

**IN THE MATTER OF** Resource Management Act 1991

**AND**

**IN THE MATTER OF** Proposed Timaru District Plan

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**Decision Report – Part 8**

**Natural Hazards, Drinking Water Protection, Contaminated Land and Hazardous  
Substances**

**19 March 2026**

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# Part 8: Natural Hazards, Drinking Water Protection, Contaminated Land and Hazardous Substances

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## **1 MATTERS CONSIDERED IN THIS PART**

[1] This Part of the Report addresses Natural Hazards, including Coastal Hazards, in a new amalgamated NH Chapter. The report also includes decisions on Drinking Water Protection (DWP), Contaminated Land (CL) and Hazardous Substances (HS).

## **2 NATURAL HAZARDS**

[2] As we have discussed in Part 1 of the Report the Government gazetted a new National Policy Statement for Natural Hazards 2025 (NPS-NH), which came into effect on 15 January 2026. We requested the views of Council and submitters as to the effect of the suite of new (and amended) national direction instruments.<sup>1</sup> Mr Willis, the s42A Report author for the NH and CE Chapters was of the opinion that no changes are required to the Proposed Plan in light of the NPS-NH, and there were no changes to his recommendations. For the most part he considered that there is good alignment between the Proposed Plan and where there was not complete alignment, he questioned the appropriateness of making changes given the lack of scope in submissions on the Proposed Plan and the complexity of the evaluations that would be required to do so.<sup>2</sup> There were no submitter responses with a contrary view. ECan was supportive of that approach.<sup>3</sup>

[3] We have considered the NPS-NH, and agree with Mr Willis' appraisal that there is good alignment with the national direction. The revised approach to the management of natural hazards recommended by Mr Willis, on the advice of ECan discussed in detail below, provides an appropriate risk-based approach to the management of natural hazards and enables a cautious approach where the level of information required to map actual risk is on a property-by-property basis. We would expect further refinement in the approach in future plan change processes.

### **2.1 COASTAL HAZARDS**

#### **2.1.1 Assessment**

[4] As notified, coastal hazards were addressed in the CE Chapter (as required by the NPS), however, Mr Willis, the s42A author for both the NH and CE Chapters recommended that the CE natural hazard provisions be merged with the NH Chapter.<sup>4</sup> PrimePort [175], whose activities are significantly impacted by the CE Chapter, agreed that the provisions would be better merged into the NH Chapter.<sup>5</sup> We agree that the natural hazard provisions are unnecessarily duplicated and potentially confusing given the interrelationship between multiple hazard sources in the District.

[5] Having considered the requirements of the NPS and the structure of the Proposed Plan we are satisfied that provided there are appropriate linkages between the two chapters,

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<sup>1</sup> Minute 50 and 51

<sup>2</sup> Memorandum of Counsel for TDC in response to Minute 50, 20 January 2026, paragraph 17.

<sup>3</sup> Part 1 Decision Report

<sup>4</sup> Andrew Willis, s42A Report, 25 March 2025, paragraph 1.2.5 and 1.2.6

<sup>5</sup> Statement of Evidence, Tim Walsh, 9 April 2025, paragraph 50.

to direct plan users from the CE Chapter to the NH Chapter for the relevant provisions, then a similar outcome is achieved, and is not inconsistent with the direction in the NPS. We note, as stated by Mr Willis, that this approach aligns with the Canterbury 'best practice' for flood modelling to consider flooding from all sources be they rainfall, river overflow, sea water inundation, or a combination. As we discuss further below, in response to submissions from ECan [183] and the technical evidence of Mr Griffiths,<sup>6</sup> we have accepted an amendment to the approach to addressing flooding risk from all sources with an updated 'Flood Assessment Area Overlay' and amendments to the definition of 'high hazard area'. The merging of the hazard provisions better aligns with this approach.

[6] The Panel directed expert conferencing between Mr Willis and Mr Walsh, on behalf of PrimePort, to provide a merged set of replacement provisions to ensure that the Port of Timaru, which is the regionally significant infrastructure located in the coastal environment, is appropriately addressed through the merging of the provisions. In effect the outcome was to:

- (a) make changes to the Port zone provisions as agreed between Mr Willis and Mr Walsh<sup>7</sup>;
- (b) delete the coastal hazards related provisions in the CE Chapter;
- (c) insert the coastal hazards provisions into the NH Chapter as standalone provisions (e.g. NH-O2, NH-P9, NH-P12, NH-P13, and NH-R3<sup>8</sup>;

[7] merge other provisions into the natural hazards' provisions where possible (e.g. amending NH-P3 and NH-P11, and amending NH-R4, NH-R5, NH-R7 and NH-R8<sup>9</sup> to include the Coastal Environment Area Overlay, Sea Water Inundation Overlay and Coastal Erosion Overlay provisions where required);

- (a) amend the NH Chapter introduction to specify it also covers coastal hazards; and
- (b) other minor amendments (such as provision re-numbering).

[8] The Panel has reviewed the amendments recommended by Mr Willis, as updated in the Final Reply (dated 10 October 2025) and considers the changes to the structure to be appropriate. We adopt Mr Willis' recommendation in relation to the structure of the merged provisions. Our assessment of the specific NH Chapter is inclusive of the amended provisions relating to coastal hazards. Where provisions numbers have changed in the Decision Version of provisions in **Appendix 3** from the notified Plan, we have used the Decision Version numbering in the section headings, following the order of provisions as set out in the Decision Version of the NH Chapter, and provided a footnote with the notified provision number to assist the reader of this Decision. We note that provision numbering containing an A, X, Y or Z were proposed in the s42A Report. Refer to **Appendix 1** for a list of renumbered provisions in the CE and NH Chapters.

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<sup>6</sup> s42A Report, Appendix 8

<sup>7</sup> Joint Witness Statement, 30 June 2025 in response to Minute 34

<sup>8</sup> Previously CE-O4, CE-P14, CE-P12, CE-P3 and CE-R7

<sup>9</sup> Previously NH-R3, NH-R4, NH-R5 and NH-R6

### 2.1.2 Decision

[9] We adopt the recommended amendments to the structure of NH Chapter and consequential deletions and amendments to the CE Chapter as they relate to coastal hazards as set out in the provisions in **Appendix 3**.

[10] We adopt Mr Willis' advice that no further s32AA evaluation is required for this structural change. To the extent the provisions are modified to address the submission of PrimePort, we adopt the s32AA evaluation as set out in Mr Willis' and Mr Walsh's (for PrimePort) JWS. We are satisfied that the structural changes can be accommodated in accordance with RMA, Schedule 1, cl 16(2)(b).

## 2.2 WAIPOPO HUTS GROUPED SUBMISSIONS

### 2.2.1 Assessment

[11] Waipopo Huts [189.48] and Te Kotare Trust [115.1] supported the NH rules insofar as they enable the outcomes contemplated by the Māori Purpose Zone (MPZ) objectives and policies, but opposed those NH rules insofar as they frustrate or impede these objectives by imposing undue regulatory burdens on the use, development and renewal of dwellings within the submitters' land. Likewise, Te Rūnanga o Ngāi Tahu [185.47] also sought to enable development on Māori land in the MPZ. Te Kotare Trust [115.2] considered that the matters advanced in their submission appear to be equally applicable to other Māori land within the Waipopo area as the same issues apply.

[12] The submissions sought amendment to the chapter objectives, policies, and methods as necessary to enable the use, development, and renewal of dwellings on the submitters' properties at Waipopo Huts, and to provide for mana whenua needs and activities on their land. They also sought to insert a permitted activity rule to allow the reconstruction of dwellings that previously occupied the Waipopo Huts land. Additionally, they sought to apply the relief sought in this submission equally to other Māori owned land within this area.

[13] Mr Willis referred to a report produced by ECan on the Waipopo Huts titled the "Timaru District recreational hut communities, overview assessment of flooding hazards" dated November 2020. The Report concluded that:<sup>10</sup>

the main huts area avoids serious flooding in a range of modelled scenarios when flooding originates from upstream, however there is potential of severe flooding if the adjacent stopbank breaches. This is a low probability scenario but would have high consequences for the dwellings, and for the safety of any resident present during a flood. Any future increase in development at the main huts area would increase the flood risk in a local stopbank breach scenario. The top huts are likely to be subject to serious flooding in a wide range of scenarios, including from upstream river overflows and stopbank breaches immediately upstream. In the scenarios modelled as part of this investigation, deep flooding occurs at these dwellings but in no scenario does it trigger high hazard flooding criteria (apart from a small area within the high hazard stopbank setback area).

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<sup>10</sup> Timaru District recreational hut communities, overview assessment of flooding hazards" dated November 2020, section 4.8.

Flooding is still significant and property damage may still occur. While not triggering high hazard criteria the flooding at these dwellings is significant in some scenarios and property damage may still result....

there is considerable uncertainty contained within in flood modelling and assumptions. The modelling should not be used in isolation but in combination with historic records, topographic information and site visits to fully determine flood hazard at a site-specific level. The uncertainty and limitations in the modelling approach are recognised but do not create doubt around the overall nature and patterns of flooding expected over the study area. Where deep flooding is shown, we expect deep flooding, and where flow paths are indicated, we expect the worst flooding in major floods. The pattern of flooding provided here is the best quantification of the flood hazard that we can produce at this time.

[14] Attached to the s42A Report is a statement from Mr Bosserelle, an environmental hazard scientist employed by NIWA.<sup>11</sup> Mr Bosserelle stated that the Waipopo Huts are generally not exposed to a coastal inundation hazard from a 1% AEP storm event with present day sea-level but are exposed for a 1% AEP storm event with 0.6m sea level rise (SLR) and above. Because it is likely that SLR will make flooding more likely in Waipopo Huts, he considered that restrictions are required for developing, intensifying, or upgrading and/or replacing dwellings in these areas to avoid unnecessary increase in the risk. The hazard varies at different locations within the Waipopo Huts location and different flood mitigation measures may be more or less appropriate depending on the dwelling location. The notified Plan's High Hazard Area Overlay only applies to Milford Hut, Waipopo Huts and Rangitata Huts and hence covers a much smaller area than the sea water inundation overlay. Mr Bosserelle considered that NH-R7<sup>12</sup> and NH-R8<sup>13</sup> are appropriate (as notified) for permitting some new building while restricting new building in hazard prone areas.

[15] Mr Willis, whilst taking into consideration Mr Bosserelle's opinion had regard to the fact that the hut areas were set aside for a specific Māori purpose decades before the RMA, the previous Town and Country Planning Act and District Plans were developed. The bulk of the Waipopo Huts area is zoned MPZ and that the Waipopo Main Huts area was "inadvertently" left off the map, and that the extent of the MPZ was intended to correlate to the former Māori Reserve. This omission occurred in the notified Planning Maps and has been corrected through our Part 3 decisions. On that basis Mr Willis considered that due to the special status 'special care' is required when developing and applying natural hazard provisions for these sites. Mr Willis considered that the MPZ should be considered an urban zone, and therefore within CRPS, Policy 11.3.1 'avoidance or mitigation' of natural hazards is appropriate in urban zoned 'high hazard areas'.

[16] Mr Willis recommended that new hazard sensitive activities are provided for as permitted activities in the MPZ where subject to flooding, including in 'high hazard areas, if the required floor levels are met. If they are not met, the development would become restricted discretionary (as opposed to non-complying in the notified Plan.).

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<sup>11</sup> S42A Report, Appendix 4

<sup>12</sup> Now deleted

<sup>13</sup> Now relocated and renumbered SUB-R5 in the Decision Version of the provisions.

[17] Mr Willis recommended consequential changes to NH-R4<sup>14</sup>, and additional matters of discretion to enable consideration of the purpose for which an MPZ was created and the views of mana whenua. This is consistent with his recommendation to include the views of mana whenua within the Strategic Directions Chapter.

[18] Mr Willis' recommended approach to Waipopo Huts differs to his recommendations for the Rangitata Huts and Milford Huts which are located in the Open Space Zone, which is not an urban zone and as such are caught by the CRPS 'avoid' approach. He acknowledged that this approach is somewhat arbitrary, but it does provide a pathway to recognise the special status of the Waipopo Huts located on MPZ land which he considered is appropriate. Mr Willis concluded that in terms of RMA s32 his approach is generally consistent with the higher order CRPS Policy 11.3.1 in relation to managing activities within urban areas subject to natural hazards. It also supports achieving rakatirataka within the MPZ and therefore supports internal Plan consistency. He considered the amendments better gives effect to RMA s8. Overall, he concluded that the amended approach is the most appropriate for achieving the Act.

[19] At the hearing we received legal submissions from Ms Walter for the Waipopo Huts Trust.<sup>15</sup> Ms Walter recorded the Trust's support for Mr Willis' recommendations and provided an evaluation of the s42A recommendations in terms of the requirements of s32 of the Act. The Trust called evidence from Trustee, Ms Stevenson<sup>16</sup> and Mr Kerr, a Flood Hazard Expert.<sup>17</sup>

[20] We note that Mr Kerr, agreed with the recommended approach in that it appropriately addressed the purpose of the MPZ with 'prudent management of risk'.<sup>18</sup>

[21] We appreciate that the distinction is a fine one, in the context of hazard risk. The approach as we understand it reflects the fact that there is a greater density of built form in urban areas generally, and therefore risk management should provide for mitigation as provided for in the CRPS. We return to this distinction in our consideration of submissions from the South Rangitata Huts which are located in an Open Space Zone, which is not an urban zone, but is an established settlement community despite leasehold land tenure. In the case of the Waipopo Huts, we agree the additional distinguishing factor is the purpose of the MPZ and the historical setting aside of land for use by mana whenua.

### 2.2.2 Decision

[22] We adopt Mr Willis' recommended amendments for the reasons he outlined and for the reasons summarised by Ms Walter on behalf of Waipopo Huts Trust. We adopt their respective s32 evaluations as meeting the requirements of s32AA.

[23] The amended provisions are set out in **Appendix 3**.

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<sup>14</sup> Now renumbered NH-R5 in the Decision Version of the provisions.

<sup>15</sup> Legal Submissions for Waipopo Huts Trust Regarding Hearing F Natural Hazards, 16 April 2025

<sup>16</sup> Elizabeth Stevenson, Statement of Evidence, 9 April 2025

<sup>17</sup> Robert Kerr, Statement of Evidence, 9 April 2025 and Appendix A Statement of Evidence presented at Hearing E.

<sup>18</sup> Ibid, paragraph 18.3

## 2.3 THE PORT OF TIMARU

### 2.3.1 Assessment

[24] A number of submissions on both the NH and CE Chapters by PrimePort [175], TDHL [186] (the Port's owner) and businesses located in or with interests in the PORTZ such as BP Oil, et al [196]. These submissions generally sought to better provide for PrimePort's activities in the Port's Operational Area (PREC7), along with associated activities in the wider PORTZ that rely on and support the Port's activities.

[25] Mr Willis acknowledged, and we agree, that the Port cannot be relocated and because of its function, it needs to be in an area that is exposed to coastal hazards. However, at the same time natural hazard risk needs to be managed for the activities operating from the Port. The Port's efficient ongoing operation and development relies on its ability to adapt its hazard mitigation as sea level rises and to support this, the Plan's natural hazard provisions need to be pitched correctly.

