

Wellington City Proposed District Plan

Hearing Stream 9:

Hazardous Substances Contaminated Land

Section 42A of the Resource Management Act 1991

Document Information

REPORT FOR: **Independent Hearings Commissioners:**
Trevor Robinson (Chair)
David McMahon
Jane Black
Miria Pomare

SUBJECT: **Wellington City Proposed District Plan –
Hearing Stream 9
Hazardous Substances (HS)
Contaminated Land (CL)**

PREPARED BY: Hannah van Haren-Giles

REPORT DATED: 13 May 2024

DATE OF HEARING: 10 June 2024

Executive Summary

- i. This report considers submissions received by Wellington City Council in relation to the relevant definitions, objectives, policies, and rules of the Wellington City Proposed District Plan as they apply to the Contaminated Land (CL) and Hazardous Substances (HS) chapters.
- ii. There were twelve submissions received in relation to Contaminated Land and thirty-three submissions and one further submission received in relation to Hazardous Substances.
- iii. The following matter is the key issue in contention in the chapter:
 - a. For Contaminated Land none of the submissions oppose the provisions of the chapter, but one seeks amendment.
 - b. For Hazardous Substances:
 - i. The role and function of WCC and GWRC in managing hazardous substances;
 - ii. Application of HS-P1; and
 - iii. Explosives near the gas transmission pipeline corridor.
- iv. This report includes recommendations to address matters raised in submissions as to whether the provisions in the Proposed District Plan relating to the Contaminated Land and Hazardous Substances chapters should be retained as notified, amended, or deleted in full.
- v. Appendix A of this report sets out the recommended changes to the Contaminated Land and Hazardous Substances chapters in full. These recommendations take into account all of the relevant matters raised in submissions and relevant statutory and non-statutory documents.
- vi. Appendix B of this report details officers' recommendations on submissions, and whether those submissions should be accepted or rejected. The body of this report should be consulted for reasoning.
- vii. For the reasons set out in the Section 32AA evaluation included throughout this report, the proposed objectives and associated provisions, with the recommended amendments, are considered to be the most appropriate means to:
 - a. Achieve the purpose of the Resource Management Act 1991 (RMA) where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives; and
 - b. Achieve the relevant objectives of the Proposed District Plan, in respect to the proposed provisions.

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Interpretation

Table 1: Abbreviations

Abbreviation	Means
the Act / the RMA	Resource Management Act 1991
the Council	Wellington City Council
HSNO	Hazardous Substances and New Organisms Act 1996
HSWA	Health and Safety at Work Act 2015
NESCS	Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011
NSP-UD	National Policy Statement on Urban Development 2020
the Operative Plan/ODP	Operative Wellington City District Plan
the Proposed Plan/PDP	Proposed Wellington City District Plan
RPS	Wellington Regional Policy Statement 2013
Spatial Plan	Spatial Plan for Wellington City 2021
S32	Section 32 of the Resource Management Act 1991
S32AA	Section 32AA of the Resource Management Act 1991

Table 2: Submitters' and Further Submitters' Names

Abbreviation	Submitters
BP Oil New Zealand, Mobil Oil New Zealand Limited and Z Energy Limited	the Fuel Companies
CentrePort	CentrePort Limited
FENZ	Fire and Emergency New Zealand
Firstgas	Firstgas Limited
GWRC	Greater Wellington Regional Council
	Ministry of Education
Taranaki Whānui	Taranaki Whānui ki te Upoko o te Ika
WIAL	Wellington International Airport Limited
	Wellington Tenths Trust

1.0 Introduction

1.1 Purpose

2. This report is prepared under section 42A of the Resource Management Act 1991 (the **RMA**) to:
 - a. Assist the Hearings Panel in their role as Independent Commissioners in making their decisions on the submissions and further submissions on the Wellington City Proposed District Plan (the **PDP**); and
 - b. Provide submitters with information on how their submissions have been evaluated and the recommendations made by officers, prior to the hearing.

