

Section 42A Report
Addendum

Contaminated Land Chapter

Prepared for the

Proposed Kaipara District Plan

Report prepared by: **Sarah Horton**

2 March 2026

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1. Introduction

1. This report is an addendum to my section 42A report on the Part 2 topic – Contaminated Land Chapter topic in the Proposed Kaipara District Plan (**Kaipara PDP**), to be heard at Hearing 6 on 10 March 2026. It has been prepared by myself (Sarah Horton), as the author of the section 42A report for the Part 2 topic – Contaminated Land Chapter.
2. I do not repeat the background information contained in Section 1 – Introduction of the section 42A report and request that the Hearings Panel (**the Panel**) take this as read.

2. Purpose of Report

3. This report is an addendum to my Section 42A report on the Contaminated Land Chapter of the Proposed Kaipara District Plan (PDP).
4. This addendum responds to hearing evidence filed by:
 - a. Director General of Conservation (**DOC**) prepared by Trevor Ellis – RM Regulatory Delivery Manager, Department of Conservation, dated 17 February 2026. (DOC original submission ref S304 and further submission FS45).
 - b. BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited (**Fuel Companies**), prepared by Thomas Trevilla of SLR Consulting, dated 17 February 2026. (Fuel Companies original submission S311 and further submission FS98)
 - c. Northpower Limited and Northpower Fibre Limited (**Northpower**) prepared by David Badham, of Barker and Associates Limited, dated 16 February 2026. (Northpower original submission S283 and further submission FS82)

3. Consideration of hearing statements

5. Three hearing statements were received in respect of the Contaminated Land Chapter:
6. A letter from DOC confirmed it would not be appearing at the hearing and accepted my recommendations with respect to its submission points.
7. Planning evidence was filed by The Fuel Companies; however this was not accompanied by any technical evidence such as contaminated land specialists, soil scientists, hydrogeologists or risk assessors. The matters raised by the Fuel Companies are largely planning issues, pertaining to wording and scope of the policy framework to consider effects on matters other than human health.

8. Planning evidence was tabled from provider of Regionally Significant Infrastructure provider - Northpower. Northpower confirmed it would not be appearing at the hearing but are available to the Hearing Panel in writing or via videoconferencing if required. The matters raised by Northpower primarily relate to the better enablement of essential infrastructure to be built, operated and upgraded on contaminated sites where needed.
9. For all other submission points not addressed in this report, I maintain my recommendations as set out in my original section 42A report. I will review my recommendation on submissions set out in Appendix A of the section 42A report comprehensively in my Right of Reply report once the hearing is complete.

3.1 Hearing statement of the Director-General of Conservation (DOC)

10. The hearing statement tabled by the DOC (original submission ref S304 and further submission FS45) states agreement with my Section 42A recommendations that:
 - a. Kauri dieback is not appropriately managed through the Contaminated Land Chapter and is best addressed in the Earthworks chapter.
 - b. CL-P2 and CL-P3 are appropriate as separate policies.
11. I appreciate the clear statement from DOC and maintain my analysis and recommendations in response to DOC's submission points and further submission points as set out in in the s42A report at:
 - a. Topic 4: Contaminated Land policies kauri dieback (paragraphs 110 - 115); and
 - b. Topic 3: Contaminated Land policies (paragraphs 88 - 95).

3.2 Planning evidence for The Fuel Companies

12. The planning evidence of Mr Trevilla on behalf of The Fuel Companies addresses the following provisions / matters:
 - a. references to "the environment" in the chapter;
 - b. CL-O1 and CL-O2;
 - c. CL-P2; and
 - d. CL-P3.
13. The Fuel Companies' evidence seeks to:

- a. Narrow the chapter to consideration of human health only, and delete references to environmental effects;
- b. Delete or substantially amend CL-P2 and CL-P3; and
- c. Reduce duplication with national regulation.