[26] Mr Bosserelle<sup>19</sup> stated that sea water inundation modelling completed by NIWA shows the Port area identified by PREC7 is progressively becoming increasingly exposed to sea water inundation as sea level rises. In his opinion, modelling by NIWA is likely conservative in the Port area as it underestimates the damping role of the existing rock revetment on inundation as well as specific stormwater management in the Port area. He confirmed that results from the simulation are realistic when compared to historical high wave events. Mr Bosserelle stated that the Sea Water Inundation Overlay in the Plan shows the inundation simulated for a 1% AEP storm event with 1.2m SLR and that the Port area is highly exposed to inundation. Mr Bosserelle considered that the planning rules for the Port area need to allow flexibility to adapt to increasing hazards from sea level rise so that they do not unnecessarily constrain its development and compromise its viability. However, any mitigation for the Port should not increase the risk for other areas. In the wider PORTZ Mr Bosserelle considered that some industrial development could be allowed where the effects of flooding (not limited to resilience to sea water flooding but also to account for impact of floating debris and their potential generation) can be mitigated either through flood/stormwater structures; and that the mitigation can be upgraded as sea level rises to maintain a similar level of protection. In addition, specific measures would need to be in place to guarantee the safety of life in the area during storm events.

[27] Mr Willis considered that the Plan provisions applying to natural hazards affecting the Port are not adequately tailored to achieve flexibility for continuation of Port activities and management of risk. A complicating factor is that the Port has a few business activities it relies on, and which rely on it, which are located adjacent to but outside the Operational Area of the Port but still in the wider PORTZ. These activities include cool stores; general storage; offices; bulk liquid importers; pipelines (including fuel); quarantine; fishing and engineering; container storage and processing; food grade dry goods storage and packaging; and log processing. There are also some general industrial activities located in the PORTZ which have no or little relationship to the Port.

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<sup>19</sup> S42A Report, Appendix 4

[28] Mr Willis met with the planning experts for PrimePort and ECan and together they developed a set of PORTZ specific provisions, which were also reviewed by the technical experts for TDC and PrimePort. Mr Todd, a Coastal Geomorphologist<sup>20</sup> engaged by TDC, confirmed he supported the recommendations.

[29] Mr Willis confirmed that in terms of RMA s32 the amended approach strikes an appropriate balance between providing for the continued operation of the Port and associated industrial activities, while at the same time managing natural hazard risk to appropriate levels. Which in his opinion gives effect to the CRPS natural hazard and infrastructure provisions and NZCPS Policy 25. It is also consistent with CE-O4.<sup>21</sup> He considered that there is no risk from acting as there is sufficient information on the natural hazard risk. He concluded the approach is more efficient than the notified approach. Overall, his opinion was the amended approach is the most appropriate for achieving the Act.

[30] Mr Carranceja, legal counsel for PrimePort and TDHL, confirmed agreement with the amended approach subject to a number of identified drafting errors and matters of duplication (later resolved with the restructuring of the coastal hazard provisions into the NH Chapter addressed above).<sup>22</sup> The drafting improvements were also addressed in the evidence of Mr Walsh.<sup>23</sup>

[31] Mr Willis recorded in his Interim Reply<sup>24</sup> that he accepted the drafting changes recommended by Mr Walsh and has incorporated these into the Final Reply.

### **2.3.2 Decision**

[32] We adopt the analysis and recommendations of Mr Willis for the reasons set out above. The amendments to the provisions are set out in **Appendix 3**.

[33] In terms of s32AA, we adopt Mr Willis' evaluation in support of the changes made.

## **2.4 DEFINITION OF EARTHQUAKE FAULT AWARENESS AREA**

### **2.4.1 Assessment**

[34] ECan [183.14B] requested an amendment to this definition as earthquake fault awareness areas are not only mapped to 'ensure that landowners and service providers are aware of them', but they are also mapped to support a regulatory response. Mr Willis agreed with the requested changes for the reasons given by the submitter. We also accept the change as appropriate.

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<sup>20</sup> S42A Report, Appendix 3

<sup>21</sup> Now renumbered CE-O6 in the Decision Version of the provisions.

<sup>22</sup> Legal Submissions on behalf of PrimePort and TDHL, 16 April 2025.

<sup>23</sup> Tim Walsh, Statement of Evidence, 9 April 2025, and

<sup>24</sup> Andrew Willis, s42A Interim Reply, 23 June 2025, paragraph 30(b).

## 2.4.2 Decision

[35] We adopt the analysis and recommendations of Mr Willis on the definition of 'earthquake fault awareness area' for the reasons set out above. The amended definition is set out in **Appendix 3**.

[36] We are satisfied that the original s32 evaluation continues to apply.

## 2.5 DEFINITION OF HIGH HAZARD AREA

### 2.5.1 Assessment

[37] Silver Fern Farms [172.2] and Alliance Group [173.2] submitted that given the implications for consenting, clarification is needed as to whether reference in this definition to 'inundation' means land in the Sea Water Inundation Overlay will also be subject to the High Hazard Overlay. ECan [183.14] considers the definition of 'high hazard' in the CRPS is wider than just freshwater flooding and includes areas subject to coastal flooding and coastal erosion and submitted that these matters need to be addressed in a consistent manner across the Plan, and the definition updated. They requested that the definition of 'high hazard areas' is amended to be consistent with the definition in the CRPS by including coastal hazards and consequential amendments in the CE Chapter to ensure that activities are treated in the same manner (except as required by the NZCPS).

[38] Mr Willis agreed that the definition in the Proposed Plan is not consistent with the CRPS definition as it does not include areas subject to coastal erosion, nor sea water inundation. He said this is due to the approach to coastal erosion changing through the drafting process and because the CRPS 'high hazard' definition includes any amount of sea water inundation, which he considered unhelpful as, in his opinion, small infrequent amounts should not be 'high hazard'.

[39] In response to the submissions Mr Willis recommended a drafting amendment to clarify that the definition may include land within the Sea Water Inundation Overlay which meets the definition. In terms of a s32AA assessment, he concluded that the amended definition more accurately identifies high hazard areas and is more consistent with the CRPS definition of 'high hazard'. Accordingly, it is more appropriate for achieving the Proposed Plan's objectives and the purpose of the Act. We agree with Mr Willis' evaluation and recommended drafting changes.

[40] Ms Francis, the planning witness for ECan supported the drafting changes.<sup>25</sup>

### 2.5.2 Decision

[41] We adopt the analysis and recommendations of Mr Willis on the definition of 'high hazard area' for the reasons set out above. The amendment to the provisions is included in **Appendix 3**.

[42] In terms of s32AA we adopt Mr Willis' evaluation in support of the changes made.

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<sup>25</sup> Diedre Francis, Statement of Evidence, 9 April 2025, paragraph 31.

## **2.6 DEFINITION OF LIQUEFACTION AWARENESS AREA**

### **2.6.1 Assessment**

[43] ECan [183.7] submitted that the land within the liquefaction awareness area will not necessarily liquefy during an earthquake (in most cases it will not), but the sediments underlying these areas are such that there could be liquefiable sands and silts within them, and a site-specific assessment is required to determine this. They sought that the definition of 'liquefaction awareness area' is amended to reflect this.

[44] Mr Willis agreed that liquefaction may not always occur and the risk needs to be individually assessed and recommended the changes requested be accepted.

### **2.6.2 Decision**

[45] We adopt the analysis and recommendations of Mr Willis on the definition of 'liquefaction awareness area' for the reasons set out above. The amended definition is set out in **Appendix 3**.

[46] We are satisfied that the original s32 evaluation continues to apply.

## **2.7 DEFINITION OF NATURAL HAZARD MITIGATION WORKS**

### **2.7.1 Assessment**

[47] EnviroWaste [162.4] requested an amendment to this definition to clarify the types of works that "natural hazard mitigation works" covers, stating that listing typical works by way of an example (such as 'stopbanks') would assist practitioners to understand how the rules apply.

[48] ECan [183.14A] (and the related submissions from ECan [183.84] and [183.87] on the NATC Chapter) consider that the current definition of 'natural hazard mitigation works' refers to natural hazards mitigation as part of its definition in relation to different types of engineering work and that this may cause confusion and lacks clarity. They consider that natural hazard mitigation works encompasses flood and erosion protection works and drainage works instead of natural hazard mitigation works and note that there is already a definition for flood protection works in the Proposed Plan (referred to in ECO-R1) and this could be built upon. Drafting suggestions were included.

[49] Mr Willis agreed with the submitters and recommended that the definition is amended to provide greater clarity, and alignment with the existing definition of 'flood protection works'.

### **2.7.2 Decision**

[50] We adopt the analysis and recommendations of Mr Willis on the definition of 'natural hazard mitigation works' for the reasons set out above. The amendment to the definition is included in **Appendix 3**.

[51] We are satisfied that the original s32 evaluation continues to apply.

## 2.8 DEFINITION OF NATURAL HAZARD SENSITIVE BUILDING<sup>26</sup>

### 2.8.1 Assessment

[52] ECan [183.173] submitted on this definition but this submission was omitted in the submission summary. Because of this, the Council notified a summary of this ECan submission in February 2025, and one further submission was received from NZ Pork [247.58FS] in opposition.

[53] Lineage Logistics NZ [107.4], Southern Proteins [140.4], PrimePort [175.14] and TDHL [186.7] all sought to delete or increase the definitions reference to employees. Employee numbers requested in the submissions were 10, 12 and a number of employees which accurately reflects the risk associated with a natural hazard.

[54] ECan [183.173] sought to amend the definition to be similar to the Kaikoura District Plan (KDP) definition that is based on the physical characteristics of the building, rather than the use of the building. They considered this would make it easier for applicants and council staff to determine if a given building meets the definition or not. ECan noted that the physical characteristics of the building are also less likely to change than the use of the building, and if they do change, would often require building consent. Finally, they noted that there is limited opportunity for the Council to pick up change in building use.

[55] NZ Pork [247.58FS] opposed this submission due to concern about the impact of this definition change on the rule structure proposed in the plan and the lack of clarity as it relates to the variety of buildings used to support primary production and different land use activities that characterise the activity and sensitivity to natural hazards.

[56] Mr Willis responded by noting that the NH Chapter is concerned with risk to people and risk to buildings, and this is consistent with the approach taken in the CRPS. However, building risk is more or less significant depending on the value and significance of the building at risk. In the notified definition, a habitable room (Clause 1 of the definition) covers living rooms, dining rooms, sitting rooms, bedrooms, and offices. It does not however include buildings such as storage warehouses if there are no offices, but which might be significant structures. The reference to the number of employees was used as a proxy to capture these other buildings that were not captured by Clause 1.

[57] He considered the recent definition in the KDP which referenced buildings serviced with a sewage system and connected to a potable water supply as a proxy to capture more significant buildings that do not have habitable rooms. By way of comparison, another approach is the Selwyn District Plan's (SDP) approach of referencing Principal Buildings. He looked at other plans that referenced the number of employees, such as Wellington District Plan which used 10 as the threshold for sensitivity.

[58] Having considered options and the scope of submissions he recommended aligning the definition to the KDP approach, including covering conversions of buildings. He recommended that it is also clearer to replace the word "activities" in the definition with

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<sup>26</sup> Previously 'natural hazard sensitive activity'

“buildings” as all the natural hazard sensitive activities are buildings. Given the focus of the chapter in managing risks to capture sensitive activities he did not recommend the changes requested by NZ Pork.

[59] Mr Willis evaluated the change under s32AA and concluded the amended definition is more targeted to natural hazard risk than the notified definition. As such, it more accurately implements NH-O1 and its supporting policies. He considered it more accurately applies the risk-based approach of the CRPS and its natural hazards objectives 11.2.1 and 11.2.2 and is therefore more efficient and effective than the notified definition. Accordingly, it better achieves the purpose of the Act.

[60] Ms Tait, the planning witness for Fonterra [165] raised at paragraphs 6.1 to 6.5 of her evidence<sup>27</sup> concerns regarding Mr Willis’ recommended changes to the definition. She said that while she appreciated Mr Willis’ view, she considered the approach recommended by Mr Willis merely adopts another proxy (size of building instead of number of staff) to determine the value or significance of a building.

[61] Ms Tait’s view was a proxy of some kind is necessary or appropriate, as seen in other District Plan chapters (such as building area or staff numbers for determining traffic generation). However, she considered this needs to be set at a reasonable level so as not to unnecessarily burden landowners and developers. Noting that, if a building falls outside the ‘natural hazard sensitive building’ definition, this does not stop a landowner or developer determining that it is sufficiently valuable or significant and protecting it accordingly. Having considered the submissions on the definition, she considered that both a building floor area and an employee number is appropriate for determining value / significance. She recommended a 100m<sup>2</sup> GFA minimum to avoid capturing smaller, often portable buildings and the minimum of 10 staff was supported by a number of other submitters, which she considered was appropriate.

[62] Mr Walsh for PrimePort and TDHL also responded to Mr Willis’ recommended amendment.<sup>28</sup> He said that the newly recommended definition is more restrictive than the notified definition of natural hazard sensitive activity and, whether by design or not, will capture a large percentage of buildings on a site. Clause 1 of the recommended definition is particularly problematic in his view as it captures any building that ‘is/are used as part of the primary activities on the site’. Whilst this was not a particular concern for the PORTZ, he drew this to our attention.

[63] We note that Mr Willis’ recommendation for the change is primarily based on a response to the ECan submission, which in turn sought a change to align with the KDC definition. The KDC definition did not include an area threshold for the rule. Mr Willis considered that a 30m<sup>2</sup> threshold, as it is referred to in rules NH-R5<sup>29</sup> and CE-R4 was appropriate as small buildings and small additions will not likely increase the risk profile of the activity and were excluded from the rules. When addressing NH-R5<sup>30</sup> later we note that no

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<sup>27</sup> Susannah Tait, Statement of Evidence, 9 April 2025 paragraph 6.5

<sup>28</sup> Tim Walsh, Statement of Evidence, 9 April 2025, paragraph 25-26

<sup>29</sup> Previously NH-R4.

<sup>30</sup> Previously NH-R4.

submitter sought an alternative to the 30m<sup>2</sup> rule<sup>31</sup> threshold specifically, although rural submitters with farming interests were concerned about the practicality of the rule in terms of normal farming practices. In terms of the impact on rural activities we note the amended definition includes a number of exclusions related to those activities.

[64] We have considered Mr Walsh's concern about the narrowing of the scope of the definition, however, when considered in the context of the rule NH-R5<sup>32</sup>, we do not think it has narrowed the definition in a way that has any actual impact on the operation of the rules, rather it provides consistency. We have considered Ms Tait's suggested drafting but do not consider we have any comparative evaluative evidence to suggest that 100m<sup>2</sup> with or without employee numbers strikes a more appropriate balance than the 30m<sup>2</sup> alternative, given the issue in the NH Chapter is one of risk of natural hazards. Even if it were to be more conservative, we consider that Mr Willis' recommended definition is more consistent with the higher order policy direction and the requirements of RMA s6(h).