1.2 Scope

3. This report considers submissions received by the Council in relation to the relevant definitions, objectives, policies, rules, standards, and maps as they apply to the Contaminated Land and Hazardous Substances chapters.
4. This report:
 - a. Discusses general issues;
 - b. Considers the original and further submissions received;
 - c. Makes recommendations as to whether those submissions should be accepted or rejected; and
 - d. Concludes with a recommendation for any consequential changes to the plan provisions or maps based on the assessment and evaluation contained in the report.
5. This report is intended to be read in conjunction with the Section 42A Assessment Report: Part A – Overview, which sets out the statutory context, background information and administrative matters pertaining to the District Plan review and PDP.
6. The Hearings Panel may choose to accept or reject the conclusions and recommendations of this report, or may come to different conclusions and make different recommendations, based on the information and evidence provided to them by submitters.

1.3 Author and Qualifications

7. My full name is Hannah Jane van Haren-Giles. I am a Senior Planning Advisor in the District Planning Team at Wellington City Council (the Council).
8. My role in preparing this report is that of an expert in planning.
9. I hold the qualification of Bachelor of Resource and Environmental Planning (First Class Honours) from Massey University. I am an Intermediate Member of the New Zealand Planning Institute.
10. I have six years' experience in planning and resource management, primarily as a consultant planner working for Hill Young Cooper Ltd. I have background in preparing and processing district and regional resource consent applications, plan and policy development, reviewing and preparing submissions, and providing resource management advice to a range of clients

including local authorities, industry groups, private sector companies, and individuals on various projects and planning processes.

11. My involvement with the Proposed Wellington City District Plan commenced in early 2020 when I was engaged to assist the Council with issues and options reports. I subsequently led the review and drafting of the Special Purpose Port Zone (including the Inner Harbour Port Precinct and Multi-User Ferry Precinct), Special Purpose Quarry Zone (including Kiwipoint Quarry Precinct), Special Purpose Stadium Zone, Hazardous Substances, and Contaminated Land chapters. I also authored the Section 32 Evaluation Reports for the Port Zone, Quarry Zone, Hazardous Substances, and Contaminated Land chapters.
12. Since joining the District Plan Team in July 2022 I have been involved in summarising submissions and further submissions, as well as developing the systems and database used to capture submissions and further submission points on the PDP.
13. I am also the reporting officer on the General Industrial Zone, Earthworks, Subdivision, Natural Features and Landscapes, Future Urban Zone, Development Areas, Stadium Zone, Port Zone, and Quarry Zone chapters.

1.4 Code of Conduct

14. Although this is a Council Hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court 1 January 2023. I have complied with the Code of Conduct when preparing my written statement of evidence and I agree to comply with it when I give any oral evidence.
15. Other than when I state that I am relying on the evidence or advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
16. Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. Where I have set out opinions in my evidence, I have given reasons for those opinions.

1.5 Key resource management issues in contention

17. Having read the submissions and further submissions, I consider that the following matters are the key issue in contention in each of the chapters:
 - a. For Contaminated Land none of the submissions oppose the provisions of the chapter, but one seeks amendment.
 - b. For Hazardous Substances:
 - iv. The role and function of WCC and GWRC in managing hazardous substances;
 - v. Application of HS-P1; and
 - vi. Explosives near the gas transmission pipeline corridor.

1.6 Procedural Matters

18. There are not considered to be any procedural matters to note.

2.0 Background and Statutory Considerations

2.1 Resource Management Act 1991

19. The PDP has been prepared in accordance with the RMA and in particular, the requirements of:

- Section 74 Matters to be considered by territorial authority; and
- Section 75 Contents of district plans.

20. As set out in the Section 32 Evaluation Report Part 1 – Context to Evaluation and Strategic Objectives, there are a number of higher order planning documents and strategic plans that provide direction and guidance regarding the preparation and content of the PDP. These documents and a comprehensive assessment of all relevant consultation and statutory considerations prior to public notification of the PDP are discussed in detail within [Section 32 Report for Hazardous Substances and Contaminated Land](#).

21. Since public notification of the PDP and publishing of the related section 32 evaluation reports on 18th July 2022, the following relevant statutory considerations have changed/been introduced:

a. Regional Policy Statement for the Wellington Region (RPS) – Proposed Change 1 (Change 1)

- i. A substantial change to the RPS was notified on 19 August 2022. The purpose of the change is to implement and support the National Policy Statement on Urban Development 2020 (NPS-UD) and National Policy Statement for Freshwater Management 2020 (NPS-FM). Hearings on Change 1 are proceeding in parallel with the PDP hearings scheduled to run until March 2024.
- ii. A submission was received from Greater Wellington Regional Council (GWRC) seeking amendments to the PDP, in part to achieve alignment with Change 1. In the PDP Hearing Stream 1 the Reporting Officer confirmed that given the stage that Change 1 is at in the planning process (with substantial parts the subject of competing submissions), and hearings on Change 1 still being underway, it is difficult to give much weight to Change 1. However, it is appropriate that consideration is given to Change 1 where relevant. I note that at this stage there have been no recommendation reports released by the Change 1 Independent Hearings Panel.

