

**Before the Hearings Panel
At Porirua City Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Porirua District Plan

Between **Various**

Submitters

And **Porirua City Council**

Respondent

**Council reply on Contaminated Land topic and Hazardous Substances topic –
Michael David Rachlin on behalf of Porirua City Council**

Date: 22nd December 2021

INTRODUCTION:

1 My full name is Michael David Rachlin. I am employed as a Principal Policy Planner for Porirua City Council.

2 I have read the tabled statements provided by submitters relevant to the Section 42A Reports on the Contaminated Land chapter and the Hazardous Substances chapter.

3 I have prepared this Council reply on behalf of the Porirua City Council (**Council**) in respect of matters raised through Hearing Stream 3.

4 Specifically, this statement of evidence relates to the matters in the Section 42A Report – Contaminated Land.

5 I am authorised to provide this evidence on behalf of the Council.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

6 Appendix C of my section 42A report sets out my qualifications and experience.

7 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2014.

SCOPE OF REPLY

8 This reply follows Hearing Stream 3 held on the 3rd, 6th, 7th, 8th, and 10th December 2021. Minute 2 of the Hearing Procedures allows for s42A report authors to submit a written reply within 10 working days of the adjournment of the hearing.

9 The main topics addressed in this reply include:

- Answers to questions posed by the Panel
- Changes to recommendations in the s42A report

10 I have not included a list of materials provided by submitters in relation to this topic, since this was limited to a submitter statement provided by the oil companies [submitter 123].

11 Appendix 1 has recommended amendments to PDP provisions, with updated recommendations differentiated from those made in Appendix A of the s42A report.

12 Appendix 2 has an updated table of recommended responses to submissions and further submissions, with updated recommendations differentiated from those made in Appendix B of the s42A report.

13 For ease of reference, I have shown any changes proposed through this right of reply as follows:

s42A Report	deletions / <u>insertions</u>
Right of Reply version	deletions / <u>insertions</u>

Answers to questions posed by the Panel

14 **CL-O1:** The Hearing Panel raised the issue of whether the objective needed to be amended:

- To include reference to the intended use of the land;
- To require that land is made safe for the protection of human health rather than just human health; and
- To change “it’s” to “its” for grammatical reasons

15 I agree that the objective needs to be amended to reference both the intended use of the land and the protection of human health, as

outcomes for the PDP. I consider that these amendments better reflect the outcome and purpose of the NES-CS than the version contained in my statement of supplementary planning evidence.

16 The protection of human health is the key purpose of the NES-CS and as such the objective should reflect this. The intended use of land has a key role in achieving the protection of human health¹ under the NES-CS and is linked to differing prescribed exposure to contaminants categories depending on land use².

17 The recommended amended CL-O1 is shown below and in Appendix 1. This includes the grammatical change to “its”.

Recommended Changes

CL-O1	Protection of human health from contaminants
Contaminated land is identified and made safe for its intended use and human health before any <u>it's</u> subdivision, change of use or development, and made safe for the intended use and to protect human health .	

18 **CL-P2:** The Hearing Panel raised the question of whether amendment was needed to this policy to clarify the degree of minimisation required by the policy. They questioned whether minimising the risk to people from the subdivision, change of use and development of land that may or does contain elevated levels of contaminants would be sufficient, in itself, to protect human health.

¹ Clause 7 states that “land use meansthe intended use, if the activity the person wants to do is—

(i)to subdivide land:

(ii)to change the use of the piece of land”

² Clause 7.3

19 I have given this matter further consideration and am of the opinion that the policy does not need amending to reference the “environmental bottom line”; i.e. protecting human health. I take this view for the following reasons:

- CL-P2 needs to be read and applied in the context of CL-O1, the recommended amended version which clearly identifies that land is to be made safe to protect human health. As such the risk is to be minimised, or made as small as possible, to protect human health and the policy contains the actions by which this will be achieved. It is not necessary to repeat the outcome from the Objective in the policy.
- The actions contained in CL-P2 inherently require the protection of human health. CL-P2.3 requires remediation that does not pose a more significant risk to human health than if the remediation had not occurred. CL-P2.4 requires that the land is suitable for its intended use.
- The NES-CS represents a complete implementation framework of rules, standards and methods to achieve the protection of human health. As such, it is clear to me that within the context of implementing this framework, the outcome to be achieved is the protection of human health, and again it is not necessary to repeat this in CL-P2

20 In view of the above I do not recommend any changes to CL-P2 or my recommendations in relation to submissions on this policy, set out in the s42A report for the Contaminated Land chapter.

