

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of submissions to Proposed Waimakariri
District Plan

STATEMENT OF EVIDENCE OF MILES ROWE

FOR

**BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED, AND
Z ENERGY LIMITED (THE 'FUEL COMPANIES')**

(Submitter 276 and Further Submitter FS104)

Hearing Stream 3 – Hazardous Substances and Contaminated Land

10 July 2023

INTRODUCTION

1. My full name is Miles Rowe. I have over 26 years of experience in the field of resource management and planning in local government, consultancy and private sector roles in New Zealand. I hold a Bachelor of Science (Geology) degree from the University of Canterbury and a post-graduate Diploma in Applied Environmental Technology from Christchurch Polytechnic. I am full member of the New Zealand Planning Institute.
2. I am a Principal Planning Consultant at 4Sight Consulting Limited (now Part of SLR) (**4Sight**). I have been employed with 4Sight since May 2023. Before then, I was employed for 17 years as a Principal Planner and Environmental Planning Advisor at Mercury NZ. Previous employment includes resource management consultancy and local authority regulatory resource consenting roles in New Zealand.
3. My principal role at 4Sight is to provide resource management planning and policy advice to private sector clients in relation to various projects and planning instruments across New Zealand. This role includes policy analysis, provision of strategic policy advice, and preparation of submissions and evidence.
4. I have extensive resource management experience relating to the provision of policy advice on strategic matters involving national, regional and district planning documents, preparation of submissions and evidence, and attendance at hearings and mediations. I have been involved in numerous planning processes throughout New Zealand addressing matters relating to indigenous biodiversity, outstanding natural features and landscapes, natural hazards, activities/structures in riverbeds and wetlands, water takes and discharges, amenity values, reverse sensitivity effects, regionally significant infrastructure and climate change. Of most relevance to Hearing Stream 3 to the Proposed Waimakariri District Plan (**PDP**), I have experience in district plan matters concerning the avoidance and mitigation of natural hazards.
5. I have prepared this planning evidence for bp Oil New Zealand Limited, Mobil Oil New Zealand Limited, and Z Energy Limited (*the 'Fuel Companies'*) (submitter 276 and further submitter FS104). I was not involved in the preparation of submissions or further submissions for the Fuel Companies on the PDP, but I support the intent of changes sought in the submissions.

CODE OF CONDUCT FOR EXPERT WITNESSES & CONFLICTS OF INTEREST

6. While this is not an Environment Court process, I acknowledge that I have read the Environment Court's Practice Note January 2023 as it relates to expert witnesses. My brief of evidence is prepared in compliance with the Code of Conduct, and I agree to comply with it in appearing before the hearings panel. I am not, and will not behave as, an advocate for my client. I confirm that my evidence is within my area of expertise and that

I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions. I have not relied on the evidence or opinion of any other person, in preparing my evidence.

7. I am engaged by the Fuel Companies as an independent expert. 4Sight provides planning services to the Fuel Companies along with a range of other corporate, public agency and private sector clients. I have no other interest in the outcome of the proceedings.
8. I acknowledge that I am known to one of the hearing commissioners, Mr Gary Rae, from my time working in the South Island (over 17 years ago). However, I can confirm that I never worked with Mr Rae in a professional capacity, and I do not consider there is any conflict of interest.

SCOPE OF EVIDENCE

9. This statement of evidence relates to the submission and further submissions of the Fuel Companies to the proposed Hazardous Substances and Contaminated Land (and relevant definitions) chapters of the PDP. In preparing this evidence I have considered the notified PDP documentation and the section 42A (**s42A**) report 'Mātu mōrearea – Hazardous Substances and Whenua paitini – Contaminated Land' insofar as it relates to the submission and further submissions by the Fuel Companies.
10. My evidence addresses the following matter raised in the Fuel Companies' submission:
 - a. Rule HS-R1 Hazardous substance storage and use (in the Urban Flood Assessment Overlay, Non-Urban Flood Assessment Overlay and Kaiapoi Fixed Minimum Finished Floor Level Overlay)
11. For all other matters raised in the submission and further submissions by the Fuel Companies relating to Hearing Stream 3, I accept the recommendations in the s42A report. For ease of reference, I have addressed these matters in **Schedule A** to this evidence.

THE FUEL COMPANIES INTERESTS AND INTERFACE WITH OTHER LEGISLATION

12. The Fuel Companies receive, store and distribute refined petroleum products around New Zealand. In the Waimakariri District, the Fuel Companies' core business relates to retail fuel outlets, including service stations and truck stops, and supply to commercial facilities. The Fuel Companies do not have any Major Hazard Facilities in the District.
13. The Fuel Companies are required to operate their retail fuel outlets in accordance with other legislation including the Hazardous Substances and New Organisms Act 1996 (HSNO) and Health and Safety at Work Act 2015 (HSWA)¹ and support Waimakariri

¹ For the avoidance of doubt, in my evidence where I refer to 'other legislation' I am primarily referring to these two pieces of legislation, but can also include other legislation including the Health and Safety at Work (Hazardous Substances) Regulations 2017, the Land Transport Act 1998 and the Building Act 2004.