b. Natural Resources Plan and Plan Change 1 (PC1)

- i. The Natural Resources Plan for the Wellington Region (NRP) is operative and came into effect on 28 July 2023. PC1 to the Natural Resources Plan for the Wellington Region was notified on 30 October 2023. PC1 proposes amendments related to earthworks, stormwater and wastewater discharges, and rural land use to achieve

water quality and ecological health objectives. In my opinion, these proposed changes are not directly relevant to the matters addressed in this report.

2.2 Schedule 1 and ISPP

22. As detailed earlier in the section 42A Overview Report, the Council has chosen to use two plan review processes:
 - a. The Intensification Streamlined Planning Process (ISPP) under Part 6 of Schedule 1 of the RMA for the intensification planning instrument (IPI). There are no appeal rights on ISPP provisions.
 - b. For all other PDP provisions and content, the standard Part 1 of Schedule 1 process of the RMA is used. Part 1 Schedule 1 provisions can be appealed.
23. For the Contaminated Land and Hazardous Substances topics all the relevant provisions fall under the Part 1 Schedule 1 process.

2.3 Section 32AA

24. I have undertaken an evaluation of the recommended amendments to provisions since the initial section 32 evaluation was undertaken in accordance with s32AA. Section 32AA states:

32AA Requirements for undertaking and publishing further evaluations

(1) A further evaluation required under this Act—

(a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and

(b) must be undertaken in accordance with section 32(1) to (4); and

(c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and

(d) must—

(i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or

(ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.

(2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).

25. The required section 32AA evaluation for changes proposed as a result of consideration of submissions with respect to this topic is contained within the assessment of the relief sought in submissions in section 3 of this report, as required by s32AA(1)(d)(ii).
26. The Section 32AA further evaluation contains a level of detail that corresponds to the scale and

significance of the anticipated effects of the changes that have been made. Recommendations on editorial, minor, and consequential changes that improve the effectiveness of provisions without changing the policy approach have not been re-evaluated. Additionally, further re-evaluation has not been undertaken if the recommended amendments have not materially altered the policy approach.

2.4 Trade Competition

27. Trade competition is not considered relevant to the provisions of the PDP relating to this topic.
28. There are no known trade competition issues raised within the submissions.

3.0 Consideration of Submissions and Further Submissions

3.1 Overview

29. In total there were twelve submissions received in relation to Contaminated Land and thirty-three submissions and one further submission received in relation to Hazardous Substances.

3.1.1 Format for Consideration of Submissions

30. The consideration of submissions has been undertaken in the following format:
- Matters raised by submitters;
 - Assessment; and
 - Summary of recommendations.
31. I have considered substantive commentary on primary submissions contained in further submissions as part of my consideration of the primary submissions to which they relate.
32. Recommended amendments are contained in the following appendices:
- a. Appendix A – Recommended Amendments to the Contaminated Land and Hazardous Substances chapters
 - b. Appendix B – Recommended Responses to Submissions and Further Submissions on the Contaminated Land and Hazardous Substances chapters
33. Additional information can also be obtained from the [Section 32 Report for Hazardous Substances and Contaminated Land](#), and the overlays and maps on the ePlan.
34. The following evaluation should be read in conjunction with the summaries of submissions and further submissions, along with the full submissions. Where there is agreement with the relief sought and the rationale for that relief, this is noted in the assessment section of the report, with the associated recommendation provided in the summary of submission table in Appendix B. Where a further evaluation of the relief sought in a submission(s) has been undertaken, the evaluation and recommendations are set out in the body of this report. A marked-up version of the Contaminated Land and Hazardous Substances chapters with recommended amendments in response to submissions is contained in Appendix A.
35. This report only addresses definitions that are specific to this topic. Definitions that relate to more than one topic have been addressed in Hearing Stream 1 and the associated section 42A report, and in other relevant s42A reports for different topics.

