 45 may be resilient to inundation but that

² Container under the Health and Safety at Work (Hazardous Substances) Regulations 2017—

(a) means any receptacle, whether movable or fixed, in which hazardous substances or gases under pressure may be encased, covered, enclosed, contained, or packaged; and

(b) includes—

(i) a receptacle that forms an integral part of a vehicle (other than part of a vehicle's fuel system, electrical system, control system, or emergency system); and

(ii) a stationary tank or a process container; and

(iii) a package; and

(iv) a supporting structure for a receptacle

³ Worksafe (2023). Secondary containment systems. Retrieved from

<https://www.worksafe.govt.nz/topic-and-industry/hazardous-substances/managing/secondary-containment-systems/>

they only minimise the risk of spillage and there is residual risk. The s42A report stated:

“HSNO codes of practice are not mandatory but provide guidance for how to meet legislative requirements under HSNO, HSWA and the Health and Safety at Work (Hazardous Substances) Regulations 2017. Even if the codes of practice are met, it does not account for the residual risk of tanks that are not covered by the legislation e.g. do not meet thresholds or that store other substances e.g. biofuels.”⁴

35 In the hearing, I was asked by the panel whether including a standard for where the codes of practice are met would deal with concerns of residual risk of spillage or leakage in flood prone areas. I have considered whether including such a standard in the rule would minimise this risk to give effect to HS-O1.

36 Section 9.1 of HSNOCOP 44 states that soil testing may be required and where *“there is instability, geotechnical and civil engineers should be consulted on the requirements for installation of a below ground tank. Where required, the guidance provided by these engineers should cover: dewatering processes.”⁵*

37 Section 10.9.9 states that *“where a below ground stationary tank is to be located in an area subject to high water tables or flooding, provision shall be made to prevent the tank from floating out of position”*.

38 I consider that where underground tanks are designed in accordance with the codes of practice, risk is minimised and a condition requiring storage in accordance with the codes of practice would address concerns of tanks floating out of position in floodwater. I note, however, that HSNOCOP 44 and HSNOCOP 45 are specific to petroleum.

39 There are district plans that refer to the codes of practice. For instance, the Whakatane District Plan exempts the retail sale and storage of up

⁴ Hazardous Substances and Contaminated Land s42A Report, Paragraph 70.

⁵ HSNOCOP 44, p.25

to 100,000 litres of petrol and up to 50,000 litres of diesel in underground storage tanks provided HSNO COP 44 and HSNO COP 45 are adhered to. The Decisions Version of the New Plymouth District Plan exempts underground storage of petrol and diesel over 100,000L at service stations undertaken in accordance with HSNO COP 44 and HSNO COP 45 from its Significant Hazardous Facilities definition.

40 I consider an additional standard for containment would minimise the residual risk. The Operative Waimakariri District Plan has standards (31.16.1.3) for storage of hazardous substances below the minimum quantities specified in the rules. This includes 31.16.1.3b provide protection measures to contain a spill or release of hazardous substances within a bunded or other secure area.

41 I consider including these two standards, for underground tanks to be permitted, would address residual risk in natural hazards overlays. As I have not been able to seek the Fuel Companies input into these standards, I consider that this is an area where further discussion with the single submitter on this issue would be of benefit, given the submitters specific knowledge and expertise in applying legislative requirements. At the time of writing this Right of Reply, this discussion has not yet occurred; but will be reported back to the panel. I have confirmed with the submitter that they are happy for this discussion to occur.

42 I recommend HS-R1 be amended to two rules, one for above ground and one for underground, as follows:

HS-R1a [Above ground](#) Hazardous substance storage and use

...

“Activity status: PER

Where:

1. [Above ground](#) the storage of hazardous substances within any hazardous facility is at, or above the finished floor level established

~~either by the Kaiapoi Fixed Minimum Finished Floor Level Overlay, or by a Flood Assessment Certificate issued in accordance with NH-S1, or by a Coastal Flood Assessment Certificate issued in accordance with NH-S2.”]~~

HS-R1 b Underground hazardous substance storage and use

...

“Activity status: PER

Where:

~~1. the storage of hazardous substances within any hazardous facility is at, or above the finished floor level established either by the Kaiapoi Fixed Minimum Finished Floor Level Overlay, or by a Flood Assessment Certificate issued in accordance with NH-S1, or by a Coastal Flood Assessment Certificate issued in accordance with NHS2.~~

1. The underground storage within any hazardous facility:

- a. is 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; and
- b. provides protection measures to contain a spill or release of hazardous substance within a bunded or other secure area.