District Council's (**Council**) approach in the PDP to not duplicate requirements of other legislation or the Regional Plan.

14. For most retail fuel sites, it is preferable to store hazardous substances underground to free up additional space on-site to undertake refuelling and other activities (i.e. trailer hire). Underground fuel storage also assists in the management of risks from hazardous substances, noting that several retail fuel sites are located in close proximity to more sensitive activities (e.g. residential activities).
15. The Fuel Companies operate service stations and truck stops in the towns of Kaiapoi, Woodend and Rangiora in the Waimakariri District, many of which are affected by the Natural Hazard – Flood Assessment overlays in the PDP. I have not undertaken any site visits for the purpose of preparation of this evidence. However, I grew up in Canterbury and worked in Christchurch for a number of years, so I am familiar with the towns where the Fuel Companies operate.

RULE HS-R1: HAZARDOUS SUBSTANCE STORAGE AND USE

Submissions for the Fuel Companies (submission point 276.5)

16. The Fuel Companies supported the intent of rule HS-R1 which provides a permitted activity pathway for the storage of hazardous substances in specific natural hazard overlays (Urban Flood Assessment Overlay, Non-Urban Flood Assessment Overlay and Kaiapoi Fixed Minimum Finished Floor Level Overlay) where the storage is at or above the finished floor level (*FFL*) established by the Kaiapoi Fixed Minimum Finished Floor Level Overlay or by a Flood Assessment Certificate. The Fuel Companies sought to amend this rule so that it would only apply to the aboveground storage of hazardous substances rather than storage more broadly, such as underground storage.

Council's s42A assessment and recommendation

17. The s42A report has addressed this submission point in paragraph 70 as follows:

When drafting the Hazardous Substances Chapter and preparing the s32; discussion with ECan and Hazardous Substances professionals, revealed there was a legislative gap in relation to storage in flood prone areas. Fuel Companies requested HS-R1 only apply to above ground storage of hazardous substances.

While I recognise that underground petroleum facilities designed and installed in accordance with the Codes of Practices HSNOCOP 44 and HSNOCOP 45 may be resilient to inundation, the risk is only minimised and there is still residual risk. 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.

18. The s42A report recommends that the Fuel Companies' submission point is rejected and to retain the rule as notified.

Analysis

19. The s42A report purports to suggest that there may be a 'legislative gap' in relation to the storage of hazardous substances in 'flood prone areas' which leads to there being a residual risk. It is my understanding that rule HS-R1 was intended to address this gap by seeking to manage the risk and effects of hazardous substances storage where it occurs in specific flood hazard overlays. I accept that flooding hazard areas can be a sensitive land use area that may require additional consideration. However, any consideration of residual risk should be based on whether the risk is acceptable and tolerable, taking into account the relevant environmental protection through HSNO or HSWA or any other relevant legislation to address these matters. I am not aware of any assessment through the s32 report or the s42A report regarding the acceptability or tolerability of residual risk for the underground storage of hazardous substances.
20. I consider that the rule HS-R1 is intended to only relate to the aboveground storage of hazardous substances as the storage must comply with a specific FFL to be permitted. FFL is not defined in the PDP but generally '*represents a minimum floor level height...to provide a safety factor to avoid buildings becoming inundated with water during a flood event*²'. It is therefore not possible for any underground structure (including the underground storage of hazardous substances) to comply with a FFL requirement and, in this case, comply with HS-R1. This would result in a resource consent being required as a restricted discretionary activity for all underground storage of hazardous substances in a Flood Assessment Overlay.
21. In my view, retaining the notified version of rule HS-R1 will lead to unnecessary resource consent requirements where, in most cases (and accepted by the reporting officer), underground storage is resilient to inundation, such that the integrity and function of the underground storage structures will be maintained. Further, in many cases, underground storage will be more resilient to the effects from inundation than aboveground storage.
22. In the case of the Fuel Companies' sites, hazardous substances are stored in underground tanks that have been specifically designed in accordance with other legislative requirements including appropriate mechanisms (e.g. valves) to ensure substances cannot exit the tanks, including during flood events. Modern underground tanks, and certainly any new tank to be installed or replaced, are double contained fibre-glass tanks manufactured to an EPA approved specification. In many instances, these underground tanks are

² Floor Heights and Freeboard – Waimakariri District Council - <https://www.waimakariri.govt.nz/have-a-say/closed-consultations/closed-consultations2/natural-hazards-management/flood-hazard-areas>

installed below the water table, so inundation from flood events does not result in any change to the level of risk.