3.2 Contaminated Land

3.2.1 Definitions

Matters Raised by Submitters

36. The Fuel Companies [372.8] seek that the definition of ‘contaminated land’ is retained as notified.

3.2.2 General points on the Contaminated Land chapter

Matters Raised by Submitters

37. GWRC [351.116] and the Fuel Companies [372.75] seek that the Contaminated Land chapter is retained as notified.

3.2.3 Contaminated Land Objectives

Matters Raised by Submitters

38. The Fuel Companies [372.76] and WIAL [406.197] seek that CL-O1 (Protection of human health from contaminants) is retained as notified.
39. WIAL [406.198] seeks that CL-O2 (Benefit of remediating contaminated land) is retained as notified.

3.2.4 Contaminated Land Policies

40. WIAL [406.199] seeks that CL-P1 (Benefit of remediating contaminated land) is retained as notified.
41. WIAL [406.200] seeks that CL-P2 (Identification of contaminated and potentially contaminated land) is retained as notified.
42. Wellington Tenth Trust [363.2], the Fuel Companies [372.77], and WIAL [406.201] seek that CL-P3 (Management of contaminated land) is retained as notified.
43. Taranaki Whānui [389.62] seek CL-P3 is amended to reflect Taranaki Whānui partnership opportunities in the assessment of contaminated land practices and restoration and recovery processes.

Assessment

44. There was only one submission seeking amendment to the Contaminated Land chapter.
45. As established in the s32 Report¹ and Introduction to the CL chapter, the chapter provides objective and policy guidance for decision makers implementing the NESCS – which provides the regulatory framework for contaminated land. The CL chapter seeks to ensure that land containing elevated levels of contaminants is managed to protect mana whenua’s significant sites, waterways, natural resources and associated values and relationships, as well as the general health and wellbeing of their people and rohe. I consider that CL-P3.3 addresses the submitters point, noting that there are triggers in the consenting process through the PDP to

¹ Page 31, [Hazardous Substances and Contaminated Land s32 Report](#)

enable active engagement where appropriate. I therefore do not consider any specific amendment to the CL chapter is necessary.

Summary of Recommendations

- 46. **HS6-CL-Rec1:** That the Contaminated Land chapter be retained as notified.
- 47. **HS6-CL-Rec2:** That submission points relating to the Contaminated Land chapter are accepted/rejected as detailed in Appendix B.

3.3 Hazardous Substances

3.3.1 Definitions

Matters Raised by Submitters

- 48. FENZ [273.10] seek that the definition of ‘hazardous substances’ is retained as notified.
- 49. The Fuel Companies [372.1] seek that the definition of ‘major hazard facility’ is retained as notified.
- 50. The Fuel Companies [372.6] (supported by WIAL [FS36.12]) seek a new definition of ‘Hazardous Facilities’ be added.

Assessment

- 51. In response to the Fuel Companies [372.6] seeking a new definition of ‘Hazardous Facilities’ be added, my understanding is that this matter was raised within the context of the ‘hazard sensitive activities’ definition that is used in the Natural Hazards chapter.
- 52. The term ‘hazardous facilities’ is intended to capture land and buildings where hazardous substances are manufactured, used, stored, or disposed of. I agree with the Fuel Companies [372.6] and WIAL [FS36.12] that a definition would provide clarity to plan users.

Summary of Recommendations

- 53. **HS9-HS-Rec1:** That the definitions of ‘hazardous substances’ and ‘major hazard facility’ be confirmed as notified.
- 54. **HS9-HS-Rec2:** That a definition of ‘hazardous facilities’ be added as set out below and detailed in Appendix A:

<u>HAZARDOUS FACILITY</u>	<u>means land or buildings where hazardous substances are manufactured, used, stored, or disposed of. Excludes:</u> <ul style="list-style-type: none">a. <u>fuel stored in mobile plants, motor vehicles, boats or small engines;</u>b. <u>the incidental use and storage of hazardous substances in domestic scale quantities.</u>
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- 55. **HS9-HS-Rec3:** That submission points relating to definitions are accepted/rejected as detailed in Appendix B.

3.3.2 General points on the Hazardous Substances chapter

Matters Raised by Submitters

56. GWRC [351.117] considers that the 2017 amendments to the RMA repealed the provisions of s30 and s31 relating to the function of regional councils and territorial authorities with respect to management of the use of, or use of land for, hazardous substances. GWRC seeks the removal of reference to Greater Wellington Regional Council's role in managing hazardous substances, and for Council to consider removing the HS chapter rules.
57. The Fuel Companies [372.78] support the approach of the Hazardous Substances chapter. The Fuel Companies [372.79] also specifically seek that the Introduction to the Hazardous Substances chapter be retained as notified.