## 2.8.2 Decision

[65] We adopt the analysis and recommendations of Mr Willis on the definition of 'natural hazard sensitive building'<sup>33</sup> for the reasons set out above. The amendment to the definition is included in **Appendix 3**.

[66] In terms of s32AA, we adopt Mr Willis' evaluation in support of the changes made.

## 2.9 DEFINITION OF OVERLAND FLOWPATH

### 2.9.1 Assessment

[67] ECan [183.6] submitted that the definition of 'overland flowpath' is unclear, as all surface water will flow over land in a rain event on saturated ground. They consider that this term can be relied on for its natural meaning and does not require its own definition where referenced.

[68] Mr Willis considered there is value in providing a definition as this is used extensively in the NH Chapter. The notified definition reads: "means the route along which stormwater flows over land in a rain event and excludes permanent watercourses or intermittent rivers or streams". Mr Willis reflected on the proposed Waimakariri District Plan (WDP) which also includes an overland flowpath definition which he found to be clearer as it refers to a "low point in terrain". He recommended the definition can be improved by also referring to a low point.

[69] Mr Griffiths, (Science Team Leader, Natural Hazards at ECan), was of the opinion that the definition was unnecessary provided NH-R1 included diversion and displacement effects as a matter of discretion, unless the definition was required elsewhere.<sup>34</sup>

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<sup>31</sup> We note that later Mr Willis has recommended the deletion of reference to 30m<sup>2</sup> as a consequence of now including it in the definition of Natural Hazard Sensitive Building.

<sup>32</sup> Previously NH-R4.

<sup>33</sup> Previously 'natural hazard sensitive activity'

<sup>34</sup> Nick Griffiths, Statement of Evidence, 9 April 2025, paragraph 19

[70] We accept Mr Willis' assessment of the utility of the definition for the reasons he explained.

## **2.9.2 Decision**

[71] We adopt the analysis and recommendations of Mr Willis on the definition of 'overland flowpath' for the reasons set out above. The amended definition is set out in **Appendix 3**.

[72] We are satisfied that the original s32 evaluation continues to apply.

## **2.10 NEW DEFINITION OF NATURAL HAZARD AREAS**

### **2.10.1 Assessment**

[73] OWL [181.15] requested a new definition of "natural hazard areas", which is a term referred to in the NH Chapter but is not defined, as follows:

Natural Hazard Areas means areas subject to the Flood Assessment Area, Overland Flow Paths, and High Hazard Overlays

[74] Mr Willis did not agree with the request given the limited use of the term in the Proposed Plan. He recommended that the upper case be removed to avoid confusion, which will be undertaken as a cl16(2) change. We accept his recommendation. His recommendation was accepted by Ms Crossman for OWL.<sup>35</sup>

### **2.10.2 Decision**

[75] We adopt the recommendation of Mr Willis. No change is needed other than a minor correction.

## **2.11 GENERAL SUBMISSIONS**

### **2.11.1 Assessment**

[76] There were a range of submissions classified as 'general' on the NH Chapter, and these are summarised in Mr Willis' s42A Report.<sup>36</sup> General submissions from Fenlea Farms [171.33] and KJ Rooney [197.8] are addressed when discussing their submission points on specific provisions below.

[77] ECan made extensive general submissions on the chapter to simplify its application and improve consistency with other District Plans in the region that have recently been reviewed. ECan submitted that in light of its regional role and resourcing in identifying flood hazards, a consistent approach across the region is desirable.

[78] Ms Francis, ECan's Principal Planning Officer, provided a statement of evidence that set out the Regional Council responsibilities for natural hazard management under the RMA.<sup>37</sup> In her evidence she explained the CRPS policy setting as follows:

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<sup>35</sup> Julia Crossman, Statement of Evidence, 15 April 2025, paragraph 2(b) footnote 2.

<sup>36</sup> Andrew Willis, s42A Report, paragraph 7.11

<sup>37</sup> Diedre Francis, Statement of Evidence, 9 April 2025

24 The policy framework in the CRPS for managing Natural Hazards is mostly contained within Chapter 11. This chapter sets out a risk-based approach for managing natural hazards in Canterbury. Risk is determined as a function of the likelihood and the consequences of a natural hazard occurring.

25 The CRPS applies a three-tiered management hierarchy to implement this approach. It requires the avoidance of development in high risk or hazard prone areas as the first priority, it requires mitigation where avoidance is not possible or where residual mitigated risk from the natural hazard will be acceptable and thirdly it provides for recovery from and response to – the consequences of natural hazard events. ....

26 The CRPS requires the Regional Council to provide information it holds to define high hazard areas; to share any information it holds about natural hazards when requested, and to work with Territorial Authorities (TAs) to investigate and define potential high hazard areas where information is uncertain or insufficient. The Regional Council is also required to assist TAs in determining areas subject to 0.5% AEP flood events, by providing the information it holds, and guidance about appropriate floor levels to manage the adverse effects of flood events.

[79] In pursuit of that consistency ECan [183.5] requested that either a new rule is provided or NH-R3<sup>38</sup> is amended to create an overarching permitted activity rule for all earthworks and vegetation clearance associated with existing public flood and erosion protection works (excluding new structures). This approach would include advisory notes for vegetation clearance and earthworks rules including ECO-R5, NATC-R1 and CE-R9<sup>39</sup> to make it clear that it is the natural hazards rules and not these rules that apply to existing flood and erosion protection schemes. No specific rule drafting was identified, but ECan have separately submitted on specific provisions consistent with this general submission and submitted on ECO-R2 [183.77], ECO-R1 [183.76], NATC-R1 [183.85], NATC-R2 [183.86], NFL-R2 [183.90] and NFL-R5 [183.91] to achieve this outcome.

[80] Regarding the ECan [183.24] submission and the related submissions<sup>40</sup>, Mr Willis agreed the suggestion has merit and he discussed this with the responsible s42A author for the ECO, NATC, NFL and SASM Chapters and considered that the requested approach can be adopted within NH-R3<sup>41</sup>, as these chapters already contain exclusions for natural hazard mitigation works. Mr Willis identified that the key differences are that NH-R3<sup>41</sup> includes permitted activity standards for upgrades, whereas the respective ECO, NATC, NFL and SASM Chapters were focussed on maintenance and repairs. He considered, however, that the other standards in NH-R3<sup>41</sup> (e.g. PER-2 and PER-3<sup>42</sup>) appropriately act to restrict the level of upgrading that can occur such that this slight extension to the ECO, NATC, NFL and SASM provisions is acceptable.

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<sup>38</sup> Now renumbered NH-R4 in the Decision Version of the provisions.

<sup>39</sup> Now merged with NH-R4 in the Decision Version of the provisions.

<sup>40</sup> [183.5] and on ECO-R2 [183.77], ECO-R1 [183.76], NATC-R1 [183.85], NATC-R2 [183.86], NFL-R2 [183.90] and NFL-R5 [183.91]

<sup>41</sup> Now renumbered NH-R4 in the Decision Version of the provisions.

<sup>42</sup> Now renumbered PER-3 and PER-4 in the Decision Version of the provisions.

[81] To achieve this change, Mr Willis recommended adding to the relevant matters of discretion in NH-R3<sup>41</sup> an express requirement to consider the environmental effects on these matters and also adding a statement to the Rules Introduction that the ECO, NATC, NFL and SASM Chapters Rules do not apply to NH-R3.<sup>41</sup> Accordingly, he recommended that this submission is accepted in part. In doing so he noted that EW-R1 already excludes earthworks for natural hazard mitigation works carried out by the Council or Regional Council that are permitted by the relevant Plan chapter. Overall, he considered that the changes are the most appropriate for collectively achieving NH-O1, NH-O3 and NH-O4<sup>43</sup>, together with ECO-O1, NATC-O1, NFL-O1 and SASM-O3.

[82] ECan [183.25] also sought to amend the various references to a 0.5% AEP rainfall event or flood event, to be only a 0.5% AEP flood event, as rainfall can be variable within a catchment and does not necessarily address the hazard of concern, which is the flood, and associated flood heights. Mr Willis agreed to this change also.

[83] In relation to references to "Flood Risk Certificates" throughout the NH Chapter, ECan [183.26] considered that the certificates being issued are assessing flood hazard impacting the site, not risk. They sought to amend all references in the chapter from "Flood Risk Certificate" to "Flood Hazard Assessment Certificate". Mr Willis agreed with that terminology, except for the word 'hazard', which was unnecessary in his view.

[84] ECan [183.27] identified that many of the restricted discretionary assessment matters in the NH Chapter address the same matters but are ordered differently and worded slightly differently and that they should be consistent. Mr Willis agreed this could be done without changing the meaning.

[85] ECan [183.1] made a general submission noting that a large number of rules in the plan use variable terminology to define floor areas of buildings, often with the term undefined, so that it is not clear what is being measured, and requests the entire plan is reviewed so all references to the size of buildings, link to either building footprint or gross floor area which are defined terms in the National Planning Standards (NPS). Mr Willis was comfortable that these are already appropriate and clearly described, noting that the provisions also refer to 'structures' and these would not be captured by ECan's suggested change to 'building floor areas'. However, he did recommend that building floor area is referred to in the recommended amended definition for 'natural hazard sensitive building'.

[86] Kāinga Ora [229.38] supported the identification of natural hazards, however due to the dynamic nature of natural hazards, sought amendments so that these areas are mapped on GIS layers which sit outside of the statutory planning maps and consequential changes to give effect to this submission. The submitter did not attend the hearing to elaborate further.

[87] Mr Willis' view was that more certainty is provided by including the proposed hazard overlays in the Proposed Plan where possible, especially as these overlays come up when a property search is undertaken through the Planning Maps in the EPlan. Mr Willis also explained that the way the Flood Assessment Certificate is applied enables flexibility as the

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<sup>43</sup> Now renumbered NH-O4 and NH-O6 in the Decision Version of the provisions.

high flood hazard and overland flowpaths are not mapped but are assessed on an individual basis and this provides some of the flexibility that the submitter sought.

[88] In terms of a s32AA assessment, Mr Willis noted that the majority of the changes are minor and seek to provide greater clarity. The key substantive change is covering the ECO, NATC, NFL and SASM provisions in NH-R3<sup>44</sup> instead of those District-Wide Chapters. The key differences are that NH-R3<sup>45</sup> includes permitted activity standards for upgrades, whereas the respective ECO, NATC, NFL and SASM Chapters were focussed on maintenance and repairs. We agree with Mr Willis' conclusions that the changes are the most appropriate for collectively achieving NH-O1, NH-O3 and NH-O4<sup>46</sup>, together with ECO-O1, NATC-O1, NFL-O1 and SASM-O3 and the purpose of the Act.

### **2.11.2 Decision**

[89] We adopt Mr Willis' recommended drafting changes as set out in his s42A Report<sup>47</sup> in response to submissions for the reasons set out above. The amended provisions are set out in **Appendix 3**.

[90] In terms of s32AA, we adopt Mr Willis' evaluation in support of the changes made.

## **2.12 INTRODUCTION**

### **2.12.1 Assessment**

[91] TDC [42.30] submitted that due to climate change, the risk associated with wildfires is expected to increase across many parts of the District, and that risks further increase when vegetation planting occurs in close proximity to where people live and work. They requested amendments to the Introduction to address this.

[92] Hort NZ [245.51] supports a risk-based approach to managing risks associated with natural hazards and supports the inclusion of climate change, but notes that food security is an issue that arises due to climate change - both in terms of food production and distribution and that this should be acknowledged in the section on climate change. They requested amendments to the Introduction to reflect this.

[93] Mr Willis agreed and included both submitters' requested drafting amendments.

[94] We also note that additions have been made to the Introduction to address submissions from the Telcos<sup>48</sup> (as discussed further below) to make it clear that natural hazard provisions do not apply to telecommunication infrastructure.

[95] Further additions are also included to clarify the relationship between the NH Chapter and PORTZ Chapter as requested by PrimePort and TDHL submissions, and as a result of the merging of the CE Chapter.

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<sup>44</sup> Now renumbered NH-R4 in the Decision Version of the provisions.

<sup>45</sup> Now renumbered NH-R4 in the Decision Version of the provisions.

<sup>46</sup> Now renumbered NH-O4 and NH-O6 in the Decision Version of the provisions.

<sup>47</sup> Andrew Willis, s42A Report, paragraph 7.11.22 to 7.11.26, and Appendix 1

<sup>48</sup> Connexa [176], Spark [208], Chorus [209] and Vodafone [210]

### **2.12.2 Decision**

[96] We adopt Mr Willis' recommended changes to the Introduction and have included them in **Appendix 3**.

[97] We are satisfied that the original s32 evaluation continues to apply.

## **2.13 OBJECTIVE NH-O1 AREAS SUBJECT TO NATURAL HAZARDS**

### **2.13.1 Assessment**

[98] Fonterra [165.45] submitted that the objective should be amended to enable risks to be managed outside of a high-risk area (noting that 'manage' includes 'avoid, remedy or mitigate'). Mr Willis did not agree with the request because 'manage' whilst inclusive of avoidance and mitigation is a broader concept, and that the CRPS Policy 11.3.1 refers to 'avoidance' and 'mitigation'.

[99] Silver Fern Farms [172.22] and Alliance Group [173.19] considered it is inappropriate not to provide for mitigation as an approach to managing activities in high hazard areas. The submitters also considered that objective NH-O1 is inconsistent with CRPS directions that contemplate risk mitigation in areas of natural hazard risk. Tosh Prodanov [117.1] considered NH-O1 must allow for mitigation of natural hazards for the 114 huts families at the South Rangitata Huts, which are identified as being within a high hazard area.

[100] Mr Willis accepted that some refinement of the objective could be made to better align this objective with CRPS Policy 11.3.1 which seeks to avoid new subdivision, use and development in high hazard areas unless various requirements are met. Whilst he considered that the life risk and significant building risk to property are already generally consistent, CRPS Policy 11.3.1 also includes a split approach to development within rural or non-urban areas and urban areas, with avoidance required in the former and avoidance or mitigation required in the latter in recognition of the fact that these areas already exist / are identified for urban development. He concluded that changes to NH-O1 to achieve this refinement would be appropriate and respond in part to these submissions and to the submissions of Waipopo Trust and Te Kotare Trust discussed above.

[101] In terms of a s32AA assessment Mr Willis considered that the amendments to NH-O1 better give effect to the CRPS approach for high hazard areas within and outside of urban areas under Policy 11.3.1 and is more consistent with the approach taken in the CE Chapter. He concluded that the approach is more efficient and effective than the notified Plan as it is cognisant of the built development in existing urban areas and the known natural hazard risk in these locations. Overall, this approach better achieves the purpose of the Act.

[102] We agree with Mr Willis' recommendations in response to these submissions, and the drafting changes that more accurately give effect to CRPS Policy 11.3.1. We have also accepted minor corrections as indicated by Mr Willis.

