Evidence in respect of Genesis Energy Limited Submitter #924

BEFORE THE INDEPENDENT HEARINGS PANEL FOR THE PROPOSED WAIKATO DISTRICT PLAN

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Waikato District Plan, Stage 1: Hearing 8A, Hazardous Substances

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PRIMARY STATEMENT OF EVIDENCE BY RICHARD MATTHEWS

17 DECEMBER 2019

FOR GENESIS ENERGY LIMITED SUBMITTER #924

Executive Summary

1. I do not consider there is any necessity for separate hazardous substance provisions in the Proposed Waikato District Plan. Any resource management matters that may arise from the storage and use of hazardous substances are more than adequately managed and controlled through other provisions of the Plan, such as building setbacks, development controls, height limits or odour controls.

2. I understand that the overlap between hazardous substance regulation and District Plan requirements is a matter that the Independent Hearings Panel for the Christchurch Replacement District Plan faced in their deliberations for Hazardous Substances and Contaminated Land. In that case, the Independent Hearing Panel rejected an approach based on reference to an Activity Status Table, like that proposed for the Waikato District Plan. While this decision was made prior to changes to the Resource Management Act and the Hazardous Substances and New Organisms Act 1996 in 2017, I consider that the decision provides a helpful and useful approach to separating out those provisions which are required to achieve a resource management purpose from those that serve a hazardous substance management or control purpose.

3. I consider that the hazardous substance provisions set out in the Proposed Waikato District Plan and the changes recommended in the s42A Report may result in significant and unnecessary potential overlap between hazardous substance regulation and District Plan requirements.

4. The hazardous substance provisions in the Proposed Waikato District Plan should be deleted entirely or amended to ensure that there is no overlap between the District Plan requirements and what is already required under other regulations.

Introduction

5. My name is Richard John Matthews. I hold the qualifications of Master of Science (Hons) degree specialising in Chemistry and have been working on resource consent applications (and their former descriptions under legislation prior to the commencement of the Resource Management Act 1991) since 1979 and advising on Regional and District Plan provisions since 1991.

6. I am a partner with Mitchell Daysh Limited, a specialist environmental consulting practice with offices in Auckland, Hamilton, Tauranga, Taupo, Napier, Wellington and Dunedin. Mitchell Daysh Limited was formed on 1 October 2016, as a result of merger between Mitchell Partnerships Limited and Environmental Management Services.

7. I have prepared evidence for the Proposed Waikato District Plan, Stage 1: Hearing 1, Chapter 1 Introduction and Hearing 2, Plan Structure and All of Plan and Hearing 7: Industrial Zone and Heavy Industrial Zone. My experience is set out in my previous evidence.

8. I have been providing planning advice to Genesis with respect to Huntly Power Station activities since 1999 and am familiar with the power station operations, the resource consents applicable to the site and the Operative Regional and District Plan provisions relevant to the site.

Code of Conduct

9. While not directly applicable to this hearing, I confirm that I have read the "Code of Conduct for Expert Witnesses" contained in the Environment Court Consolidated Practice Note 2014. I agree to comply with this Code of Conduct. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

10. My evidence discusses the Genesis Energy Limited ("**Genesis**") Submissions (submitter ID 924) and Further Submissions (submitter ID 1345) on the Proposed Waikato District Plan ("**PDP**") with respect to the matters addressed in the Section 42A reports for Hearing 8A: Hearing 8A: Hazardous Substances & Contaminated Land.

Genesis Energy Limited Background and Submissions

11. Section 2 of the Genesis submission and my Hearing 1 and 2 evidence sets out the background to Genesis' interests in the Waikato District. Genesis Energy owns and operates the Huntly Power Station ("**HPS**"). The HPS is located on Heavy Industrial Zone land activities related to the power station

operation, such as coal receival and delivery activities and ash removal are located are located on Rural Zone land.

12. The Submissions and Further Submissions made by Genesis in respect of the Hazardous Substances & Contaminated Land provisions largely seek changes to ensure that overlaps between the District Plan provisions and requirements under other legislation do not occur and that if related requirements are proposed for the District Plan they are necessary for a resource management purpose.

13. I have read the s42A Report and associated appendices relevant to Hearing 8A. I do not propose to repeat the matters addressed in those reports other than to highlight particular points and focus on the aspects addressed in the Genesis submissions and further submissions.

Genesis Submission Points 924.32 and 924.36

14. In these submission points, Genesis sought changes to Rule 21.2.6 and 22.2.4 to permit activities managed in accordance with the Safety at Work (Hazardous Substances) Regulations, or activities within the Huntly Power Station Site that already comply with hazardous substance regulations. The s42A Report recommends that both submission points be rejected, largely on the grounds that there is a need for the provisions as they stand and that the Activity Status Table ("**AST**") included in Appendix 5 of the Proposed Plan provides "a much easier method of determining compliance" and determines whether a resource consent is required.

15. The Genesis submission points basically seek to avoid overlaps between compliance with rules under different legislative requirements. I note that the Resource Legislation Amendment Act 2017 amended both the Resource Management Act 1991 and Hazardous Substances and New Organisms Act 1996 in an effort to avoid potential overlaps between the two sets of legislative requirements.

16. In terms of practical implementation of the hazardous substance rules under the Waikato District Plan, I am aware that the Huntly Power Station stores and uses hazardous substances within the site for the operation of various aspects of the station activities. For example:

(a) Water treatment chemicals are stored and used at the site for treating water to a high standard for use in the Rankine Units (the original dual fuel units 1 – 4 on the site) and Unit 5 boilers (very pure water is required to minimise scale production in the boilers); or

(b) Cooling tower water treatment chemicals are stored and used at the site for treating water that is recirculated within the Unit 5 cooling tower, to control the production biological films that could clog the cooling vanes within the towers.

17. For an activity such as treating the water for the Unit 5 cooling tower, there can be several proprietary brands of water treatment chemical each containing a different mix of hazardous substances but each providing particular treatment attributes suited to operation of the cooling tower. From time to time Genesis will assess what the most suitable product is for use in the treatment process.

18. As part of the site infrastructure, Genesis has appropriately designed storage facilities for the hazardous substances it stores and uses on the site. I understand that compliance certificates have also been obtained under the Safety at Work (Hazardous Substances) Regulations. If any change in those substances is made, for example to use an alternative cooling tower water treatment process, then confirmation that the storage facilities on the site are suitable for that product is sought under the hazardous substance regulations.

19. However, as the AST included in Appendix 5 of the Proposed Plan is based on quantities of hazardous substances and their hazard risk, then a simple change in water treatment chemical could trigger a requirement for a resource consent even though all the hazardous substance regulation requirements are met, there would be no change in amenity effects (e.g. no building changes). In other words, the resource consent requirement would only be triggered by a change in use of a substance that is more effectively controlled under other legislation anyway.

20. I understand that this is a similar issue that the Independent Hearings Panel for the Christchurch Replacement District Plan faced in their deliberations for Hazardous Substances and Contaminated Land. In that case, notwithstanding evidence from Mr N Schaffoener that District Plan Rules based on application of an AST similar to that proposed for the Waikato District Plan should be

used, the Independent Hearing Panel rejected that approach and adopted a simplified approach where resource consent requirements are not triggered by hazardous substance quantities and risks.

21. I have attached the Independent Hearings Panel for the Christchurch Replacement District Plan hazardous substance decision as Appendix 1. While this decision was made prior to changes to the Resource Management Act and the Hazardous Substances and New Organisms Act 1996 in 2017, I consider that the decision provides a helpful and useful approach to separating out those provisions which are required to achieve a resource management purpose from those that serve a hazardous substance management or control purpose. The changes made to the Resource Management Act and the Hazardous Substances and New Organisms Act 1996 in 2017 reinforce the separation between the two regulatory regimes and the need to avoid overlap.

22. Having reviewed the Proposed Waikato District Plan Chapter 10 Hazardous Substances and Contaminated Land s42A Report, the Hazardous Substances Management Background Report prepared by Mr N Schaffoener (appendix 4 to the s42A Report) and the Independent Hearings Panel report on the hazardous substance provisions in the Christchurch Replacement District Plan, I do not consider there is any necessity for separate hazardous substance provisions in the Proposed Waikato District Plan. Any resource management matters that may arise from the storage and use of hazardous substances are more than adequately managed and controlled through other provisions of the Plan, such as building setbacks, development controls, height limits or odour controls.

Genesis Further Submission Points 1345.71, 1345.72, 1345.73, 1345.74, 1345.75, 1345.62, 1345.69, 1345.79, 1345.83 and 1345.105

23. These Further Submission points largely support changes sought that restrict overlaps with hazardous substance regulations or oppose further restrictions or changes that are likely to exacerbate potential overlaps. The s42A Report recommendations in most cases are to reject the Genesis further submissions.

24. For the reasons outlined above for the Genesis primary submission points, I consider that the hazardous substance provisions set out in the Proposed Waikato District Plan and the changes recommended in the s42A Report may

result in significant and unnecessary potential overlap between hazardous substance regulation and District Plan requirements.

25. The hazardous substance provisions in the Proposed Waikato District Plan should be deleted entirely or amended to ensure that there is no overlap between the District Plan requirements and what is already required under other regulations.

Richard Matthews

17 December 2019

Appendix One: Independent Hearings Panel Decision on Christchurch Replacement District Plan: Chapter 12: Hazardous Substances and Contaminated Land — Stages 1 and 2 (and relevant definitions)

Independent Hearings Panel
Christchurch Replacement District Plan
Te paepae motuhake o te mahere whakahou a rohe o Ōtautahi

IN THE MATTER OF	section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014
AND	
IN THE MATTER OF	proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 13 and 14 October 2015

Date of decision: 15 March 2016

Hearing Panel: Hon Sir John Hansen (Chair), Ms Jane Huria, Mr Stephen Daysh, Mr Alec Neill

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DECISION 18

Chapter 12: Hazardous Substances and Contaminated Land — Stages 1 and 2 (and relevant definitions)

Outcomes: **Proposals changed as per Schedule 1**

COUNSEL APPEARANCES

Ms K Viskovic and Ms M Jagusch	Christchurch City Council
Mr D Randal and Mr T Ryan	Crown
Ms J Appleyard	Lyttelton Port Company Limited Christchurch International Airport Limited Orion New Zealand Limited
Ms H Atkins	Horticulture New Zealand
Ms R Dixon	Rockgas Limited
Mr E Chapman	Christchurch Polytechnic Institute of Technology University of Canterbury
Mr J Gardner-Hopkins	Mobil Oil New Zealand Limited, Z Energy Limited and BP Oil NZ Limited
Ms A Theelen	Liquigas Limited

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INTRODUCTION

[1] This decision ('decision') continues the series of decisions made by the Independent Hearings Panel ('Hearings Panel'/'Panel') concerning the formulation of a replacement district plan for Christchurch City (including Banks Peninsula) ('Replacement Plan'/'Plan').[1]

[2] This decision concerns Chapter 12: Hazardous Substances and Contaminated Land.