Date: 17/8/2023



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Appendix 1 – List of materials provided by submitters

Statement of Evidence of Joanne Mitten on behalf of The Canterbury Regional Council – Submission 316 and further submission 105

Legal Submissions On Behalf Of The Canterbury Regional Council – Submission 316 and further submission 105

Statement Of Evidence Of Miles Rowe For BP Oil New Zealand Limited, Mobil Oil New Zealand Limited, And Z Energy Limited (The ‘Fuel Companies’) – submission 276 and further submission 104

Speaking notes of Miles Rowe for submitter – submission 276 and further submission 104

Appendix 2 – Recommended amendments to PDP provisions

In order to distinguish between the recommendations made in the s42A report and the recommendations that arise from this report:

- s42A recommendations are shown in black text (with underline and ~~strike-out~~ as appropriate); and
- Recommendations from this report in response to evidence are shown in blue text (with underline and ~~strike-out~~ as appropriate).

HS - Matū mōrearea - Hazardous Substances

Introduction

Hazardous substance use, its storage and disposal can pose potential risks for human and ecological health and safety, and for property. These risks are primarily managed by HSNO, HSWA, Health and Safety at Work (Major Hazard Facilities) Regulations 2016, Health and Safety at Work (Hazardous Substances) Regulations 2017.

The District Plan should not duplicate specific legislation or the functions of Regional Council but can control effects that are not otherwise managed. This chapter addresses risk that is not controlled by zone provisions, Regional Council or other legislation. This includes the location of major hazard facilities using or storing hazardous substances, the location of sensitive activities and locations in areas that are prone to ~~flood hazard~~ natural hazards⁶.

The provisions in this chapter are consistent with the matters in Part 2 - District Wide Matters - Strategic Directions and give effect to matters in Part 2 - District Wide Matters - Urban Form and Development.

Other potentially relevant District Plan provisions

As well as the provisions in this chapter, other District Plan chapters that contain provisions that may also be relevant to hazardous substances include:

⁶ ECan [316.33]

- Energy and Infrastructure: this chapter contains rules for energy and infrastructure such as fuel and gas distribution, ~~and storage~~ and also addresses hazardous substances, amongst other activities, located in the National Grid Yard⁷.
- Any other District wide matter that may affect or relate to the site.
- Zones: the zone chapters contain provisions about what activities are anticipated to occur in the zones.

Objectives	
HS-O1	<p>Hazardous substance use, storage and disposal</p> <p>Hazardous substance use, storage and disposal activities are <u>enabled and located</u>, and in the case of flood events managed, ⁸so that:</p> <ol style="list-style-type: none"> 1. risk to people, property⁹ and the environment from any major hazard facility is minimised, including avoiding unacceptable risk to sensitive activities; 2. risk to any sensitive area is minimised; and 3. risk to land and water as a result of <u>natural hazards, including flood events</u>,¹⁰ is minimised.
HS-O2	<p>Sensitive activities</p> <p>The location of any new sensitive activity minimises reverse sensitivity effects on any existing major hazard facility, and avoids unacceptable risk to the sensitive activity.</p>
Policies	
HS-P1	<p>New major hazard facility</p> <p>Minimise risk to people, property¹¹ and the environment from any new major hazard facility, or any addition to a major hazard facility by:</p> <ol style="list-style-type: none"> 1. identifying risk to human and ecological health and safety, and to property, though a QRA of any proposed activity, including its site characteristics and any cumulative risk from the use, storage and disposal of hazardous substances on other sites; 2. ensuring the location provides sufficient separation from any sensitive activity to minimise any risk identified in a QRA for the activity and avoids unacceptable risk to existing sensitive activities; 3. locating outside <u>of the National Grid Yard</u>¹², any areas of significant indigenous vegetation, significant habitats for indigenous fauna and Sites and Areas of Significance to

⁷ Transpower [195.54]

⁸ Fuel Companies [276.2]

⁹ Fuel Companies [276.2]

¹⁰ ECan [316.34]

¹¹ Fuel Companies [276.4]

¹² Transpower [195.55]