23. For typical retail and commercial refuelling facilities, the nature of the activities and compliance with other legislation enables hazardous substance risks to be contained within the site. Therefore, I believe any residual risk from spillage or leakage (to the extent that any such risk remains) is appropriately minimised to be tolerable and acceptable.
24. In my opinion, requiring a resource consent for the underground storage of hazardous substances in a flood hazard area is inefficient as it will unlikely elicit a different (or reduced-risk) outcome in relation to managing adverse effects on people or the environment. Any foreseeable resource consent conditions would unlikely require changes to the design or location of underground storage tanks, and will instead likely duplicate other legislative requirements. In these circumstances, I do not consider that a resource consent will assist in achieving the objectives and policies of the PDP.
25. I consider that enabling, by way of exclusion, underground storage of hazardous substances achieves Objective HS-O1 to minimise risk to any sensitive area (clause 2 of the Objective), and minimise risk to land and water from natural hazards (clause 3 of the Objective). This in turn gives effect to Policy HS-P3 to minimise the risk of spillage or leakage and contamination of land and water in a flood event.

Conclusion and Relief

26. I consider that permitted pathway for the underground storage of hazardous substances is appropriate and consistent with the level of risk associated with aboveground storage that complies with FFL requirements.
27. For the reasons set out, I recommend the relief sought in the Fuel Companies be adopted as follows (insertions underlined, deletions ~~struck out~~):

HS-R1 Hazardous substance storage and use

Activity Status: PER

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.*

Miles Rowe

10 July 2023

SCHEDULE A: THE FUEL COMPANIES SUBMISSION AND FURTHER SUBMISSION POINTS

Table 1: This table addresses all submission points by the Fuel Companies relevant to Hearing Stream 3 on hazardous substances and contaminated land.

Submission point	Provision	Position	Submission Reasons	Relief sought (deletion struck-out , insertions <u>underlined</u>)	S42A recommendation	S42A reasoning (deletions struck-out , insertions <u>underlined</u>)	Fuel Companies position
Definitions							
279.9	Hazardous facility	Support	No reason provided	Retain as notified	Accept	No reason provided	Accept
276.16	Hazardous Substance	Support	No reason provided	Retain as notified	Accept	No reason provided	Accept
276.8	Major Hazard Facility	Support	No reason provided	Retain as notified	Accept	No reason provided	Accept
276.17	Contaminated Land	Support	No reason provided	Retain as notified	Accept	No reason provided	Accept
Hazardous Substances (HS)							
276.1	Introduction	Support	The Fuel Companies support Council's intent to only control matters in relation to hazardous substances that are not covered by other more specific legislation and the functions of the Canterbury Regional Council, as set out in the introduction to the proposed plan.	Retain as notified	Accept	No reason provided	Accept
276.2	HS-01	Support in part	The Fuel Companies consider that the proposed objectives do not adequately recognise the contribution hazardous substances make to economic and social wellbeing. In addition, the Fuel Companies consider that clarity is required in regards to the term 'flood events' used in HS-01 and the direction to manage the same, noting that both managed and minimised are used in the objective. Further, the Fuel Companies consider that property is clearly part of the environment and in relation to hazardous substance risk, does need not be specifically identified as a subset of the same.	<p>Amend as follows:</p> <p><i>Hazardous substance use, storage and disposal activities are <u>enabled and located</u>, and in the case of flood events, managed, so that:</i></p> <ol style="list-style-type: none"> 1. <i>risk to people, property and the environment from any major hazard facility is minimised, including avoiding unacceptable risk to sensitive activities;</i> 2. <i>risk to any sensitive area is minimised; and</i> 3. <i>risk to land and water as a result of flood events is <u>minimised managed</u></i> <p><u>Note:</u></p> <p><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.</u></p>	Accept in part	<p>I agree the objectives do not adequately recognise hazardous substance's potential contributions to economic and social wellbeing. The purpose of the objective, as set out in the s32 evaluation, was to minimise risk through location of hazardous substances and not to prevent the activities occurring. Therefore, the addition of "enabled and" would still achieve the purpose of the objective. Rules require major hazard facilities to be located to minimise this risk. The objectives and policies of RPS Chapter 18 - Hazardous Substances seek to avoid, remedy or mitigate adverse effects. The introduction to Chapter 18 states that "hazardous substances are vital to the social, cultural and economic well-being of people and communities, as well as the maintenance and enhancement of the quality of the environment" (p.230). The purpose of the RMA also includes social and economic well-being. Therefore, I recommend these words are added to HS-01.</p> <p>'Flood event' is specified elsewhere in the plan, in HS-MD1(3), and aligns with the Proposed District Plan definition of High Flood Hazard Area and the RPS definition of High Hazard Area. Locating an advisory note about how flood event is defined directly with Objective HS-01, may improve clarity/usability of the plan, however it may become outdated and create confusion if the RPS definition was amended and, as it is clarified elsewhere, I recommend not including an advisory note.</p> <p>The Fuel Companies seek deletion of the words "and in the case of flood events, managed". I have confirmed with the submitter the reason for seeking deletion of this text as this was not identified in the submission. The submitter considers the inclusion of this text in the opening sentence has no relevance in achieving the specific outcomes sought in clauses (1) and (2) of the objective, only clause (3). They stated that in their opinion it is cleaner and clearer to</p>	Accept