[3] In this decision, the phrase 'Notified Version' describes the version notified by the Christchurch City Council ('CCC'/'Council') (submitter 2123) and to which, subsequent to consideration of submissions, conferencing and mediation between the Council and submitters, a number of changes were made. This was then ultimately produced by the Council through the rebuttal evidence of Mr Blair as a red-line version dated 6 October 2015 ('Red-line Version').[2]

[4] As we will go on to explain further, at the conclusion of the hearing we issued an interim ruling and requested that parties confer on revising the provisions in light of our interim findings. In response, the Council and the Crown (2387, further submitter 2810) filed an agreed revised set of provisions ('Revised Version') and associated s 32 report dated 16 November 2015. The Parties often refer to this Revised Version as the 'Revised Proposal' in their documentation and where we use this term it means the same 16 November 2015 document.

[5] Where we refer to the 'Decision Version', it is our redrafting of the Revised Version, as set out in Schedule 1, which will become operative upon release of this decision and the expiry of the appeal period.

[6] This decision follows our hearing and consideration of submissions and evidence. Further background on the review process, pursuant to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('the OIC') is set out in the introduction to Decision 1, concerning Strategic Directions and Strategic Outcomes (and relevant definitions) ('Strategic Directions decision').[3]

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1 The Panel members are Hon. Sir John Hansen (Chairperson), Ms Jane Huria, Mr Stephen Daysh and Mr Alec Neill.
2 Rebuttal evidence of Adam Scott Blair on behalf of the Council.
3 Strategic directions and strategic outcomes (and relevant definitions), 26 February 2015.

Effect of decision and rights of appeal

[7] Our proceedings and the rights of appeal are set out in our earlier decisions.[4] We concur in those.

Identification of parts of existing district plans to be replaced

[8] The OIC requires that our decision also identifies the parts of the existing district plans that are to be replaced by the Hazardous Substances and Contaminated Land Chapter.[5]

PRELIMINARY MATTERS

Conflicts of interest

[9] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.[6] No submitter raised any issue in relation to this.

Deferral of Stage 1 of the Proposal

[10] The Hazardous Substances and Contaminated Land Proposal was notified (in part) in Stage 1. The hearing and decisions on submissions on Stage 1 of the proposal was deferred until the remainder of the chapter was notified in Stage 2.[7] Therefore, this decision is on both Stage 1 and Stage 2 of the proposal.

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4 Strategic Directions decision at [5]–[9].
5 We have done so in Schedule 3.
6 The website address is www.chchplan.ihp.govt.nz.
7 Pre-hearing Report and Directions, Chapter 12 Hazardous Substances and Contaminated Land (in part), 23 February 2015.

REASONS

STATUTORY FRAMEWORK

[11] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.[8]

[12] It sets out what we must and may consider in making that decision.[9] It qualifies how the Resource Management Act 1991 ('RMA') is to apply and modifies some of the RMA's provisions, both as to our decision-making criteria and processes.[10] It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act').[11] The OIC also specifies additional matters for our consideration.

[13] Our Strategic Directions decision, which was not appealed, summarised the statutory framework for that decision. As it is materially the same for this decision, we apply the analysis we gave of that framework in that decision.[12] As with all our decisions, we apply our Strategic Directions decision throughout.

[14] Documents specific to the Hazardous Substances and Contaminated Land Chapter are set out in Schedule 2.

The required "s 32" and "s 32AA" RMA evaluation

[15] Again, this is a matter referred to in earlier decisions. We adopt and endorse [48]–[54] of our Natural Hazards decision.[13] We discuss these aspects further in our decision.

8 OIC, cl 12(1).
9 OIC, cl 14(1) .
10 OIC, cl 5.
11 Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website.
12 At [25]–[28] and [40]–[62].
13 Natural Hazards (Part) (and relevant definitions and associated planning maps), 17 July 2015, pages 20-21.

INTERIM EVIDENTIAL RULING — PREFERENCE FOR EVIDENCE OF THE CROWN WITNESSES

[16] At the conclusion of the hearing, the Panel retired and considered the evidence. As a consequence of that deliberation, the hearing was reconvened and we issued an interim ruling in relation to significant evidence we had heard.[14]

[17] In that interim ruling, we accepted the evidence from Mr St Clair, Ms Yozin and Dr Dawson,[15] and rejected the evidence of the Council expert, Mr Schaffoener.

[18] As a consequence of that interim ruling, we requested the various parties to confer and to comment on the Revised Version in the light of those findings. We requested the relevant submitters to attempt to reach agreement in the light of those factual findings, and to file a further agreed revised set of provisions. We then adjourned the hearing. While a great deal of agreement was reached and a Revised Version reflecting those agreements filed, a small number of issues still remained. We will turn to those in due course.

[19] We also indicated that we would give full reasons in our decision for preferring the evidence of the Crown witnesses to that of the Council witnesses. These are our reasons.

[20] Mr Schaffoener described himself as an environmental planner and a member of the New Zealand Planning Institute, but accepted he was giving evidence of a technical nature relating to his expertise in environmental consultancy rather than as an expert planner.[16]

[21] Mr Schaffoener had previously been a member of the Auckland City Council Planning Department, where he had been involved in the development of the Hazardous Facilities Screening Procedure ('HFSP'), and after that as a senior analyst in the Ministry for the Environment ('MfE'), working specifically on the Hazardous Substances and New Organisms legislation ('HSNO').[17]

[22] The starting point for a consideration of his, and the Crown, evidence is the HSNO Act, and in particular s 142 RMA which, where relevant, reads:

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14 Interim Ruling and Decision Stage 1 and 2 Chapter 12 Hazardous Substances and Contaminated Land, 16 October 2015.

15 Mark St Clair, Nardia Yozin and Dr Peter Dawson appeared on behalf of the Crown.

16 Transcript, page 63, lines 1–27.

17 Hazardous Substances and New Organisms Act 1996.

142 Relationship to other Acts

…

(2) Every person exercising a power or function under the Resource Management Act 1991 relating to the storage, use, disposal, or transportation of any hazardous substance shall comply with the provisions of this Act and with regulations and notices of transfer made under this Act.

(3) Nothing in subsection (2) shall prevent any person lawfully imposing more stringent requirements on the storage, use, disposal, or transportation of any hazardous substance than may be required by or under this Act where such requirements are considered necessary by that person for the purposes of the Resource Management Act 1991.

[23] To assist in our considerations of this, we set out the definition of 'necessary' from the Concise Oxford Dictionary:

> Indispensable, requisite, (to or for person etc; it is n. that, to do), requiring to, that must, be done; determined by predestination or natural laws, not by free will, happening or existing by necessity, (of concept or mental process) inevitably resulting from nature of things or the mind, inevitably produced by previous state of things; (of agent) having no independent volition.

We adopt this definition.

[24] Therefore, for the purposes of the RMA, more stringent requirements can only be imposed where the empowered person under the RMA considers it necessary in terms of the definition above at [23].

[25] The Crown submission and evidence was concerned that the Notified Version replicated the requirements of HSNO, and introduced complicated sets of rules and standards requiring consents above specified thresholds unless a facility is specifically exempted.

[26] In his evidence in chief, rebuttal and answers to cross-examination, Mr Schaffoener did not accept that. He felt that there were gaps in the HSNO coverage that required an RMA intervention. He also stressed that the wording of the Act means that as long as the decision-maker under the RMA considered more stringent requirements were necessary, it was appropriate to introduce them. That, of course, is true, but in no way changes the meaning of the term 'necessary'.

[27] It was clear to the Panel that Mr Schaffoener's approach to the provisions was restrictive and lacked a suitable level of balance. Under cross-examination he was often argumentative,

and on occasions answered completely different questions from those put to him. That was to the extent that on more than one occasion the Chair had to draw this to his attention.

[28] In 2002 a guidance document was issued by the MfE, which was prepared by Mr Schaffoener. More recently, a quality planning guidance (in which Mr Schaffoener was also involved) was issued. The latter dictates that:

> Inclusion of hazardous substance controls in plans should be the exception rather than the rule, and included only when a rigorous section 32 analysis shows that these controls are justified.

[29] Mr Schaffoener took issue with this later document, and indeed distanced himself from it and did not agree with it. Despite it being a substantial document, he did not think it was sufficient.

[30] A further issue is that Mr Schaffoener did not list the OIC, the CRPS, or our Strategic Directions provision as key documents. In answer to questions from the Panel, he said he had considered them, but we are not satisfied he has made any real attempt to respond to the statutory direction concerning the particular provisions of the OIC or our Strategic Directions decision requiring reduction in regulation, the consenting process and clarity of language.[18]

[31] We have considered the Red-line Version and Mr Schaffoener's support for it. We agree with the Crown submission, and its witnesses, that it is an overly-complex document that fails to give account to the OIC and the Strategic Directions provisions.

[32] The complexity of the Council's approach can be seen in the opening submission of the Crown, at paragraph 29:[19]

> The Redline Version sets out a complex rule framework in respect of the use, storage, transport and disposal of hazardous substances that would apply throughout Christchurch. The key features of the Council's approach are as follows:
>
> (a) detailed volume thresholds are prescribed in respect of the various classes of hazardous substances;
>
> (b) the volume thresholds would apply throughout Christchurch, albeit with different thresholds in the three 'zone groups';

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18 OIC Schedule 4, Statement of Expectations (a) and (i); Strategic Directions decision, Objective 3.3.1.