	<p>Māori, and zones and overlays where sensitive areas or activities predominate; and</p> <p>4. locating outside any high hazard area unless risk associated with the hazard can be mitigated to protect human, and environmental, health and safety.</p>
HS-P2	<p>Sensitive activity location</p> <p>Ensure any new sensitive activity is sufficiently separated from any existing major hazard facility to minimise reverse sensitivity effects for the major hazard facility, and avoid unacceptable risk to the sensitive activity.</p>
HS-P3	<p>Hazardous substance storage and flood hazards</p> <p>Within the Non-Urban Flood Assessment Overlay, Urban Flood Assessment Overlay and the Kaiapoi Fixed Minimum Finished Floor Level Overlay¹³, and High Coastal Flood Hazard Area any flood hazard overlays,¹⁴ any hazardous substance shall be stored to minimise the risk of spillage or leakage and contamination of land and water in a flood event <u>or from sea water inundation¹⁵.</u></p>

Activity Rules

HS-R1a	<u>Aboveground hH¹⁶</u> hazardous substance storage and use	
	<i>This rule does not apply to any major hazard facility provided for under HS-R2.</i>	
Urban Flood Assessment Overlay Non-Urban Flood Assessment Overlay Kaiapoi Fixed Minimum	<p>Activity status: PER</p> <p>Where:</p> <ol style="list-style-type: none"> <u>Above ground¹⁹</u> storage of hazardous substances within any hazardous facility is at, or above the finished floor level established either by the Kaiapoi Fixed Minimum Finished Floor Level Overlay₁ or²⁰ by a 	<p>Activity status when compliance not achieved: RDIS</p> <p>Matters of discretion are restricted to:</p> <p>HS-MD1 - Hazardous substances</p>

¹³ Natural Hazards s42A consequential amendment

¹⁴ ECan [316.38]

¹⁵ ECan [316.38]

¹⁶ Fuel Companies [276.5]

¹⁹ Fuel Companies [276.5]

²⁰ Natural Hazards s42A consequential amendment

<p>Finished Floor Level Overlay¹⁷</p> <p>Coastal Flood Assessment Overlay¹⁸</p>	<p>Flood Assessment Certificate issued in accordance with NH-S1, or by a Coastal Flood Assessment Certificate issued in accordance with NH-S2.²²</p>	
<p>HS-R1b</p>	<p><u>Underground hH</u>²³azardous substance storage and use</p>	
<p><i>This rule does not apply to any major hazard facility provided for under HS-R2.</i></p>		

¹⁷ Natural Hazards s42A consequential amendment

¹⁸ ECan [316.39]

²¹ Natural Hazards s42A consequential amendment

²² ECan [316.39]



²³ Fuel Companies [276.5]

<p>Urban Flood Assessment Overlay</p> <p>Non-Urban Flood Assessment Overlay</p> <p>Kaiapoi Fixed Minimum Finished Floor Level Overlay²⁴</p> <p>Coastal Flood</p>	<p>Activity status: PER</p> <p>Where:</p> <p>the storage of hazardous substances within any hazardous facility is at, or above the finished floor level established either by the Kaiapoi Fixed Minimum Finished Floor Level Overlay or by a Flood Assessment Certificate issued in accordance with NH S1, or by a Coastal Flood Assessment Certificate issued in accordance with NH S2.</p> <p><u>1. The underground storage within any hazardous facility;</u></p> <p style="padding-left: 40px;"><u>a. Is undertaken in accordance with HSNOCOP 44 Below Ground Stationary Container Systems for Petroleum – Design and Installation and HSNOCOP 45 Below Ground Stationary Container Systems for Petroleum – Operation; and</u></p> <p style="padding-left: 40px;"><u>b. provides protection measures to contain a spill or release of hazardous substance within a bunded or</u></p>	<p>Activity status when compliance not achieved: RDIS</p> <p>Matters of discretion are restricted to:</p> <p>HS-MD1 - Hazardous substances</p>
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²⁴ Natural Hazards s42A consequential amendment

<u>Assessment Overlay</u> ²⁵	other secure area. ²⁶	
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²⁵ ECan [316.39]