Assessment

58. In response to GWRC [351.117] I disagree. Whilst WCC no longer has the specific obligation to manage hazardous substances under s31 of the RMA, it retains the broad function to place extra controls on hazardous substances if existing controls in the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Health and Safety at Work Act 2015 (HSWA) inadequately address the environmental effects of hazardous substances. There is still a role for Council to ensure that adverse effects of land use activities are managed to ensure that the purpose of the RMA is met. The PDP hazardous substances provisions are intended to manage only residual and cumulative risk, reverse sensitivity effects, and the location and risks associated with Major Hazard Facilities after statutory rules and controls are complied with.
59. Policy 63 of the RPS directs that local authorities are responsible for specifying the objectives, policies and methods, including rules, for the control of the use of land for the prevention or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances. This is what the HS chapter of the PDP achieves.
60. The rationale for the Hazardous Substances chapter is established in the s32 Report (and preceding Issues and Options Report). I note the Fuel Companies [372.78] support the s32 Report and approach to control matters in relation to hazardous substances that are not covered by other more specific legislation.
61. As set out in the Issues and Options Report²:
*Hazardous substances provisions are generally only warranted when hazardous substances are located within or in proximity to sensitive environments, incompatible activities, or locations with unusual site-specific characteristics. Overall, it must be demonstratable why a level of environmental protection over and above that provided by other legislation is necessary, and importantly the focus should be on ensuring the risk of adverse effects is acceptable, rather than on risk avoidance.*³
62. The primary matter the HS chapter seeks to manage is the risk profile and location of Major Hazard Facilities (MFH). While HSNO and HSWA are adequate to ensure risks, including

² Page 19, [Section 32 Report for Hazardous Substances and Contaminated Land](#)

³ Ministry for the Environment. (2019). *Plan Topics: Hazardous Substances under the RMA*. Wellington: Ministry for the Environment. Retrieved from <https://www.qualityplanning.org.nz/sites/default/files/2019-07/managing-hazardous-substances.pdf>

cumulative effects, are contained on a site, there may be the potential for off-site effects or catastrophic consequences associated with their risk despite compliance with HSNO and HSWA. Therefore, for facilities that store/use large volumes of hazardous substances, provisions in the PDP provide a wider assessment to account for potential risks and effects on surrounding land uses and the environment.

63. As set out in the Issues and Options Report - *Whilst Worksafe manages risk, it was considered that first and foremost Council has some duty to control where the facility can/does situate. For example, a paint factory could locate in Lambton Quay and be compliant with HSNO. In that sense – Worksafe manages risk – but not the risk of the location itself – as Council has this influence and control.*⁴
64. I also disagree that reference to Greater Wellington Regional Council’s role in managing hazardous substances be removed from the HS chapter Introduction. GWRC does have a role in regulating the discharge of hazardous substances (Objective O41 and Policy P100 of the Natural Resources Plan), along with a responsibility for identifying and recording sites where hazardous activities and industries have or currently are being carried out. In this sense, the Selected Land Use Register (SLUR) as it pertains to the identification of contaminated land goes hand and hand with activities involving hazardous substances.
65. I acknowledge that the HS Introduction could clarify GWRC’s role, and recommend it be amended as set out below.

Summary of Recommendations

66. **HS9-HS-Rec4:** That the HS Introduction be amended as set out below and detailed in Appendix A:

Greater Wellington Regional Council, among other government bodies, also has a role in the management of hazardous substances-, specifically to regulate the discharge of hazardous substances and administer the Selected Land Use Register (SLUR) that provides a regional database of sites that have, or may have, been used for hazardous activities and industries.

67. **HS9-HS-Rec5:** That submission points relating to general points are accepted/rejected as detailed in Appendix B.

3.3.3 Hazardous Substances Objectives

68. FENZ [273.58], the Fuel Companies [372.80], and WIAL [406.202] seek that HS-O1 (Protection from unacceptable residual risk) is retained as notified.
69. The Fuel Companies [372.81], Ministry of Education [400.41], and WIAL [406.203] seek that HS-O2(Protection of established facilities) is retained as notified.