21 If the Hearing Panel still consider that it is appropriate and necessary for the Policy to define the degree of minimisation to be achieved, then I would recommend the following wording:

CL- P2 Minimising risks from contaminated land

Minimise the risk to [the health of people to an acceptable level](#) from the subdivision, change of use and development of land that may or does contain elevated levels of contaminants by:

1. Enabling site investigations to better understand the type and level of contaminants present;
2. Having particular regard to management measures proposed, which may include remediation, containment, or disposal of contaminated soil;
3. Applying a best practice approach to remediation that does not pose a more significant risk to human health than if the remediation had not occurred; and
4. Ensuring the land is suitable for its intended use.

22 **Scope to amend CL-P2:** The Hearing Panel sought clarification on whether there was scope to amend this policy, should it be minded to do so in respect of providing an “environmental bottom line” in relation to the use of the term “minimise” in the policy.

23 In my opinion, Waka Kotahi submission points 82.296 and 82.294 provide scope to make the changes I have suggested in paragraph 21 above.

24 In submission point 82.296 Waka Kotahi seeks to replace “minimise” with “mitigate”. The reasons given for this are:

“Waka Kotahi consider that the term is difficult to interpret and apply in practice. For clarity it is considered that the term be replaced with ‘mitigate’; which aligns with the effects hierarchy under the RMA” *(emphasis added)*

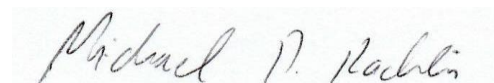
25 In submission point 82.294, the submitter seeks:

“Amend the provisions of the Proposed District Plan as detailed in Table 1 [attached to the submission] including such further, alternative or consequential relief as may be necessary to fully achieve the relief sought in the submission.” *(emphasis added)*.

26 For the reasons set out in paragraphs 61 and 62 of the s42A report for contaminated land, I consider that the use of the term, 'minimise' remains appropriate. However, the issue raised by the Hearing Panel is whether further clarity is necessary to assist the interpretation and application of the policy. In my opinion the amended version of CL-P2 included in paragraph 21 above, could be considered to represent an alternative as sought in submission point 82.294, to overcome the concerns identified in 82.296 in relation to interpretation and application of policies where the term "minimise" is used.

27 My comments on scope are limited to the contaminated land topic given the circumstances identified by the Hearing Panel in relation to the use of the term "minimise" for this topic. These circumstances include the existence of the NES-CS and how it creates a relatively unique regulatory framework within the PDP, as described in paragraph 19 above.

Date: 22nd December 2021



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Appendix 1 – Recommended amendments to PDP provisions

In order to distinguish between the recommendations made in the s42A report and the recommendations that arise from this report:

- s42A recommendations are shown in red text (with underline and ~~strike out~~ as appropriate); and
- Recommendations from this report in response to evidence are shown in blue text (with underline and ~~strike-out~~ as appropriate).

CL - Contaminated Land

Contaminated land is land that has a hazardous substance in or on it that could have an adverse effect on human health. The subdivision, change of use or development of contaminated land can expose people to increased levels of contamination from hazardous substances that were previously contained. The treatment or remediation of contaminated land contributes to the social, economic and health outcomes of communities by managing risk to human health and increasing the availability of land for development. This includes land for housing and business.

Territorial authorities control land use to prevent or mitigate adverse effects on human health associated with the subdivision, use and development of land on contaminated or potentially contaminated sites. The Council's response to this issue is largely governed by the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS).

The NESCS regulations ensure that land affected by contaminants is identified and assessed before it is subdivided or developed or a change of use occurs and if necessary, the land is remediated or the contaminants contained to make that land safe for human use. In most cases, the responsibility for the management of environmental effects arising from contaminated land will sit with the Greater Wellington Regional Council, e.g. leaching of contaminants to waterbodies or groundwater from land development or disturbance activities. This chapter contains objective and policy guidance for the assessment of any resource