HS-R2	Any new major hazard facility or addition to a major hazard facility	
<p>General Industrial Zone</p> <p>Heavy Industrial Zone</p>	<p>Activity status: RDIS Where:</p> <ol style="list-style-type: none"> the activity is not located within a SASM or Fault Awareness Overlay;  <p>and</p> <ol style="list-style-type: none"> the activity is not located within a High Flood-Hazard Area, High Coastal Flood Hazard Area,²⁷ or the Ashley Fault Avoidance Overlay. <p>Matters of discretion are restricted to: HS-MD1 - Hazardous substances</p>	<p>Activity status when compliance not achieved with HS-R2 (1): DIS Activity status when compliance not achieved with HS-R2 (2): NC</p>
General Rural Zone	<p>Activity status: DIS Where:</p> <ol style="list-style-type: none"> the activity is not located within any SNA or SASM;  <p>and</p> <ol style="list-style-type: none"> the activity is not located within a Fault Awareness Overlay, the Ashley Fault Avoidance Overlay, a High Flood Hazard Area or a High Coastal Flood²⁸ Hazard Area. 	<p>Activity status when compliance not achieved: NC</p>

²⁶ Fuel Companies [276.5]

²⁷ Natural Hazards s42A consequential amendment

²⁸ Natural Hazards s42A consequential amendment

Rural Lifestyle Zone Residential Zones Commercial and Mixed Use Zones Light Industrial Zone Open Space and Recreation Zones Special Purpose Zones	Activity status: NC	Activity status when compliance not achieved: N/A
HS-R3	Sensitive activity located within a Major Hazard Facility	
All Zones	Activity Status: NC	Activity status when compliance not achieved: N/A
	Advisory Note <ul style="list-style-type: none"> • Sensitive activity within the site of any major hazard facility or within any Risk Management Contour shown on the planning map. 	

Advice Note

HS-AN1	Activities and structures may also be subject to controls outside the District Plan. Reference should also be made to any other applicable rules or constraints within other legislation or ownership requirements including the following: <ol style="list-style-type: none"> 1. There are additional controls for hazardous substances under the HSNO, the HSWA, Health and Safety at Work (Major Hazard Facilities) Regulations 2016, and Health and Safety at Work (Hazardous Substances) Regulations 2017. These are administered by the Environmental Protection Authority and WorkSafe New Zealand; 2. The rules in this chapter are for any residual risk from hazardous substances on human health and the environment that is not controlled through other legislation,
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	<p>or by the Regional Council. Resource consent may also be required from the Regional Council in relation to hazardous substances, under the LWRP and the CARP. The LWRP contains rules for the discharge and storage of hazardous substances including storage near water bodies, bores, community drinking water and faults. The CARP manages the effects of discharges to air on health and sensitive activities; and</p> <p>3. Resource consent may be required from the District Council under the NESCS, which prescribes the methods that may be used to assess and manage land that is contaminated, or potentially contaminated from an activity or industry on the HAIL. The Regional Council is to be advised when contaminated land is identified. Resource consent may also be required from Regional Council in relation to disturbance of contaminated land.</p>
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Matters of Discretion

<p>HS-MD1</p>	<p>Hazardous substances</p> <ol style="list-style-type: none"> 1. QRA of the activity, including use of either the individual fatality risk contour or the maximum credible fatality distance, taking into account features of the site and surrounding environment which may affect the site-specific contour. 2. Proposed mitigation in relation to risk identified by the QRA that are not controlled by other legislation or regional council functions. 3. Any effects relating to natural hazard areas identified in the District Plan, including the extent to which hazardous substances can be safely contained to avoid inundation by floodwater or contamination of land or water in the event of a 0.5% AEP flood event for low and medium hazard and a 0.2% AEP flood event for high hazard. 4. The level of risk relating to the nature and volume of the hazardous substance, except where this is controlled by other legislation, including the: <ol style="list-style-type: none"> a. probability and potential consequences of an accident leading to the loss of control of hazardous substances; b. potential effects on natural ecosystems and life-supporting capacity of land and water from escape or spillage; c. potential risk and effect on sites and areas of significance to Māori as set out in SASM-SCHED1; d. potential risk and effect on the human health and safety, and on neighbouring activities such as residential activities and areas where people congregate, and the amenity values of these areas and activities;
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	<ul style="list-style-type: none">e. potential effects on sensitive activities that would be permitted in the zone near a major hazard facility; andf. potential for cumulative adverse effects considering other activities in the surrounding area that store, use, or dispose of hazardous substances. <ol style="list-style-type: none">5. Reverse sensitivity effects from a sensitive activity on the functioning of a major hazard facility.6. Effects on any sensitive activity from a major hazard facility establishing in that location.7. The operational need or functional need for a major hazard facility, or sensitive activity to locate in that location.8. Any positive effects of the major hazard facility.
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Appendix 3 – Recommended responses to submissions and further submissions – Hazardous Substances

In order to distinguish between the recommended responses in the s42A report and the recommended responses that arise from this report:

- Recommendations from this report in response to evidence are shown in blue text (with underline and ~~strike-out~~ as appropriate).