Assessment

70. No further assessment is required.

⁴ Page 22, [Section 32 Report for Hazardous Substances and Contaminated Land](#)

Summary of Recommendations

- 71. **HS9-HS-Rec6:** That HS-O1 and HS-O2 be confirmed as notified.
- 72. **HS9-HS-Rec7:** That submission points relating to HS-O1 and HS-O2 are accepted/rejected as detailed in Appendix B.

3.3.4 Hazardous Substances Policies

- 73. FENZ [273.59] and WIAL [406.204] seek that HS-P1 (Residual risk to people and communities) is retained as notified.
- 74. The Fuel Companies [372.82] oppose HS-P1 on the basis that the policy extends to a range of matters which are not specific to hazardous substances and which would be better managed through provisions applicable to all activities affected by these specific areas or overlays (i.e. in their own chapters). They submit that HS-P1 could potentially conflict with these chapters including, for example, the Natural Hazards chapter which does not explicitly seek to avoid hazardous substances in natural hazard areas. The Fuel Companies seek that hazardous substance activities be determined on a case-by-case basis depending on, for example, the specific activity's sensitivity to natural hazard risk.
- 75. CentrePort [402.84] seeks that HS-P1 recognise that there may be a functional need or operational requirements for hazardous substances to be handled within certain areas i.e. natural hazard areas within the Port Zone. The amendment sought is as follows:

HS-P1 Residual risk to people and communities

...

Unless

1. There is a functional need or operational requirement and there are no practicable alternatives; and

2. It can be demonstrated that the residual risk to human health, people and communities or these identified areas and their values will be avoided or, if avoidance is not possible, unacceptable risk is adequately mitigated.

- 76. The Fuel Companies [372.83], CentrePort [402.85], and WIAL [406.205] seek that HS-P2 (Location of hazardous facilities and activities) is retained as notified.
- 77. The Fuel Companies [372.84], Ministry of Education [400.42], CentrePort [402.86], and WIAL [406.206] seek that HS-P3 (Sensitive activities) is retained as notified.

78. Firstgas [304.38] seek a restricted discretionary rule be added to manage the use of explosives within 100 metres of the Gas Transmission Network, as follows:

HS-RX The use of explosives within 100 metres of the Gas Transmission Network

1. Activity Status: Restricted Discretionary

Matters of discretion are restricted to:

1. The risk of hazards affecting public or individual safety, and the risk of property damage;
2. Measures proposed to avoid or mitigate potential adverse effects on the Gas Transmission Network;
3. Technical advice from the owner and operator of the Gas Transmission Network, including an assessment of the level of risk;
4. The outcome of any consultation with the owner and operator of the Gas Transmission Network; and
5. Whether the use of explosives could be located a greater distance from the Gas Transmission Network

Assessment

79. I disagree with the notion from the Fuel Companies [372.82] that the matters in HS-P1 are not specific to hazardous substances and would be better managed through provisions specific to the area or overlay chapters. The PDP is to be read as a whole. If a hazardous facility were to be proposed in, for example, an Outstanding Natural Landscape, then the HS objectives and policies would be a relevant consideration for discretionary or non-complying activities. Likewise, the matters in HS-P1 would be relevant for the consideration of an application made under HS-R2.2 and HS-R3 to ensure that MHF avoid locating in sensitive environments.
80. The intent is that the provisions in each of the zone chapters are sufficient to manage reverse sensitivity and avoid incompatible activities locating within areas where hazardous facilities can be anticipated.
81. The HS provisions would be triggered for discretionary and non-complying activities in the zones and overlays. By way of example:
- a. Sensitive activities in the General Industrial Zone (GIZ) that are not ancillary to a permitted activity are non-complying. In considering a proposal for a sensitive activity within the GIZ, the assessment would need to include HS-P3, given the agglomeration of activities in this zone that involve hazardous substances.
 - b. Heavy industrial activities in any zone other than the GIZ are a non-complying activity. In assessing a proposal to locate a heavy industrial activity in for example the City Centre Zone, consideration would need to be given to any residual risk this activity might create to human health from its use or storage of hazardous substances (HAZ-P2).
82. There is also a reliance on provisions in district-wide matter chapters e.g. Natural Features and Landscapes that seek to avoid buildings in identified areas unless effects on the characteristics and values of these areas are avoided. The Natural Hazards chapter also addresses hazardous

substances within hazard areas consistent with the direction of the National Planning Standards. Hazardous facilities are identified as a hazard sensitive activity, and there are policies and rules in the NH chapter to manage this type of activity. The Natural Hazards chapter seeks that the risk to people and property is minimised. Therefore, by default, any new hazardous facility building and its effects would be captured by the building and structure rules in these district-wide matters chapters.