### 2.13.2 Decision

[103] We adopt the analysis and recommendations of Mr Willis on NH-O1 for the reasons set out above. The amendment to the provisions is included in **Appendix 3**.

[104] In terms of s32AA, we adopt Mr Willis' evaluation in support of the changes made.

## 2.14 OBJECTIVE NH-O2 COASTAL HAZARDS<sup>49</sup>

### 2.14.1 Assessment

[105] Southern Proteins Limited [140.14] considered the reference in the objective relates to major hazard facilities via the defined term 'unacceptable risks' and this narrows the focus of the objective which they assume is in error. They sought to remove the defined term 'unacceptable risks'. Mr Willis agreed that there should be no hyperlink to the definition for that purpose.

[106] Forest and Bird [156.145] submitted that the objective does not capture natural hazard climate response and adaption. They sought the deletion of the objective or amendments to address the omission. Mr Willis confirmed that climate change is built into the modelling, so it is addressed but is not reflected in the drafting of the provision. He agreed that climate change should be referenced. In terms of the remaining drafting changes requested by Forest and Bird he did not consider this appropriate in the objective. We agree with Mr Willis' recommendations for the reasons he explained.<sup>50</sup>

[107] DOC [166.101] supports this objective as it gives effect to Objective 5 and Policy 25 of the NZCPS to avoid increasing the risk of social, environmental, and economic harm from coastal hazards. However, the submitter considered it necessary to amend the objective to take into account the effects of climate change as required by Objective 5 of the NZCPS. Mr Willis agreed that climate change should be referenced in the objective but recommended different wording to that requested by the submitter. We accept Mr Willis' recommendation in that regard.

### 2.14.2 Decision

[108] We adopt the analysis and recommendations of Mr Willis on NH-O2 for the reasons set out above. The amendments to the provision are included in **Appendix 3**.

[109] In terms of s32AA, we are satisfied that the original s32 evaluation continues to apply.

[110] Objective NH-O3 Regionally Significant Infrastructure<sup>51</sup>

### 2.14.3 Assessment

[111] Transpower [159.60] supported that the Proposed Plan does not prevent the location of RSI within high hazard areas, however considered that the provisions fail to acknowledge

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<sup>49</sup> Previously CE-O4

<sup>50</sup> Andrew Willis, s42A Report, Paragraph 8.7.8

<sup>51</sup> Previously NH-O2

that the National Grid is able to be located (and is appropriately designed to do so) in areas of high natural hazards without exacerbating risk to others, compromising electricity transmission or resulting in inappropriate risks or adverse effects on the National Grid itself. Transpower sought drafting changes to address a risk management approach rather than the proposed directive to locate RSI outside high hazard areas. Mr Willis agreed with the submitter and recommended drafting changes to that effect.

[112] OWL [181.46] supported the objective, and we have addressed the drafting style issue above.

[113] Connexa [176.60], Spark [208.60], Chorus [209.60] and Vodafone [210.60] requested that the objective be amended to exclude telecommunication infrastructure. In related submissions, these submitters sought to exclude telecommunication infrastructure from NH-P5, NH-P6, NH-P11, NH-R5, NH-R6, CE-R5, CE-R7 and CE-R8.<sup>52</sup> The submitters considered that Regulation 57 of the NES-TF specifically disapplies District Plan natural hazard area rules from telecommunication structures which are regulated under the NES-TF. The submitters request consistency between the District Plan and the NES-TF.

[114] Mr Willis agreed that this objective and other identified provisions do not apply given the Regulation 57 of the NES-TF. However, rather than exclude telecommunications facilities from every relevant provision as submitted, he initially recommended that this exclusion is instead identified in the NH Chapter Introduction. He recommended the following wording:

Regulation 57 of the National Environmental Standard for Telecommunication Facilities specifically disapplies District Plan natural hazard provisions from telecommunication structures which are regulated under that standard. Therefore, the natural hazards provisions in this chapter do not apply to telecommunications infrastructure regulated under this standard.

[115] Mr Anderson, the planning witness for the telecommunication submitters considered that Mr Willis' recommendation did not fully address the submitters concerns.<sup>53</sup> He said the recommendation assumes that all telecommunications infrastructure is a regulated activity under the NES-TF. This is not the case. His evidence was:

Regulated activities under the NESTF include all telecommunications activities (lines, cabinets, antennas and poles) in all zones, except for new poles outside of legal road (termed private sites – even though they may be in public ownership) in urban areas. Consequently, as it stands, the note as recommended would not be applicable to new telecommunication poles on private sites in urban areas, making these sites an outlier with respect to the direction provided in Regulation 57. The associated cabinets, which typically go hand in hand with poles, are regulated by the NESTF and therefore are excluded from the Natural Hazard rules. My understanding is that the NESTF deliberately does not regulate poles on private sites in urban areas as it was considered more appropriate for district plans to determine what parameters with regard to bulk and location should apply on such sites.

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<sup>52</sup> Rules now renumbered NH-R7, NH-R8, CE-R5, CE-R8 and CE-R9 in the Decision Version of the provisions.

<sup>53</sup> Tom Anderson, Statement of Evidence, 9 April 2025, paragraphs 11-20.

[116] Mr Anderson referenced the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 Users' Guide, published by the Ministry for the Environment (August 2018), which explains the rationale for the exemption. The exemption exists because resilience of the system is already factored into industry practice and hazard areas will either be avoided or the structures will be engineered for resilience.<sup>54</sup>

[117] Mr Anderson undertook an analysis of the Proposed Plan and concluded that there are potential areas where if telecommunication infrastructure was to be located in legal road, it would be exempt from the chapter, but if telecommunication poles were located in a private site, would need to consider the chapter, despite both locations being within a natural hazard overlay. He did not consider this to be an efficient approach, particularly when noting the reasons why the NES-TF has included Regulation 57 as noted earlier. There should be consistency between the Plan and NES-TF, and he suggested a small amendment to the Introduction as recommended in the s42A Report to delete the words 'regulated under this standard'. Mr Anderson undertook a s32AA evaluation in support of his drafting amendment.

[118] We agree with Mr Anderson's assessment of the issues and consider the amendment to be appropriate for the reasons he outlined.

[119] Mr Willis indicated his agreement to the solution in his Interim Reply.<sup>55</sup>

#### **2.14.4 Decision**

[120] We adopt the drafting recommendation of Mr Willis in relation to the objective, and the amendment to the Introduction as agreed by Mr Willis and Mr Anderson. The amended provisions are set out in **Appendix 3**.

[121] We adopt Mr Willis' and Mr Anderson's s32AA evaluation to support the changes made.

### **2.15 OBJECTIVE NH-O4 NATURAL HAZARD MITIGATION WORKS<sup>56</sup>**

#### **2.15.1 Assessment**

[122] Forest and Bird [156.85] submitted that natural hazard mitigation works should reduce the risk to native species as well, and make provision for expanding their range, as part of the preference for using natural features and buffers. Mr Willis did not support the submission and highlighted the practical difficulties with reducing risk to native species. Further he did not consider this was required by RMA s6(h). The submitter did not attend the natural hazards hearing to elaborate further.

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<sup>54</sup> Page 93 of the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 Users' Guide (copy at <https://www.mbie.govt.nz/dmsdocument/1347-nestf-2016-draft-users-guide-pdf%20>)

<sup>55</sup> Interim Reply Natural Hazards, Coastal Hazards, Drinking Water Protection, 23 June 2025, para 30 and Appendix E.

<sup>56</sup> Previously NH-O3

[123] Silver Fern Farms [172.23] and Alliance Group [173.20] submitted that it is necessary to allow the exercise of discretion as to the use of buffers and natural features, particularly where there is existing development. Mr Willis agreed that it will often not be appropriate or practicable to use natural features and buffers to manage natural hazard risk. He referred to CRPS Policy 11.3.6 which states that the role of natural topographic (or geographic) and vegetation features which assist in avoiding or mitigating natural hazards should be recognised but does not state a preference for their use over hard engineering methods. CRPS Policy 11.3.7 covers physical mitigation works and again does not specify a preference for natural features and buffers. Given that the use of natural features for hazard mitigation may not always be practical and the CRPS policies he recommended that these submissions are accepted.

[124] PrimePort [175.28] and TDHL [186.14] agreed that the use of natural features and buffers for natural hazard mitigation is preferable where it is practicable but considered that such features are not always sufficient to enable hazard mitigation. Mr Willis recommended that the words 'where practicable' are added to the objective, thereby addressing the submissions from PrimePort, TDHL, Silver Fern Farms and Alliance Group.

[125] ECan [183.31] supported that these works reduce risks to people and property but consider it would be preferable to align the objective with CE-O5<sup>57</sup> to be consistent. ECan considered that a clearer way to address these activities is to either refer to flood and erosion protection works or to change the definition of 'natural hazard mitigation works' to be more consistent with the description in CRPS Issue 11.1.3.

[126] In response to ECan's submission Mr Willis accepted that this objective and CE-O5<sup>57</sup> both cover natural hazard risk mitigation. He explained the reason for the differences in phraseology is to in part reflect the influence of the NCZPS. NZCPS Policy 25(e) discourages hard protection structures and seeks to promote alternatives including natural defences while the reference to "retained" comes from NZCPS Policy 26. There is also a slightly different focus between the objectives - NH-O3<sup>58</sup> seeks to make sure the works reduce risks to people and property, whereas CE-O5<sup>57</sup> is focused on the retention of natural features as a preference. For these reasons he preferred to retain these objectives as drafted, noting he recommended to add a reference to "where practicable". He also recommended amending the definition of 'natural hazard mitigation works' in response to the specific ECan submission on this matter. As a consequence of the merging of the coastal hazard provisions into the NH Chapter the separate objectives are now renumbered NH-O4 and NH-O5, and retain the distinctions as explained by Mr Willis. Ms Francis, ECan Principal Planning Officer, accepted this recommendation in her evidence.

[127] In terms of s32AA Mr Willis noted the amendment simply recognises that the use of natural features and buffers may not always be practicable. In his opinion this amended approach remains consistent with NZCPS Policy 25(5) and CRPS Policy 11.3.6 but is more efficient and effective than the notified objective as it more readily provides for other mitigation options. As such, he considered it better achieves the purpose of the RMA.

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<sup>57</sup> Now renumbered NH-O5 in the Decision Version of the provisions.

<sup>58</sup> Now renumbered NH-O4 in the Decision Version of the provisions.

## **2.15.2 Decision**

[128] We adopt the analysis and recommendations of Mr Willis on NH-O4<sup>59</sup> for the reasons set out above. The amendments to the provision are included in **Appendix 3**.

[129] In terms of s32AA we adopt Mr Willis' evaluation in support of the changes made.

## **2.16 OBJECTIVE NH-O5 NATURAL DEFENCES<sup>60</sup>**

### **2.16.1 Assessment**

[130] Forest and Bird [156.146] noted that the NZCPS Objective 5 requires the protection of natural features, and that it is not clear if being "used for coastal hazard management" is appropriate wording, they requested drafting changes to refer to natural defence and buffers and the restoration and protection of them.

[131] DOC [166.102] supported the intent of this objective but considered it necessary to amend the wording to make it clearer and to give effect to Objective 5 and Policies 25 and 26 of the NZCPS, and in particular the discouragement of hard protection structures and the promotion of alternatives such as natural defences.

[132] Mr Willis noted that NZCPS Objective 5 refers to protecting and restoring natural defences and that it would be appropriate to amend the objective to refer to natural defences and these outcomes. He considered that referring explicitly to hard engineering is consistent with the NZCPS. In terms of s32AA he was satisfied that the changes better align the objective with NZCPS Objective 5 and achieve the higher order framework and the RMA. We agree with the recommendations of Mr Willis for the retitling of the objective and amended drafting to align with the higher order documents.

### **2.16.2 Decision**

[133] We adopt the analysis and recommendations of Mr Willis on NH-O5<sup>61</sup> for the reasons set out above. The amendments to the provision are included in **Appendix 3**.

[134] In terms of s32AA we adopt Mr Willis' evaluation in support of the changes made.

## **2.17 OBJECTIVE NH-O6 ADAPTIVE MANAGEMENT AT THE PORT<sup>62</sup>**

### **2.17.1 Assessment**

[135] This new objective was agreed between the Council, ECan [183], PrimePort [175] and TDHL [186] to support the new policy and rule provisions specific to the PORTZ in the NH Chapter.<sup>63</sup> Mr Walsh for PrimePort had identified that the agreed drafting was limited to the

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<sup>59</sup> Previously NH-O3

<sup>60</sup> Previously CE-O5

<sup>61</sup> Previously CE-O5

<sup>62</sup> A new objective

<sup>63</sup> Andrew Willis, s42A Report, paragraph 7.3.9 and 7.3.13, and Appendix 1

Port rather than the PORTZ. He suggested further drafting changes in his evidence to address consistency with the corresponding policies and rules.<sup>64</sup>

[136] Mr Carranceja, legal counsel for PrimePort and TDHL, also submitted that the wording of the objective refers only to the Port rather than the Port and activities within the PORTZ. He submitted that this appears to be an inadvertent oversight because:

- (a) the intent of Council's coastal hazard expert is that it is appropriate for adaptive management provisions to apply within the PORTZ (i.e. not just the Port);<sup>65</sup> and
- (b) as Mr Walsh observed, the s42A recommended version of policy NH-P14 and the NH rules that implement the objectives provide for adaptive management within the PORTZ (not just the Port).

[137] Mr Willis advised in his Interim Reply that he had made further changes to the provisions to be consistent with and in accordance with Mr Walsh's evidence.<sup>66</sup> We agree with this approach.

### **2.17.2 Decision**

[138] We adopt the analysis and recommendations of Mr Willis on NH-O6 for the reasons set out above. The amendments to the provision are included in **Appendix 3**.

[139] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

## **2.18 POLICY NH-P1 IDENTIFICATION OF NATURAL HAZARDS AND APPROACH TO MANAGEMENT WITHIN NATURAL HAZARD AREAS**

### **2.18.1 Assessment**

[140] Forest and Bird [156.86] sought to amend NH-P1 to include identification and mapping of existing and potential habitat of native species that is subject to natural hazards, such as coastal habitat, wetlands, or riverbed/ margin/ floodplain habitat for native fauna. They also sought to include a clause that considered the level and severity of risk to native species and habitat from the natural hazard and provide for its ability to recover after a natural hazard event. In a similar submission, Forest and Bird [156.89] considered the rules should protect native species and their habitat from natural hazards and mitigation works.

[141] Mr Willis disagreed and considered that the requested mapping could be significant because it may require surveying all areas potentially at risk of natural hazards, which for flooding could be much of the District. He said that wildfire, drought, and wind are also potential natural hazard threats to native species, but these would be more difficult to map as the areas where this would occur are uncertain. While he understood that natural hazards can also

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<sup>64</sup> Tim Walsh, Statement of Evidence, 9 April 2025, paragraph 35 to 38, 40 to 41, 51 and 64

<sup>65</sup> Derek Tood, Statement of Evidence, paragraph 29

<sup>66</sup> Andrew Willis, Interim Reply, 23 June 2025, paragraph 30 and Appendix A and E

threaten native species, his view is that this goes beyond the RMA s6(h) requirement of managing the significant risk from natural hazards. Mr Willis noted that effects can be considered in NH-R9<sup>67</sup>.