[insert relevant rows from Appendix B of your s42A report]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report where Addressed	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to Proposed Plan?
<u>General provisions</u>							
284.1	CIL	General	Amend all controlled and restricted discretionary activity rules: "Applications shall not be limited or publicly notified, on the basis of effects associated specifically with this rule and the associated matters of control or discretion."	N/A	Reject	See paragraphs 13-18 of right of reply.	No
326.1	RIDL	General	Amend the Proposed District Plan to delete the use of absolutes such as 'avoid', 'maximise' and 'minimise'.	N/A	Reject	See paragraphs 13-18 of right of reply.	No
FS78	Forest and Bird		Oppose - there may be instances where it is appropriate to notify consents	N/A	Accept	See paragraphs 13-18 of right of reply.	No

<u>FS84</u>	<u>Ohoka Residents Association</u>		<p><u>Oppose – “Refer to ORA submission on RCP031 for further detail. It is inconsistent with the policy direction set out in the National Policy Statement for Highly Productive Land. It is also inconsistent with the objectives of the National Policy Statement on Urban”</u></p> <p><u>“ORA oppose any and every amendment requested to the Proposed District Plan that supports RIDL's hugely unpopular, unwanted and inappropriate satellite town to be developed in Ohoka . We want the Council to disregard all submissions from RIDL, The Carter Group Limited and Chapmann Tripp that are designed to facilitate RCP031”</u></p> <p><u>Disallow the submission</u></p>	<u>N/A</u>	<u>Accept</u>	<u>See paragraphs 13-18 of right of reply.</u>	<u>No</u>
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FS119	Andrea Marsden		<p><u>Oppose – RIDL suggest limited the use of absolutes i.e. maximum, within the Waimakariri District Plan. The these attributes exist is surely to ensure compliance with the District Plan so should be included as they stand to prevent private developers doing exactly as they please”</u></p> <p><u>Limiting the use of absolutes as suggested by RIDL opens the system up to potential abuse. As RIDL are proposing a Plan Change 31 which directly affects my property, this change to wording must not be allowed.</u></p> <p><u>Disallow</u></p>	N/A	Accept	See paragraphs 13-18 of right of reply.	No
FS120	Christopher Marsden		<p><u>Oppose – RIDL are seeking to limit the use of absolutes, i.e. ‘maximum’, ‘avoid’ in the Waimakariri District Plan – this plan covers Ohoka where I live. However these absolutes exist to ensure compliance with the District Plan so should be included as they stand.</u></p> <p><u>Disallow</u></p>	N/A	Accept	See paragraphs 13-18 of right of reply.	No
326.2	RIDL	General	<p><u>Amend so that all controlled and restricted discretionary activity rules include the following wording, or words to like effect:</u></p> <p><u>"Applications shall not be limited or publicly notified, on the basis of effects associated specifically with this rule and the associated matters of control or discretion."</u></p>	N/A	Reject	See paragraphs 13-18 of right of reply.	No

FS78	Forest and Bird		Oppose - there may be instances where it is appropriate to notify consents	N/A	Accept	See paragraphs 13-18 of right of reply.	No
FS199	Andrea Marsden		<p>Oppose – RIDL are proposing that the wording be altered to include unlimited applications which do not need to be publicly notified. However all applications should be notified and open for consultation to give local communities a voice.</p> <p>The District Plan covers Ohoka. RIDL have proposed a Plan Change 31 for this area and adopting unlimited applications and non-notifications will open the system up to exploitation so the change of wording must be declined.</p> <p>Disallow</p>	N/A	Accept	See paragraphs 13-18 of right of reply.	No
FS120	Christopher Marsden		<p>Oppose – RIDL are proposing that the wording be altered to include unlimited applications which do not need to be publicly notified. However all applications should be notified and open for consultation to give local communities a voice.</p> <p>The District Plan covers the area where we live, Ohoka. RIDL have proposed a Plan Change 31 for this area and adopting unlimited applications and non-notifications will open the system up to exploitation.</p> <p>Disallow</p>	N/A	Accept	See paragraphs 13-18 of right of reply.	No
326.3²⁹	RIDL	General	Amend controlled and restricted discretionary activity rules to provide direction regarding non-notification.	N/A	Reject	See paragraphs 13-18 of right of reply.	No