3.2.1 Consideration of the environment

14. A number of the provisions in the Contaminated Land chapter make reference to “the environment”, such as:
 - a. CL-O1 seeks to protect human health and safety *and the environment* from unacceptable risk;
 - b. CL-P1 seeks to discourage the disturbance of contaminated land where it could adversely affect human health and safety *and the environment*;
 - c. CL-P3 seeks to avoid, remedy or mitigate adverse effects on the health of people *and the environment*; and
 - d. CL-P4.4 requires that the disposal of contaminated soil must be carried out in a manner that avoids further adverse effects on human health *or on the environment*
15. The evidence of Mr Trevilla seeks to remove references to “the environment” and narrow the focus to human health. His reasoning for this is that the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NES-CS**) focuses on the risk to human health. He observes that the Overview in the Contaminated Land chapter states that the chapter will assist the assessment of applications that require consent under the NES-CS.¹ He considers therefore that these assessments should relate solely to human health effects, as broader environmental effects are outside the scope of NES-CS assessments². He also draws attention to the Northland Regional Plan which has a suite of rules for contaminated land, and considers that this document addresses environmental effects of contaminated land on aquatic ecosystem health, water quality, human health and amenity values.³
16. I agree that the NES-CS protects human health and that this should be appropriately acknowledged in the policy framework in the Contaminated Land chapter. I also agree that the Northland Regional Plan captures effects on water and soil. However there are other aspects of

¹ Statement of evidence (planning) of Thomas Trevilla for the Fuel companies dated 17 February 2026 at [5.6]

² Statement of evidence (planning) of Thomas Trevilla for the Fuel companies dated 17 February 2026 at [5.8]

³ Statement of evidence (planning) of Thomas Trevilla for the Fuel companies dated 17 February 2026 at [5.12]

“the environment” which cannot be addressed by the Northland Regional Plan as it is outside the jurisdiction of a regional plan. The Resource Management Act (**RMA**) definition of “environment” includes:

- (a) ecosystems and their constituent parts, including people and communities; and*
- (b) all natural and physical resources; and*
- (c) amenity values; and*
- (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters*

17. It seems to me that there are other elements of “the environment” that are not captured by either the NES-CS or the Northland Regional Plan and are worthy of inclusion in the Contaminated Land policies to ensure they are considered during a resource consent assessment. The NES-CS regulates soil disturbance activities to protect human health. It does not regulate:
- a. Ecological effects;
 - b. Groundwater contamination beyond human health thresholds;
 - c. Cultural or mauri impacts;
 - d. Land use compatibility;
 - e. Reverse sensitivity;
 - f. Integrated land use management.
18. The NES-CS is a minimum national standard. It is not a comprehensive land use management regime. It is noted that the Ministry for the Environment guidance confirms that the NES-CS is focused on human health, and that contaminants may also impact ecosystems, water, and other receptors not covered by the NES.
19. Contaminated land is a land use condition that may generate adverse effects beyond human health. I consider that removing references to “environment” would create a policy gap and artificially narrow Council’s statutory responsibilities to just human health.
20. Removing references to “the environment” would, in my view, create an artificial and unintended narrowing of the Council’s statutory responsibilities. The Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38 confirmed that planning instruments must be interpreted within their statutory hierarchy and in accordance with their statutory purpose. The NES-CS establishes national minimum standards for protection of

human health; it does not extinguish broader territorial authority functions unless expressly stated. There is no such limitation here.