19 Opening submissions for the Crown.

(c) any "hazardous facility" at which hazardous substances are proposed in volumes exceeding any of the relevant thresholds would require resource consent;

(d) the Council's discretion in considering applications for such consent would extend to a detailed list of "matters of discretion", with the relevant matters to vary depending on the types of substances in question;

(e) facilities used for certain specified purposes (listed either in the permitted activity rules or in the definition of the term "hazardous facility") would be exempt from the need to obtain consent, or subject to varying standards or other requirements (including in some cases different volume thresholds and certification processes); and

(f) additional rules and activity standards would control the establishment of:

  (i) new activities (particularly sensitive land uses) near existing major hazardous substances facilities; and

  (ii) the storage or handling of some types of hazardous substances near National Grid transmission lines.

[33] It is, as the Crown submitted, highly complicated, and it is made so by Mr Schaffoener's approach.

[34] The further point is, however, that the evidence did not show and properly demonstrate the gaps he referred to. Nor did his evidence, or that of other Council witnesses, demonstrate that the approach taken by the Council introducing more stringent measures was 'necessary'.[20]

[35] We also do not accept the evidence that there would be only a few additional resource consents arising from this approach. While Rockgas Limited (2267), through Mr Daly, could not give exact figures, even the reduction of the threshold for the storage of LPG from the Existing Plan to 200 kilograms would lead to a number of resource consents that Mr Daly put in the hundreds.[21] His evidence was that it would certainly apply to fish and chip shops, takeaways, cafes and other similar commercial activities that are sited, in many instances, in residential areas. That evidence is more compelling than what we heard from Mr Schaffoener and the Council.

[36] Dr Dawson held the position of principal scientist at the Environmental Protection Authority. He has been involved for some time with developing the policy and operational

[20] As per our [25].
[21] Transcript, page 193, line 13.

aspects of the hazardous substances regulatory regime ('HSRR'). He is currently involved in work to reform that further reflecting the new Health and Safety at Work Act 2015 ('HSWA'). Subpart 4 (Regulations, exemptions, approved codes of practice, and safe work instruments) is already in force. The rest of this Act comes into force on 4 April 2016.[22]

[37] It was his view that the blanket approach taken in the Notified Version, particularly through the activity status tables in the matters for discretion, largely replicated the controls already imposed by HSNO. He could see no obvious benefit in this. He also noted that the proposal contained a number of provisions that introduced lower thresholds than HSNO, without demonstrating this was essential, and it introduced anomalies and inaccurate terminology. He considered it would add a layer of unnecessary regulation to the regime for the control of hazardous substances in Christchurch, and introduce uncertainty as the result of the anomalies and varying thresholds. He considered the Revised Version remained complex.

[38] He noted the purpose of HSNO was:[23]

> to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances…

To achieve that, HSNO requires:[24]

> No hazardous substances shall be imported, or manufactured… otherwise than in accordance with an approval issued under this Act…

[39] He considered that the HSNO regime "comprises a comprehensive set of regulatory tools capable of being used on a stand-alone basis to manage hazardous substances" to achieve the Act's purpose.[25]

[40] He took issue with Mr Schaffoener's argument that HSNO does not specifically address risk to people, property and the wider environment, and that these were matters for the RMA to address. Dr Dawson pointed out that many HSNO requirements, while generic, are aimed at protecting the environment and people's health and safety from hazardous substances, irrespective of their location. In other words, mitigating risk to levels acceptable for people in

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22 See Health and Safety at Work Act 2015, s 2 (Commencement).
23 Hazardous Substances and New Organisms Act 1996, s 4.
24 Ibid, s 25(1).
25 Evidence in chief of Dr Peter Dawson at 5.11.

the workplace and others in the immediate vicinity. We note here that all of the expert witnesses concurred that it was ultimately for the community to establish levels of risk.

[41] It is also apparent from his evidence that HSNO and the regulations are supported by a body of guidance material in the form of codes of practice and other information resources.

[42] It is unclear to us from Mr Schaffoener's evidence what additional environmental or risk management benefit would arise from the consenting regime required for the use or storage of hazardous substances above a particular volume, particularly when that is irrespective of the circumstances of the site and the surrounding environment.

[43] We accept Dr Dawson's evidence in support of the position taken by the Crown.

[44] Mr St Clair also gave evidence on behalf of the Crown. He is a director of Hill Young Cooper, a planning and resource management consultancy firm based in Wellington and Auckland. He was asked to provide evidence in relation to the overlap between the Notified Version and HSNO. In doing so, he took into account studies undertaken by his firm for MfE regarding the approach taken in district plans, as well as resource consents involving hazardous substances. He also reviewed conditions imposed on a number of resource consents involving hazardous substances, processed by the CCC.

[45] He noted that the Quality Planning website is a joint initiative of the New Zealand Planning Institute, the Resource Management Law Association, Local Government New Zealand, the New Zealand Institute of Surveyors and MfE. The partnership is overseen by a partners' group chaired by MfE, and the website is owned and funded by MfE. It is intended to provide best practice guidance for all RMA practitioners, including planners.

[46] He stated that the latest guidance states that before imposing more stringent requirements around hazardous substances, RMA decision makers should carefully consider whether they are in fact necessary. In his view, this was an important consideration in the preparation of a plan and is also related to the s 32 requirements.

[47] In our view, the s 32 analysis fell well short of considering whether or not the requirements imposed in the Notified Version were necessary, and any proper cost benefit

analysis of them (e.g. this was also highlighted by answers in cross-examination, and to the Panel, by Mr Schaffoener, who was unaware of a number of relevant factors relating to the airport).

[48] Mr St Clair gave evidence that the second part of his firm's 2013 study focused on a review of resource consents that a selection of councils had processed in regard to hazardous substances.[26] That study noted:[27]

> The initial intent of including hazardous substances as a function of councils was to address the location specific factors of certain applications, such as proximity to sensitive land-uses or environments of particularly high value. However from the examples reviewed, there appears to be very little discussion of location specific considerations. For instance, the consent involving the installation of bulk LPG storage at an aged care facility in a residential environment does not discuss the potential effects on the surrounding residential environment.

[49] He continued that the study showed that assessments by council officers around compliance with HSNO was found in commentaries, and this was reflected in the conditions imposed. The study found three categories:

(i) Conditions required compliance with HSNO or its regulations.

(ii) Conditions sought to require in substance the same as HSNO or its regulations.

(iii) Conditions deliberately went beyond HSNO.

[50] The third category fell into two sub-categories. The first, related to limited examples only, addressed effects associated with the protection of water-bodies and the prevention of discharges. In Mr St Clair's evidence, this is the type of s 142 local issue where it is necessary to impose a greater level of protection. His evidence was that the second sub-category covered conditions that related to HSNO administrative matters.

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26 Evidence in chief of Mark St Clair on behalf of the Crown at Attachment E: Hill Young Cooper *Hazardous Substances: the interface between HSNO and the RMA* (Ministry for the Environment, July 2013).

27 Ibid at 4.3, page 15.

[51] The study found:[28]

> … it appears that majority of conditions are largely inefficient as they are using the resource consent process to achieve compliance with HSNO, or to a limited extent, fill a perceived gap in the current HSNO regime. There are limited examples where conditions are legitimately used to avoid environmental effects, and in such cases the use of these conditions suggests the resource consent process provides [no] added value beyond HSNO.

[52] He went further in his enquiries, and requested copies of consents referred to in the report authored by Mr Schaffoener for CCC, titled 'Hazardous Substances and Contaminated Land Management — Report on Management Options for the District Plan', and dated 29 May 2014.

[53] Mr St Clair received and reviewed 11 resource consents granted in the period February 2012 to March 2014.[29] He understood these to be the only consents granted by CCC for the management of hazardous substances in that period. Of those 11 consents, only one consent had measures imposed beyond what is required by default under the HSNO regulations. He considered this broadly confirmed the 2013 study.

[54] It follows that this analysis shows that CCC and councils are not imposing obligations on consent holders that go beyond what is already required by HSNO.

[55] He accepted that additional protection of sensitive activities and aspects of the environment may be appropriately addressed in the plans. But it is his view that it would be more efficient and in keeping with good resource management practice for this to be dealt with through general zoning and overlay controls. In this regard he supported the evidence of Ms Yozin for the Crown.

[56] We accept Mr St Clair's evidence.

[57] Finally, of relevance to this portion of the evidence, the Crown called Ms Yozin, who was Advisor, Planning at the Canterbury Earthquake Recovery Authority ('CERA').

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28 Ibid at 4.4.4, page 17. The bracketed word "[no]" was inserted by Mr St Clair when setting out this paragraph at 7.4 of his evidence in chief.

29 Evidence in chief of Mark St Clair on behalf of the Crown, Attachment F.

[58] Like other Crown witnesses, she considered that there is little justification in a plan simply replicating the requirements of other regulatory regimes. In her view, the Notified Version did this.

[59] She said, given the wording of s 142, if provisions are to be put in the plan above and beyond what HSNO already manages, they must be sufficiently justified in terms of being the most appropriate way of achieving the Plan's objectives in the relevant s 32 Report.

[60] She accepted there may be some benefits in a plan addressing location-specific effects that are not fully addressed through HSNO or HSWA, such specific sensitive environments or impacts of natural hazard risk on the use and storage of hazardous substances.

[61] Agreeing with Dr Dawson and Mr St Clair, she considered the majority of the provisions proposed in the Notified Version are already effectively managed or mitigated through HSNO or HSWA. She did not consider the s 32 Report for the proposal provided sufficient justification that the proposed provisions are necessary in addition to HSNO and HSWA.

[62] She considered the Notified and Revised Versions overly-prescriptive and complicated to interpret so that they would result in increased consent applications and had the potential to result in unintended non-compliance.

[63] She considered a better way to manage hazardous substances in a district plan is to focus the controls on the associated activities that are occurring when the use and storage of hazardous substances is being carried out. She considered this more appropriate than the Notified Version's approach of triggering consent by way of thresholds. She gave examples of territorial authorities where this had occurred.

[64] She said the Crown's framework would:

(i) Redraft objectives and policies to focus on those aspects that will be managed through the district plan, removing duplication with HSNO and HSWA.

(ii) Amend the Activity Status tables in 12.1.2.2 to clarify which substances will be managed through the Replacement Plan and how they will be managed, and clearly identify which activities will be excluded.