FS78	Forest and Bird		Oppose - There may be instances where it is appropriate to notify consents	N/A	Accept	See paragraphs 13-18 of right of reply.	No
Hazardous Substances - General							
295.85 ³⁰	HortNZ	General	Retain the HS - Matū mōrearea - Hazardous Substances sections as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	n/a
Hazardous Substances - Definitions							
166.2	New Zealand Defence Force	Hazardous Facility	Retain the definition of 'hazardous facility' as notified.	n/a	Accept	Agree with submitter.	No
276.9	Fuel Companies	Hazardous Facility	Support 'hazardous facility' definition.	n/a	Accept	Agree with submitter.	No
276.16	Fuel Companies	Hazardous Substance	Support 'hazardous substances' definition.	n/a	Accept	Agree with submitter.	No
276.8	Fuel Companies	Major Hazard Facility	Support 'major hazard facility' definition.	n/a	Accept	Agree with submitter.	No
Hazardous Substances - Introduction							
195.54	Transpower	Introduction	In the Introduction of the Hazardous Substances Chapter, amend 'Other potentially relevant District Plan provisions': "As well as the provisions in this chapter, other District Plan chapters that contain provisions that may also be relevant to hazardous substances include:	n/a	Accept	Agree with submitter. The Hazardous Substances Chapter applies to Energy and Infrastructure.	Yes

²⁹ Oppose - Forest and Bird [FS78] – Officer’s recommendation: accept

³⁰ Support – CIAL [FS80] – officer recommendation: accept

			<p>- Energy and Infrastructure: this chapter contains rules for energy and infrastructure such as fuel and gas distribution, and storage <u>and also addresses hazardous substances, amongst other activities, located in the National Grid Yard.</u></p> <p>- Any other District wide matter that may affect or relate to the site.</p> <p>- Zones: the zone chapters contain provisions about what activities are anticipated to occur in the zones."</p>				
276.1	Fuel Companies	Introduction	Support introduction to Hazardous Substances Chapter in part.	n/a	Reject	Submitter did not request any amendments to the Introduction.	No
316.33 ³¹	ECan	Introduction	Amend Hazardous Substances Introduction to refer broadly to natural hazards rather than specifically flood hazards.	3.3	Accept	Gives effect to the RPS.	Yes
Hazardous Substances - Objectives							
46.3	Woodstock Quarries Limited	HS-O1	Retain HS-O1 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions (276.2 and 316.34).	No
276.2	Fuel Companies	HS-O1	<p>Amend HS-O1:</p> <p>"Hazardous substance use, storage and disposal activities are <u>enabled and</u> located, and in the case of flood events, managed, so that:</p> <p>1. risk to people, property and the environment from any major hazard facility is minimised, including avoiding unacceptable risk to sensitive activities;</p>	3.2	Accept in part	See body of the report.	Yes

³¹ Support – CIAL [FS80] – officer recommendation: accept

			<p>2. risk to any sensitive area is minimised; and</p> <p>3. risk to land and water as a result of flood events is minimised<u>managed</u>.</p> <p><u>Note:</u> A flood event is defined as a 0.5% AEP flood event for low and medium hazard and a 0.2% AEP flood event for high hazard."</p>				
284.126	CIL	HS-O1	Retain HS-O1 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions (276.2 and 316.34).	No
316.34 ³²	ECan	HS-O1	Amend HS-O1 to reference all natural hazards.	3.3	Accept	Gives effect to the RPS.	Yes
326.130	RIDL	HS-O1	Retain HS-O1 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions (276.2 and 316.34).	No
145.19	Daiken New Zealand Limited	HS-O2	Retain HS-O2 as notified.	n/a	Accept	Agree with submitter.	No
276.3	Fuel Companies	HS-O2	<p>Amend HS-O2:</p> <p>"The location of any new sensitive activity minimises reverse sensitivity effects on any existing major hazard facility, and avoids unacceptable risk to the sensitive activity.</p> <p><u>Avoid unacceptable risk from the establishment or intensification of sensitive activities and otherwise minimise reverse sensitive effects on major hazard facilities."</u></p>	3.2	Reject	See body of the report.	No