Submission point	Provision	Position	Submission Reasons	Relief sought (deletion struck out , insertions <u>underlined</u>)	S42A recommendation	S42A reasoning (deletions struck out , insertions <u>underlined</u>)	Fuel Companies position
						<p>have any specific outcome relating to flood events be a subset or criteria of the overarching objective to locate (and enable) hazardous substances (where risk to land and water as a result of flood events is managed). I consider the objective is not intended to apply only to flood risks as all three of the clauses also apply to the first part of the objective before the colon. This part of the Objective is given effect to by HS-R1 - the risk from flooding is managed through the location of hazardous substances (at, or above the finished floor level). However, I agree that it is repetitive and would be cleaner if the repetition was deleted since it is covered by clause 3.</p> <p>I disagree with the Fuel Companies that HS-O1(3) be amended from “managed” to “minimised”. Policies provide direction on how to achieve minimisation, particularly HS-P1 and this is implemented through the rules.</p> <p>I agree with the submitter that ‘property’ referred to in HS-O1 and HS-P1 is part of the environment. The RMA definition of ‘environment’ includes all natural and physical resources [emphasis added].</p> <p><i>Hazardous substance use, storage and disposal activities are <u>enabled and located</u>, and in the case of flood events, <u>managed</u>, so that:</i></p> <ol style="list-style-type: none"> 1. <i>risk to people, property and the environment from any major hazard facility is minimised, including avoiding unacceptable risk to sensitive activities;</i> 2. <i>risk to any sensitive area is minimised; and</i> 3. <i>risk to land and water as a result of flood events is minimised.</i> 	
276.3	HS-O2	Support in part	<p>The Fuel Companies support the intent of objective HS-O2 to minimise reverse sensitivity effects on MHF and avoid unacceptable risk to sensitive activities but consider the provision should be simplified and not just applied to establishment of new MHF, recognising that ongoing management of these matters is important. The Fuel Companies consider that this would be better achieved by amending the objective as follows:</p>	<p>Amend as follows:</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>	Reject	<p>The notified versions of HS-O2 and HS-P1 are more specific than the wording sought by the submitter, as they refer specifically to “location” of sensitive activities in relation to major hazard facilities (HS-O2) or “location” of major hazard facilities in relation to sensitive activities (HS-P1) which is implemented through the rules, specifically HS-R3 which minimises reverse sensitivity effects through the location of sensitive activities and not the intensification of them. The submitter has not requested any changes to or deletion of HS-R3 but supports HS-R3 which implements this objective and policy [276.7]. Therefore, I consider HS-O2 should be retained as notified.</p>	Accept
276.4	HS-P1	Support in part	<p>The proposed wording of HS-P1 is such that any addition to an existing MHF would trigger a Quantitative Risk Assessment (QRA) to identify and assess any potential further risk on human and ecological health. This policy would require a QRA for changes to a MHF which would not increase the risk profile of an existing MHF, for instance new or extended buildings. The notified wording also seeks to avoid locating new MHF in overlays and zones where sensitive areas or activities predominate. The Fuel Companies consider that this</p>	<p>Amend to the following:</p> <p>Minimise risk to people, <u>property</u> and the environment from any new major hazard facility, or any increase in the risk profile addition to of a major hazard facility by:</p> <ol style="list-style-type: none"> 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, though a QRA of any proposed activity, including consideration of</u> 	Reject	<p>The Fuel Companies seek amendment of HS-P1(2) and deletion of HS-P1(3), which seeks to minimise risk by locating major hazard facilities outside locations where sensitive areas or activities predominate. However, this policy is given effect to through the Hazardous Substances rules and would result in rules without an associated policy. It is unclear how it will be achieved by "provisions relating to those overlays and zones", as these do not deal with hazardous substances. As discussed in the s32 evaluation report for Hazardous Substances, the District Plan manages residual risk. This includes the impact on sensitive areas, which HS-P1(3) addresses. The policy gives effect to Chapter 18 of the RPS. In particular, 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. Therefore, I recommend these requested amendments are rejected.</p>	Accept