(iii) Remove the Hazardous Facilities Activity Status Table in 12.1.2.3, as it duplicates HSNO and HSWA.

(iv) Amend the matters of discretion in 12.1.3 to focus them on those effects that are not already effectively managed through HSNO and HSWA.

(v) Amend definitions as necessary to improve clarity.

[65] Again, we accept her evidence, and it is our view that it is better to manage hazardous substances through zonings and overlays, which is amply supported on the Crown evidence we have accepted. This is better than the complex and complicated approach of Mr Schaffoener, with triggering thresholds. His approach brings complexity, lack of clarity, duplication with HSNO and HSWA and additional consenting requirements.

[66] As noted earlier, such an approach does not comply with the OIC, the CRPS or Strategic Directions.

[67] For the above reasons, we prefer the evidence of the three Crown witnesses to that of Mr Schaffoener, which is why we made the interim ruling we did.

REVISED VERSION AND POSITION OF THE PARTIES

[68] A minute from the Panel, issued following the Interim Ruling and Decision, gave the following direction: [30]

> [3] To address the deficiencies in the notified proposal we direct the Council, in consultation with the Crown and other interested submitters to prepare a revised proposal and a robust section 32 Report taking into account the matters listed at para [2] (a)-(d) and lodge the same with the Independent Secretariat on or before 5pm Thursday 12 November 2015.

[69] This resulted in the Revised Version and associated s 32 evaluation report being lodged with the Panel. Further minutes were issued by the Panel to clarify the position of the parties

30 Minute regarding directions to the CCC to prepare a revised proposal and an evaluation under s 32 of the RMA in relation to Stage 1 and 2 Chapter 12 Hazardous Substances and Contaminated Land, 16 October 2015.

in relation to the Revised Version,[31] and to set a timetable for receiving closing legal submissions,[32] resulting in the following outcomes:

(a) No parties sought leave to call further evidence.

(b) A joint memorandum was received from the Council and the Crown that:[33]

(i) Confirmed that the primary authors of the Revised Version are Mr Blair for the Council and Ms Yozin for the Crown;

(ii) Noted that Mr St Clair is the primary author of the corresponding redrafted s 32 report, having been jointly commissioned by the Council and the Crown;

(iii) Outlined the process undertaken by the Council and Crown to circulate a first draft of the Revised Version to submitters, along with the summary position of nine submitters who responded to that first draft;

(iv) Described the further amendments made to the first draft following ongoing discussions between the Council and the Crown and taking into account comments made on the first draft by submitters;

(v) Noted that in response to an email to Ms Yozin, following an offer to discuss the Revised Proposal, Te Rūnanga o Ngāi Tahu did not intend to comment further on the provisions.

(c) The closing submission from the Crown recorded the following key points:[34]

(i) Paragraphs 12 to 17, which the Council has endorsed, describes the process of how the Council and Crown have worked together in an iterative and collaborative process to prepare the Revised Proposal and the accompanying s 32 Report.

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31 Minute Chapter 12 Hazardous Substances and Contaminated Land – 16 November Revised Version, 23 November 2015.
32 Minute Chapter 12 Hazardous Substances and Contaminated Land – Legal Closings, 1 December 2015.
33 Joint memorandum on behalf of CCC and the Crown, 27 November 2015.
34 Closing submissions for the Crown.

(ii) The Council and Crown planning teams also worked together to refine the rest of the draft provisions to ensure they were internally consistent, and as user-friendly as possible. The result of this process is that the Council and Crown have been able to file an agreed, much improved version of Proposal 12 (the Revised Proposal).

(iii) The s 32 analysis in respect of the hazardous substances provisions has also been redrafted to reflect the Panel's directions, our evidential findings and the Revised Proposal, and to account properly for the relevant higher order documents. It has also been agreed by the Council and Crown.

(iv) The contaminated land provisions are largely unchanged, other than an amendment to 12.2.1.1 agreed to by a number of parties, and which the Crown is content with.

(v) The hazardous substances provisions have been substantially redrafted in line with the approach advocated by the Crown and in accordance with the Panel's evidential findings, with the default position being that the use, storage and disposal of any hazardous substance is a permitted activity (Rule 12.1.2.2.1 P1).

(vi) The default position is subject to the provisions of other chapters of the Replacement District Plan (see Rule 12.1.2.1 General Provisions) and two non-complying rules in Proposal 12 itself covering proximity to National Grid transmission lines (Rule 12.1.2.2.2 NC1) and any sensitive activity within a "Risk Management Area" shown on Planning Map 47 (Rule 12.1.2.2.2 NC2).[35]

(vii) The Revised Proposal would also insert an extra matter for discretion to be considered for relevant existing restricted discretionary rules in Chapter 5 of the Replacement District Plan, allowing the Council to consider hazardous substances matters in Slope Instability Management Areas.

35 References in this decision to Rule 12.1.2.2.2 relate to the numbering used in the Revised Version. In the Decision Version, the rule number has changed to Rule 12.1.2.2.5.

(viii) There are no controlled, restricted discretionary, discretionary or prohibited activities in the Revised Proposal and the detailed Activity Status Table setting out thresholds above which consent would be required has been deleted.

(ix) The Crown takes no particular position and abides the Panel's decision in respect of amendments sought to the Revised Proposal by Liquigas Limited (2359, FS2751), the Oil Companies (2185, FS2787),[36] Lyttelton Port Company ('LPC') (2367, FS2808) and Orion New Zealand Limited ('Orion') (2340, FS2797) (refer (e) to (h) below), while noting in its view "the amendments sought are minor in the context of the Revised Proposal as a whole".

(d) Five submitters have indicated they support the revised proposal in its entirety, being:

1. Transpower New Zealand Limited ('Transpower') (2218, FS2780)[37]
2. Canterbury Regional Council (2249, FS2796)[38]
3. University of Canterbury (2464, FS2822)[39]
4. Christchurch Polytechnic Institute of Technology (2269, FS2769)[40]
5. Christchurch International Airport Limited (2348)[41]

(e) Liquigas generally supports the Revised Proposal, but seeks an amendment so that the Risk Management Area in respect of its facility is not subject to a "sunset

36 Mobil Oil New Zealand Limited, Z Energy Limited and BP Oil NZ Limited ('the Oil Companies') together filed submission 2185.
37 Memorandum of counsel on behalf of Transpower New Zealand Limited, 27 November 2015.
38 Memorandum of counsel on behalf of Canterbury Regional Council, 27 November 2015.
39 Memorandum of counsel on behalf of University of Canterbury and Christchurch Polytechnic Institute of Technology, 27 November 2015.
40 Ibid.
41 Memorandum of counsel on behalf of Christchurch International Airport Limited, 27 November 2015.

clause", whereby Rule 12.1.2.2.2 NC2 is to cease to have effect on 31 March 2019.[42]

(f) The Oil Companies are largely in agreement with the Revised Proposal, but seek that the interim Risk Management Area provisions apply to include the balance of the land adjacent to the Lyttelton Port area.[43]

(g) LPC supports the revised proposal on issues of avoiding regulatory duplication, and generally supports its treatment of the terms "residual risk" and "acceptable risk". The company also considers that the absence of an interim overlay at Lyttelton in the Revised Proposal is appropriate, and opposes the Oil Companies' relief which seeks to have this inserted.[44]

(h) Orion did not file any closing legal submissions, but in its memorandum dated 27 November 2015 stated that the company prefers the simplified approach in the Revised Proposal, which recognises the regulatory role played by Regional Plans, and by the Hazardous Substances and New Organisms legislation. It does, however, seek corridor protection for Orion's strategic electricity distribution lines, similar to that proposed for the National Grid.[45]

(i) The Council recorded its final position in its closing legal submissions as follows:[46]

  (i) The Council is content with the Crown's analysis and conclusion, particularly in paragraphs 12–37 of its closing submissions.[47]

  (ii) There is not sufficient evidence to support the extension of the Risk Management Area and hence a Quantitative Risk Assessment ('QRA') to the residual areas surrounding the Port Zone, as requested by the Oil Companies.

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42 Closing submissions for Liquigas Limited.
43 Closing submissions for the Oil Companies.
44 Closing submissions for Lyttelton Port Company.
45 Memorandum of counsel for Orion New Zealand Limited, 27 November 2015.
46 Closing submissions for Christchurch City Council.
47 Closing submissions for the Crown.

(iii) The Council's position is that the sunset clause remains appropriate and no exclusion is required in respect of the Liquigas depot, noting the existing QRA for Liquigas's depot is seven years old and was developed before the earthquakes.

(iv) The Council's position is that it would be appropriate to include corridor protection for Orion's strategic electricity distribution in a non-complying activity rule, noting that this would make the position for Orion's strategic electricity distribution lines consistent with other chapters of the proposed Replacement District Plan.

[70] The process and outcomes summarised in the above paragraph illustrates to us a thorough and inclusive re-consideration of Proposal 12. While this review was jointly co-ordinated by the Council and Crown, as we requested, all submitters had the opportunity for input into the Revised Version. We acknowledge their constructive approach.

[71] Importantly, this review process has comprehensively and appropriately responded to the factual findings on the expert evidence and the quality of the s 32 Report along with our following consequential findings outlined in our 16 October 2015 minute as set out below:[48]

(a) The s 32 Report that the chapter is based on fundamentally falls short of what is required;

(b) That the Hazardous Substances and New Organism legislation addresses hazardous substances and contaminated land in the first instance;

(c) Then there needs to be an RMA response to the regulation of hazardous substances and contaminated land; and

(d) The RMA response may include, non-exclusively; amenity effects, reverse sensitivity and matters of that sort. The next step is to identify other matters that are properly brought into it of concern to the Christchurch City Council, for example sensitive areas (there may be others).

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[48] Minute, 16 October 2015 at paragraph 2.

