

Contaminated Land – s42A Officer’s hearing speaking notes

25 July 2023

I am Jessica Manhire, Policy Planner in the Development Planning Unit at the Waimakariri District Council. I prepared the s42A report on Hazardous Substances and Contaminated Land and can confirm that I have read all the submissions, further submissions, submitter evidence and relevant technical documents and higher order policies.

First I would like to provide you with corrections to my Hazardous Substances and Contaminated Land s42A report.

Then by way of introduction to the contaminated land topic, I will provide an overview of the s32 report, submissions received, the s42A report and my recommendations in that report. Then I will go through my preliminary view of the submitter evidence, the questions from the hearing panel and my preliminary written responses. After which, I will be happy to take questions on the S42A report.

I anticipate that there may be questions of clarification on my answers to your pre-circulated questions, so I will take a pause between my responses for this purpose.

I would like to correct two errors in my s42A Report. I will provide an updated s42A report showing these amendments in tracked changes.

Corrections to s42A Report

1. On page 6, Paragraph 44, of my s42A report, it mentions general submissions by further submitters in opposition or support of the whole submission by original submitters which did not contain any material relevant to the Hazardous Substances or Contaminated Land Chapters. I would like to add David Cowley’s FS41 on ECan’s submission [316] and Kainga Ora’s submission [325] to this list.
2. On page 10, Paragraph 64, sentence one, should read from “minimised” to “managed”, not “managed” to “minimised”.

General submissions

I would also like to acknowledge the general submissions on the whole plan from Clampett Investments Ltd and Rolleston Industrial Developments Ltd that seek that all controlled and restricted discretionary activities are amended to preclude them from limited or public notification.

Rolleston Industrial Developments Ltd also seeks that all provisions in the Proposed Plan are amended to delete the use of absolutes such as 'avoid', 'maximise' and 'minimise'.

These 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.

These submissions do not change my recommendations contained in the s42A report. If the hearing panel would like, I can provide detail on my reasons for this in my right of reply.

I will now introduce the Contaminated Land Chapter.

Variation 1

I would like to note that the Contaminated Land Chapter is not subject to provisions introduced by *Variation 1: Housing Intensification* and there are no qualifying matters that apply to the chapter provisions.

S32 Report

As outlined in the executive summary of the Contaminated Land s32 report, the review of the Operative District Plan identified that the introduction of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011, which I will hereafter refer to as the NESCS, has changed the role of the District Plan to one of facilitating the NESCS and controlling any relevant matters not covered by other legislation.

The Canterbury Regional Council identifies and monitors contaminated land and is responsible for discharges, under section 30 of the RMA, which would cause the contamination.

The Proposed District Plan provisions therefore do not seek to duplicate the requirements of other legislation or the role of the Regional Council. The chapter, therefore, has only

provided objectives and policies (which are not provided within the NESCS) to guide applications and decision making in relation to contaminated land.

The key issues identified in section 4 of the Contaminated Land s32 were:

- The Operative District Plan does not give effect to the NESCS
- The Operative District Plan does not refer to Environment Canterbury's Listed Land Use Register and duplication of regional council responsibilities should be avoided
- Contaminated land has the potential to adversely affect the environment and human health

The notified provisions were drafted to address these issues.

Submissions

The Contaminated Land Chapter received six submissions, 33 submission points and five further submissions.

More than 50% of the submissions on contaminated land were in support of provisions, about 30% sought amendment and there were two submission points opposing provisions.

S42A Report – Key issues

The s42A report demonstrates my consideration of the submissions received.

As identified in section 1.4 of my S42A report, the key issues raised in submissions were:

- Alignment with the NESCS.
- It would be helpful to consider additional information known from Waimakariri District Council's records to identify contaminated land.
- Kainga Ora sought an objective to recognise the positive effects associated with the remediation of contaminated soils.
- ECan sought a policy to discourage the creation of contaminated land.
- "Natural values" is not defined and there may be other values helpful to consider.

- The Fuel Companies considered the risk or effects associated with earthworks or disturbance of contaminated land can be appropriately addressed by policy CL-P2 and deletion of policy CL-P3 is sought.
- The submitter also considered that the intent of policy CL-P4 is provided by policy CL-P2 and landfill activities are more appropriately dealt with under zone provisions.

S42A Report – recommended amendments

Upon weighing up all submissions, my recommended changes are contained within Appendix A of my S42A report. Generally, I have recommended to retain the provisions as proposed. However, I have recommended some minor wording changes to the provisions to address matters raised in submissions.

Submitter evidence

I have read all the submitter evidence received on Contaminated Land.

Kainga Ora and ECan have provided evidence on amendments sought to the chapter.

Kainga Ora has requested a new objective to recognise the benefits of remediation. I am satisfied that sufficient information has now been provided to justify the inclusion of the objective.