Submission point	Provision	Position	Submission Reasons	Relief sought (deletion struck out , insertions <u>underlined</u>)	S42A recommendation	S42A reasoning (deletions struck out , insertions <u>underlined</u>)	Fuel Companies position
			intent will be achieved by provisions relating to those overlays and zones and need not be specified in the hazardous substance chapter. Additional changes are proposed to HS-P1 and HS-P2 for consistency with amendments to provisions above	<p>its site characteristics and any cumulative risk from the use, storage and disposal of hazardous substances on other sites;</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. 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</p> <p>4. locating outside any high hazard area unless risk associated with the hazard can be appropriately mitigated to protect human, and environmental, health and safety.</p>		<p>HS-P1 as drafted is more directive than sought by submission point 276.4 as it is unclear what a risk profile is and how it is determined. The trigger of 'addition' is measurable and allows the risk profile to then be assessed.</p> <p>As there is only one MHF in the district, the likelihood of requiring a Quantitative Risk Assessment (QRA), a type of risk analysis for any new or addition to a MHF, is low even if additional MHF establish in the future. It is unlikely many would meet the threshold to be classified as a MHF under the Health and Safety at Work (Major Hazard Facilities) Regulations 2006 due to the level of the thresholds and the fact that only one facility in the district has met these. At this point in time, there is insufficient evidence to justify requiring an appropriate risk assessment rather than a QRA in HS-P1.</p>	
276.41	HS-P2	Support in part	Additional changes are proposed to HS-P1 and HS-P2 for consistency with amendments to provisions above HS-O2)	<p>Amend as follows:</p> <p><u>Ensure any new or intensified activities are 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 activities and minimise reverse sensitivity effects.</u></p>	Reject	No specific reason provided	Accept
276.42	HS-P3	Support	No reason provided	Retain as notified.	Accept in part	HS-P3 refers to flood hazards to give effect to HS-O1 and is implemented through the rules. It aligns with the Natural Hazards Chapter by referring to the natural hazard overlays. The High Coastal Flood Hazard Area has been addressed by the Hazardous Substances rules and could be referred to in the policy and I recommend the policy also addresses sea water inundation.	Accept
276.5	HS-R1	Support in part	The Fuel Companies also seek that rule HS-R1 is amended to only apply to above ground storage of hazardous substances, noting that underground facilities, like petroleum storage at service stations, are resilient to inundation. This could be achieved by amending HS-R1.	<p>Amend as follows:</p> <p><i>(Permitted) Where:</i></p> <p>1. <u>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</u></p>	Reject	<p>When drafting the Hazardous Substances Chapter and preparing the s32; discussion with ECan and Hazardous Substances professionals, revealed there was a legislative gap in relation to storage in flood prone areas. Fuel Companies requested HS-R1 only apply to above ground storage of hazardous substances.</p> <p>While I recognise that underground petroleum facilities designed and installed in accordance with the Codes of Practices HSNOCOP 44 and HSNOCOP 451 may be resilient to inundation, the risk is only minimised and there is still residual risk. HSNO codes of practice are not mandatory but provide guidance for how</p>	Addressed in Evidence

Submission point	Provision	Position	Submission Reasons	Relief sought (deletion struck out , insertions <u>underlined</u>)	S42A recommendation	S42A reasoning (deletions struck out , insertions <u>underlined</u>)	Fuel Companies position
				<i>Certificate issued in accordance with NH-S1</i>		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.	
276.6	HS-R2	Support in part	The Fuel Companies also seek that rule HS-R2 is amended to reflect the proposed changes to HS-P1 and HS-P2 above	Amend as follows: <i><u>Any new major hazard facility or any increase in the risk profile of a</u></i> addition to <i>major hazard facility.</i>	Reject	No specific reason provided.	Accept
Contaminated Land							
276.11	Introduction	Support in part	<p>The proposed provisions recognise that subdivision, development and use of contaminated or potentially contaminated land is primarily managed through the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS). The Fuel Companies support this approach but note some inconsistencies with the proposed introduction as it relates to the NESCS.</p> <p>The NESCS seeks to 'identify' and 'assess' contaminants in soil to the then determine if any management is required before the land is 'subdivided, used or developed'. In contrast the second paragraph of the introduction states that the NESCS requires contaminants in soils to be managed before it is subdivided, used or developed.</p> <p>Similarly, the third paragraph states that District Council can implement consents under the NESCS. While this is technically correct, the Council could obtain and implement resource consent conditions under the NESCS, it is anticipated that the intent of this statement was to convey that the District Plan does not contain rules for contaminated land but contains objectives or policies.</p> <p>Thirdly, the Fuel Companies support recognition of the Regional Council's</p>	<p><i>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.</i></p> <p><i>The District Council is required to implement the NESCS. The NESCS requires that land affected, or potentially affected, by contaminants in soil is identified <u>and</u>, 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.</i></p> <p><i>The District Council Plan does not contain <u>any rules for the subdivision, use or development of contaminated land as this is regulated</u> implements resource consents under the NESCS. The District Plan does, however, <u>provide the relevant</u> as the NESCS does not contain any objectives or policies relating to contaminated land, noting that none are provided by the NESCS <u>the District Plan will apply.</u></i></p> <p><i>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.</i></p>	Accept in part	<p>The NESCS, as described on the Ministry for the Environment website: "ensures that land affected by contaminants in soil is appropriately identified and assessed before it is developed - and if necessary, the land is remediated or the contaminants contained to make the land safe for human use" [emphasis added].</p> <p>I consider the amendments to the chapter Introduction suggested by Fuel Companies align with the NESCS but suggest the deletion of "and managed" is replaced with "if necessary, remediated" to be consistent with the NESCS.</p> <p><i>...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 <u>and if necessary remediated</u> 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...</i></p>	Accept