21. Neither the NES-CS nor the Northland Regional Plan regulates ecological effects arising from contaminants present in soil where those effects do not relate to water or human health. For example, contaminant mobilisation during earthworks could lead to loss of soil biodiversity, harm to soil dwelling invertebrates, or impacts on vegetation health all of which fall within the broader RMA definition of ‘environment’ but are not addressed by the NES-CS (which covers only human health) or the Regional Plan (which focuses primarily on water, soil discharge, and aquatic ecosystems).
22. Contamination or disturbance of contaminated soil may adversely affect sites of cultural significance or diminish the mauri of land, even where there is no measurable effect on human health or water quality. These cultural and spiritual dimensions are part of the RMA definition of “environment” and fall within district plan functions, but are not regulated by the NES-CS or the Regional Plan. This includes effects on wāhi tapu, traditional uses, or the relationship of tangata whenua with land and resources.
23. These cultural and spiritual dimensions are not addressed by the NES-CS, which is confined to human health risk assessment, nor are they comprehensively regulated by the Northland Regional Plan unless associated with discharge effects. Yet they fall squarely within the Council’s obligations under sections 6(e), 7(a), and 8 of the RMA.
24. The Court of Appeal in *Auckland Regional Council v North Shore City Council* [1995] NZRMA 424 emphasised that integrated management requires coordination of land use and environmental effects, not rigid separation of jurisdictional silos. Where neither national nor regional instruments address certain land use effects, the district plan framework properly fills that space. Retaining reference to “the environment” ensures that those effects are not left unmanaged.
25. Therefore, I do not accept that such narrowing is either necessary or legally defensible.
26. The Court of Appeal in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 confirmed that Part 2 remains relevant where higher-order instruments have not already provided complete direction on the issue. Even where national standards exist, the direction of Part 2 of the RMA to safeguard life-supporting capacity and maintain environmental quality continues to guide the scope and purpose of district plan provisions.
27. The Supreme Court in *Environmental Defence Society v NZ King Salmon Co Ltd* [2014] NZSC 38 confirmed that national direction does not extinguish or replace the functions of subordinate planning instruments unless expressly stated. Planning instruments operate in a complementary

manner, each performing their statutory role. This principle supports the conclusion that the NES-CS does not displace Council's broader s31 responsibilities to manage the actual and potential effects of land use beyond human health alone.

28. I therefore have not changed my recommendation as contained in Topic 2: Contaminated Land Chapter objectives or Topic 3: Contaminated Land Policies paragraphs of my s42A report.

3.2.2 Amalgamation of the objectives

29. The Contaminated Land chapter contains two objectives as follows:

CL-O1 Contaminated land

Subdivision, use and development of contaminated land is managed to protect human health and safety and the environment from unacceptable risk.

CL-O2 Management and remediation of contaminated land

Remediation and/or site management of contaminated land contributes to the health and wellbeing of communities and increases development opportunities for future use and development.

30. While the submission of The Fuel Companies sought the amalgamation of these objectives into a single objective, Mr Trevilla supports the retention of separate policy direction.⁴ He expresses the following concerns with the wording of the objectives however:

- a. There is no clear link between the objectives and the CL-P1 which is about identifying contaminated land;
- b. The use of the word “safety” in CL-O2 may duplicate WorkSafe functions;
- c. Opposes the use of reference to “the environment” (as discussed above);
- d. Unnecessary duplication due to CL-O2 referring to the health of communities, while CL-O1 refers to “human health”;
- e. CL-O2 reads as an expectation that activities must contribute to community wellbeing and increase development opportunities which is unrealistic for many activities involving contaminated land; and
- f. Neither objective recognises that the land should be safe for its “intended use” which is a term that arises from regulation 7 of the NES-CS.

⁴ Statement of evidence (planning) of Thomas Trevilla for the Fuel companies dated 17 February 2026 at [6.3]