The objective can be considered along with the notified objective CL-O1, which I have recommended to retain as notified and, at this point in time, I maintain my position outlined in the s42A report on objective CL-O1.

The new objective requested by Kainga Ora refers to best practice approaches, which would align with the NESCS, for example regulation 8 in regards to having controls to minimise the exposure of humans to mobilised contaminants for the activity to be permitted. I note, however, that the term “good practice” rather than “best practice” would align better with the NESCS as it is a term used in the contaminated land management guidelines.

I would also be interested in Kainga Ora’s view on referencing the “good practice approach”, in CL-P2 as requested by the Fuel Companies submission, as this has not been specifically addressed in the evidence.

ECan disagrees with the deletion of CL-P4 which I have addressed in my response to the panel questions.

Hearing panel questions

In preparing my reply to the questions from the Hearing Panel, my opinion has not changed with respect to my recommendations on the Contaminated Land Chapter. I will revisit these recommendations again in my right of reply should my opinion be moved through the course of the hearing.

CL – Contaminated Land

Paragraph or Plan reference	Question
Section 3.7.3	<p>Please set out your recommendation on the ECan submission point 316.48</p> <p>My answer: My recommendation is reject as per Appendix B of the s42A report. It was discussed in the body of the report but was missed from the summary of recommendations in the body of the report.</p>
Para 139	<p>Please explain how the inclusion of “including ecological values” after natural values clarifies what “natural values” means.</p> <p>My answer: It doesn’t necessarily clarify natural values but it extends the understanding of the term. The term ‘ecological values’ would trigger plan users to look at those other chapters where the term is used (Ecosystems and Indigenous Biodiversity, Natural Character of Freshwater Bodies, and Coastal Environment). If you just have natural values you would not necessarily look at the other chapters. RPS policies also include the term such as Policy 10.3.2 Protection and enhancement of areas of river and lake beds and their riparian zones.</p>
Para 145	<p>Would you not consider that because CL-P4 relates specifically to disposal of contaminated soil it is not really covered by CL-P2 (which relates to management of contaminated <u>land</u> and not <u>soils</u> as such)? Whilst landfills might be covered by the zone provisions how is the</p>

Paragraph or Plan reference	Question
	<p>transportation and indiscriminate dumping of soils (not in landfills) addressed in terms of CL-P2. Would a specific reference to disposal of contaminated soil added to CL-P2 be warranted if CL-P4 is to be deleted?</p> <p>My answer: The full definition of contaminated land under section 2 of the RMA is:</p> <p><i>"contaminated land means land that has a hazardous substance in or on it that -</i></p> <p><i>has significant adverse effects on the environment; or</i></p> <p><i>is reasonably likely to have significant adverse effects on the environment."</i></p> <p>I consider that contaminated land includes contaminated soil, as soil is a component part of land.</p> <p>The regional council is responsible for discharges but there may be a potential gap where the dumping of soil is not a discharge under s15 of the RMA¹. This legislative gap was the reason for the inclusion of Policy CL-P3. CL-P3 was also intended to provide a link to the earthworks chapter to discourage the disturbance of contaminated land, where it is not a discharge, and where it could adversely affect natural values, except for the purpose of contamination remediation.</p> <p>As the definition of earthworks includes the moving and placing of soil, the transportation and dumping of soils may also be covered under earthworks provisions (where</p>

¹RMA s15 (1)

No person may discharge any—

- (a) contaminant or water into water; or
- (b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or
- (c) contaminant from any industrial or trade premises into air; or
- (d) contaminant from any industrial or trade premises onto or into land—

Paragraph or Plan reference	Question
	<p>thresholds are exceeded). There are standards in the Earthworks Chapter that minimise adverse effects including water body setbacks and material used for filling. No earthworks are permitted in certain areas such as Ashley River/Rakahuri Saltwater Creek Estuary, and SNAs. In Appendix A of the s42A report, I recommend amendment to CL-P2 to “apply a good practice approach to the management of risks to protect human health and the environment”.</p> <p>The good practice approach is referred to in the Ministry for the Environment contaminated land management guidelines² and is referenced in the NESCS³.</p> <p>I consider a “good practice approach” and “management” includes the removal and disposal of soils that are contaminated.</p> <p>However, there would be no harm in including a specific reference in CL-P2. If the panel are of that view, then I consider the wording provided in ECan’s evidence⁴ would provide for this matter, or CL-P4 can be retained.</p>

² E.g. Ministry for the Environment (2021). *Contaminated land management guidelines No 1: reporting on contaminated sites in New Zealand*. Retrieved from <https://environment.govt.nz/assets/publications/Files/contaminated-land-management-guidelines-no-1.pdf>

³ Hazardous Substances and Contaminated Land s42A Report, Paragraph 104

⁴ Statement of Evidence of Joanne Mitten on behalf of The Canterbury Regional Council

Thank you, that concludes the preliminary written response to questions.

I am happy to now take questions on my s42A report.