[142] Silver Fern Farms [172.24] and Alliance Group [173.21] submitted this policy does not expressly reflect the obligation of RMA s75(3)(c) for District Plans to give effect to Regional Policy Statements. They sought to amend NH-P1 to include reference to aligning the proposed mapping of natural hazards with that of the CRPS.

[143] Mr Willis reviewed the CRPS Natural Hazards Chapter and did not find any CRPS requirements for District Plan mapping that indicate the Proposed Plan's mapping approach is misaligned. For example, Policy 11.3.3 Method 1 refers to delineating fault avoidance zones along known active fault traces as a Regional Council function. The Planning Maps delineate faults based on advice from ECan.

## **2.18.2 Decision**

[144] We adopt Mr Willis' recommendation, and no change is required to the policy in response to submissions.

## **2.19 POLICY NH-P3 ROLE OF NATURAL FEATURES AND VEGETATION IN HAZARD MITIGATION<sup>68</sup>**

### **2.19.1 Assessment**

[145] Forest and Bird [156.87] submitted that healthy, expansive, functioning natural ecosystems provide greater resilience to natural hazards for people as well as native species. They sought to expand this policy to include native vegetation and habitat for native species to give better effect to the RMA s6(a). Mr Willis recommended limited drafting changes. He considered it will not always be practical to restore natural features, and he did not agree with removing the words "where appropriate". He also did not agree with including the requirement to protect native species from natural hazards for the reasons he set out in his evidence on NH-O4 discussed above.

[146] Mr Willis agreed with adding the words "including native habitat" as sometimes the vegetation will be native habitat. However, Ms Crossman for OWL<sup>69</sup> raised concerns with including reference to native habitat and discussed this further with Mr Willis. Ms Crossman considered that, and Mr Willis agreed, the reference to the term "including native habitat" could cause confusion, as this term is not defined in the Plan. Mr Willis suggested changes to address this issue, either by replacing the phrase "including native habitat" with "including native vegetation"; or deleting the phrase "including native habitat", as the definition of 'vegetation' in the Plan includes native vegetation.

[147] In the Final Reply Mr Willis recommended adding 'including native vegetation.' We consider this addition is redundant as the definition of vegetation includes native vegetation.

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<sup>67</sup> Now merged with NH-R4 in the Decision Version of the provisions.

<sup>68</sup> Now includes notified CE-P4

<sup>69</sup> Julia Crossman, Summary Statement, 30 April 2025, 2.4

We also note that if the submission point from Forest and Bird were to be accepted there is now a consistency issue between the provisions applying within and outside the CE. Therefore we do not agree with this recommendation.

[148] The policy has also been restructured as part of the merging of hazard provisions in the CE and NH Chapters. The policy is now in two parts, applying outside and inside the CE.

[149] In terms of submissions on the equivalent provision notified in the CE Chapter, CE-P4, Forest and Bird [156.152] considered that while this policy appears to be giving effect to NZCPS Policy 26 and 27, it also adds in words such as ‘topographical’ that were not present in the objective and it also uses a different test to that set out in the NZCPS i.e., a practicable test for restoration.

[150] DOC [166.109] supported CE-P4 as notified as it is consistent with the NZCPS Policy 26. However, it considered that an amendment is needed to clarify that the wording relates to natural defences. The submitter also considered that ‘protect and maintain’ would also include the management of natural defences to be able to retreat due to the effects of climate change.

[151] ECan [183.118] considered this policy contributes to the implementation of NZCPS Policy 26. However, the NZCPS Policy is to "Provide where appropriate for the protection, restoration or enhancement ..." while Policy CE-P4 is "Protect and maintain ... where practicable restore ...." The policy does not provide for "enhancement" as the NZCPS Policy does. They sought to include “enhancement” within the policy.

[152] Mr Willis generally agreed with the inclusion of “enhance” for consistency with NZCPS Policy 26 and the reference to natural defences (along with a new definition), but he did not agree with the other amendments requested by Forest and Bird. Mr Willis’ recommendations are now included in the merged NH-P3.2.

## **2.19.2 Decision**

[153] We adopt the analysis and recommendations of Mr Willis on NH-P3, except the inclusion of ‘including native vegetation’ in NH-P3.1. The amendments to the provision are included in **Appendix 3**.

[154] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

## **2.20 POLICY NH-P4 SUBDIVISION, USE AND DEVELOPMENT IN FLOOD ASSESSMENT AREAS, EXCLUDING HIGH HAZARD AREAS**

### **2.20.1 Assessment**

[155] Silver Fern Farms [172.25] and Alliance Group [173.21] stated that their sites are included in the Major Hazard Facility Overlay as SHF-14 and SHF-12 respectively but are not listed in SCHED2 - Schedule of Major Hazard Facilities, as such it is unclear if Major Hazard Facility provisions apply to the site. If the provisions do apply, it could be that some buildings

at the submitters' sites are affected despite not containing hazardous substances. Additionally, the submitters consider amendments are required to avoid undue regulation simply because a building is in a Flood Assessment Area.

[156] Mr Willis clarified that in his Hazardous Substances s42A Report, SHF-14 and SHF-12 are recommended to be removed from the Planning Map. These sites are not listed in the SCHED2 - Schedule of Major Hazard Facilities. As such, he anticipated that Clause 5 will not apply to these submitters. He agreed that the clause can be refined to target only the potential harm caused by hazardous substances entering the environment, rather than the building itself.

[157] Rangitata Dairies [44.2] considered that existing development within flood assessment areas has already occurred and needs to be acknowledged by the Proposed Plan. They sought NH-P4 is amended to acknowledge this. Mr Willis noted that in response to other submissions he recommended an 'avoid or mitigate' approach for high hazard areas in urban zoned areas. This is consistent with the submission. However, he said that NH-P4 itself enables development to occur where the risk is appropriately managed (as set out in the policy). He considered this is enabling and does not require an additional reference to existing development in hazard risk areas. We agree with his assessment of the issue raised.

[158] MFL [60.15] submitted that there is no mention of freeboard with regard to flooding and sought drafting changes to reflect that. Mr Willis did not consider this was needed in the policy because freeboard is a matter to be applied through his recommended Flood Assessment Certificate approach discussed below.

[159] ECan [183.33] submitted that NH-P4.4 requires all buildings to achieve minimum floor levels, when it should only be a requirement for natural hazard sensitive activities. Mr Willis agreed.

[160] BP Oil, et al [196.50] submitted that it is unclear what 'inundated' means for major hazard facilities (MHF) (Clause 5) when the policy relates to areas that are already subject to inundation by a 0.5% flood event. The submitter considered that the overall policy is about risk which appropriately comes through via all other clauses, such that specific reference to MHF is unnecessary. They sought that Clause 5 is deleted.

[161] Mr Willis agreed that there is some uncertainty as to what 'inundated' means for MHF when the policy relates to areas that are already subject to inundation. In response to the Silver Fern Farms [172.25] and Alliance Group [173.21] submissions he recommended amendments to Clause 5 to help to clarify its application.

[162] Mr Willis also recommended a number of corrections to the drafting of Clause 6 to improve clarity (under RMA cl16(2)) to include examples of increasing risk on other sites. As set out under the discussion of NH-R1 he recommended that as a consequence of amending NH-R1 in response to ECan [183.38], NH-P4 should be amended to also cover overland flowpaths, and NH-P8 Overland Flowpaths is deleted.

## 2.20.2 Decision

[163] We adopt the analysis and recommendations of Mr Willis on NH-P4. The amendments to the provision are included in **Appendix 3**.

[164] In terms of s32AA, we are satisfied that the original evaluation continues to apply.

## 2.21 POLICY NH-P5 SUBDIVISION IN LIQUEFACTION AWARENESS AREAS

### 2.21.1 Assessment

[165] Transpower's submission [159.61] acknowledged that the policy references RSI (but not all structures) on the basis that the Building Act addresses other buildings but considers: the relationship between Policies NH-P5 and NH-P6 and NH-P11 is unclear; and the reference to RSI in Policy NH-P5 and Policy NH-P6 is unnecessary duplication. They considered that the reference to RSI (but not other activities) results in more onerous provisions applying to RSI when compared to other activities. They sought to remove the reference to RSI in NH-P5.

[166] Mr Willis agreed and in response to Transpower's [159.63] submission on NH-P11, recommended amending NH-P11 to clarify its application to high hazard areas and other hazard areas. Because of this, he considered that RSI need not be expressly included within NH-P5.

[167] ECan [183.34] considered this policy is relatively strongly worded for liquefaction risk, and wording should be better drafted to recognise the level of risk associated with liquefaction. ECan noted that the only control for liquefaction for RSI is in the subdivision provision NH-R8.2<sup>70</sup>, so it is questionable whether RSI should be removed from the policy, and the subsequent assessment matter for NH-R8.2<sup>70</sup> Where RSI does form part of a subdivision, the amendment to remove it would not restrict consideration of risk to the infrastructure as part of the subdivision assessment. ECan sought deletion of the policy and its replacement with:

Provide for subdivision in the Liquefaction Awareness Area Overlay, where the liquefaction risk has been identified and assessed, and can be appropriately remedied or mitigated.

[168] Mr Willis agreed with the submitter's reasoning but recommended a different wording:

Require the liquefaction risk in the Liquefaction Awareness Area Overlay to be identified and appropriately remedied or mitigated.

[169] Waka Kotahi [143.67] generally supported NH-P5 but requested amendment to recognise the operational needs of infrastructure. In light of Mr Willis' recommended redrafting of the policy the relief the submitter sought is no longer necessary.

[170] Mr Willis reevaluated the provision under s32AA and concluded that the original s32 generally continues to apply as the changes achieve greater internal consistency and more accurately reflect the rules. In addition, he noted that the amended NH-P5 more appropriately manages the level of risk associated with the natural hazard and therefore better gives effect

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<sup>70</sup> Now relocated and renumbered SUB-R5 in the Decision Version of provisions.

to CRPS objectives 11.2.1 and 11.2.2 and Proposed Plan NH-O1. Overall, he considered the amended NH-P5 better achieves the purpose of the Act.

### **2.21.2 Decision**

[171] We adopt the analysis and recommendations of Mr Willis on NH-P5. The amendments to the provision are included in **Appendix 3**.

[172] In terms of s32AA, we adopt Mr Willis' evaluation in support of the changes made.

## **2.22 POLICY NH-P6 SUBDIVISION IN EARTHQUAKE FAULT AWARENESS AREAS**

### **2.22.1 Assessment**

[173] For similar reasons to their submission on NH-P5, Transpower [159.62] requested that reference to RSI be removed from NH-P6. Mr Willis agreed.

[174] Similar to their submission on NH-P5, Waka Kotahi [143.68] generally supported NH-P6 but requests amendment to recognise the operational needs of infrastructure. Mr Willis agreed.

[175] Mr Willis also recommended that "(Subdivision)" is included in the overlay title (under c16(2)) as that is the overlay title on the Planning Map.

[176] In terms of s32AA Mr Willis considered the amendments simply refine the application of the policy to avoid duplication across the policies and more closely align it with the rules. The addition of 'operational need' more accurately recognises the locational requirements applying to activities. Accordingly, it better achieves NH-O1 and the purpose of the Act.

### **2.22.2 Decision**

[177] We adopt Mr Willis' analysis and recommendation on NH-P6. The amended provisions are set out in **Appendix 3**.

[178] We adopt Mr Willis' s32AA evaluation in support of the change.

## **2.23 POLICY NH-P8 OVERLAND FLOWPATHS<sup>71</sup>**

### **2.23.1 Assessment**

[179] Kāinga Ora [229.40] considered it is not clear how overland flowpaths are identified. They sought to amend NH-P8 to delete the reference to overland flowpaths or insert sufficient text and/ or provisions so it is clear about how overland flowpaths are identified, and how this information is available to District Plan users.

[180] Mr Willis explained that the obstruction of flowpaths can lead to increased flood risk on adjacent properties. It is therefore important that the functioning of overland flowpaths is maintained. Flowpaths are not identified on the Planning Maps as they are many and varied

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<sup>71</sup> Numbered NH-P8 in the notified version of provisions. Now deleted.

and can evolve over time. As a result of this, flowpaths can be determined through a Flood Assessment Certificate which also identifies the flood risk on the site. Mr Willis agreed that it is not clear in NH-P8<sup>71</sup> how a flowpath will be determined. However, he noted that NH-S1.1(c) identifies that the Flood Assessment Certificate will specify this and he is recommending changes to NH-R1 to include a permitted activity standard (PER-2) to not worsen flooding on another property through the diversion or displacement of flood water.

[181] Mr Willis considered the submission to be partially addressed due to his analysis of NH-P4 and as discussed below, in relation to NH-R1 where he recommended that as a consequence of amending NH-R1 in response to ECan [183.38], NH-P4 is amended to include overland flowpaths, and NH-P8 Overland Flowpaths is deleted. In addition to avoiding the duplication for floodwater diversion occurring from NH-P4.6, a separate overland flowpath policy is no longer required given the altered approach to assessing and managing diversion and displacement under NH-R1.

### **2.23.2 Decision**

[182] We adopt Mr Willis' analysis and recommendations and have deleted NH-P8 for the reasons stated.

[183] No additional s32AA evaluation is required as this is a consequential change to decisions on NH-R1 and NH-P4.

## **2.24 POLICY NH-P8 NATURAL HAZARD MITIGATION WORKS<sup>72</sup>**

### **2.24.1 Assessment**

[184] Silver Fern Farms [172.27] and Alliance Group [173.24] submitted that it is appropriate to provide for private natural hazard mitigation works subject to the criteria specified in this policy. They sought a minor amendment to Clause 2(d) to recognise that changes to the flood risk profile may be acceptable in some cases, for example where the increased flood risk is outweighed by the benefit of the project.

[185] Mr Willis considered that it may be appropriate at the policy level to enable the consideration of acceptable mitigation of new or increased risk from flooding as there may be some instances where the works are justified as they protect an existing community but increase risk in a minor and acceptable way to other property, for example where stopbanks are extended, causing increased flows past existing bridges, or where overland flows are diverted to discharge down roads. However, he was uncomfortable that this could result in an increased risk to life or the ready transference of the hazard to someone else. He recommended that these submissions on this policy are accepted as the wording still requires the risk to be acceptably mitigated and note that NH-O1 enables risk to be avoided or mitigated to an acceptable level.

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<sup>72</sup> Previously NH-P9

[186] Mr Willis noted that a similar submission was made by Alliance Group [173.88] on CE-P14<sup>73</sup> (now included as NH-P9 as addressed below) which he recommended to be rejected based on the evidence of Mr Todd.<sup>74</sup> For that CE submission, Mr Willis distinguished that recommendation from this policy on the basis that the wording in CE-P14<sup>73</sup> referred to hard engineering only, applies to adjacent properties only and is limited to coastal hazards (sea water inundation and coastal erosion).