31. Mr Trevilla therefore proposes alternative drafting of the two objectives so that:
- a. CL-O1 addresses both the identification of contaminated land and its subdivision use and development. Identification is omitted from the notified version of this objective; and
 - b. CL-O2 contains the same elements of remediation and management of contaminated land, but is reworded to reflect the intended use of the land; and
 - c. Neither objective contains reference to “the environment”.
32. Mr Trevilla considers that neither objective clearly links to CL-P1 (Identification of Contaminated Land). In my opinion, that criticism does not reflect the established structure of plan drafting. Objectives articulate the outcomes sought, while policies set out the mechanisms to achieve those outcomes. CL-P1 provides the identification mechanism necessary to implement both CL-O1 (management of subdivision, use and development to avoid unacceptable risk) and CL-O2 (remediation and site management contributing to broader wellbeing outcomes). Identification is inherently a precursor to both risk management and remediation. The absence of explicit cross-referencing does not indicate a structural deficiency. I am satisfied that the objective to policy relationship is clear and legally coherent. This orthodox drafting hierarchy has been affirmed in *Long Bay-Okura Great Park Society Inc v North Shore City Council* [2008] NZRMA 89 (CA), where the Court of Appeal confirmed that plan provisions must be interpreted purposively and as a coherent whole. CL-P1 provides the identification mechanism that underpins both CL-O1 (risk management through subdivision, use and development) and CL-O2 (remediation and site management). Explicit cross-referencing is not required for structural or legal validity.
33. In relation to the inclusion of the term “safety” in CL-O1, I do not accept that interpretation. The objective addresses land use outcomes and exposure risk arising from contaminated land. It does not regulate workplace systems, operational safety procedures, or compliance duties under the Health and Safety at Work Act 2015. Nor does it create any additional compliance obligation beyond the RMA framework. The term “safety” operates at the outcome level, describing the absence of unacceptable risk arising from subdivision, use or development. It does not create overlap with occupational health and safety regulation. In my view, its inclusion clarifies the intent of the objective. The Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38 confirmed that planning instruments must be interpreted in light of their statutory function. Here, the function is land use management under s31 of the RMA. The reference to “safety” clarifies the outcome sought in that context and does not intrude into occupational health and safety regulation.
34. Regarding Mr Trevilla’s statement that CL-O2 duplicates CL-O1 by referring to “the health of communities”, I disagree. CL-O1 addresses the avoidance of unacceptable risk at the activity and exposure scale. CL-O2 recognises that remediation and site management can generate

broader, longer-term positive outcomes, including increased certainty regarding land suitability and improved community confidence. These objectives operate at different conceptual levels of risk avoidance versus positive regeneration outcomes. They are complementary rather than duplicative.

35. In relation to the concern that CL-O2 creates an unrealistic expectation that all remediation will increase development opportunities, I consider this a mischaracterisation of the function of objectives. Objectives describe desired outcomes at a strategic level. They do not impose a mandatory performance threshold on every proposal. The objective recognises that remediation and site management can contribute to enabling future use and development. It does not require that every activity demonstrably expand development capacity. Consent assessments remain governed by the policies and the NES-CS framework. The objective appropriately recognises the enabling role remediation can play without imposing an absolute requirement. I do not consider the drafting to be unreasonable or unachievable.
36. Mr Trevilla further proposes replacing references to “proposed land use” with “intended use” to align with regulation 7 of the NES-CS. While alignment with national direction is important, I do not consider it necessary or appropriate to embed detailed NES-CS terminology within the objectives. The Court of Appeal in *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 confirmed that higher-order instruments must be given effect to, but subordinate instruments retain their own function unless expressly displaced. The concept of suitability for intended use is operational in nature and is more appropriately expressed at the policy level, where it directly informs consent assessment. The objectives are framed at a higher level of generality and focus on managing subdivision, use and development to avoid unacceptable risk. The current drafting achieves that purpose without narrowing the objective framework. Embedding detailed NES-CS terminology within the objective’s risks narrowing their scope unnecessarily.
37. Having considered the proposed replacement objectives set out in Mr Trevilla’s evidence , I am not persuaded that they represent an improvement on the notified framework. While they refine NES-CS terminology, they narrow the scope of the objectives and shift structural emphasis away from outcome-based drafting.
38. I also do not support removing references to “the environment” and focus “human health”. Section 31(1)(b)(ia) requires territorial authorities to control land use for the prevention or mitigation of adverse effects arising from contaminated land. That function is not confined to human health. The Court of Appeal in *Auckland Regional Council v North Shore City Council* [1995] NZRMA 424 (CA) emphasised that integrated management requires coordination of land use and environmental effects rather than rigid compartmentalisation of jurisdiction. The NES-CS establishes national minimum standards for human health protection; it does not exhaust or

replace broader territorial authority functions unless expressly stated. Removing reference to the environment would narrow the policy scope and undermine integrated management.