[72] Having read all the material that has been prepared and tabled with us since the hearing was adjourned, the Panel agrees with and endorses the following summary paragraphs contained in the Crown's closing,[49] which are also supported by the Council:

> 28. The end result is that, in contrast to the provisions as presented to the Panel at the hearing, the Revised Proposal provides for a simple, easy-to-use regime under which rules apply to the storage and use of hazardous substances only in specifically justified, limited circumstances.
>
> 29. The controls provided for by the Revised Proposal include an appropriate, limited rule framework addressing location-specific issues, requiring consent for hazardous facilities near particularly sensitive areas that require specific protection through the Replacement District Plan, namely:
>
> (a) Transpower transmission lines (protected through Rule 12.1.2.2.2 NC1); and
>
> (b) Slope Instability Management Areas (addressed through the additional matter for discretion to be inserted in Chapter 5).
>
> 30. The Revised Proposal also appropriately restricts sensitive activities close to major hazardous facilities, as a way of dealing with reverse sensitivity. This is done through Rule 12.1.2.2.2 NC1, which covers specifically identified Risk Management Areas containing major hazardous facilities.

ISSUES RAISED BY SUBMISSIONS

[73] We have considered all submissions and further submissions, along with evidence received in relation to the Hazardous Substances and Contaminated Land Proposal. Schedule 4 lists witnesses who gave evidence for various parties, and submitter representatives.[50]

[74] Following our Interim Ruling and Decision and the subsequent production of the Revised Version, very few issues remained outstanding between submitters and the Council as outlined in the section of our decision above. We turn to these now.

Woolston Sunset Clause

[75] The Revised Version includes the identification of a Risk Management Area ('Risk Area') in Woolston, with the extent of this area defined in Revised Planning Map 47. Rule 12.1.2.2.2 NC2 provides a non-complying activity status for any sensitive activity located within this area, with the rule ceasing to have effect on 31 March 2019 ('sunset clause'). In

[49] Closing submissions for the Crown.
[50] Counsel appearances are recorded on page 2.

relation to the control of sensitive activities in the Woolston area, we note that while the surrounding Industrial Heavy and Industrial General zones restrict most sensitive activities through activity status rules (i.e. discretionary and non-complying), a preschool could be established in the Industrial General Zone as a permitted activity in the Woolston area.[51]

[76] Liquigas generally supports the Revised Version, but does not support the sunset clause. It considers that it does not provide certainty that the risks associated with major hazard facilities are to be appropriately managed into the future, and may result in a "vacuum" if a further QRA and subsequent plan change does not occur before the clause expires.[52] Liquigas also considers that the current QRA undertaken for its site (the Woolston Depot) remains valid in any case, as no modifications have been carried out that would change the results of the QRA, and relies on the evidence of Mr Phillis in this regard.[53]

[77] As an alternative to the deletion of the sunset clause, Liquigas seeks that an exclusion be provided in the rule as it applies to the Woolston Depot. This is on the basis that the Risk Area for the Woolston Depot is based on an existing, valid QRA and, therefore, Liquigas considers no plan change would be required for this rule to remain valid in respect of their site.

[78] Mr Phillis explained that a QRA in this context "refers to a study whereby the consequences of identified major incidents are assessed together with event frequencies derived from industry data to calculate the risk profile of the facility."[54]

[79] Mr Phillis went on to state that the QRA for the Liquigas site was commissioned in 2008 as part of a resource consent obtained to upgrade the storage at the Woolston Depot. His view is that the QRA remains valid in terms of its representation of the Liquigas site, as no modifications have been carried out that would change the QRA results.[55] While accepting that to model specific contours for a risk overlay might use different underlying assumptions and be done using more sophisticated software, he remained of the view that the existing QRA provides a basis for representing risk around the Liquigas depot.[56]

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51 Rule 16.2.2.1 P18.
52 Closing submissions for Liquigas at 5.
53 Closing submissions for Liquigas at 6.
54 Evidence in chief of Damian Phillis on behalf of Liquigas Limited at 20.
55 Evidence in chief of Damian Phillis at 33.
56 Evidence in chief of Damian Phillis at 34–35.

[80] The Council's position is that the sunset clause remains appropriate, as the existing QRA is seven years old and was developed pre-earthquakes.[57] They rely on the evidence of Mr Schaffoener, whose view is that, while supporting the principle of overlays, he does not support their imposition without quantitative risk modelling data and analysis.[58] His view is that the QRA for the Woolston Depot is "dated".[59]

[81] Mr Blair provided what was, in our view, considered and pragmatic planning evidence in his summary statement during the hearing in relation to the Woolston overlays, as follows:[60]

> The extent of the overlays need to be based on a quantitative risk assessment. The oil companies cannot produce a QRA within the timeframes of this process, [Liquigas] has produced a QRA but [it] is several years old and predates the earthquakes.
>
> I agree with the oil companies, as a pragmatic approach that interim overlays which would expire when a Plan Change for overlays based on an up to date QRAs for the facilities can be use[d].
>
> The interim overlays would cease to have effect on the 31st of March 2018.[61] The oil companies suggest an interim overlay with distances based on a hazardous facility accident in the United Kingdom.
>
> The [Liquigas] QRA although older, can suffice in the interim, whilst the evidence on the extent of the Woolston Company overlay is not ideal, the overlay will only be in place for a limited period of time.

[82] The Oil Companies support the sunset clause, but are not opposed to the application of a permanent Risk Area for Liquigas's Woolston Depot on the basis that there is an existing QRA for that depot. However, they support an interim Risk Area for the Mobil Depot until such time as a QRA is completed.[62]

[83] Having considered all of the relevant evidence, and the final position of the Council and relevant submitters as recorded above, we find in favour of the Council position and, therefore, the retention of both the sunset clause in the relevant provisions (specifically Policy 12.1.1.2.2 and Non-Complying Rule 12.1.2.2.5 NC2), and the associated mapping as shown on Planning Map 47 as set out in the Revised Version. We do not think it is acceptable for Liquigas to rely on its existing QRA, which is now seven years old and was prepared pre-earthquakes.

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[57] Closing submissions for the Council.
[58] Evidence in chief of Norbert Schaffoener on behalf of the Council at 7.6.
[59] Rebuttal evidence of Norbert Schaffoener at 5.4.
[60] Transcript, pages 75 and 76.
[61] Mr Blair's reference to "31st of March 2018" relates to the date proposed in the Red-line Version. In the Revised Version, the date was extended to 31 March 2019 (as noted at [84]).
[62] Closing submissions for the Oil Companies at 2.4.

[84] In making this finding, we consider that there is ample time between now and 31 March 2019 for Liquigas and Mobil to prepare the requisite QRA and to work with the Council to formulate an appropriate Plan Change based on the outcome of the QRAs for these sites. In this regard we note that an extra year has been added to the sunset clause in the Revised Version.

[85] We also note that the sunset clause mechanism may lead to a number of potential outcomes including retention of the overlays and rule provisions as they are, their amendment or their deletion, and it is appropriate for these potential outcomes to be tested through a s 32 process and publicly notified Plan Change which takes into account the information provided in the new QRAs and other relevant RMA factors at that time.

Lyttelton

[86] The Oil Companies also seek that an interim Risk Area be applied to an area in Lyttelton that is outside the Special Purpose (Lyttelton Port) Zone ('Port Zone') and, therefore, not covered by the Lyttelton Port Recovery Plan ('Recovery Plan'). As with Woolston, this interim Risk Area would apply until a QRA is prepared and a plan change process completed. The Oil Companies' position is that it would be prudent to apply a Risk Area to the residual areas that are outside the Port Zone, because the proposed zoning for these areas is Open Space, and some types of sensitive activities (caretaker units, guest accommodation and community facilities) can establish there as a permitted or restricted discretionary activity, with matters of discretion not including consideration of risks arising from locating near a hazardous facility. As such, they consider that there is potential for activities to establish without adequate consideration of the potential risks.

[87] They further state that:[63]

> The presence (or potential presence) of sensitive activities in close proximity to bulk fuel facilities also has the potential to increase the risk profile of the facilities to the extent that the operation and development of the terminal facilities may be compromised, which would in turn affect resilience and efficiency in region wide fuel supplies.

[63] Closing submissions for the Oil Companies at 2.7(b).

[88] They consider that if sensitive activities are unlikely to occur in their proposed Risk Area, then costs of imposing the Risk Area would be minimal, and further, that even if likelihood of sensitive activities being established is low, it is still appropriate to apply the Risk Area as a precautionary measure. They consider their approach would be consistent with that for Woolston.

[89] The Council's position is that there is insufficient evidence to support a Risk Area being applied to the residual areas surrounding the Port Zone. While they accept that a QRA prepared for the Port Zone could include these residual areas, they consider that there is currently no appropriate basis for an extension of the Risk Area to the identified areas.

[90] LPC opposes an interim Risk Area being applied in Lyttelton, on that basis that, because there is no QRA for this area, there is no evidential basis for the imposition of a Risk Area.[64] It considers that a Risk Area should be pursued by a plan change once a QRA has been prepared. It emphasises the comments in the recommendation report of the panel hearing the Recovery Plan, that any overlay would only be appropriate if underpinned by a comprehensive QRA.[65]

[91] In response to the concern of the Oil Companies that sensitive activities may establish in the area in the short term, LPC considers that there are a limited number of these activities that could establish, and considers that:[66]

> … the interim risk of the establishment of a caretaker's unit within a very short window of time is not sufficient to justify the imposition of an interim overlay in which certain activities would have non-complying status without the evidential foundation of a QRA.

[92] We note that the basis of a QRA for the Lyttelton Terminal Facilities has been agreed between the Council, Oil Companies and other parties, is expected to commence shortly, and that there is a commitment in the Recovery Plan for it to be completed within nine months of the gazettal of the Recovery Plan,[67] which we understand to be 19 August 2016.