Submission point	Provision	Position	Submission Reasons	Relief sought (deletion struck out , insertions <u>underlined</u>)	S42A recommendation	S42A reasoning (deletions struck out , insertions <u>underlined</u>)	Fuel Companies position
			responsibility in relation to contaminated land, including managing contaminated land within the CMA and within the beds of lakes and rivers but seek that those responsibilities are more accurately reflected as they relate to discharges. The Fuel Companies consider that the following amendments to the Introduction would address these inconsistencies:	<p><i>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 of <u>contaminants into or onto contaminated land, air or water.</u></i></p> <p><i>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</i></p>			
276.12	CL-O1	Support in part	The Fuel Companies consider that Objective CL-O1 should seek the protection of human health and environment which is consistent with the NESCS and better aligns with CL-P2. In addition, the use of ‘adversely affect’ does not appropriately enable outcomes where adverse effects may be acceptable. This could be addressed by amending CL-O1.	<p>Amend as follows:</p> <p><i>The subdivision, use and development of contaminated land <u>is managed to protect human health</u> does not adversely affect people, property, and the environment.</i></p>	Reject and retain as notified	<p>The Chapter seeks to provide direction for land use management in relation to contaminated land (where this is not covered by existing legislation or regulation), as covered throughout the Contaminated Land s32.</p> <p>The District Council has a role, under the RMA, in the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land. Section 31(1)(b)(iia) of the RMA provides for the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land as a territorial function. The RPS requires territorial authorities to set out objectives, policies or methods in district plans to require:</p> <p>“that any actual or potential adverse effects of contaminated land are avoided, remedied or mitigated in a manner that does not lead to further significant adverse effects on the environment”</p> <p>I recommend CL-O1 is retained as notified to include “adversely affect” to better align with and give effect to the RPS.</p> <p>As discussed in the Contaminated Land s32 (p.14), while the scope of the NESCS relates to the effects of soil contamination on human health, this does not detract from councils’ broader functions under the RMA 31(1)(b)(iia). Objective 17.2.1 of the RPS seeks the “Protection of people and the environment from both on-site and off-site adverse effects of contaminated land” [emphasis added]. Therefore, references to the “environment” align with the RMA and the RPS.</p>	Accept
276.43	CL-P1	Support		Retain as notified	Accept in part		Accept
276.13	CL-P2	Support in part	The Fuel Companies also seek that CL-P2 is amended to better reflect that remediation is one of a range of options to help manage contaminated land and to ensure that the policy intent aligns with the NESCS, noting that the NESCS does not require avoidance of all effects. This could be achieved by amending CL-P2 as follows:	<p>Amend as follows:</p> <p><i>Require applications for subdivision, use or development of contaminated land, or potentially contaminated land, <u>to apply a good practice approach</u> include an to the investigation management of the risks to remediate the contamination, or manage activities on contaminated land, to protect the human health of people and the environment. The remediation or mitigation works for contaminated</i></p>	Accept in part	<p>The amendment to refer to “good practice approach”, as sought by Fuel Companies, aligns with contaminated land management guidelines, referenced in the NESCS.</p> <p>However, deletion of “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”, as sought by Fuel Companies, would not give effect to the RPS. Territorial authorities are directed under the RPS to set out objectives, policies, or methods to require that any remediation or mitigation works for contaminated land do not lead to further significant adverse effects on the environment.</p>	Accept