39. Finally, while the submission provides scope to debate wording, fully excising references to “the environment” or fundamentally restructuring the objectives would, in my view, go beyond what is necessary to address the issues raised. The notified framework maintains a clear distinction between:

- managing subdivision, use and development to avoid unacceptable risk (CL-O1); and
- recognising the positive outcomes of remediation and site management (CL-O2).

40. For these reasons, I recommend that CL-O1 and CL-O2 be retained as notified. I am satisfied that the objectives are internally coherent, appropriately scoped, and consistent with the Council’s statutory responsibilities under section 31 of the RMA, while complementing the NES-CS framework.

3.2.3 CL-P2 Earthworks on contaminated land

41. CL-P2 is a policy about earthworks on contaminated land, and the submission of The Fuel Companies sought its deletion on the basis that it goes beyond the scope of the NES-CS. The wording of the notified version of CL-P2 is:

CL-P2 Earthworks on contaminated land

Unless for the purpose of remediation, discourage the disturbance of contaminated land, where the level, type and toxicity of the contamination could adversely affect human health and safety and the environment.

42. Mr Trevilla also seeks deletion of the policy, but due to different reasons. He expresses the following concerns about the policy:⁵

- a. Deletion of reference to “the environment” (as discussed above);
- b. It fails to recognise that risk is determined by how the activity is undertaken;
- c. The policy may be discouraging for replacement of fuel storage systems where remediation is not required;
- d. The use of the word “safety” risks duplication with WorkSafe functions; and

⁵ Statement of evidence (planning) of Thomas Trevilla for the Fuel companies dated 17 February 2026 at [7.3-7.4]

- e. The policy does not provide any clear or useful policy direction beyond that which already exists in the other policies.
43. In my opinion, Mr Trevilla's concerns do not justify deletion of the policy. CL-P2 performs a distinct and legitimate function within the contaminated land framework and is consistent with the Council's statutory obligations under the RMA. I address each matter in turn.
44. Regarding Mr Trevilla's assertion that CL-P2 fails to recognise that risk is determined by how the activity is undertaken, CL-P2 is framed as a discouragement of disturbance "where the level, type and toxicity of the contamination could adversely affect" human health and the environment. It is inherently effects-based. The policy does not establish a presumption against development but signals that disturbance must be carefully assessed where contamination poses risk. It does not assume that all disturbance creates unacceptable effects. Rather, it signals that disturbance of contaminated land warrants scrutiny where risk is present.
45. In *Long Bay-Okura Great Park Society Inc v North Shore City Council* [2008] NZRMA 89 (CA), the Court of Appeal affirmed that policies are to be interpreted purposively and in context, not mechanistically. CL-P2 operates at a strategic level and informs decision-making; it does not prescribe methodology or override the NES-CS assessment framework.
46. The manner in which works are undertaken, including mitigation and management measures, is appropriately addressed through consent conditions under the NES-CS. The policy does not require amendments to explicitly reference methodology to remain valid.
47. While Mr Trevilla provided a useful example of CL-P2 discouraging replacement of fuel storage systems where remediation is not required, I note that the policy expressly excludes disturbance undertaken "for the purpose of remediation". Even where retanking is not strictly remediation, such works are regulated under the NES-CS and assessed against its permitted, controlled or discretionary pathways. CL-P2 does not override those pathways.
48. The Environment Court has consistently recognised that policies may legitimately signal caution without amounting to prohibition (see *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, confirming that plan provisions must be read in their statutory and factual context). CL-P2 does not prohibit retanking or infrastructure upgrades; it signals that disturbance of contaminated land should be carefully managed where risk is present.
49. Replacement of ageing tanks, when undertaken in accordance with the NES-CS and best practice, would not be inconsistent with the policy's intent. I do not consider the policy creates a material or legal barrier to infrastructure upgrades.
50. I have addressed the need for "safety" earlier in this report and do not repeat that analysis here.