consent applications required under the NESCS in accordance with the requirements of section 104 of the RMA.	
<u>Land in the Wellington region where hazardous industries or activities take place or have taken place are recorded by the Greater Wellington Regional Council on the Selected Land Use Register. This register and associated mapping of sites can be found on the Greater Wellington Regional Council website³.</u>	
Objective	
CL- O1	Protection of human health from contaminants
Contaminated land is identified and made safe for its intended use and human health before any it's subdivision, change of use or development, <u>and made safe for the intended use and to protect human health.</u> ⁴	
CL- O2	Positive benefits from treatment and remediation of contaminated land
Treatment and remediation of contaminated land contributes to the health and wellbeing of communities, including increased availability of land for housing and business activities.	
Policies	
CL- P1	Identification of potentially contaminated land
At the time of subdivision, change of use or development, identify sites that may be subject to potential contamination as a result of historical land uses and activities.	
CL- P2	Minimising risks from contaminated land
<p>Minimise the risk to people from the subdivision, change of use and development of land that may or does contain elevated levels of contaminants by:</p> <ol style="list-style-type: none"> 1. Enabling site investigations to better understand the type and level of contaminants present; 2. Having particular regard to management measures proposed, which may include remediation, containment, or disposal of contaminated soil; 3. Applying a best practice approach to remediation that does not pose a more significant risk to human health than if the remediation had not occurred; and 4. Ensuring the land is suitable for its intended use. 	

³ Heather and Donald Philips and Love [79.6]; Greater Wellington Regional Council [137.40]

⁴ Oil companies [123.3]

CL- P3	Positive effects of the treatment and remediation of contaminated land
Recognise that the <u>management</u> , ⁵ treatment and remediation of contaminated land can provide positive social, economic and health effects for people and the community.	
Rules	
Note: As the NESCS provides a complete framework of rules that deal with assessing and managing contaminated soils, the District Plan does not contain any independent or separate set of rules or assessment matters. The Council is required to enforce the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 pursuant to section 44A(8) of the RMA.	

Appendix 2 – Recommended responses to submissions and further submissions

To distinguish between the recommended responses in the s42A report and the recommended responses that arise from this report updated recommended responses from this report in response to evidence are show in tracked changes in blue. See table below:

⁵ Oil Companies [123.6]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report where Addressed	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
General							
79.6	Heather and Donald Phillips and Love	General	Amend – GWRC's Contaminated Land register should be referenced/linked in the Porirua District Plan.	3.2	Accept in part	See body of the report	Yes
137.40	Greater Wellington Regional Council	General	Retain chapter but amend chapter to include an explanation of the SLUR and reference to it.	3.2	Accept	See body of the report	Yes
264.43	TROTR	General	Retain as notified	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions	No
123.7	Oil companies	General	Retain the intent of the wording as drafted, with rules being addressed under the existing NESCS framework.	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions	No
81.400	Kāinga Ora	General	Retain as notified	n/a	Accept in part	Accept in part, subject to amendments made in response to other submissions	No
Objective CL-O1							
123.3	Oil companies	CL-O1	Retain intent of the objective. Provide further clarity that the intent of the objective relates to ensuring there is a level of management of any contamination which may need to be ongoing, relative to the sensitivity of the intended use. This could be achieved by way of the following wording:	3.3	Reject Accept in part	See body of the report and Council Statement of Supplementary Planning Evidence and Right of Reply	No Yes

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report where Addressed	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			Contaminated land is identified and made managed so that any residual human health risk is and remains acceptable and safe for its intended use and human health before any subdivision, change of use or development.				
Policy CL-P1							
123.4	Oil companies	CL-P1	Retain intent of the policy as currently worded.	n/a	Accept	Agree with submitter	No
Policy CL-P2							
123.5	Oil companies	CL-P2	Retain intent of the policy as currently worded	n/a	Accept	Agree with submitter	No
Policy CL-P3							
123.6	Oil companies	CL-P3	Retain intent of the objective. Provide further clarity that the intent to provide for positive social, economic and health effects requires suitable management of contaminated land in achieving those outcomes. This could be achieved by way of the following wording: Recognise that the <u>management</u> , treatment and remediation of contaminated land can provide positive social, economic and health effects for people and the community.	3.4	Accept	See body of the report	Yes

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report where Addressed	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
Other matters							
82.296	Waka Kotahi	General	Amending the use of the term minimise throughout the Proposed District Plan. Considers that the term is difficult to interpret and apply in practice. For clarity it is considered that the term be replaced with 'mitigate'; which aligns with the effects hierarchy under the RMA	3.5	Reject	See body of the report	No