Submission point	Provision	Position	Submission Reasons	Relief sought (deletion struck out , insertions <u>underlined</u>)	S42A recommendation	S42A reasoning (deletions struck out , insertions <u>underlined</u>)	Fuel Companies position
				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.			
276.14	CL-P3	Support in part	The Fuel Companies oppose policy CL-P3 as it explicitly discourages the disturbance of contaminated land which is often the first step in identifying and assessing risk. While an allowance is made for disturbance associated with remediation, as set out above, remediation is only one method of addressing potential effects associated with contaminated land and disturbance may be necessary for a range of other reasons, for instance instatement of sealed surfaces. The Fuel Companies consider that any risk or effects associated with earthworks and/or disturbance can be appropriately addressed by the intent of policy CL-P2 and, as such, consider policy CL-P3 be deleted.	Delete: 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	Reject	<p>The purpose of CL-P3 was to manage the residual risk of contaminated land on the environment and to give effect to Part 2 of the RMA, in particular s6I and s7(f), as set out in the Contaminated Land s32 (p.9, 14, 15). As the Proposed District Plan rules e.g. Earthworks Chapter along with the NESCS set out a criteria for where disturbance is acceptable, I recommend the policy is retained.</p> <p>As the regional council is responsible for discharges, there is a residual risk of flora and fauna being affected directly where contaminated land is disturbed where there was no discharge involved.</p> <p>CL-P3 would be implemented through the earthworks rules e.g. no earthworks are permitted within SNAs, and could be considered where this rule is breached, as outlined in the Contaminated Land s32 (p.14-15). I was the main author of the Contaminated Land Chapter and the s32 and the intention was to encompass the ecological values of flora and fauna, as this was a gap not addressed by other legislation. The permitted activity rules in the NESCS will not necessarily provide protection for ecological receptors, in particular terrestrial biodiversity. I consider 'Ecological values' is a well-known and understood term and is used throughout the plan, including in the Ecosystems and Indigenous Biodiversity, Natural Character of Freshwater Bodies, and Coastal Environment chapters. It is also used in the RPS policies 6.3.9(5)(j) and 10.3.2(2). I recommend the policy be amended to include 'ecological values' which accurately reflects the intent of the policy.</p> <p>I recommend that the submission point from Ecan [316.46] be accepted, and Fuel Companies [276.14] be rejected.</p> <p><u>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, including ecological values.</u></p>	Accept
276.15	CL-P4	Oppose	The Fuel Companies also consider that the intent of policy CL-P4 is effectively provided by CL-P2 which seeks to apply good environmental practices to effectively manage risk and effects. It is also assumed that this policy seeks to manage land fill activities which would be more appropriately dealt with under the relevant zone provisions. The Fuel Companies also seek this policy be deleted:	Avoid adverse effects on the health of people and the environment from the disposal of soil from contaminated land.	Accept	<p>I agree that the intent of CL-P4 is effectively provided by CL-P2 and landfill activities are dealt with under zone provisions e.g. waste management facility (LLRZ-R37, GRUZ-R31, RLZ-R32 and SPZ(PR)-R26) and composting facility (LLRZ-R38, GRUZ-R32, RLZ-R33 and SPZ(PR)-R33) as well as other legislation (Waste Minimisation Act 2008). Risks and effects from contaminated soil are also dealt with through the Earthworks provisions. Therefore, I consider that CL-P4 is unnecessary.</p>	Accept

Table 2: This table addresses all further submission points by the Fuel Companies relevant to Hearing Stream 3 on hazardous substances and contaminated land.

