

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
AT RANGIORA / WAIMAKARIRI**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE  
RANGIORA / WAIMAKARIRI**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the hearing of submissions and further  
submissions on the **Proposed Waimakariri  
District Plan**

**HEARING TOPIC:** **Stream 3 Contaminated Land**

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**STATEMENT OF PRIMARY EVIDENCE OF CLARE DALE  
ON BEHALF OF KĀINGA ORA – HOMES AND COMMUNITIES**

**PLANNING**

**10 JULY 2023**

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## 1. EXECUTIVE SUMMARY

- 1.1 My name is Clare Elizabeth Dale, and I am a Senior Planner at Novo Group Limited. I have been engaged by Kāinga Ora-Homes and Communities (**Kāinga Ora**) to provide evidence in support of its primary submission (submitter #325) and further submissions (further submitter #88) on both the Waimakariri District Council's (**WDC**) Proposed District Plan (**the PDP**) and Variation 1 (**V1**) to the Proposed District Plan (submitter #80).
- 1.2 Kāinga Ora made submissions and further submission points in relation to the contaminated land and natural hazards chapters of the Waimakariri Proposed District Plan (**PDP**). The Section 42A report only covers Kāinga Ora submission points on the PDP. In the Section 42A reports the reporting officers Ms Manhire has recommended accepting some but not all the changes requested by Kāinga Ora. This statement of evidence focuses on the submission points that remain in contention.
- 1.3 In summary the key points of my evidence are as follows:
- a) **Contaminated land:**
    - i. The District Plan contains objectives and policies to implement the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (**NESCS**). While the NES focuses on human health, Territorial Authorities also have responsibilities under section 31(1)(b)(iia) of the Resource Management Act 1991 (**RMA**) to manage the effects of contaminated land on the on the environment.
    - ii. Remediation of contaminated sites can have benefits or positive effects for communities and the environment.

1.4 I consider that amendments are needed to appropriately address the effects of contaminated land and its management/ remediation. I have recommended some further changes to the wording of the Section 42A Report's drafting of the contaminated land provisions; a marked up set of provisions showing the further amendments that I recommend is attached as **Appendix 2**.

## 2. INTRODUCTION

2.1 My full name is Clare Elizabeth Dale. I am a senior planner practising with Novo Group Limited in Christchurch. Novo Group is a resource management planning and traffic engineering consulting company that provides resource management related advice to local authorities and private clients.

2.2 I hold the qualifications of a Bachelor of Resource Studies (Policy and Planning Stream) from Lincoln University, attained in 2002. I am associate member of the New Zealand Planning Institute.

2.3 I have 20 years of experience as a resource management planner, predominantly working at Christchurch City Council in a range of planning roles (consenting, policy and heritage), and as a consultant since 2021.

2.4 My time at Christchurch City Council included several years with a focus on the Central City rebuild and high and medium density residential development including in a decision-making role. I have also prepared evidence for, and appeared in, resource management consent and plan hearings, Environment Court mediations, and Environment Court hearings.

2.5 I have been engaged by Kāinga Ora since July 2022 to provide planning expertise on the PDP process and V1 to the PDP. Novo Group had no involvement in preparing the Kāinga Ora primary submission on the PDP and became involved in this process at further submission stage. I have assisted with preparing the Kāinga Ora submission and further submissions on V1.

2.6 I am familiar with the national, regional and district planning documents relevant to the PDP. In preparing this evidence I have read the Section 32 and Section 42A reports together with the associated appendices prepared by Council staff.

#### **Code of Conduct**

2.7 Although this is a Council hearing, I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023. I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving evidence.

2.8 Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

#### **Scope of Evidence**

2.9 My evidence covers submissions and further submissions on the PDP in relation to, contaminated land and natural hazards.

2.10 My evidence will address the following matters:

(a) Contaminated Land.

2.11 I note that the relevant statutory documents have been identified and outlined within the Section 42A reports of Ms Manhire (contaminated land) and Mr Willis (natural hazards) and the overarching and Part 1 matters officers report by Mr Wilson and I agree with the identification of those matters.

### **3. KĀINGA ORA SUBMISSIONS AND FURTHER SUBMISSIONS**

3.1 The Kāinga Ora submission and further submission points allocated to the Stream 3 hearings are attached in **Appendix 1**.