51. I disagree with Mr Trevilla that CL-P2 does not provide clear or useful direction beyond that already contained in other policies.

CL-P1 addresses identification. CL-P3 addresses management and remediation. CL-P2 addresses disturbance that is not necessarily remediation. This structural sequencing reflects orthodox plan drafting and provides coherence to the chapter.

52. In *Genesis Power Ltd v Franklin District Council* [2005] NZRMA 541 (CA), the Court of Appeal emphasised that plan provisions must be read as a whole, recognising that different provisions perform different functions within the framework. I consider that removing CL-P2 would create a gap between identification and remediation by omitting policy guidance on disturbance that is neither purely investigatory nor remedial.

53. CL-P2 therefore serves a preventative function consistent with section 5 of the RMA, by signalling that unnecessary disturbance of contaminated land where risk is present should be avoided. That is a legitimate land use planning objective and is not redundant.

54. Having considered Mr Trevilla's evidence and the relevant statutory framework and case law, I am satisfied that CL-P2:

- falls squarely within the Council's section 31 functions;
- complements, rather than duplicates, the NES-CS;
- does not intrude into regional discharge control (with the reference to "the environment") or WorkSafe jurisdiction; and
- provides distinct preventative policy guidance within the chapter.

55. I therefore confirm my recommendation that CL-P2 be retained as notified.

3.2.4 CL-P3 Contaminated land management and remediation

56. The Fuel Companies' submission sought the replacement of CL-P3 with a shorter policy. While the Fuel Companies supported the intent of CL-P3, they consider that it exceeds Council's responsibilities under the RMA and NES-CS. I recommended retaining the policy, and Mr Trevilla agrees.⁶ However he expresses the following concerns with the wording of the policy:

- a. Deletion of the references to "the environment" (as discussed above);

⁶ Statement of evidence (planning) of Thomas Trevilla for the Fuel companies dated 17 February 2026 at [8.2]

- b. The words “the proposed land use” should be replaced with “intended use” to better align with the NES-CS and CL-O1;
 - c. Clause 1 and the chapeau duplicate wording;
 - d. The chapeau does not read well with the wording of some of the clauses such as clause 5; and
 - e. The chapeau should include “where appropriate” because not all clauses will apply to every activity.
57. While Mr Trevilla ultimately supports retention of CL-P3, he proposes a number of drafting refinements. I address each of those matters below.
58. Regarding Mr Trevilla’s proposed replacement of the words “proposed land use”, I have addressed this matter in paragraph 72 and 73 below and do not consider the replacement to be necessary.
59. Regarding the duplication between the chapeau and the subclauses, I do not agree that there is duplication in a material sense. The chapeau establishes the overall policy directive: to avoid, remedy or mitigate adverse effects arising from management or remediation of contaminated land. Clause 1 then specifies a primary outcome — that contaminants are reduced to levels acceptable for the relevant land use.
60. Structurally, the chapeau establishes the policy intent, and the clauses provide particularised methods or outcomes. This drafting technique is orthodox in district plans. The repetition of key language reinforces the hierarchy between the general directive and the specific implementation mechanism. It does not create ambiguity.
61. In my view, clause 1 performs a distinct function and should be retained.
62. In relation to the grammatical alignment between the chapeau and certain clauses, I have reviewed the structure. While the drafting could be marginally refined for grammatical flow, I do not consider the current wording to be legally uncertain or internally inconsistent. The meaning is clear: each clause identifies a matter that should be ensured in order to avoid, remedy or mitigate adverse effects.
63. Mr Trevilla suggests that the chapeau should include the words “where appropriate” and I agree that not all clauses will be relevant to every activity. However, decision-makers are already required to apply policies in a manner proportionate to the circumstances of the application. Policies are not applied mechanistically; they are interpreted purposively and in context.