Further Sub points	Provision	Position	Submission Reasons	Relief sought (deletion struck-out , insertions <u>underlined</u>)	S42A recommendation	S42A reasoning (deletions struck-out , insertions <u>underlined</u>)	Fuel Companies position
Contaminated Land							
FS104 <i>(Kainga Ora – Homes and Communities)</i>	Introduction	Support	The proposed amendment seeks to narrow the focus of effects to those relating to ‘human health’ which better aligns with intent and rule framework of the NES:CS. The Fuel Companies support this amendment with broader environmental effects more appropriately managed through the regional framework.	Amend as follows: <i>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</i>	Reject	The Chapter seeks to provide direction for land use management in relation to contaminated land (where this is not covered by existing legislation or regulation), as covered throughout the Contaminated Land s32. The District Council has a role, under the RMA, in the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land. Section 31(1)(b)(iia) of the RMA provides for the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land as a territorial function. The RPS requires territorial authorities to set out objectives, policies or methods in district plans to require: <i>“that any actual or potential adverse effects of contaminated land are avoided, remedied or mitigated in a manner that does not lead to further significant adverse effects on the environment”.</i>	Accept
FS104 <i>(Kainga Ora – Homes and Communities)</i>	CL-O1	Support in part	The Fuel Companies support limiting the scope of effects to human health for reasons previously stated. Notwithstanding, the Fuel Companies consider that CL-O1 should seek to ‘manage’ effects on human health rather than avoid significant adverse effects, the former being better aligned with intent of the NES:CS.	Amend CL-O1: <i>The subdivision, use and development of contaminated land does not have <u>significant adverse effects on human health</u> adversely affect people, property, and the environment.</i>	Reject	I recommend CL-O1 is retained as notified to include “adversely affect” to better align with and give effect to the RPS.	Accept
FS104 <i>(Canterbury Regional Council)</i>	CL-P1	Oppose	The notified policy seeks to identify sites containing contaminated land by using the Listed Land Use Register (LLUR) ‘and’ coordinating with the Regional Council to enable the recording, and management, of contaminated land. The Fuel Companies consider that the notified policy provides clear direction and sufficient scope to utilise other methods of identifying and recording contaminated land that is not strictly restricted to the use of the LLUR. In the absence of any specific relief proposed by the submitter, it is not possible to understand what a broadened scope will look like and any possible implications. Relief: retain policy CL-P1 as notified.	Broaden scope of CL-P1 so consideration can also be given to sites not listed on the Listed Land Use Register but which are known to be contaminated or have had activities onsite warranting investigation.	Accept	While I agree with the Fuel Companies that the notified policy provides clear direction and sufficient scope to utilise other methods of identifying and recording contaminated land, reference to District Council records can add further clarity and direction and implementing the policy would be as simple as checking files held in council property records. I am also aware that checking territorial records is a common method used to establish where a site is ‘a piece of land’. Therefore, I recommend the policy is amended to reference District Council records.	Accept

Further Sub points	Provision	Position	Submission Reasons	Relief sought (deletion struck-out , insertions <u>underlined</u>)	S42A recommendation	S42A reasoning (deletions struck-out , insertions <u>underlined</u>)	Fuel Companies position
FS104 (Kainga Ora – Homes and Communities)	CL-P2	Support in part	For reasons previously stated, the Fuel Companies support limiting the scope of effects, relevant at the policy level, to those associated with human health but consider the relief offered in the Fuel Companies’ submission more appropriately reflects that remediation is just one option of managing effects of contaminated land which better aligns with the intent of the NES:CS.	Amend CL-P2: <i>Require applications for subdivision, change of use or development of contaminated land, or potentially contaminated land, to include an investigation of <u>investigate</u> the risks and to remediate the contamination, or manage activities on contaminated land, to protect human health. 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.</i>	Accept in part	I agree that the addition of the words “change of” in CL-P2, as sought by Kainga Ora, would better align with NESCS Regulation 5(6).	Accept
FS104 (Canterbury Regional Council)	Policy (New)	Oppose	The Fuel Companies acknowledge that the ‘creation’ of new contaminated land is not desirable but is unavoidable as accidents, including leaks, and spills infrequently occur on sites that use and store hazardous substances, despite best intentions and adherence to best practice industry regulations. The Fuel Companies oppose any new policy that discourages the creation of new contaminated land as it may inadvertently discourage the establishment, expansion or ongoing operation of HAIL activities that provide essential resources to the district but are more susceptible to creating contaminated land compared to other activities.	Add a policy to discourage the creation of new contaminated land.	Accept	The addition of a policy to discourage the creation of new contaminated land, does not have a rule trigger associated with it so that the policy can be given effect to through rules. If such rules were included in the Plan, this would mean HAIL activities would require consent. Requiring consent for these activities, which are wide-ranging e.g. application of agrichemicals, livestock dip, storage drums for fuel, cemeteries etc. everywhere in the district would be a restrictive approach and not align with the current activity-based rule framework of the zone chapters. I also consider that the inclusion of rules is outside scope as ECan has not sought the addition of such rules.	Accept
FS104 (Kainga Ora – Homes and Communities)	CL-P4	Support in part	The Fuel Companies oppose CL-P4 as its intent is effectively captured by CL-P2 which seeks to apply good environmental practices to effectively manage risk and effects associated with contaminated land. Notwithstanding and for reasons previously stated, the Fuel Companies support the proposed amendment.	Amend CL-P4: <i>Avoid adverse effects on <u>human health</u> the health of people and the environment from the disposal of soil from contaminated land.</i>	Accept	I agree that the intent of CL-P4 is effectively provided by CL-P2 and landfill activities are dealt with under zone provisions e.g. waste management facility (LLRZ-R37, GRUZ-R31, RLZ-R32 and SPZ(PR)-R26) and composting facility (LLRZ-R38, GRUZ-R32, RLZ-R33 and SPZ(PR)-R33) as well as other legislation (Waste Minimisation Act 2008). Risks and effects from contaminated soil are also dealt with through the Earthworks provisions. Therefore, I consider that CL-P4 is unnecessary	Accept