**4. RECOMMENDATIONS BY SECTION 42A REPORT AND RESPONSE**

4.1 The evidence below is structured around the key headings in the Section 42A reports first noting the points of agreement.

**Areas of Agreement with Section 42A Report**

4.2 Having reviewed the respective Section 42A reports, I generally support the following recommendations by the reporting planners Ms Manhire and Mr Willis on the matters covered within this evidence:

(a) Contaminated Land: The council has a responsibility to consider the effects of land contamination beyond the 'human health' matters covered in the NESCS.

**5. CONTAMINATED LAND (3.4) - CONSISTENCY WITH THE NESCS**

5.1 Kāinga Ora made several submission points (s 325.93, 325.94, 325.97 and 325.99) in relation to the consistency of the proposed provisions with the NESCS. The submission sought the deletion of the word 'environment' from several provisions on the basis that this broadened the effects considerations beyond those related to human health, which is the focus of the NESCS. The Kāinga Ora submission also sought to add a new objective CL-O2 covering the benefits of contaminated land remediation in relation to matters beyond human health and the NESCS. My evidence addresses these two submission points.

5.2 Ms Manhire explains in the Section 42A Report, that, while the scope of the NESCS relates to the effects of soil contamination on human health, this does not detract from territorial authorities' broader functions under section 31(1)(b)(iia) of the Act<sup>[1]</sup>. I agree. Further, I also agree that the inclusion of the term 'environment' in the objectives and policies is consistent with Objective 17.2.1 of the Canterbury Regional Policy Statement (**RPS**) that seeks the "*Protection of people and the*

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[1] Section 31(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—

(iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land.

*environment from both on-site and off-site adverse effects of contaminated land*". Therefore, I consider references to the "environment" and broadening consideration beyond those relating to 'human health' aligns with the RMA and the RPS and are appropriate. I recommend that the word 'environment' is not deleted from the chapter introduction, CL-O1 and CL-P2. See **Appendix 2** below for suggested wording.

- 5.3 I do, in part, understand the concern raised by Kāinga Ora about expanding the consideration beyond the NESCS and human health at objective and policy level. This could lead to erroneous consideration of matters at consenting stage that are not within the control or discretion provided by the NESCS, depending on the consent's overall activity status. However, I note that for controlled and restricted discretionary activities the control/discretion for assessment under the NESCS would be limited to 'human health'<sup>1</sup> and it would not be appropriate to then consider wider environmental effects. The consideration of any wider contaminated land effects would only be available for full discretionary or non-complying activities. This is ultimately a plan administration matter that is best determined at the time individual consent applications are made and therefore I do not consider that the objectives and policies require amendment for this reason.

## **6. CONTAMINATED LAND (3.6) – SUBMISSION SEEKING NEW OBJECTIVE**

- 6.1 Kāinga Ora have submitted seeking that a new objective (CL-O2) be included in the plan to acknowledge that remediation of contaminated land can have *positive* benefits for the community and the environment. The Council has rejected the submission point stating that there is insufficient information provided and that there is a risk of acting.
- 6.2 The RMA (s31(1)(b)(iia) and NESCS only deal with *adverse* effects of contaminated land on human health and the environment. The wording of the contamination objectives and policies in Chapter 17 of the RPS also focus on adverse effects and do not directly consider the benefits

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<sup>1</sup> Matters of control Regulation 9(2)(a – e) and 9(3)(a – 2) and matters of discretion Regulation 10 (3)(1 – h).

of remediation. However, the introductory and explanatory text for some of the provisions do acknowledge that the territorial authorities and Environment Canterbury need to work together to achieve positive environmental outcomes<sup>2</sup> and that activities “*may assist in the mitigation of adverse effects of contaminated land by containing the contamination and limiting human and animal access to the contamination*”<sup>3</sup>.