³² Support – CIAL [FS80] – officer recommendation: accept

284.127	CIL	HS-O2	Retain HS-O2 as notified.	n/a	Accept	Agree with submitter.	No
316.35 ³³	ECan	HS-O2	Retain HS-O2 as notified or retain the original intent.	n/a	Accept	Agree with submitter.	No
326.131	RIDL	HS-O2	Retain HS-O2 as notified.	n/a	Accept	Agree with submitter.	No
Hazardous Substances – Policies							
195.55	Transpower	HS-P1	<p>Amend HS-P1:</p> <p>“Minimise risk to people, property and the environment from any new major hazard facility, or any addition to a major hazard facility by:</p> <p>...</p> <p>3. locating outside <u>of the National Grid Yard</u>, any areas of significant indigenous vegetation, significant habitats for indigenous fauna and Sites and Areas of Significance to Māori, and zones and overlays where sensitive areas or activities predominate; and</p> <p>...”</p> <p><i>[HS-P1 was incorrectly summarised as HS-O1 in the summary of submissions]</i></p>	n/a	Accept	This amendment is consistent with Transpower submission point 195.43 on EI-R51 which seeks that a building or structure within a National Grid Yard must not be used for the handling or storage of hazardous substances with explosive or flammable properties in greater than domestic scale quantities. I understand the Energy and Infrastructure s42A author’s current preliminary recommendation is to accept submission point 195.43 to better give effect to the NPSET and RPS and improve consistency with the district plans of neighbouring councils. If this is the case, then I recommend the submission point be accepted for consistency with this amendment.	Yes
276.4	Fuel Companies	HS-P1	Amend HS-P1:	3.2	Accept in part	See body of the report.	Yes

³³ Support – CIAL [FS80] – officer recommendation: accept

			<p>"Minimise risk to people, property and the environment from any new major hazard facility, or <u>any increase in the risk profile</u>addition to of a major hazard facility by:</p> <p>1. <u>an appropriate risk assessment of the proposed storage and use of hazardous substances, identifying risk to human and ecological health and safety, and to property, through a QRA of any proposed activity, including consideration of its site characteristics and any cumulative risk from the use, storage and disposal of hazardous substances on other sites;</u></p> <p>2. <u>avoiding unacceptable risk identified in the QRA on existing sensitive activities; ensuring the location provides sufficient separation from any sensitive activity to minimise any risk identified in a QRA for the activity and avoids unacceptable risk to existing sensitive activities;</u></p> <p>3. <u>locating outside any areas of significant indigenous vegetation, significant habitats for indigenous fauna and Sites and Areas of Significance to Māori, and zones and overlays where sensitive areas or activities predominate; and</u></p> <p>4. <u>locating outside any high hazard area unless risk associated with the hazard can be appropriately mitigated to protect human, and environmental, health and safety."</u></p>				
284.128	CIL	HS-P1	Retain HS-P1 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	No
316.36 ³⁴	ECan	HS-P1	Retain HS-P1 as proposed or retain the original intent.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	No

³⁴ Support – CIAL [FS80] – officer recommendation: accept

			[Note: This was incorrectly referenced as HS-O1 in the relief sought summary and was re-notified]				
326.132	RIDL	HS-P1	Retain HS-P1 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	No
145.20	Daiken New Zealand Limited	HS-P2	Retain HS-P2 as notified.	n/a	Accept	Agree with submitter.	No
276.41	Fuel Companies	HS-P2	Amend HS-P2: "Ensure any new or intensified activities are sensitive activity <u>is sufficiently separated from any existing major hazard facility to minimise reverse sensitivity effects for the major hazard facility, and avoid unacceptable risk to the sensitive activities and minimise reverse sensitivity effects.</u> "	3.2	Reject	HS-R3 implements this policy. There is no rule to ensure any "new or intensified activities" are sufficiently separated, and no scope was provided in the submission to amend this rule.	No
284.129	CIL	HS-P2	Retain HS-P2 as notified.	n/a	Accept	Agree with submitter.	No
316.37 ³⁵	ECan	HS-P2	Retain HS-P2 as notified or retain the original intent.	n/a	Accept	Agree with submitter.	No
326.133	RIDL	HS-P2	Retain HS-P2 as notified.	n/a	Accept	Agree with submitter.	No
46.8	Woodstock Quarries Limited	HS-P3	Retain HS-P3 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	No
276.42	Fuel Companies	HS-P3	Support in part HS-P3.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	No