83. In response to CentrePort [402.84] on a similar point, the NH chapter provides a carve out for buildings associated with operational port activities (of which the definition includes *ancillary distribution activities including dry bulk warehousing and bulk liquids storage and transfer, including fuel and ancillary pipeline networks*). I do not agree with the suggested amendment to HS-P1 because in my view the demonstration that ‘the residual risk to human health, people and communities or these identified areas and their values will be avoided or, if avoidance is not possible, unacceptable risk is adequately mitigated’ in HS-P1 is sufficient and appropriate as to the matters the District Plan should control.
84. In response to Firstgas [304.38], I can understand the purpose of a setback from the use of explosives from a gas transmission network, however it is not clear what the basis is for the 100m setback or whether other existing regulations already manage the use of explosives in relation to gas pipelines. It is my understanding that the use and storage of explosives is regulated under the Health and Safety at Work (Hazardous Substances) Regulations 2017.
85. Based on the information before me, I do not therefore support the addition of the suggested rule. I would encourage Firstgas to provide further detail in order that I better understand the scale and significance of this issue in Wellington, and what other mechanisms may effectively manage this issue.

Summary of Recommendations

86. **HS9-HS-Rec8:** That HS-P1, HS-P2, and HS-P3 be confirmed as notified.
87. **HS9-HS-Rec9:** That submission points relating to HS-P1, HS-P2, and HS-P3 are accepted/rejected as detailed in Appendix B.

3.3.5 Hazardous Substances Rules

88. The Fuel Companies [372.85], CentrePort [402.87], and WIAL [406.207] seek that HS-R1 (The manufacture, use, storage, transportation or disposal of hazardous substances) is retained as notified.
89. The Fuel Companies [372.86], Ministry of Education [400.43], and CentrePort [402.88] seek that HS-R2 (Existing major hazard facility) is retained as notified.
90. The Fuel Companies [372.87] seek that HS-R3 (New major hazard facility) is retained as notified.
91. CentrePort [402.89 and 402.90] seeks that HS-R3 be amended to include the Special Purpose Port Zone in HS-R3.1 as a discretionary activity for new major hazard activities.

Assessment

- 92. There was only one submission point seeking amendment to HS rules.
- 93. In response to CentrePort [402.89 and 402.90], HS-R3.1.a as notified only provides for MHF where the facility is located within the General Industrial Zone (GIZ), and makes MHF non-complying in any other zone.
- 94. In my view, the Port Zone (PORTZ) has similar characteristics to the GIZ, is generally devoid of sensitive activities, and generally at a distance from sensitive activities in adjacent zones i.e. the City Centre Zone.
- 95. Wellington City’s existing MHF is associated with bulk fuel storage. Given the location and nature of operational port activities, it is in my view logical that this type of facility may be anticipated in the Port Zone. Consistent with the approach within the GIZ, I consider that discretionary activity status is appropriate to allow for the consideration of the potential impact of MHF that are not managed through other instruments (the residual risk).
- 96. Activities in the Port Zone, particularly operational port activities, are similar to industrial activities in terms of the potential effects (amenity, visual, light, noise, transport etc). Therefore, I consider that the likely impacts of a MHF in the Port Zone would be similar to those anticipated in the GIZ.
- 97. On this basis I recommend amending HS-R3 to include the Special Purpose Port Zone in the discretionary activity rule. For consistency with other District-wide matter chapters I recommend adding a left-hand panel to the chapter to indicate the relevant zones.

Summary of Recommendations

- 98. **HS9-HS-Rec10:** That HS-R1 and HS-R2 be confirmed as notified.
- 99. **HS9-HS-Rec11:** That HS-R3 be amended as set out below and detailed in Appendix A.

