

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

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Wellington City District Plan

**Hearing Stream 9 (Hazardous Substances and Contaminated Land)
Reporting Officer Right of Reply of Hannah van Haren-Giles on
behalf of Wellington City Council
Date: 19 July 2024**

INTRODUCTION

1. My name is Hannah van Haren-Giles. I am employed as a Senior Planning Advisor at Wellington City Council (the Council).
2. I have prepared this Reply in respect of the matters in Hearing Stream 9 relating to the Hazardous Substances (HS) and Contaminated Land (CL) Chapters.
3. I have listened to submitters in Hearing Stream 9, read their evidence and tabled statements, and referenced the written submissions and further submissions relevant to the Hearing Stream 9 topics.
4. The [Contaminated Land and Hazardous Substances Section 42A Report](#) sets out my qualifications and experience as an expert in planning.
5. 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 2023, as applicable to this Independent Panel hearing. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
6. Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the relevant part of my evidence to which it relates. Where I have set out opinions in my evidence, I have given reasons for those opinions.

SCOPE OF REPLY

7. This Reply follows Hearing Stream 9 held from 10 June to 14 June 2024. [Minute 51: Stream 9 Hearing Follow Up](#) released by the Panel on 17 June 2024 requested that Section 42A report authors submit a written Right of Reply as a formal response to matters raised during the course of the hearing. [Minute 38: 2024 Hearing Arrangements](#) requires this response to be submitted by 19 July 2024.
8. The Reply includes:
 - (i) Responses to specific matters and questions raised by the Panel in Minute 51.

Responses to specific matters and questions raised in Minute 51:

CONTAMINATED LAND

(a)(i) Can Ms van Haren-Giles please advise whether the National Environmental Standard for Assessing and Managing Contaminants in the Soil to Protect Human Health makes provision for involvement of mana whenua in such assessments and, if not, whether the objectives and policies in the Contaminated Land Chapter of the PDP should be amended to do so in response to the submission of Taranaki Whānui;

9. The Contaminated Land chapter provides objective and policy guidance for decision makers implementing the NESCS – which provides the regulatory framework for contaminated land. The NESCS does not make specific provision for the involvement of mana whenua.
10. Where contaminated land is within a site or area of significance, the Sites and Areas of Significance to Māori (SASM) chapter gives appropriate consideration to consultation undertaken with mana whenua. This however would not necessarily extend to include partnership opportunities.
11. I consider there would be benefit amending CL-P3 with the following addition to clause 3: *‘including through partnership opportunities for remediation and/or site management’*. This amendment, which uses terminology consistent with CL-O2, is set out in Appendix A to this Right of Reply.

HAZARDOUS SUBSTANCES

(a)(ii)(1) In relation to HS-P1: Query whether the focus of this policy should be on whether avoidance is not practicable (as opposed to not being possible) as per Ms van Haren-Giles’ rebuttal evidence at paragraph 10;

12. At paragraph 10 of my supplementary evidence, I wrote ‘practicable’ instead of ‘possible’. This was an error – it was not my intention to change the wording or intent of the notified policy. This was not suggested by any submitter and there is no scope to consider this matter.

(a)(ii)(2) In relation to HS-P1: Is there scope to amend HS-P1 to make clear that it is talking about off-site effects on human health and wellbeing?

13. I have reviewed submissions on the Hazardous Substances chapter and am satisfied that none of the submissions provide sufficient scope for this amendment. I am however comfortable with the notified policy because it seeks to only address 'residual risk to human health'. The reference to human health is non-exclusive in its application, and taken at face value it applies in general to human health and is therefore not site-specific.
14. Relying on the definition of residual risk the Plan would only address the level of any remaining risk of an adverse effect after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work (Hazardous Substances) Regulations 2017 and any other subordinate instruments, and regional planning instruments have been complied with. Therefore, potential on-site effects on human health and wellbeing would be primarily managed through WorkSafe regulations.

(a)(ii)(3) In relation to HS-P1: Can Ms van Haren-Giles please provide suggested wording if the Hearing Panel considers there to be merit in splitting this policy into two, in line with her verbal comments;

15. In my supplementary evidence¹ and in response to questions at the hearing, I noted my support to split HS-P1 into two separate policies. This amendment, set out below, would provide clarity whilst retaining the substance of the notified HS-P1.
16. The tracked change amendments to split HS-P1, as well as updated references to the numbering of provisions, is set out in Appendix A to this Right of Reply.

¹ Paragraph 16, [HS9 Supplementary Evidence](#)

HS-P1 Residual risk to people and communities

Avoid facilities and activities involving the manufacture, use, storage, transportation or disposal of hazardous substances from locating in areas where they may adversely affect human health unless it can be demonstrated that the residual risk to human health, people and communities will be avoided or, if avoidance is not possible, mitigated to an acceptable level.

HS-P2 Residual risk to sensitive environments

Avoid facilities and activities involving the manufacture, use, storage, transportation or disposal of hazardous substances from locating in:

1. A Significant Natural Area;
2. An Outstanding Natural Feature;
3. An Outstanding Natural Landscape;
4. A Special Amenity Landscape; and
5. A Site or Area of Significance to Māori;

unless it can be demonstrated that the residual risk to these identified areas and their values will be avoided or, if avoidance is not possible, mitigated to an acceptable level.

(a)(iii) Can Ms van Haren-Giles please advise what guidance the Natural Hazards Chapter gives as to the identification of 'acceptable' levels of risk?

17. The introduction to the Natural Hazards chapter outlines that risk is a product of both the likelihood of and the consequences from a natural hazard event. The Natural Hazards chapter adopts a risk-based approach to reduce the risk to property and people of a natural event.
18. Hazardous Facilities and Major Hazardous Facilities are included in the definition of hazard sensitive activities. The objective and policy framework directs that in high hazard areas the existing risk from natural hazards to people, property and infrastructure is reduced or not increased, and in low and medium hazard areas, that risk from natural hazards to people, property and infrastructure is minimised.
19. In my opinion, the test for Hazardous Facilities and Major Hazardous Facilities in high hazard overlay areas is clear as the activity cannot introduce any greater level of risk.
20. The policy test for Hazardous Facilities and Major Hazardous Facilities in medium and low hazard overlay areas, although not as absolute as compared with high hazard overlay areas, requires that risk is to be reduced to the smallest amount reasonably practicable.
21. I am comfortable that the rule framework and policies for hazard sensitive activities

(which includes Hazardous Facilities and Major Hazardous Facilities) is appropriate to identify and ensure that risk is reduced to the smallest amount reasonably practicable through requirements such as mitigation measures and ensuring safe evacuation, among other matters.

A handwritten signature in black ink, appearing to read "Han", enclosed within a hand-drawn oval.

Date: 19 July 2024