- 6.3 This does not however, preclude consideration of positive effects or benefits of land remediation for discretionary or non-complying activities, where that remediation is being carried out in accordance with best practice approaches. The Act’s definition of the word ‘effect’ at s 3, RMA, clearly includes positive effects and there are a range of benefits associated with contamination remediation projects that can be demonstrated through expert assessment. This includes, but is not limited to: releasing brownfield land that is consequently suitable for housing or business activities; preventing the continued leaching of contaminants into waterways (rivers, streams, estuaries and the sea) or ground water; restoration which improves water quality and ecosystems, creating habitats for flora and fauna; restoring cultural values such as the mauri of water/land and mahinga kai; and improving health outcomes for communities that have been exposed to contamination.
- 6.4 In my view, there can be a tendency for Plans to focus on the adverse effects of activities and ignore or place less weight on positive environmental outcomes. I note that I have not been able to find another District Plan that includes an objective or policy relating to the benefits of remediation. Where significant benefits exist, I consider that it is appropriate to enable and encourage them in a positively geared planning framework. For full discretionary or non-complying activities this would enable a balancing of positive and adverse effects in a decision and may provide an incentive for remediation.
- 6.5 For the above reasons I support the Kāinga Ora submission seeking the inclusion of CL-O2.

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<sup>2</sup> RPS – Chapter 17, page 223, Introduction section.

<sup>3</sup> RPS, Chapter 17, page 223, Objective 17.1.1, explanation.

- 6.6 I also consider that the benefits of remediation go beyond those stated in the submission relating to land for housing and business activities. I recommend rewording the objective initially proposed in the Kāinga Ora submission. My proposed wording is as follows:

*CL-O2 Benefits of contaminated land remediation:*

*Enable remediation of contaminated land via best practice approaches, in recognition that remediation can have significant benefits for; the health and wellbeing of communities, increased availability of land, cultural values and for the natural environment.*

**7. SUMMARY OF PROPOSED WORDING CHANGES SOUGHT**

- 7.1 The proposed additional changes sought by Kāinga Ora are included in **Appendix 2** of my evidence. I can confirm that the version of relief in my evidence represents the full “updated” set of relief requested by Kāinga Ora in relation to this hearing topic. Other than the specific additional changes sought by Kāinga Ora and set out in this evidence and **Appendix 2**, I support the wording as recommended by the reporting officer in the Section 42A report.

**8. CONCLUSION**

- 8.1 The District Plan contains objectives and policies to implement the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (**NESCS**). While the NES focuses on human health, Territorial Authorities also have responsibilities under section 31(1)(b)(iia) of the Resource Management Act 1991 (**RMA**) to manage the effects of contaminated land on the on the environment.
- 8.2 Remediation of contaminated sites can have benefits or positive effects for communities and the environment.



**Clare Dale**  
**10 July 2023**



## Appendix 1: Kāinga Ora Submission Points for Stream 3 Hearing

### Proposed District Plan Submissions Contaminated Land

Section/Sub-section/Provision	Support/Support in Part/Oppose	Reason(s) for submission	Relief sought / decision requested Changes sought by Kāinga Ora is shown in red as <del>strikethrough</del> for deletion and <u>underline</u> for addition. Consequential amendments may be required to give effect to the relief sought.
<b>1. Part 2: District Wide Matters</b>			
<b>2. Part 2: District Wide Matters – Hazards and Risks – Contaminated Land</b>			
<b>3. Part 2: District Wide Matters – Contaminated Land – Introduction</b>			
Introduction	Support in part	<p>Kāinga Ora generally supports that this chapter appropriately defers to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS). However, Kāinga Ora are concerned that the objectives and policies broaden the application of the NESCS by referencing the “environment”.</p> <p>Amendments are also sought to make the connection to the NESCS clearer.</p>	<p><u>Amend</u>, as follows:</p> <p>Sites are identified as contaminated when land has a hazardous substance in or on it that may have significant adverse effects on human health <del>or the environment</del>.</p> <p>...</p>
<b>4. Part 2: District Wide Matters – Contaminated Land – Objective</b>			
CL-01	Support in part	<p>Kāinga Ora generally supports that this chapter appropriately defers to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS). However, Kāinga Ora are concerned that the objectives and policies broaden the application of the NESCS by</p>	<p><u>Amend</u>, as follows:</p> <p>The subdivision, use and development of contaminated land does not <u>have significant adverse effects on human health</u> <del>adversely affect people, property, and the environment</del>.</p>