[93] After considering all of the evidence before us on this matter, and the final position of the parties outlined in their closing submissions, we do not consider there is justification for

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64 Closing submissions for LPC at 34.
65 Closing submissions for LPC at 32.
66 Closing submissions for LPC at 38.
67 Closing submissions for the Oil Companies.

this interim Risk Area to be inserted into the Plan. The potential for new "sensitive" activities to establish in the area concerned as a permitted activity in the interim period before the Oil Companies complete their QRA for their Lyttelton Port-based facilities is extremely remote, in our view. Based on our careful review of all of the evidence before us, we agree with the summary position on this point provided by Ms Appleyard at paragraph 37 of her closing submissions for LPC:[68]

> 37 Under cross examination of Mr Le Marquand it became evident that the interim risk is de minimis as demonstrated by the following:
>
> 37.1 the Buncefield event which the Oil Companies allege has triggered awareness of a need for overlays occurred a decade ago. However, that incident has not resulted in the Oil Companies taking steps to establish interim overlay in relation to any other facility in New Zealand;
>
> 37.2 an interim overlay would be a situation unique to the Replacement District Plan as no other District Plan has an interim overlay despite Buncefield occurring a decade ago;
>
> 37.3 the majority of land where the interim overlay would "bite" is land owned by LPC or CCC;
>
> 37.4 with respect to the land owned by LPC the activities which can take place are those falling within the definition of "Port Activities" now part of the Replacement District Plan by virtue of the Gazette notice of 19 November 2015;
>
> 37.5 under the definition of port activities, most of the sensitive activities Mr Le Marquand is concerned about could not occur on LPC or CCC owned land. For example, the phrase "Port activities" does not cover residential units or preschools …

[94] Furthermore, based on the evidence we heard, our view is that the Oil Companies appear to be taking an inordinate time in relation to the QRA associated with their facilities at the Port of Lyttelton. They have had ample time to prepare a comprehensive QRA, considering the issues identified from the Buncefield event. If this had occurred, appropriate land use planning in response to the findings of the QRA (including overlays if necessary) could have been incorporated into the Replacement District Plan when it was notified, and all parties would have had an opportunity to make submissions based on the QRA information provided.

[95] We agree with the Council position that there is currently no evidence to support the insertion of an interim overlay pending the completion of the QRA process. If the Lyttelton QRA now being prepared by the Oil Companies concludes there is a need to insert a Risk

[68] Closing submissions for LPC at 37.

overlay or apply other land use controls on all or part of the land concerned, then the appropriate course in our view is for this to be inserted into the District Plan by way of a Plan Change where all interested and affected parties will have the opportunity to have an input.

[96] While we acknowledge this position may at first glance appear inconsistent with our findings to retain the Woolston risk overlays and sunset clause provisions (a point raised by the Oil Companies),[69] we have come to the conclusions on these matters by considering them in terms of our obligations under s 32(2), and in particular the requirement to assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. The key points of difference, when considered in light of those obligations, are that for Woolston there is already a risk assessment, albeit limited to the Liquigas facility and needing to be updated, whereas for Lyttelton there is no risk assessment, but there is a commitment to undertake one. Therefore, in approaching these two locations according to our obligations under s 32, we have determined on the evidence that different outcomes are appropriate, namely that:

(a) For Woolston, there is a need for a sunset clause in recognition of the limitations of the underpinning risk assessment. This reflects that we have some information on risk that justifies retention of the interim Risk Area but which also acknowledges the need to revisit this under s 32 in the near future.

(b) For Lyttelton, there is no reliable risk evidence before us, and no reliable analysis of benefits and costs, such as would justify our imposition of an interim Risk Area, whereas we are informed that there is a commitment to undertake a quantified QRA, and the most appropriate approach, therefore, is to not impose anything at this time as to do so would be unjustified and premature in benefit, cost and risk terms.

Orion Corridor Protection

[97] Transpower sought a new non-complying activity rule that would provide for the protection of existing transmission lines from risks associated with the storage of hazardous substances. In a further submission, Orion supported Transpower's submission and sought that

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69 Closing submission for the Oil Companies at 2.7(e).

this rule be extended to cover its strategic electricity distribution lines. Orion, in its primary submission, also sought the incorporation of its strategic electricity distribution lines into the Planning Maps and, at a general level, sought that provisions be included across the pCRDP to provide corridor protection for these lines.

[98] In the Revised Version, setbacks are required from the National Grid transmission lines for any new storage or use of hazardous substances with explosive or flammable properties. Such activities within the specified setbacks require consent as a non-complying activity under Rule 12.1.2.2.2 NC1.

[99] The Council in closing stated that it would be appropriate to include corridor protection for Orion's strategic electricity distribution in the non-complying activity rule, as this would make the position for Orion's strategic electricity distribution lines consistent with other chapters of the pCRDP.[70]

[100] Consistent with our findings in other decisions, we are satisfied, on the evidence, that it is appropriate to apply corridor protection to Orion's strategic electricity distribution lines and in the Decision Version we have extended Rule 12.1.2.2.5 NC1 to do so.

Meaning of Objective 12.1.1.2 and Policy 12.1.1.2.1

[101] Following our interim ruling and the subsequent production of the Revised Version, we issued a minute directing that parties (other than the Council and the Crown) indicate whether they were in agreement with the Revised Version and identify any areas of disagreement. LPC, in response, indicated that they remained concerned about the how the issue of reverse sensitivity is dealt with in Objective 12.1.1.2 and Policy 12.1.1.2.1.[71]

[102] However, LPC did not pursue this in legal closings. It appears to us that they now support the wording of these provisions in the Revised Version, on the proviso that the Panel's Decision Version reflect their analysis of "residual risk" and "acceptable risk".[72] We have considered the use of the terms "residual risk" and "acceptable risk" in the Revised Version, including the definition of the former. We confirm that we agree with LPC's analysis of the use of those

70 Closing submissions for the Council at 4.2.
71 Memorandum of counsel for LPC, 27 November 2015.
72 Closing submissions for LPC at 15–23.

terms within the Revised Version. More specifically, we note that residual risks are those risks not already controlled by other legislation or industry controls, such as HSNO, and that the direction in the provisions is to manage those risks to acceptable levels. However, we consider that amendments are required to Policy 12.1.1.1.1 so that it is clear that residual risks to strategic infrastructure are to be managed to acceptable levels. As worded in the Revised Version, we consider the Policy could be interpreted to suggest that unacceptable risks would be acceptable. The Decision Version, therefore, uses wording consistent with that used in Objective 12.1.1.1 and Policy 12.1.1.1.2.

Section 32

[103] We refer to the necessary principles set out in our earlier decisions.[73] We have had regard to the s 32 report ('Report') filed with the Revised Proposal. On matters where we have not departed from the Revised Version, we have relied on the Report and the evidence which we have discussed.

Section 32AA

[104] We have already referred in earlier decisions to the matters we must address.[74]

[105] We only have to consider changes that we have made to the Notified Version. In this instance we note that there have been very substantial and fundamental changes from the Notified Version to the Revised Version.

[106] When the Panel identified the general scope of the changes to the Notified Proposal (over and above the Red-line Version) that it considered were required after hearing evidence at the hearing,[75] it was apparent that these could not be drafted by the Panel itself, nor was it possible or appropriate for the Panel itself to undertake a s 32AA evaluation at that stage. Therefore, in our 16 October minute the Panel outlined a process for the Council to work together with the Crown to comprehensively review Chapter 12, including preparation of an updated s 32 Report to support the revised proposal.[76]

[73] Strategic Directions at [63]–[70].
[74] Above, at [15].
[75] See Interim Ruling and Decision, 16 October 2016.
[76] Minute, 16 October 2015.

[107] We have carefully considered Mr St Clair's updated s 32 Report,[77] prepared jointly for, and endorsed by, the Council and the Crown. In terms of s 32AA of the RMA, we have evaluated both the changes in the Revised Version and this revised s 32 Report, and find that the updated s 32 Report has been appropriately undertaken in accordance with s 32(1) to (4) of the RMA. In particular, we consider the evaluation now adequately assesses reasonably practical options by including the option proposed by the Crown — see Option 1 as outlined in Section 4 of the revised report. The s 32 revised evaluation has also been strengthened by:

(a) A more thorough analysis of the Key Strategic Documents in Appendix 1; and

(b) An assessment of specific activities and identified sensitive features for the hazardous substances and contaminated land proposal in Appendix 6.

[108] We also consider that the revised s 32 report has been undertaken at a level of detail that corresponds to the scale and significance of the changes to the proposal, as we directed be developed by the Council and the Crown based on our factual findings on the expert evidence that we set out in our Interim Ruling and Decision.

[109] Having evaluated the various options and approaches put to us, in accordance with the matters in ss 32 and 32AA, we are satisfied that our consideration of the evidence and our findings are sufficient assessment of those matters.

[110] In reaching our decision, we have considered all submissions and further submissions made on the Notified Version, and had regard to the Council's recommended acceptance or rejection of those submissions, as filed.[78] We note that as a consequence of the process in this hearing, these recommendations in many cases no longer align with the Revised Version. However, we are satisfied that as part of this process, a draft of the revised proposal was circulated on 6 November 2015 by the Council to all submitters on this proposal, and all submitters were provided with the opportunity to respond to this revision. Nine responses were received, and these have also been provided to the Panel.[79] Further changes were then made in response to this feedback, culminating in the Revised Proposal. All submitters were then

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[77] Section 32 Report revised 16 November 2015.

[78] The Council's updated Submissions Table ("Accept/Accept in Part/Reject Table"), as contained in Appendix D of the rebuttal evidence of Adam Scott Blair.

[79] Joint memorandum on behalf of Christchurch City Council and the Crown, 27 November 2015, Appendix 3.

given the opportunity to indicate whether or not they agreed with the Revised Proposal, and to identify any areas of disagreement. We have addressed those areas of disagreement identified in our decision. Therefore, we are satisfied that the issues raised by submitters and further submitters have been adequately traversed.

The Decision Version

[111] As set out earlier, we have made changes to the Revised Version, in our Decision Version, to amend the wording of Policy 12.1.1.1.1 for consistency and clarity purposes, and have amended Rule 12.1.2.2.5 NC1 so that it applies to Orion's electricity distribution lines.[80]

[112] These are the only substantive changes made to the Revised Version in the Decision Version, but we note that we have changed some formatting and phrasing of the provisions, but not their effect, to bring the chapter into line with other parts of the pCRDP. We have also amended the title of Objective 12.1.1.3 to better reflect what the objective covers.

Definitions

[113] We note that the Revised Version includes a set of definitions of particular relevance to Chapter 12. In the Decision Version we have confirmed those definitions, except as follows:

(a) We consider that 'emergency services' (a definition proposed in Stage 2) has wider application than to Chapter 12 alone and is better deferred to the Stage 2 and 3 Definitions hearing;

(b) We note that 'sensitive activities' and 'reverse sensitivity' were decided through the Stage 1 Definitions hearing;[81] and

(c) We have removed 'location' as we consider that the definition is superfluous.