[187] ECan [183.36] considered that while the policy is consistent with CRPS Policy 11.3.7, either the definition or the use of the term "natural hazard mitigation works" needs to change to provide greater clarity concerning the activities covered. As addressed above, Mr Willis recommended amending the definition of natural hazard mitigation works in response to ECan [183.14A], which we have accepted.

[188] Te Rūnanga o Ngāi Tahu [185.67] submitted that the values of qualities of ONL/ONF, Historic Heritage and SASM do not become less important when the works are being undertaken by the Crown, Canterbury Regional Council or the Council and that therefore the policy should be amended to only consider one set of criteria and due to the RMA s6 importance of these values, it should be the Clause 2 criteria. They sought that the policy is amended to delete Clause 1. In a further submission Waka Kotahi [143.18FS] opposed this submission as the amendments would result in onerous requirements that will restrict the ability of Waka Kotahi to respond and protect its infrastructure against natural hazards.

[189] Mr Willis agreed that the values of qualities of ONL/ONF, Historic Heritage and SASM do not become less important when the works are being undertaken by the Crown, Canterbury Regional Council or the Council, however he noted that these organisations have a statutory responsibility to also keep their communities safe by managing significant risks from natural hazards as a matter of national importance under RMA s6(h) and s31 and s32. In his opinion, life risk is not something that should be subjugated under the matters listed in the submission and the policy therefore appropriately seeks to mitigate adverse effects. We agree with his assessment in light of the focus of this chapter.

[190] In response to the submissions of Silver Fern Farms, Alliance Group and ECan Mr Willis recommended the addition of 'avoid or acceptably mitigate' in Clause 2(d) of the policy. We agree with the recommendation.

[191] In terms of a s32AA assessment, Mr Willis noted that while transferring risk is generally not appropriate, in some limited circumstances this may be appropriate, and the proposed amendment provides greater flexibility to consider this. Accordingly, this more flexible approach enables greater efficiency. It is also consistent with NH-O1 where risk can be avoided or mitigated to an acceptable level. As such, the amendment better achieves the purpose of the Act.

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<sup>73</sup> Now relocated and renumbered NH-P9 in the Decision Version of the provisions.

<sup>74</sup> Derek Todd, Statement of Evidence, s42A Report Appendix 3

### 2.24.2 Decision

[192] We adopt Mr Willis' analysis and recommendations on NH-P8.<sup>75</sup> The amended provisions are set out in **Appendix 3**.

[193] We adopt Mr Willis' s32AA evaluation in support of the change.

## 2.25 NH-P9 HARD ENGINEERING NATURAL MITIGATION WORKS WITHIN THE COASTAL ENVIRONMENT<sup>76</sup>

### 2.25.1 Assessment

[194] Tosh Prodanov [117.3] submitted that hard engineering must be done decades in advance - it cannot be left until the risk is immediate. Therefore, he requested the removal of the word 'immediate' from the policy.

[195] Mr Willis explained that there are some instances, such as with cliff collapse caused by erosion, that there is an immediate danger that must be responded to. On balance he concluded that this clause should be amended to refer to "a demonstrated clear risk" to life or property. This phrasing is consistent with the notified Plan in that it requires certainty that the hazard will occur, but it need not be immediate. In his evidence (paragraph 23) Mr Todd<sup>77</sup> supported this change stating "compliance with this clause clearly places the onus on the applicant for any hard engineering works to demonstrate a clear risk with an associated degree of certainty, within a reasonable timeframe to allow for the planning and implementation of the works."

[196] Forest and Bird [156.161] submitted that the policy does not accurately reflect the NZCPS and should be deleted and replaced with a policy that better reflects NZCPS Policy 27.

[197] Mr Willis did not agree with the submitter's interpretation of NZCPS Policy 27. We agree with Mr Willis' assessment of the NZCPS.<sup>78</sup>

[198] Silver Fern Farms [172.88] submitted that when read in conjunction with the policy requirement to 'only allow...', it appears that Clause 4 will operate as a de-facto prohibition of any hard engineering works located seaward of a foreshore, dune system, estuary etc. The submitter considered this undesirable as in some instances, it may be necessary for hard engineering mitigation to replace natural defences. This policy would weigh against that outcome being realised. The submitter considered that references in Clause 4 to natural "systems" appear superfluous, given the focus of the policy is on the interplay between engineering and natural "defences" against coastal erosion and that Clause 5 appears to unnecessarily repeat the preceding Clause. The submitter considered it is unclear what additional policy guidance of value is provided by Clause 5 compared to Clause 4. The submitter sought to ensure the policy does not inappropriately foreclose the ability to use

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<sup>75</sup> Previously NH-P9

<sup>76</sup> Previously CE-P14

<sup>77</sup> Derek Todd, Statement of Evidence, s42A Report Appendix 3

<sup>78</sup> Andrew Willis, s42A Report, Hearing F, 25 March 2025, paragraphs 8.22.8-8.22.10

engineering measures to mitigate coastal hazards and remove duplication between Clauses 4 and 5.

[199] Mr Bosserelle<sup>79</sup> supported ‘softening’ Clause 4. Mr Willis, relying on Mr Bosserelle’s evidence recommended that Clause 4 is amended by replacing “avoid” with “minimise”. In his evidence on hard engineering (paragraph 19) Mr Todd<sup>80</sup> recommended amending Objective NH-O3 - Natural Hazard Mitigation Works, by adding the words “where practicable”, noting this would strengthen the consistency with this policy. Mr Willis already recommended adding “where practical” in response to PrimePort [175.28] and TDHL [186.14].

[200] Mr Willis further recommended changes to ensure there is clarity between the requirements of Clauses 4 and 5.

[201] In response to submissions from Alliance Group [173.88] which sought changes to the policy to recognise that changes to the coastal environment natural hazard profile may be acceptable in some cases - for example, where some degree of new or increased coastal hazard risk is outweighed by the benefits of the natural hazard mitigation project. Mr Willis noted that Mr Todd did not support the proposed change as it could allow (by policy) the transfer of risk to adjacent properties, which may not be supported by the adjacent property owner.

[202] In terms of a s32AA assessment, Mr Willis concluded the changes sought to provide greater drafting clarity to achieve the intent of the provision and provide some flexibility to support more mitigation options. He considered that they provide greater efficiency and effectiveness and are the most appropriate for achieving CE-O5 and the purpose of the Act.

[203] We accept the advice of Mr Todd, and the recommendations of Mr Willis. Noting the submitters did not attend the hearing to address these matters further. Alliance Group and Silver Fern Farms advised of their agreement to the recommendations.

## **2.25.2 Decision**

[204] We adopt the recommendations and analysis of Mr Willis on NH-P9.<sup>81</sup> The amended provisions are set out in **Appendix 3**.

[205] We adopt Mr Willis’ s32AA evaluation in support of the changes made.

## **2.26 NH-P10 HIGH HAZARD AREAS**

### **2.26.1 Assessment**

[206] Silver Fern Farms [172.28] and Alliance Group [173.25] submitted that the unqualified avoidance policy setting is not appropriate as it may be acceptable to lose some structures e.g. a fence. They also considered that all high hazard areas need to be mapped, so the policy direction can be implemented at a consenting level.

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<sup>79</sup> S42A Report, Appendix 4

<sup>80</sup> Ibid, Appendix 3

<sup>81</sup> Previously CE-P14

[207] Mr Willis' opinion was that the policy does not require unqualified avoidance as it provides a pathway for buildings that are not natural hazard sensitive. In his opinion this should include structures like fences and therefore an amendment is required to refer to structures in Clause 1 in accordance with the submissions. He also confirmed he was comfortable with the amendments proposed to Clause 2(a) to reference 'significant property' as these simplify the wording but are still accurate. Regarding the mapping of all high hazard areas, he agreed that this would provide certainty for all plan users, but he understood that this is not possible as the Council does not hold detailed flood modelling data for the whole District. In addition, the flood modelling evolves as more data becomes available, and works are undertaken to manage flood risk. Given this, the Flood Assessment Area Overlay identifies where flooding may occur and requires a Flood Assessment Certificate to identify the extent of flooding on the subject site. This enables an up-to-date detailed assessment of flood risk within the Overlay. He considered that this is a more accurate approach than trying to map all high hazard areas with insufficient or changing information.

[208] Tosh Prodanov [117.2] submitted that NH-P10 must allow for mitigation of Natural Hazards at the South Rangitata Huts. In response Mr Willis said that at a policy level it is appropriate to avoid development that would rely on new or upgraded public natural hazard mitigation works to mitigate the natural hazard and that such development should require an assessment through a resource consent pathway to identify risk and appropriate responses. Given that the South Rangitata Huts area is a high hazard area based on the flood modelling he recommended that this submission is rejected. Mr Willis distinguished this site from the Waipopo Huts site because of the underlying Open Space Zone applying to the South Rangitata Huts versus the existing and recommended MPZ applying to the Waipopo Huts, the intended use of the MPZ and its special status. We have addressed the submission from South Rangitata Reserve separately below.

[209] Mr Willis recommended the addition of Clause 3 in relation to submissions from Rangitata Dairies, Silver Fern Farms, Alliance Group, Waipopo Trust and Te Kotare Trust to include:

3. It is located within an Urban Zoned Area and the risks of the natural hazard are avoided or mitigated.

[210] For new Clause 3, consistent with his s32AA assessment for NH-O1, Mr Willis considered this amendment better gives effect to the CRPS approach for high hazard areas within and outside of urban areas under Policy 11.3.1 and is more consistent with the approach taken in the CE Chapter as notified. He considered that this approach is more efficient and effective than the notified Plan as it is cognisant of the built development in existing urban areas and the known natural hazard risk in these locations. Overall, this approach better achieves the purpose of the Act. We agree with that evaluation.

### **2.26.2 Decision**

[211] We adopt the analysis and recommendations of Mr Willis on NH-P10. The amended provisions are set out in **Appendix 3**.

[212] We adopt Mr Willis' s32AA evaluation in support of the changes made.

## **2.27 POLICY NH-P11 REGIONALLY SIGNIFICANT INFRASTRUCTURE IN NATURAL HAZARD AREAS<sup>82</sup>**

### **2.27.1 Assessment**

[213] Transpower [159.63] supports that there is a specific policy to address RSI in natural hazard areas however does not support the “only allow” direction as NH-O2 relates to high hazard areas. In response Mr Willis agreed that there is some misalignment between this policy and NH-O2. However, he said that the solution proposed by the submitter would remove all policy support for RSI in natural hazard areas other than high hazard areas, and earthquake fault and liquefaction areas. CRPS Policy 11.3.4 requires that new critical infrastructure (which is generally the same as RSI) “will be located outside high hazard areas unless there is no reasonable alternative. In relation to all areas, critical infrastructure must be designed to maintain, as far as practicable, its integrity and function during natural hazard events.” Given this higher order policy, Mr Willis recommended amending the policy to limit the “only allow” direction to high hazard areas as per the submitter’s submission and CRPS Policy 11.3.4.

[214] Waka Kotahi [143.70] supports NH-P11 which recognises that RSI may have an operational or functional need to be located within a natural hazard area, however requests an amendment to acknowledge the linear nature of some infrastructure, such as roading, as one reason why it may not be practicable, or sometimes possible, to avoid locations subject to natural hazards. Mr Willis agreed that the linear nature of some infrastructure is an example of an operational need or functional need. However, he did not think it necessary to add this into the policy as an example, noting that there are other examples that could also be added. Waka Kotahi did not pursue this issue further at the hearing.

[215] Te Rūnanga o Ngāi Tahu [185.68] considered that the impact on Kāti Huirapa values and the ability to avoid, remedy and mitigate them should be a consideration of this policy given the long lifespan and potentially permanent impact of RSI. The submitter considers that it needs to be identified in the policy in order to ensure good cross referencing and to allow for consideration as a matter of discretion. Mr Willis agreed that there may be adverse effects on Kāti Huirapa values from some RSI. However, this policy is only concerned with natural hazards and the functioning of the RSI – it does not cover adverse effects such as those identified by the submitter, nor on indigenous biodiversity or natural character or outstanding landscapes, etc – these are addressed by the relevant District-Wide Chapter, not the NH Chapter. SASM provisions apply to RSI (e.g. SASM-R2) that the assessment of Kāti Huirapa values can be undertaken under that chapter.

[216] In the coastal environment, Forest and Bird [156.160] considers that the policy does not accurately reflect the NZCPS and on the other hand DOC [166.116] supports this policy as it is consistent with the NZCPS but requests that it is amended to clarify that the activity does not create or exacerbate natural hazards. Mr Willis recommended that no change was made to the CE aspect of the policy.

[217] Mr Willis considered that the notified s32 evaluation continued to apply to the changes he recommended. We accept that view.

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<sup>82</sup> Previously NH-P11 and CE-P13

## 2.27.2 Decision

[218] We adopt the analysis and recommendations of Mr Willis on NH-P11.<sup>83</sup> The amended provisions are set out in **Appendix 3**.

[219] In terms of s32AA, we are satisfied that the original evaluation continues to apply.

## 2.28 NH-P12 ACTIVITIES IN COASTAL HAZARD AREAS (EXCLUDING REGIONALLY SIGNIFICANT INFRASTRUCTURE)<sup>84</sup>

### 2.28.1 Assessment

[220] Lineage Logistics [107.8] opposes CE-P12.2<sup>85</sup> as it is inconsistent with RMA s6(h), which refers to the management of significant risks, however CE-P12<sup>85</sup> seeks to avoid an increase of any risk, even de minimis or temporary. They sought to delete Policy CE-P12.2<sup>86</sup> and replace it with wording that focuses on unacceptable risk.

[221] Southern Proteins [140.15], Hilton Haulage [168.7], and North Meadows [190.10] considered that use of the term “avoid” in Clause 2 of this policy sets a high threshold, and the term “increase” is not quantified. They considered that potentially, no new buildings could establish in the Sea Water Inundation Overlay in accordance with this policy, they sought a management directive instead. Similarly, Silver Fern Farms [172.87] sought to amend CE-P12<sup>85</sup> to require the avoidance of unacceptable natural hazard risk to life and property, and the management of other risks.

[222] Mr Willis noted that RMA s6(h) requires “the management of significant risks from natural hazards”. However, NCZPS Policy 25 expressly states that “In areas potentially affected by coastal hazards over at least the next 100 years: a. avoid increasing the risk of social, environmental and economic harm from coastal hazards” and CE-P12.2<sup>87</sup> is an exact copy of Clause (a). As the District Plan must give effect to the NZCPS, Mr Willis considered this policy position is correct. He also noted that in his evidence (paragraph 17), Mr Todd draws the same conclusion. We accept Mr Willis’ opinion.

[223] Forest and Bird [156.159] considered that the policy should also direct where new development should occur and sought that it be amended to give effect to the NZCPS. Mr Willis was of the opinion the policy already gives effect to the NZCPS.