Section/Sub-section/Provision	Support/Support in Part/Support in Part/Oppose	Reason(s) for submission	Relief sought / decision requested Changes sought by Kāinga Ora is shown in red as <del>strikethrough</del> for deletion and <u>underline</u> for addition. Consequential amendments may be required to give effect to the relief sought.
		referencing the “environment”. Amendments are also sought to make the connection to the NESCS clearer.	
New objective	Support	New objective proposed to recognise the positive effects associated with the remediation of contaminated soils.	<u>CL-O2 Positive benefits from treatment and remediation of contaminated land:</u> <u>Remediation of contaminated land contributes to the health and wellbeing of communities, including increased availability of land for housing and business activities.</u>
<b>5. Part 2: District Wide Matters – Contaminated land: Policies</b>			
CL-P1	Support	Kāinga Ora supports this policy as proposed.	<i>Retain as notified.</i>
CL-P2	Support in part	Kāinga Ora seek amendments to this policy to better align with the NESCS and remove reference to ‘environment’.	Amend, as follows:  Require applications for subdivision, <u>change of</u> use or development of contaminated land, or potentially contaminated land, to <del>include an investigation of</del> <u>investigate</u> the risks and to remediate the contamination, or manage activities on contaminated land, to protect <u>human health</u> . <del>the health of people and the environment</del> . The remediation or mitigation works for contaminated land shall be undertaken in such a way to not pose further risk to human health <del>or the environment</del> than if remediation had not occurred.

Section/Sub-section/Provision	Support/Support in Part/Oppose	Reason(s) for submission	Relief sought / decision requested Changes sought by Kāinga Ora is shown in red as <del>strikethrough</del> for deletion and <u>underline</u> for addition. Consequential amendments may be required to give effect to the relief sought.
CL-P3	Support	Kāinga Ora supports this policy as proposed.	<i>Retain as notified.</i>
CL-P4	Support in part	Kāinga Ora seek an amendment to remove reference to environment.	Amend, as follows: Avoid adverse effects on <u>human health</u> <del>the health of people and the environment</del> from the disposal of soil from contaminated land.

## Appendix 2: Kāinga Ora Updated Relief Sought following S42A

In the tables below black text is as notified, “blue mark up” amendments from ~~s42A-Section 42A~~ Report, and “red mark” Kāinga Ora evidence relief sought.

### Contaminated Land

Provision Number	As notified	Council S42A Drafting	Kāinga Ora Relief Sought
Introduction	<p>Sites are identified as contaminated when land has a hazardous substance in or on it that may have significant adverse effects on human health or the environment.</p> <p>The District Council is required to implement the NESCS. The NESCS requires that land affected, or potentially affected, by contaminants in soil is identified, assessed and managed before it is subdivided, used or developed to mitigate adverse effects on human health. The NESCS sets out the activity status for subdivision, use and development of land.</p> <p>The District Council implements resource consents under the NESCS, however as the NESCS does not contain any objectives or policies the District Plan will apply.</p> <p>Regional councils identify and monitor contaminated land. The Regional Council has recorded potentially contaminated land in</p>	<p>Sites are identified as contaminated when land has a hazardous substance in or on it that may have significant adverse effects on human health or the environment.</p> <p>The District Council is required to implement the NESCS. The NESCS requires that land affected, or potentially affected, by contaminants in soil is identified, assessed and, <u>if necessary managed remediated</u> before it is subdivided, used or developed to mitigate adverse effects on human health. The NESCS sets out the activity status for subdivision, use and development of land.</p> <p>The District <u>Council Plan does not contain any rules for the subdivision, use or development of contaminated land as this is regulated implements resource consents under the NESCS.</u> <del>The District Plan does,</del> however, <u>provide the relevant as the NESCS does not contain any objectives or</u> <u>and</u> policies <u>relating to contaminated land,</u></p>	Accept <u>Section</u> 42A drafting.