64. The Environment Court has consistently held that plan provisions must be read as a whole and applied according to their relevance to the facts of the case. The absence of the phrase “where appropriate” does not compel application of irrelevant clauses.
65. The inclusion of “where appropriate” in the chapeau would not alter the substance of the policy and will not provide additional drafting clarity.
66. Having considered Mr Trevilla’s drafting concerns, I remain satisfied that CL-P3 as notified:
- falls within the Council’s section 31 functions;
 - complements the NES-CS without duplicating it;
 - provides structured and coherent policy direction; and
 - does not exceed the Council’s statutory responsibilities.
67. The concerns raised relate primarily to drafting refinement rather than substantive policy overreach. I therefore recommend retention of CL-P3 as notified.

3.2.5 Overall Conclusion regarding Fuel Companies evidence

68. Having carefully reviewed Mr Trevilla’s evidence, I conclude that:
- a. The Contaminated Land Chapter does not duplicate the NES-CS;
 - b. The chapter properly reflects Council’s section 31 function;
 - c. Environmental references are necessary to ensure the Plan gives effect to the Council’s section 31 functions and remains consistent with Part 2 of the RMA;
 - d. Deletion or narrowing of CL-P2 and CL-P3 would create a policy gap;
69. I consider that no amendments are warranted.
70. For these reasons, and as set out in detail in the s42A report, I consider the notified objectives and policies (with minor amendments as recommended in the s42A report) to be the most appropriate, effective, and efficient means of achieving the purpose of the Act. The Fuel Companies’ proposed amendments would reduce clarity, create gaps in policy coverage, and risk undermining Council’s broader RMA responsibilities.

3.3 Planning evidence for Northpower

71. The planning evidence of Mr Badham on behalf of Northpower addresses the following provisions / matters:

- a. Deletion of the Contaminated Land chapter in its entirety;
- b. Objective CL-O2
- c. Policy CL-P2
- d. Policy CL-P3
- e. Terminology of 'avoid'
- f. Restrictive nature of framework

72. Mr Badham's evidence:

- a. Confirms that the Contaminated Land chapter must remain due to RMA obligations.
- b. Seeks amendments to CL-O2 and Policy CL-P2 to enable infrastructure on contaminated land.
- c. Seeks revisions to Policy CL-P3.4 as the "avoid" requirement may be excessive.
- d. Considers that the current framework is too restrictive for infrastructure providers.

3.3.1 Retention of contaminated land chapter and Section 31(1)(b)(iia) of the RMA

73. I appreciate the comment from Mr Badham and agree that by retaining a Contaminated land Chapter correctly reflects the legislative framework. Section 31(1)(b)(iia) of the RMA explicitly assigns territorial authorities the function of managing land use to prevent or mitigate adverse effects arising from contaminated land. Accordingly, a district plan must contain provisions that give effect to this statutory responsibility. Full deletion of the chapter would not be consistent with the mandatory functions of a territorial authority.

74. Consequently, no amendments are required to as a result of this point.

3.3.2 Objective CL-O2 and Policy CL-P2

75. Mr Badham seeks amendments to CL-O2 and CL-P2 to better enable the establishment, operation, maintenance, upgrading, and development of infrastructure on contaminated land. He restates that infrastructure is often located on, or must traverse, historically contaminated land, and therefore the Plan should include provisions enabling remediation, site management, and necessary earthworks associated with such infrastructure.

76. He considers that the National Policy Statement for Infrastructure (**NPS-I**) provides strengthened national direction to enable infrastructure and to recognise its functional and operational needs,

including where this requires locating in constrained environments. He considers that amendments to CL-O2 and CL-P2 would be consistent with the new NPS-I.

77. I canvassed this issue in paragraph of 72 of my s42a report and I consider that CL-O2 focuses on promoting remediation and management of contaminated land to enable safe use and development. It is effects-based and outcome-focused, which is appropriate for an objective and does not require activity-specific references. Introducing explicit references to particular activities such as infrastructure would narrow the scope of CL-O2 and risk shifting it from an outcome-based objective to an activity-enabling statement, which is more appropriately addressed through policies elsewhere in the Plan.
78. In paragraph of 73 of my s42a report, I observed that amending CL-O2 would not change consent triggers or assessment pathways. Contaminated land matters continue to be managed through the NES-CS.
79. I consider that the infrastructure chapter is the appropriate vehicle to give effect to the NPS-I.
80. Consequently, I recommend that amendments are not required to CL-O2 or CL-P2.