[224] Te Rūnanga o Ngāi Tahu [185.46] noted that part of the MPZ is within the Sea Water Inundation Overlay. They considered this policy prevents the development of the MPZ on Māori Land which is against the function of the zone and does not recognise the statement in Section 2.2.4 of the Plan that restrictions by government about flood protection, etc that have prevented Kāti Huirapa from expressing rakatiratata on their ancestral land. They sought an exception for Māori Land. Mr Willis referred to his evidence in relation to the Waipopo Huts

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<sup>83</sup> Previously NH-P11 and CE-P13

<sup>84</sup> Previously CE-P12

<sup>85</sup> Now relocated and renumbered NH-P12 in the Decision Version of the provisions.

<sup>86</sup> Now relocated and renumbered NH-P12 in the Decision Version of the provisions.

<sup>87</sup> Now relocated and renumbered NH-P12 in the Decision Version of the provisions.

assessment which we have addressed above. In his opinion the MPZ could be regarded as urban zoned land as it is intended for urban activities to occur on it. Given this the avoidance requirement would not apply, the clause related to urban zones would apply with its mitigation approach. He recommended clarification of “urban areas” is required, noting that this term is already defined and widely used for other purposes throughout the Plan and that there is an overlay on the Planning Map for urban areas. He recommended that references to urban areas for natural hazards matters instead refer to “urban zoned areas”, with these defined as meaning all zones with the exception of the General Rural, Rural Production, Rural Lifestyle, Future Urban and all Open Space and Recreation zones. We accept the changes are appropriate.

[225] In terms of a s32AA assessment, Mr Willis confirmed this approach is generally consistent with the higher order CRPS Policy 11.3.1 in relation to managing activities within urban areas subject to natural hazards and therefore better gives effect to it. The changes are the most appropriate for achieving the NH Objectives in the CE and the purpose of the Act.

### **2.28.2 Decision**

[226] We adopt the analysis and recommendations of Mr Willis on NH-P12. The amended provisions are set out in **Appendix 3**.

[227] We adopt Mr Willis’ s32AA evaluation in support of the changes made.

## **2.29 NH-P13 IDENTIFYING COASTAL HAZARDS<sup>88</sup>**

### **2.29.1 Assessment**

[228] Lineage Logistics [107.7] considered that this policy should recognise the predicted timeframes and uncertainty associated with predicted coastal inundation. Mr Willis noted that the NZCPS requires at least a 100-year timeframe and uncertainty is built into the modelling and risk assessments. We agree the policy is appropriate to give effect to the NZCPS.

[229] DOC [166.108] supported this policy and the identification of coastal hazards, however, considered that the policy needs to take into account the effects of climate change in line with the NZCPS Objective 5 and Policy 24 and the RMA Part 2, Section 7. Mr Willis recommended changes to include reference to climate change.

[230] Forest and Bird [156.151] considered the policy does not give effect to NZCPS Policies 24 and 25 and requests the deletion of CE-P3<sup>89</sup> and replacement with policies that give effect to these NZCPS policies. Aside from the reference to climate change Mr Willis was of the view that the policy appropriately addresses the NZCPS requirements.

[231] PrimePort [175.44] and TDHL [186.24] considered the policy does not recognise that activities within the Port of Timaru have a functional and operational requirement to locate in the CE, and this requirement should be a matter for consideration in the risk-based approach. In response Mr Willis was of the view that functional or operational need is an appropriate

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<sup>88</sup> Previously CE-P3

<sup>89</sup> Now renumbered NH-P13 in the Decision Version of the provisions.

consideration, this is already included in CE-P13<sup>90</sup> for RSI. In his opinion this particular policy is focussed on identifying coastal hazards through a risk-based approach which determines risk as a result of natural hazard consequences and likelihood. We understood that this response was accepted by the submitters, and that the issues regarding the functional and operational requirements of the Port are addressed further in the PORTZ, and in new NH-P14.

### **2.29.2 Decision**

[232] We adopt the analysis and recommendations of Mr Willis on NH-P13<sup>91</sup> and have included the amendments in **Appendix 3**.

[233] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

## **2.30 NH-P14 PORT ZONE**

[234] We note the addition of this policy to the NH Chapter as a consequence of the merging of the CE Chapter, and in response to submissions from PrimePort [175] and TDHL [186]. The approach is addressed above (in Section 2.3) in relation to the Port of Timaru generally, including our acceptance of Mr Willis' s32AA evaluation and the evidence of Mr Walsh. We accept the recommended wording and consider it appropriately addresses the submissions from PrimePort and TDHL.

### **2.30.1 Decision**

[235] We adopt the recommended drafting of NH-P14 as set out in the Final Reply and have included the policy in **Appendix 3**.

[236] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

## **2.31 NEW POLICIES**

### **2.31.1 Assessment**

[237] Forest and Bird [156.88] considered that by excluding RSI in NH-P10, there is no policy direction for development of RSI in high hazard areas, noting that NH-P11 only addresses natural hazard areas that are not high hazard areas. They sought that a new policy is added to the NH Chapter to provide guidance for development of RSI in high hazard areas. Mr Willis disagreed. The submitter did not attend the hearing to elaborate on this point.

### **2.31.2 Decision**

[238] We adopt the recommendation of Mr Willis and reject the submission. No additional policy is required.

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<sup>90</sup> Now renumbered NH-P10 in the Decision Version of the provisions.

<sup>91</sup> Previously CE-P3

## **2.32 RULES RELATING TO NATURAL HAZARDS**

[239] The Introduction to the NH Chapter explains that the rules in this chapter relate to the Planning Map Overlays (which are addressed below at Section 2.46), which identify a range of natural hazards and the level of risk they pose. The rules apply to avoid risk to development and activities within areas that have been identified as high risk (both scale and probability) from natural hazards. The Council has applied a precautionary approach to areas where it is difficult to map different levels of flood risk and accordingly identifies large areas, particularly in the GRUZ, as a Flood Assessment Area Overlay. The rules apply to mapped natural hazards such as earthquake fault awareness areas, and other areas are mapped or a certification approach within the Flood Assessment Area Overlay such as high hazard areas and overland flowpaths.

[240] A modified approach to the mapping and identification of the Flood Assessment Area Overlay was recommended during the hearing process in response to submissions from ECan [183.28] which requested a revised and more extensive mapping approach, but they had not provided a revised map. A consequence of extending the mapping of the Flood Assessment Area Overlay is that the rules discussed below apply, in some cases, to a wider area than that which was evident at the time of notification. For those reasons, the Panel directed that the ECan submission point be renotified with revised maps and an opportunity given for further submissions. A further opportunity for the hearing of the ECan submission and further submissions in response was provided in Hearing I. We address the revised mapping of the Flood Assessment Area Overlay below. We have determined that the recommendations of Mr Willis in response to ECan [183.28] are the most appropriate approach having considered the relevant matters in the Act and a further evaluation under s32AA. Our decisions on specific rules in the NH Chapter below have been undertaken having considered the extent of the revised Flood Assessment Area Overlay.

## **2.33 NEW RULES**

### **2.33.1 Assessment**

[241] ECan [183.41] supported the need to obtain resource consent when establishing new flood protection schemes, but noted there is sometimes the need for small scale one-off works to protect a particular area, which would be captured by Rule NH-R3<sup>92</sup> (which they recommend is combined with NH-R9<sup>93</sup>). Examples of activities that could be classified as new works under this rule, which are small scale and have little environmental effect include: proactive works where the movement of the river is signalling potential for bank erosion or overtopping in the next flood or repairs to areas where rivers have broken out in a flood. To resolve this ECan suggests adding a new rule “NH-RX: Natural hazard mitigation works, including associated earthworks” that would prevent any consequential adverse effects that could occur if the work is not done well; is certain; can only occur at an acceptable scale; and ensures the work is part of an integrated protection scheme. This submission point also includes ECan’s recurring request to amend the terminology of “natural hazards mitigation works”.

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<sup>92</sup> Now renumbered NH-R4 in the Decision Version of the provisions.

<sup>93</sup> Now merged with NH-R4 in the Decision Version of the provisions.

[242] Mr Willis did not support the addition of a new rule, rather he preferred to address the issues raised in the context of amendments to NH-R3<sup>92</sup> and CE-R9<sup>94</sup> as notified related to natural hazard mitigation works (now merged into NH-R4). As part of Minute 34 we directed Ms Irvine for ECan and Mr Willis to consider an appropriate rule package to address ECan's hazard management activities. They produced a JWS which we address further below.<sup>95</sup>

### **2.33.2 Decision**

[243] We adopt Mr Willis' recommendation that no new rule is required, however we address the submission from ECan as part of our decision on Rule NH-R4 below.<sup>96</sup>

## **2.34 RULE NH-R1 BUILDINGS, STRUCTURES AND EARTHWORKS OUTSIDE THE PORT ZONE, EXCLUDING NATURAL HAZARD MITIGATION WORKS AND ASSOCIATED LAND DISTURBANCE UNDER NH-R4<sup>97</sup>**

### **2.34.1 Assessment**

[244] A number of rural and industrial submitters were concerned about the effect of the provision on their day to day and post flooding reinstatement activities. Dairy Holdings [89.6] requested an exclusion of ancillary rural earthworks undertaken in a flood assessment area from this rule.

[245] Rangitata Dairies [44.3] requested an amendment to NH-R1 to enable remedial works to re-instate existing farmland and infrastructure post flooding events as a permitted activity.

[246] A J Rooney [177.15] wished to introduce a rule that earthwork limits within this overlay only apply in respect to activities that increase flood exposure and amend NH-S2 to increase the permitted earthworks volumes in the Rural Zones within the Flood Assessment Area Overlay per year from 2,000m<sup>2</sup> to 2,500m<sup>2</sup> or more.

[247] KJ Rooney Ltd [197.8 and 197.10] and Fenlea Farms [171.33 and 171.35] had general concerns about the Flood Assessment Area Overlay on their properties and specifically sought amendments to NH-S2 to increase the permitted earthworks volumes.

[248] Silver Fern Farms [172.29] and Alliance Group [173.26] opposed PER-1 on the basis that standard NH-S2 limits earthworks to 250m<sup>2</sup> per calendar year. Mr Willis responded to submitter concerns regarding earthworks related to primary production by noting that the definition of 'ancillary rural earthworks' could enable significant earthworks to occur as it means any earthworks associated with the maintenance and construction of facilities typically associated with farming activities, including, but not limited to, farm tracks/roads (up to 6m wide), landings, stock races, silage pits, farm drains, farm effluent ponds, feeding pads, fencing and erosion and sediment control measures, and burying of material infected by unwanted organisms.

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<sup>94</sup> Now merged with NH-R4 in the Decision Version of the provisions.

<sup>95</sup> JWS, Irvine and Willis, 20 June 2025

<sup>96</sup> Previously NH-R3 and CE-R9

<sup>97</sup> Previously NH-R1 inclusive of Port and CE-R5

[249] Mr Bosserelle<sup>98</sup> stated that it is important that in floodplains, earthworks do not significantly increase the inundation hazard by unintentionally facilitating the flow of inundation water landward or unintentionally creating dams that could catastrophically fail and increase the hazard. He supports setting a limit on the volume of earthworks that is allowed without consent and that the limit of 2,000m<sup>2</sup> in area in any calendar year in a Rural Zone seems appropriate as it should prevent any significant changes to flow pathways in the case of a coastal storm, or alternatively an approach that simply seeks to not worsen flooding on another property through the diversion or displacement of flood water. He is also concerned that the definition of ‘ancillary rural earthworks’ is very broad and could allow for the significant disruption of sea water inundation flow pathways, potentially increasing the inundation hazard.

[250] Mr Willis considered that the area or volume of earthworks in the standard is rather arbitrary. In reviewing the Waimakariri and Selwyn District Plans he noted that the earthworks provisions in flood assessment overlays were permitted where they ‘will not increase flooding on another property through the diversion or displacement of floodwaters’. He supported this approach for Timaru also. He recommended that NH-R1 is amended to delete the reference to NH-S2 and instead include a performance standard that refers to increasing flooding on other properties. He also recommended this approach in the GIZ to address the concerns of Silver Fern Farms and Alliance. Although he did not accept Rangitata Dairies concerns relating to all remedial work. Mr O’Brien, the representative of the submitter, advised the solution proposed to amend NH-R1 PER-2 and delete the reference to NH-S2 addressed their concerns.<sup>99</sup>

[251] ECan [183.38] submitted that the purpose of the rule would be clearer if the title were amended to reflect that it applies to all earthworks except for those associated with natural hazards mitigation works and the land disturbance associated with those works. ECan suggested the same provisions for non-hazard sensitive buildings and structures can be covered by this rule.

[252] ECan suggested PER-1 could be limited to earthworks subject to flooding rather than the entire site. For PER-2, they submitted that the definition of ‘overland flowpath’ is unclear, and any area identified as an overland flowpath will show up in an assessment of whether the site is impacted by a 0.5% AEP flood event. In addition, ‘overland flowpath’ would not necessarily pick up ponding areas. ECan questioned the drafting of the words "If a" at the beginning of the standard. The drafting does not indicate the status of the activity if no certificate has been issued, as the standard would then only apply if a certificate had been issued. ECan suggests a new PER-3 to ensure that earthworks that might be undertaken as a permitted activity do not have offsite flooding effects, and to ensure compliance or enforcement action can be undertaken if offsite effects occur and also addresses displacement of flood waters as well which can have an impact in non-flow ponding areas.

[253] Mr Willis generally agreed with the drafting improvements and reasons provided by ECan and adopted these in part in his recommended rule redrafting.

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<sup>98</sup> S42A Report, Appendix 4

<sup>99</sup> Justin O’Brien, Written Statement, April 2025

[254] Te Rūnanga o Ngāi Tahu [185.69] considered the extent of impacts on Kāti Huirapa values should be a matter of discretion for all the activities requiring resource consent in the Overlays and not just the maintenance, replacement and upgrading of mitigation works. They sought the addition of new matters of discretion to the restricted discretionary activities in this rule.

[255] Mr Willis was not supportive of the addition of the matters of discretion as requested by Te Rūnanga o Ngāi Tahu, for the reason that the NH Chapter has a specific focus of natural hazard management. We have accepted his recommendation in the context of the objectives and policies addressed above.

[256] We note that the Panel has considered the request to include matters of discretion related to Kāti Huirapa values in the context of Hearing E. Ms Pull<sup>100</sup>, the planner on behalf of the submitter undertook an analysis of controlled and restricted discretionary rules across the plan to identify if mana whenua values ought to be included to achieve better environmental outcomes. Ms Pull referred to the NPS which requires integration of mana whenua values throughout the Plan.<sup>101</sup> Her evidence was focused on the provisions that were being considered in Hearing E; however, she offered to undertake a plan-wide assessment. We invited her to do so in Minute 24, and a response was provided.<sup>102</sup> In the tabular evaluation, Ms Pull had concluded that there were no easily identifiable values at a general level for NH-R1. Ms Pull noted that the notified matters of discretion included consideration of adverse effects of mitigation measures. Based on that analysis we agree with Mr Willis that it is not necessary to provide for specific matters related to Kāti Huirapa values in NH-R1.