Provision Number	As notified	Council S42A Drafting	Kāinga Ora Relief Sought
	<p>the LLUR, which is a public database of land with a history of potentially hazardous activities or industries. The information in the LLUR is used by territorial authorities to identify land that is or has been used for a hazardous activity or industry, when preparing Land Information Memoranda and when assessing applications for resource consent.</p> <p>The Regional Council is also responsible for the avoidance, remediation, or mitigation of adverse effects from the use of contaminated land within the CMA and within the beds of lakes and rivers and the avoidance, remediation, or mitigation of adverse effects from discharges on contaminated land.</p> <p>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.</p>	<p><del>as none are provided by the NESCS the District Plan will apply.</del></p> <p>Regional councils identify and monitor contaminated land. The Regional Council has recorded potentially contaminated land in the LLUR, which is a public database of land with a history of potentially hazardous activities or industries. The information in the LLUR is used by territorial authorities to identify land that is or has been used for a hazardous activity or industry, when preparing Land Information Memoranda and when assessing applications for resource consent.</p> <p>The Regional Council is <del>also</del> responsible for the avoidance, remediation, or mitigation of adverse effects from the use of contaminated land within the CMA and within the beds of lakes and rivers and the avoidance, remediation, or mitigation of adverse effects from discharges <u>of contaminants into or onto contaminated land, air or water.</u></p> <p>The provisions in this chapter are consistent with the matters in Part 2 - District Wide Matters Strategic Directions a 2 - District Wide Matters - Urban Form and Development.</p>	

Provision Number	As notified	Council S42A Drafting	Kāinga Ora Relief Sought
Objective CL-01	<b>Contaminated land:</b> The subdivision, use and development of contaminated land does not adversely affect people, property, and the environment.	Retain as notified.	<u>Amend</u> , as follows: The subdivision, use and development of contaminated land is <u>managed to protect human health and the environment</u> .
Objective CL-02	N/A (new objective sought by submitter)	Reject Submission.	<u>CL-02 Benefits of contaminated land remediation:</u> <u>Enable remediation of contaminated land via best practice approaches, in recognition that remediation has benefits for; the health and wellbeing of communities, increased availability of land and for the natural environment.</u>
Policy CL-P1	<b>Identify contaminated land:</b> Identify sites potentially containing contaminated land, including sites with contamination from current and historical land uses and activities, by using the Regional Council's LLUR and coordinating with the Regional Council in the recording and management of contaminated land.	<b>Identify contaminated sites:</b> Identify sites potentially containing contaminated land, including sites with contamination from current and historical land uses and activities, by using the Regional Council's LLUR, <u>District Council records</u> , and coordinating with the Regional Council in the recording and management of contaminated land.	Accept <u>Section</u> 42A drafting.
Policy CL- P2	<b>Best practice management of contaminated land:</b> Require applications for subdivision, use or development of	<b>Best practice management of contaminated land:</b> Require applications for subdivision, <u>change_of</u> use or	<u>Amend</u> , as follows: Require applications for subdivision, <u>change_of</u> use or development of

Provision Number	As notified	Council S42A Drafting	Kāinga Ora Relief Sought
	contaminated land, or potentially contaminated land, to include an investigation of the risks and to remediate the contamination, or manage activities on contaminated land, to protect the health of people and the environment. The remediation or mitigation works for contaminated land shall be undertaken in such a way to not pose further risk to human health or the environment than if remediation had not occurred.	development of contaminated land, or potentially contaminated land, <u>to apply a good practice approach to the include an investigation management of the risks and to remediate the contamination, or manage activities on contaminated land,</u> to protect <u>the human</u> health <u>of people</u> and the environment. The remediation or mitigation works for contaminated land shall be undertaken in such a way to not pose further risk to human health and the environment than if remediation had not occurred.	contaminated land, or potentially contaminated land, to <u>investigate</u> the risks and to remediate the contamination, or manage activities on contaminated land, to protect <u>human health and the environment.</u> The remediation or mitigation works for contaminated land shall be undertaken in such a way to not pose further risk to human health <u>or the environment</u> than if remediation had not occurred.
Policy CL-P3	<b>Earthworks on contaminated land:</b> Discourage the disturbance of contaminated land, unless for the purpose of contamination remediation, where the level, type and toxicity of the contamination could adversely affect natural values.	<b>Earthworks on Contaminated Land:</b> Discourage the disturbance of contaminated land, unless for the purpose of contamination remediation, where the level, type and toxicity of the contamination could adversely affect natural values, <u>including ecological values.</u>	Accept <u>Section</u> 42A drafting.
Policy CL – P4	<b>Disposal of contaminated soil:</b> Avoid adverse effects on the health of people and the environment from the disposal of soil from contaminated land.	<del><b>Disposal of contaminated soil:</b> Avoid adverse effects on the health of people and the environment from the disposal of soil from contaminated land.</del>	Accept <u>Section</u> 42A drafting/ support deletion.