3.3.3 Clause 4 of Policy CL-P3

81. Clause 4 of Policy CL P3 requires the avoidance of adverse effects on human health or the environment in contaminated soil disposal scenarios. Mr Badham seeks amendments to clause 4 of Policy CL P3. He considers that avoidance is not always practicable or necessary and that the policy should instead allow decision makers to apply the full effects management hierarchy of avoid, remedy, or mitigate.
82. I addressed this matter in paragraph 106 of my s42a report, and note that CL-P3 uses “avoid, remedy or mitigate” in its chapeau for general management and remediation activities. This provides appropriate flexibility for in-situ treatment, containment, and site management where the contamination remains on the original site. Clause 4 is specifically about disposal - a subset of activities that justifies the higher “avoids” threshold. While Northpower’s general point about effects hierarchy flexibility has merit for many contaminated land activities, disposal is the exception that proves the rule. Disposal involves removal and relocation of contaminants and therefore carries a heightened risk of creating new contamination effects, justifying a stronger directive:
 - Infrastructure projects that generate contaminated soil can still dispose of it; they just need to use appropriate facilities.
 - The standard does not constrain infrastructure development.
 - It prevents the creation of new contamination sites through inappropriate disposal; and

- This protects both human health and the environment in accordance with RMA purposes.

83. As is stated in paragraph 107 of my s42a report, I consider that the requirement for the disposal of contaminated soils to 'avoid' further effects rather than including 'remedy' or 'mitigate' effects acknowledges the inherent known risks with disposal of contaminated soils and underpins the precautionary approach and intent to prevent the spread of contaminants.
84. Consequently, I do not recommend any amendments to Clause 4 of CL-P3.

3.3.4 Assess whether the current framework is too restrictive for infrastructure providers.

85. Mr Badham considers that the Contaminated Land chapter applies "unnecessarily restrictive" and "prohibitive language," particularly in relation to infrastructure works on contaminated land, and that the policy framework should be adjusted to better provide for upgrades and new infrastructure while still managing adverse effects.
86. While I acknowledge the concern, the planning framework purposefully adopts a precautionary approach due to the significant risks contaminated land can pose to human health and the environment. The requirement for clear policy direction is not intended to restrict infrastructure development, but rather to ensure that any activity involving contaminated soils is undertaken safely, is appropriately assessed, and complies with both district-level obligations and national standards.
87. The RMA places a mandatory responsibility on the Council under s31(1)(b)(iii) to control the use of land for the prevention or mitigation of adverse effects from contaminated land. This statutory direction requires district plans to contain robust provisions that avoid unacceptable risks.
88. The chapter does not prevent infrastructure activities from occurring on contaminated land. Instead, it ensures that such activities are supported by appropriate investigation, remediation, and disposal practices, reflecting well-established good practice and the NES-CS framework.
89. The requirement for clear and sometimes directive policy wording is consistent with national expectations for contaminated land management. Achieving safe development outcomes necessitates strong guidance for plan users.
90. Mr Badham correctly notes that infrastructure works frequently encounter contaminated land; however, this reinforces rather than diminishes the importance of maintaining a strong, effects-focused policy framework. Ensuring human-health protection and environmental safety requires specific direction within the PDP, and the policies have been drafted to balance enabling activities with avoiding unacceptable risks.

91. Accordingly, while the chapter may require infrastructure providers to undertake certain assessments or management steps, these requirements are neither unnecessary nor unduly restrictive but instead reflect the Council's statutory obligations and the need for clear, consistent risk-management provisions.
92. The framework therefore remains appropriate and proportionate to the level of environmental and human-health risk associated with contaminated land.

4. Section 32AA RMA

93. Given that I have not recommended any further amendments to the provisions, an additional s32AA evaluation is not required.