³⁵ Support – CIAL [FS80] – officer recommendation: accept

284.130	CIL	HS-P3	Retain HS-P3 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	No
316.38 ³⁶	ECan	HS-P3	Amend HS-P3 to reference natural hazards rather than specifically flood hazards.	3.3	Accept in part	Notified version given effect to through the rules. Aligns with the Natural Hazards Chapter. Recommend amendments to broaden policy while still being given effect to through rules.	Yes
326.134	RIDL	HS-P3	Retain HS-P3 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	No
Hazardous Substances – Activities Rules							
276.5	Fuel Companies	HS-R1	Amend HS-R1: (Permitted) "Where: 1. aboveground the storage of hazardous substances within any hazardous facility is at, or above the finished floor level established either by the Kaiapoi Fixed Minimum Finished Floor Level Overlay or by a Flood Assessment Certificate issued in accordance with NH-S1."	3.2	Rejeet <u>Accept in part</u>	The r Rule as notified addresses residual risk (the risk of hazardous substances from natural hazard events is not adequately addressed through other legislation). <u>I recommend the rule is split into two rules – one for aboveground and one for underground storage of hazardous substances. I recommend deletion of the floor level standard from the rule for underground storage, which would require resource consent in all instances for underground storage but the inclusion of standards to address the residual risk of underground storage of hazardous substances.</u>	No <u>Yes</u>

³⁶ Support – CIAL [FS80] – officer recommendation: accept

						Evidence that all underground facilities are resilient to inundation not provided.	
284.131	CIL	HS-R1	Retain HS-R1 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	No
316.39 ³⁷	ECan	HS-R1	Amend HS-R1 to refer to high hazard areas rather than specifically flood hazards and control the storage of hazardous substances in high flood hazard areas.	3.3	Accept in part	The rule as currently drafted is specific, measurable and achievable as refers to the Kaiapoi Fixed Minimum Finished Floor Level <u>specific overlays used in the Natural Hazards Chapter</u> and aligns with the Natural Hazards Chapter which would more effectively give effect to the objective. Amend to also apply to the Coastal Flood Assessment Overlay.	Yes
326.135	RIDL	HS-R1	Retain HS-R1 as notified.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions.	No
276.6	Fuel Companies	HS-R2	Amend HS-R2: "Any new major hazard facility or <u>any increase in the risk profile of addition</u> to major hazard facility."	3.2	Reject	Rule implementation.	No
284.132	CIL	HS-R2	Retain HS-R2 as notified.	n/a	Accept	Agree with submitter.	No
316.40 ³⁸	ECan	HS-R2	Retain HS-R2 as notified or retain the original intent.	n/a	Accept	Agree with submitter.	No
326.136	RIDL	HS-R2	Retain HS-R2 as notified.	n/a	Accept	Agree with submitter.	No

³⁷ Support – CIAL [FS80] – officer recommendation: accept

³⁸ Support – CIAL [FS80] – officer recommendation: accept

276.7	Fuel Companies	HS-R3	Support HS-R3.	n/a	Accept	Agree with submitter.	No
284.133	CIL	HS-R3	Retain HS-R3 as notified.	n/a	Accept	Agree with submitter.	No
316.41 ³⁹	ECan	HS-R3	Retain HS-R3 as notified or retain original intent.	n/a	Accept	Agree with submitter.	No
326.137	RIDL	HS-R3	Retain HS-R3 as notified.	n/a	Accept	Agree with submitter.	No
Hazardous Substances – Matters of Discretion							
284.134	CIL	HS-MD1	Retain HS-MD1 as notified.	n/a	Accept	Agree with submitter.	No
316.42 ⁴⁰	ECan	HS-MD1	Amend HS-MD1 to refer to other natural hazards.	3.3	Reject	Already addresses all residual risk of hazardous substances from natural hazards.	No
326.138	RIDL	HS-MD1	Retain HS-MD1 as notified.	n/a	Accept	Agree with submitter.	No

³⁹ Support – CIAL [FS80] – officer recommendation: accept

⁴⁰ Support – CIAL [FS80] – officer recommendation: accept