HS-R3	New major hazard facility
<p><u>General Industrial Zone</u></p> <p><u>Special Purpose Port Zone</u></p>	<p>1. Activity status: Discretionary</p> <p>Where:</p> <p>a.—The activity is located within the General Industrial Zone.</p> <p>Section 88 information requirements for applications:</p> <p>1. Applications under this rule must provide, in addition to the standard information requirements:</p> <ul style="list-style-type: none"> a. A Quantitative Risk Assessment for the site that includes: <ul style="list-style-type: none"> i. The mapped extent of the area which has the potential to cause an unacceptable level of risk; ii. The probability and potential consequences of an accident leading to the release or loss of control of hazardous substances; iii. Potential risks and effects on sensitive activities,

		<p>sensitive environments, and adjacent hazardous facilities and/or activities; and</p> <p>iv. The potential for unacceptable residual risk including cumulative residual risk, having particular regard to separation distances, alternative locations, and site layout.</p>
	<p><u>All other Zones</u></p>	<p>2. Activity status: Non-complying</p> <p><u>Where:</u></p> <p>a. Compliance with the requirements of HS-R3.1 cannot be achieved.</p>

100. **HS9-HS-Rec12:** That submission points relating to HS-R1, HS-R2, and HS-R3 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

101. In my opinion, the recommended amendment to HS-R3 is the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:

- a. The amendment provides a more nuanced rule framework with respect to Major Hazard Facilities in the Port Zone.
- b. The amendment recognises the potential for a Major Hazard Facility to locate in the Port Zone and that this activity is not unnecessarily restricted.
- c. The amendment is not inconsistent with the notified objectives in relation to the management of major hazardous facilities.

102. Amending HS-R3 to allow for MHF in the PORTZ as a discretionary activity, rather than a non-complying activity, is more effective and efficient compared to the notified provisions and gives effect to the objectives and policies in the PDP. The amendment accounts for the similarities between the PORTZ and GIZ, whilst still retaining consistency with the provision as notified. The risk of not acting would be that a non-complying activity could foreclose what might otherwise be an appropriate proposal. Overall, I consider that the amended rule assists in achieving the HS objectives and policies and provides for MHF in the Port Zone whilst ensuring that any potential effects are considered through a resource consent process.

103. The environmental, economic, social and cultural effects of the recommended amendments, as they vary somewhat from the existing plan s32 evaluation report, are below.

Environmental	<ul style="list-style-type: none"> Manages Major Hazard Facilities in a manner that is consistent with industrial areas.
Economic	<ul style="list-style-type: none"> Compared to the notified proposal, the recommended approach is unlikely to have additional economic costs. The amendment retains appropriate scrutiny of the merits of any proposal for a MHF in the Port Zone. The effects are likely to be more positive, in providing for MHF in an appropriate zone. The costs to an applicant are also likely to be less for a discretionary activity resource consent application, compared to a non-complying resource consent.
Social	<ul style="list-style-type: none"> There are unlikely to be any additional social costs or benefits compared to the notified proposal.
Cultural	<ul style="list-style-type: none"> No cultural effects are identified.

4.0 Minor and inconsequential amendments

104. Pursuant to Schedule 1, clause 16 (2) of the RMA, a local authority may make an amendment, without using the process in this schedule, to its proposed plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.
105. I recommend one minor amendment to add the abbreviation '(NESCS)' to the CL chapter Introduction to provide context where the abbreviation is used elsewhere.

5.0 Conclusion

106. This report has provided an assessment of submissions received in relation to the Contaminated Land and Hazardous Substances Chapters.
107. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, I recommend that the PDP should be amended as set out in Appendix A of this report.
108. For the reasons set out in the Section 32AA evaluation included throughout this report, I consider that the proposed objectives and provisions, with the recommended amendments, will be the most appropriate means to:
- Achieve the purpose of the Resource Management Act 1991 (RMA) where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives; and
 - Achieve the relevant objectives of the PDP, in respect to the proposed provisions.

5.1 Recommendations

109. It is recommended that:

- a. The Hearing Commissioners accept, accept in part, or reject submissions (and associated further submissions) as outlined in Appendix B of this report; and
- b. The PDP is amended in accordance with the changes recommended in Appendix A of this report.

6.0 Appendices

Appendix A: Recommended Amendments to the Contaminated Land and Hazardous Substances Chapters

Where I recommend changes in response to submissions, these are shown as follows:

- Text recommended to be added to the PDP is underlined.
- Text recommended to be deleted from the PDP is ~~struck through~~.

Appendix B: Recommended Responses to Submissions and Further Submissions on the Contaminated Land and Hazardous Substances Chapters