[114] For completeness we also note that we have moved the exclusions proposed as part of the definition of 'hazardous substances' into Rule 12.2.2.5 NC1, on the basis that the exclusions apply only to that rule.

[80] Renumbered from Rule 12.1.2.2.2 NC1 in the Revised Version, to Rule 12.1.2.2.5 NC1 in the Decision Version.
[81] Decision 16, Chapter 1 Introduction (part) and Chapter 2 Definitions (part) — Stage 1.

Overall evaluation and conclusions

[115] The Panel has been greatly assisted by the planners involved in developing the Revised Proposal and s 32 report in response to our Interim Ruling and Decision, and would like to acknowledge Messrs Blair and St Clair and Ms Yozin in this regard.

[116] We would also like to thank all counsel and the parties involved in what has been a comprehensive and inclusive process for developing what we now consider are appropriate Proposal 12 provisions, supported by a suitably robust s 32 Report. The fact that in closing all submitters who participated in the revision now generally support the revised proposal is testament to the process. (Albeit that there were some limited amendments sought which we have had to consider and make a decision on.)

[117] We agree with the concluding statement made by counsel for the Crown in closing that:[82]

> The Revised Proposal will minimise red tape (by not duplicating other statutory processes), while protecting important environmental values where that is *"necessary"* to further the RMA's purpose. That approach will help expedite the recovery of Christchurch and further the RMA's purpose.

[118] Accordingly, in light of the submissions and evidence we have considered, and for the reasons we have set out, we are satisfied that:

(a) We have exercised our function, in making this decision, in accordance with the provisions of Part 2, RMA (there are no applicable regulations).

(b) As part of the Replacement Plan, these further provisions for Hazardous Substances and Contaminated Land in Schedule 1 to this decision will:

(i) accord with and assist the Council to carry out its statutory functions for the purposes of giving effect to the RMA;

(ii) give effect to NPSET and the CRPS (to the extent relevant);

(iii) duly align with other RMA policy and planning instruments, the land use recovery plans, and the OIC (including the Statement of Expectations).

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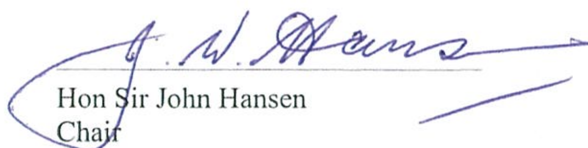
[82] Closing submissions for the Crown at 37.

(c) As part of the Replacement Plan, the policy and rules we have included in Chapter 12 will achieve the purpose of the RMA.

For the Hearings Panel:



Hon Sir John Hansen
Chair

Ms Jane Huria
Panel Member

Mr Stephen Daysh
Panel Member

Mr Alec Neill
Panel Member

SCHEDULE 1

Changes that the decision makes to the proposals

Chapter 12 Hazardous Substances and Contaminated Land

12.1 Hazardous substances

12.1.1 Objectives and policies

12.1.1.1 Objective - Adverse environmental effects

a. The residual risks associated with the storage, use, or disposal of hazardous substances in the district are managed to acceptable levels to not adversely affect people, property and the environment while recognising the benefits of facilities using hazardous substances.

12.1.1.1.1 Policy - Location of new facilities using, storing or disposing of hazardous substances

a. Locate new facilities using, storing, or disposing of hazardous substances on appropriate sites to ensure that any residual risks to strategic infrastructure are managed to acceptable levels.

12.1.1.1.2 Policy – Identifying and managing individual and cumulative effects of facilities using, storing, or disposing of hazardous substances

a. Identify the individual and cumulative effects associated with facilities using, storing or disposing of hazardous substances and manage residual risks to people, property and the environment to acceptable levels.

12.1.1.2 Objective - Risk and reverse sensitivity effects

a. Sensitive activities are established at suitable locations to minimise reverse sensitivity effects on and avoid unacceptable risks from established facilities using, storing or disposing of hazardous substances.

12.1.1.2.1 Policy - Establishment of sensitive activities

a. The establishment of sensitive activities in close proximity to existing major facilities using, storing or disposing of hazardous substances shall be:

   i. avoided in the first instance when that facility or area includes strategic infrastructure or where the sensitive activity may be exposed to unacceptable risk; and

   ii. minimised, to allow such facilities to carry out their operations without unreasonable reverse sensitivity constraints.

12.1.1.2.2 Policy - Risk Management Areas

a. Avoid sensitive activities locating within Risk Management Areas where these have the potential to be exposed to unacceptable risk and /or may otherwise constrain the development, operation, upgrading or maintenance of bulk fuel and gas terminals.

Note:

1. The Risk Management Areas are shown on Planning Map 47. The geographic extent of these areas may be subject to a future plan change to have effect by 31st March 2019 and any such plan change would need to be based on the findings of a Quantitative Risk Assessment.

12.1.1.3 Objective - Acceptable slope stability risks in relation to hazardous substances

a. Residual risks of adverse effects from the use, storage, or disposal of hazardous substances are managed to acceptable levels in areas affected by slope instability.

12.1.1.3.1 Policy - Risks and adverse effects within areas affected by natural hazards

a. Design, construct and manage any proposal involving use, storage or disposal of hazardous substances within areas affected by slope instability to ensure residual risks are managed to acceptable levels.

12.1.2 Rules - Hazardous substances

12.1.2.1 How to use the rules

a. The following rules apply to activities that involve the use, storage, and disposal of hazardous substances, and sensitive activities located within a defined Risk Management Area.

b. There are regional rules applicable to the contamination of land, air and water associated with the storage, use, and disposal of hazardous substances. Certain activities which comply with the rules regulating hazardous substances under the District Plan may still require consent from the Canterbury Regional Council (CRC).

c. The activity status tables and standards in the following chapters shall be complied with (where relevant):

4 Papakāinga Zone

5 Natural Hazards

6 General Rules and Procedures

7 Transport

8 Subdivision, Development and Earthworks

9 Natural and Cultural Heritage
11 Utilities and Energy
14 Residential
15 Commercial
16 Industrial
17 Rural
18 Open Space
19 Coastal Environment; and
21 Specific Purpose Zones

12.1.2.2 Activity status tables - hazardous substances

12.1.2.2.1 Permitted activities

The activities listed below are permitted activities if they comply with any activity specific standards set out in this table.

Activities may also be controlled, restricted discretionary, discretionary, non-complying or prohibited as specified in Rules 12.1.2.2.2, 12.1.2.2.3, 12.1.2.2.4, 12.1.2.2.5 and 12.1.2.2.6.

Activity		Activity Specific Standards
P1	The use, storage or disposal of any hazardous substance (unless otherwise specified in this plan).	Nil

12.1.2.2.2 Controlled activities

The activities listed below are controlled activities.

There are no controlled activities.

12.1.2.2.3 Restricted discretionary activities

The activities listed below are restricted discretionary activities.

There are no restricted discretionary activities.

12.1.2.2.4 Discretionary activities

The activities listed below are discretionary activities.

There are no discretionary activities.

12.1.2.2.5 Non-complying activities

The activities listed below are non-complying activities.

Activity	
NC1	a. Any new storage or use of hazardous substances with explosive or flammable properties within: i. 10 metres of the centre line of a 66kV National Grid transmission line or a 66kV electricity distribution line; or ii. 5 metres of the centre line of a 33kV electricity distribution line; or iii. 12 metres of the centre line of a 110kV or 220kV National Grid transmission line. b. For the purpose of a., the definition of hazardous substances excludes the following activities, facilities and quantities: i. storage of substances in or on vehicles being used in transit on public roads; ii. installations where the combined transformer oil capacity of the electricity transformers is less than 1,000 litres; iii. fuel in mobile plant, motor vehicles, boats and small engines; iv. gas and oil pipelines and associated equipment that are part of a utility; v. retail activities selling domestic scale usage of hazardous substances, such as supermarkets, trade suppliers, and pharmacies. vi. the accessory use and storage of hazardous substances in minimal domestic scale quantities; vii. fire-fighting substances, and substances required for emergency response purposes on emergency service vehicles and at emergency service facilities viii. activities involving substances of Hazardous Substances and New Organisms sub-classes 1.4, 1.5, 1.6, 6.1D, 6.1E, 6.3, 6.4, 9.1D and 9.2D unless other hazard classification applies; ix. the temporary storage, handling and distribution of national or international cargo containers; x. waste treatment and disposal facilities (not within High Flood Hazard Areas and Flood Management Areas), and waste in process in the Council's trade waste sewers, municipal liquid waste treatment and disposal facilities (not within High Flood Hazard Areas and Flood Management Areas) which may contain hazardous substance residues; xi. vehicles applying agrichemicals and fertilisers for their intended purpose.
NC2	Any sensitive activity located within a Risk Management Area. This rule shall cease to have effect by 31 March 2019. Note: 1. The Risk Management Areas are shown on Planning Map 47. The geographic extent of these areas may be subject to a future plan change to have effect by 31st March 2019 and any such plan change would need to be based on the findings of a Quantitative Risk Assessment.

Note to be placed on Planning Map 47 under "Other Notations": Risk Management Area (refer Rule 12.1.2.2.5). *The geographic extent of these areas may be subject to a future plan change to have effect by 31st March 2019 and any such plan change would need to be based on the findings of a Quantitative Risk Assessment.*

12.1.2.2.6 Prohibited activities

The activities listed below are prohibited activities.

There are no prohibited activities.

12.1.3 Other methods

a. Education will be used to promote public awareness about the costs and benefits of hazardous substances and associated facilities, to encourage resource users to take responsibility for their own health and safety, and for management of the effects of their activities on the public and the environment.

b. Industry Codes and New Zealand Standards and Guidelines will be utilised in some circumstances to provide the basis for controls on the use of hazardous substances.

c. Develop specific guidelines to assist operators of facilities using, storing, or disposing of hazardous substances in achieving compliance with relevant management requirements.

d. Preparation and operation of site management systems and emergency plans to avoid or mitigate the risk of hazardous substances escaping into the environment.

e. Promotion by government and local government of "Cleaner Production" and recycling principles, including methods and processes to improve operating efficiency and minimise the release of hazardous substances, or the use of alternative non-hazardous substances or technologies.

f. Waste Disposal Guidelines will be used for the disposal of hazardous waste to Local Authority approved facilities to protect human health and the receiving environment from potential adverse effects. Advice may be given on pre-treatment requirements or alternative methods of disposal for non-acceptable wastes.

g. Liaise with parties involved with hazardous substance use, such as the regional council and adjoining territorial authorities, WorkSafe New Zealand, Ministry of Health, Ministry for the Environment, the Environmental Protection Authority (EPA), the New Zealand Police and owner/operators who use hazardous substances, to allow more effective risk management coordination.

12.2 Contaminated land

12.2.1 Objective and policies

12.2.1.1 Objective - Contaminated land - managing effects

a. Land containing elevated levels of contaminants is managed to protect human health and the environment, which includes significant natural and Ngāi Tahu cultural values from the adverse effects of subdivision, development and use of contaminated land and natural hazards, including from site investigations, earthworks and soil disturbance, and to enable the land to be used in the future.

12.2.1.1.1 Policy - Best practice approach

a. Require any proposal to subdivide, use or develop contaminated or potentially contaminated land to apply a best practice approach to investigate the risks, and either remediate the contamination or manage activities on contaminated land to protect people and the environment.

Note:

1. The status of some activities will be determined by the requirements of the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. Reference should be made to the Ministry for the Environment website for a copy of these regulations, a user's guide, and documents incorporated by reference in these regulations.

12.2.1.1.2 Policy – Remediation

a. Remediation of contaminated land should not pose a more significant risk to human health or the environment than if remediation had not occurred.

12.2.1.1.3 Policy – Future use

a. Use or development of contaminated land that has been remediated or has an existing management plan in place, must not damage or destroy any containment works, unless comparable or better containment is provided.

12.2.2 Other methods

a. The Ministry for the Environment's Hazardous Activities and Industries List (HAIL), the list of properties on Environment Canterbury's Listed Land Use Register, Council records, and site investigations shall provide the basis for identifying whether land is contaminated or potentially contaminated. It is the duty of the person undertaking any activity to ascertain whether the land is identified as having a current or past use that is identified in the HAIL. The Resource Management (NES for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 specifies two

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methods for determining whether a piece of land is, was or more than likely had a HAIL activity on it. Use of the Ministry for the Environment's Contaminated Land Management Guidelines will form the approach to achieving best practice. Where contamination is confirmed and this data becomes known to Council it will be included on Land Information Memorandums (LIM).

b. Maintain factsheets, templates and guidance to assist with consent applications under the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

Definitions

Hazardous substance

means:

a. any substance or mixture or formulation of substances which has one or more of the following intrinsic properties, and exceeds any of the minimum degrees of hazard for the following hazards prescribed in the Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001:

   i. explosiveness (excluding dust explosions);

   ii. flammability;

   iii. a capacity to oxidise;

   iv. corrosiveness;

   v. acute and chronic toxicity; and

   vi. eco-toxicity, with or without bio-accumulation;

b. substances which, in contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased), generate a substance or reaction with any one or more of the properties specified in a. above;

c. substances that, when discharged to surface or groundwaters, have the potential to deplete oxygen as a result of the microbial decomposition of organic materials (for example, milk or other foodstuffs); and

d. radioactive substances, except smoke detectors.

Potentially contaminated

means that part of a site where an activity or industry described Schedule 3 of the LWRP (refer Section 16, Schedule 3-Hazardous Industries and Activities, pp 16-9 to 16-11) has been or is being undertaken on it or where it is more likely than not that an activity or industry in the list is being or has been undertaken on it, but excludes any site where a detailed site investigation has been completed and reported and which demonstrates that any contaminants in or on the site are at, or below, background concentrations.

Residual risk

Means in relation to hazardous substances, any risk of an adverse effect that remains after other industry controls and legislation such as the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998 and regional planning instruments have been complied with.

Substance

[has the same meaning as s2(1) of the Hazardous Substances and Natural Organisms Act 1996]

means:

a. any element, defined mixture of elements, compounds, or defined mixture of compounds, either naturally occurring or produced synthetically, or any mixtures thereof;

b. any isotope, allotrope, isomer, congener, radical, or ion of an element or compound which has been declared by the (Environmental Protection) Authority, by notice in the Gazette, to be a different substance from that element or compound;

c. any mixtures or combination of any of the above;

d. any manufactured article containing, incorporating or including any hazardous substance with explosive properties.

Consequential amendments to other parts of the Replacement District Plan

a. Insert new 5.5.1.6 (b)(x), as shown below.

12.2.2.6 Slope Instability Management Areas - RD1 to RD49 matters of discretion

b. Restricted discretionary activities RD1 to RD49 will be assessed against the following criteria:

    x. For RD 34, RD 36, RD 37, RD 38, RD 39 and RD 40 only, where the use and storage of hazardous substances are involved, whether the facility is designed in a way to manage the residual risks of adverse effects from hazardous substances to acceptable levels in the event of a significant natural hazard event occurring.

SCHEDULE 2

Documents specific to the Hazardous Substances and Contaminated Land Chapter.

Statutory document	Statutory direction
Canterbury Regional Policy Statement 2013 (CRPS)	Give effect to
National Policy Statement on Electricity Transmission	Give effect to
OIC Statement of Expectations	Have particular regard
Mahaanui Iwi Management Plan 2013	Take into account
Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011	Rules may not be more stringent or more lenient
Recovery Strategy for Greater Christchurch: Mahere Haumanutanga o Waitaha	Not be inconsistent with
Land Use Recovery Plan (LURP)	Not be inconsistent with
Lyttelton Port Recovery Plan	Not be inconsistent with
Canterbury Land and Water Plan	Not be inconsistent with
Te Rūnanga o Ngāi Tahu HSNO Policy Statement 2008	

SCHEDULE 3

Provisions of existing district plans that we replace or delete by this decision, as identified by the Council[1]

Existing provision to be replaced or deleted	Our reasons for replacing or deleting
Christchurch City Plan	
Volume 2	
Section 2 Objective 2.1 (part) Policy 2.1.3	Replaced by Chapter 12 Hazardous Substances and Contaminated Land 12.1.1 Objectives and Policies
Section 4 Objective 4.2 (part) Policy 4.2.12	
Section 7 Objective 7.7 (part) Policy 7.7.9	
Section 12 Objective 21.11 (part) Policy 12.11.13 (part)	
Section 13 Objective 13.2 (part) Policy 13.2.1	
Section 2 2.1.2 (part)	Replaced by Chapter 12 Hazardous Substances and Contaminated Land 12.2.1 Objectives and Policies
Section 6 6.3A.19 (part)	
Section 10 10.3.5 (part), 10.3.7 (part), 10.3.8 (part), 10.3.9 (part)	
Section 11 11.1.11 (part), 11.1.16 (part), 11.1.27	
Section 12 12.10.3, 12.11.4 (part)	
Volume 3	
Part 2: 6.4.5, 15.1.40	Replaced by Chapter 12 Hazardous Substances and Contaminated Land 12.1.2 Rules – Hazardous substances
Part 3: 5.4.1(a)(c), 7.3.12	
Part 8: 7.2.8, 8.3.5	
Part 9 (part)	
Part 11: 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.3.6, 3.4.2, Schedule 1-2	

[1] http://resources.ccc.govt.nz/files/policiesreportsstrategies/dpr-stage2-whatischanging-hazardoussubstancesandcontaminatedland.pdf

Existing provision to be replaced or deleted	Our reasons for replacing or deleting
Part 2: 8.2.23, 12.2.18	Deleted as covered by National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health
Part 3: 5.3.5	
Part 14: 20.5.1.11, 29.4.13	
Banks Peninsula District Plan	
Chapter 37 Objective 3 Policies 3A-E	Replaced by Chapter 12 Hazardous Substances and Contaminated Land 12.1.1 Objectives and Policies
Chapter 37 Rules 1, 2, 3, 4, 5, 6, 7, Criteria for the assessment of controlled and discretionary Activities, Appendix XV	Replaced by Chapter 12 Hazardous Substances and Contaminated Land 12.1.2 Rules – Hazardous substances

SCHEDULE 4

Table of submitters heard

This list has been prepared from the index of appearances recorded in the Transcript, and from the evidence and submitter statements shown on the Independent Hearing Panel's website.

Submitter Name	№	Person	Expertise or Role if Witness	Filed/ Appeared
Christchurch City Council	2123	N Schaffoener	Environmental Planner	Filed/Appeared
		D McNickel	Contaminated Land	Filed/Appeared
		S Blair	Planning	Filed/Appeared
Horticulture New Zealand	2165	L Wharfe	Planning	Filed/Appeared
Z Energy Limited, Mobil Oil NZ Limited, BP Oil NZ Limited ('the Oil Companies')	2185 FS2787	J Polich	Engineer	Filed/Appeared
		D le Marquand	Planning	Filed/Appeared
		J Court	Contaminated Land	Filed/Appeared
Transpower New Zealand Limited	2218 FS2780	A Renton	Engineer	Filed
		A McLeod	Planning	Filed
Rockgas Limited	2267	K Daly		Filed/Appeared
Christchurch Polytechnic Institute of Technology	2269 FS2769	M Scheele	Planning	Filed/Appeared
Orion New Zealand Limited	2340 FS2797	S Watson		Filed/Appeared
		M Scheele	Planning	Filed/Appeared
Christchurch International Airport Limited	2348	J Clease	Planning	Filed/Appeared
		Fiona Ambury	Environmental Engineer	Filed/Appeared
		B Akacich		Filed/Appeared
Liquigas Limited	2359 FS2751	D Phillis	Safety and Risk Engineer	Filed/Appeared
		J Clease	Planning	Filed/Appeared
Lyttelton Port Company	2367 FS2808	J Simpson	Environmental Engineer	Filed/Appeared
		A Purves	Planning	Filed/Appeared
Crown	2387 FS2810	N Yozin	Planning	Filed/Appeared
		M St Claire	Planning	Filed/Appeared
		P Dawson	Scientist	Filed/Appeared
		M Thomas	Fire Risk Management	Filed
		A McLeod	Planning	Filed
University of Canterbury	2464 FS2822	M Scheele	Planning	Filed/Appeared