[257] South Rangitata Reserve [206.10] raised concerns that compliance costs may outweigh the cost of the physical work and hopes that minor work would be readily approved. The submitter objects only if the protection works on the South Rangitata Reserve or neighbouring coastal or river margins is not provided for. Mr Willis did not consider it appropriate to predicate a submission on the basis that protection works on the South Rangitata Reserve or neighbouring coastal or river margins are provided for. Mr Willis relied on advice from ECan, that flood risk certificates for rural parts of the District, if required, will be reasonably priced (in the order of \$150-\$200 dollars) and therefore it was unlikely to outweigh the actual earthworks costs. We agree the relief requested by South Rangitata Reserve is not supported by evidence.

[258] Accordingly, Mr Willis recommended that as a consequence of amending NH-R1 this single rule adequately covers the risk from the diversion of overland flowpaths, and therefore this is not needed to be separately addressed. He recommended that NH-R4 PER-3 and NH-R6 PER-2<sup>103</sup> relating to overland flowpaths be deleted and NH-P4 amended to also cover overland flowpaths.

[259] Mr Willis' Final Reply recommended reinstating the notified permitted activity standard (PER-2) in NH-R1 that requires a Flood Assessment Certificate to confirm a site is not located

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<sup>100</sup> Rachael Pull, Statement of Evidence, 22 January 2025, paragraphs 39-48

<sup>101</sup> NPS Mandatory Direction 5.

<sup>102</sup> Memorandum on behalf of Te Rūnanga o Ngāi Tahu, 31 March 2025.

<sup>103</sup> Now renumbered NH-R6 in the Decision Version of the provisions.

within an overland flowpath, but narrowing the application of this notified standard by limiting it to existing Council stormwater management areas in Timaru, Temuka, Geraldine and Pleasant Point, identified via an additional overlay in the Plan (i.e. the Overland Flowpath Assessment Area Overlay).

[260] He also recommended a minor change to NH-S1 to account for these changes (by adding a reference to the Overland Flowpath Assessment Area Overlay in NHS1.1(c)). He recommended narrowing the reference in amended PER-1 (now renumbered PER2) from “will not worsen flooding” to “will not create or increase the diversion or displacement of floodwater” to make this standard more precise. The revised rule now includes an exclusion to this standard for buildings, structures or earthworks authorised by a building consent, to avoid duplication as these matters are also considered under the Building Act; and the deletion of references to overland flowpaths and diversion and displacement flooding from the matters of discretion in other rules (e.g. NH-R4 Matter of Discretion 1 and NH-R5.1 Matter of Discretion 2) as these matters are now adequately captured in NH-R1.

[261] Mr Willis also recommended deleting NH-R2 Fences (as notified) as these matters are now addressed in NH-R1. This outcome addresses submissions raised in response to the notified rules for the same reasons he explained above in relation to NH-R1.<sup>104</sup>

[262] In terms of s32AA Mr Willis concluded that the proposed amendments seek to clarify the application of the provisions and change the approach for managing diversion and displacement. Whilst the recommended diversion and displacement approach utilises a different approach from the notified plan, the same outcomes are still sought. He concluded that the recommended approach is more efficient than the notified approach of requiring Flood Assessment Certificates and utilising building and earthworks thresholds and better achieves NH-O1 and the purpose of the Act. We agree with the recommended approach.

### **2.34.2 Decision**

[263] We adopt the analysis and recommendations of Mr Willis on NH-R1, and related amendments to delete NH-R2 (as notified), NH-R5 PER-3, NH-R8 PER-2.<sup>105</sup> The amended provisions are set out in **Appendix 3**. The Overland Flowpath Assessment Area Overlay is included in **Appendix 2**.

[264] We adopt Mr Willis’ s32AA evaluation in support of the changes made.

## **2.35 RULE NH-R2 NEW BUILDINGS STRUCTURES AND EARTHWORKS IN THE PORT ZONE<sup>106</sup>**

### **2.35.1 Assessment**

[265] This is a new rule to address hazard overlays within the PORTZ as a consequence of the bespoke rule package agreed between PrimePort [175], ECan [183] and the Council. It also includes the Coastal Erosion Overlay which was recommended to be extended in

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<sup>104</sup> Peter Bonifacio [36.15], ECan [183.39], Hort NZ [245.55], MFL [60.12]

<sup>105</sup> Previously NH-R4 and NH-R6.

<sup>106</sup> New rule

response a submission from ECan [183.133]. PrimePort [175.67F] opposed the submission due to implications for Port operations. We address the extent of the overlay below; however, this section addresses the outcome that was subsequently agreed between the submitters and Mr Willis on the regulatory impact of the Coastal Erosion Overlay on Port operations.

[266] Mr Walsh for PrimePort<sup>107</sup> recommended that if the Coastal Erosion Overlay (noting that PrimePort is supportive of the overlay) is introduced to the South Beach frontage of the PORTZ, then this needed to be added to the rule as a relevant hazard.

[267] The drafting of the rule was subject to expert witness conferencing and is recorded in the JWS in response to Minute 34.<sup>108</sup>

### **2.35.2 Decision**

[268] We adopt the recommendations of Mr Willis and Mr Walsh. The amended provisions are set out in **Appendix 3**

[269] We adopt the s32AA evaluation as set out in Section 2.3 above.

## **2.36 RULE NH-R3 LAND DISTURBANCE<sup>109</sup>**

### **2.36.1 Assessment**

[270] Forest and Bird [156.166] submitted that it is difficult to ascertain what sort of activity this rule permits and sought to delete the rule. Mr Willis explained that land disturbance is a defined activity and is distinguishable from earthworks as it does not permanently alter the profile, contour, or height of the land. He considered it appropriate and a critical component of natural character, Loss of indigenous vegetation is covered by the ECO Chapter. Mr Willis considered that this activity is able to be determined and is, on balance, is appropriate in the CE and Overlays.

[271] South Rangitata Reserve [206.8] considered there is a range of work that could be undertaken at the Rangitata Reserve that would prolong the life of the Huts. The submitter supported the rule subject to clarification that a range of essential works within the Reserve are facilitated under this rule. It was unclear what the submitter sought specifically. We have addressed the submitter's issues more broadly below.

### **2.36.2 Decision**

[272] We adopt Mr Willis' recommendations and retain the rule.

[273] No s32AA evaluation is required.

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<sup>107</sup> Tim Walsh, Statement of Evidence, 9 April 2025, paragraph 80

<sup>108</sup> Andrew Willis, Interim Reply Report Addendum, Appendix 2 JWS, 30 June 2025 (Numbered NH-R1A)

<sup>109</sup> Previously part of CE-R6

## **2.37 RULE NH-R4<sup>110</sup> NATURAL HAZARD MITIGATION WORKS - MAINTENANCE, REPLACEMENT AND UPGRADING**

### **2.37.1 Assessment**

[274] In relation to the CE aspects of Rule NH-R4, PrimePort [175.54] submitted that it undertakes natural hazard mitigation works within/adjoining the PORTZ and considered Rule CE-R9<sup>111</sup> (as notified) needs to make similar provision for Port maintenance of existing works.

[275] Mr Willis noted this was a matter agreed with the submitter and the changes have been incorporated into the rule.

[276] South Rangitata Reserve [206.11] is concerned the cost to obtaining council certificates may outweigh the cost of physical work and objects to this rule only if the protection works on the South Rangitata Reserve or neighbouring coastal or river margins is not provided for. Mr Willis did not accept the reasoning, nor do we.

[277] OWL [181.54] submitted that it is appropriate for a permitted activity status to be extended to network utility operators of RSI subject to compliance with the regional plan or the flood protection bylaw. OWL considered this would give due recognition to the importance of RSI to the District. Mr Willis was not convinced that this rule needed to provide a permitted pathway for RSI operators as the rule is intended to apply to organisations with statutory natural hazard responsibilities to keep their communities safe and provide accountability to the public. Mr Willis distinguished the Port from other RSI operators given geographical constraints.

[278] In evidence, Ms Crossman explained that a key concern for OWL in relation to NH-R3<sup>112</sup> is the extent of the Flood Assessment Area Overlay in the proposed Planning Maps, which includes areas within the bed of rivers and streams and associated riparian zones controlled by RMA s13(1) and rules in the CLWRP.<sup>113</sup> She considered it would be inefficient (in terms of the requirements of s32) for the Plan to require operators of RSI to obtain land use consent for natural hazard works when such activities are either permitted by the CLWRP or authorised by a resource consent granted under the CLWRP (or other approval that has been obtained from ECan), where the activity complies with all other permitted activity conditions of NH-R3.<sup>114</sup> In her summary statement Ms Crossman acknowledged that Mr Willis has subsequently<sup>115</sup>, which addressed part of the submitters concerns. At the hearing Mr Willis recommended a note be included in the Introduction to the NH Chapter. This is now included. We have also addressed our preference for drafting to reference 'vegetation' not habitats and therefore we consider the issues raised by the submitter in relation to this rule to have been addressed by the drafting in the Final Reply.

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<sup>110</sup> Previously NH-R3, NH-R9, CE-R9 and CE-R12

<sup>111</sup> Now merged into NH-R4 in the Decision Version of the provisions.

<sup>112</sup> Now renumbered NH-R4 in the Decision Version of the provisions.

<sup>113</sup> Julia Crossman, Statement of Evidence, 15 April 2025, paragraph 4.9

<sup>114</sup> Now merged into NH-R4 in the Decision Version of the provisions.

<sup>115</sup> Julia Crossman, Summary Statement, 30 April 2025, paragraph 2.9

[279] Waka Kotahi [143.71] generally supports NH-R3<sup>112</sup> but noted that if this rule cannot be met and resource consent is required as a restricted discretionary activity, the potential effects on infrastructure should also be considered in addition to the risk for people, property and public spaces. Mr Willis agreed that the potential effects on infrastructure should also be considered. However, in his opinion the effects on infrastructure are already captured under “property”. To avoid confusion, he was comfortable amending matter of discretion 4 (now 3) as requested.

[280] ECan submitted on the rule as it related to the CE and Flood Assessment Area Overlay. They suggested some structural amendments to the rule along with a set of revised matters of discretion. Further, ECan requested a fully discretionary activity for non-compliance with PER 2 (as notified) where the works are not undertaken by Local Authorities or the Crown for maintenance, replacement or upgrading of existing infrastructure. Mr Willis did not agree with this change, noting that OWL had requested the activity status be permitted. Mr Willis accepted the merging of the rules as requested by ECan. Our decision on the merged rule is inclusive of notified NH-R3 and NH-R9 as notified (now merged into NH-R4).<sup>116</sup>

[281] In evidence for ECan, Ms Irvine raised concerns on behalf of ECan’s flood protection scheme operation, that the conditions of the rule are ambiguous when applying them to the flood and erosion protection works undertaken by the Regional Council, and further that the s42A Recommendation changes mean that anyone other than the Crown, Regional Council or TDC must obtain a resource consent for any natural hazard mitigation works (NHMW), regardless of the scale. Her evidence also related to the equivalent CE Rules (now merged into this chapter).<sup>117</sup>

[282] In particular Ms Irvine said:<sup>118</sup>

the ambiguity relates to river protection schemes being delivered at a catchment or river scale (ki uta ki tai) and not just to historic work sites or structures. River and catchment schemes are reliant on all work types playing an integrated and complementary role in the success of a scheme (i.e. the schemes are only as strong as their weakest point). This concept was illustrated under paragraph 23 and 24 where the need for maintenance, enhancement, and replacement of flood and erosion protection vegetation, anchored tree protection, and a stopbank were shown in response to the dynamic erosion patterns of a river. The limitations in PER-1 and PER 2 (as notified, they are PER-2 and PER-3 following the recommendations of the s42A report) may be interpreted as distance to, and footprints of, historic work sites or identified assets (e.g. Stopbanks), as opposed to any work type captured in the NHMW definition within the full footprint of the established river schemes.

[283] Ms Irvine also recommended a new rule setting a permitted activity threshold for new, small scale natural hazard management works and set out the reasons for that.<sup>119</sup>

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<sup>116</sup> Therefore, also addressing submissions ECan [183.48] South Rangitata Reserve [206.12] and Te Kotare Trust [115.16] and Waipopo Huts [189.26] submissions in opposition are assessed in the Waipopo Huts section.

<sup>117</sup> Jolene Irvine, Statement of Evidence, 9 April 2025.

<sup>118</sup> Ibid, paragraph 41

<sup>119</sup> Ibid, paragraph 43.

[284] Mr Willis had reserved his position on these aspects leading into the hearing. The Panel directed that Mr Willis and Ms Irvine meet and prepare a joint set of rules that addressed these important functions of the Regional Council. They produced a JWS, attached to Mr Willis' Interim Reply.<sup>120</sup> They agreed on a set of provisions to be included in the plan to address ECan's submission. This included a note to the effect that the provisions in the ECO, NATC, NFL and SASM Rules do not apply to NH-R3 and CE-R9 (now merged and renumbered NH-R4). Ms Irvine and Mr Willis provided a s32AA evaluation in support of those changes. We agree with that evaluation.

### **2.37.2 Decision**

[285] We adopt the recommendations of Mr Willis, inclusive of the agreed outcomes reached in conferencing and recorded in JWS filed with the Council's Interim Reply. The amended provisions are set out in **Appendix 3**. We adopt Mr Willis' s32AA evaluation and those recorded in the JWS filed with the Council's Interim Reply.

## **2.38 RULE NH-R5 NATURAL HAZARD SENSITIVE BUILDINGS OUTSIDE THE PORT ZONE<sup>121</sup>**

### **2.38.1 Assessment**

[286] Road Metals [169.15], Fulton Hogan [170.16], and Dairy Holdings [89.6] submitted that it is unclear if the rule applies to all structures or just those that are sensitive to natural hazards. They also considered it is unclear if 'ground floor area' applies to all structures. Mr Willis noted that in light of the recommended changes to NH-R1 which applies to non-natural hazards sensitive activities and structures, this rule need not apply to structures.

[287] Silver Fern Farms [172.30] and Alliance Group [173.27] sought clarity whether a non-complying status applies under rule NH-R4.2<sup>122</sup> for >30m<sup>2</sup> developments in a High Hazard Area Overlay. The submitters' sites are not within the High Hazard Area Overlay, but parts of the site are subject to the Sea Water Inundation Overlay. They submitted that if land is mapped in the Sea Water Inundation Overlay and is classed as a high hazard area, a non-complying activity status is not appropriate. They also submitted on the equivalent CE rule, so we have considered this collectively. Mr Willis considered that new natural hazard sensitive activities in "high hazard areas" should be non-complying where these are not within urban zoned areas and should be avoided or mitigated if located within urban zoned areas. The recommended Flood Assessment Certificate approach would identify high hazard areas.

[288] OWL [181.55] and TDC [42.31] considered the title of the rule should specifically exclude RSI to be consistent with the rule. Mr Willis agreed with the exclusion of RSI (now addressed in the definition of 'natural hazard sensitive activity'.)

[289] In response to a submission from Peter Bonifacio [36.16] Mr Willis agreed that non-compliance with meeting the minimum specified floor levels under PER-1 and PER-2 should be restricted discretionary, rather than non-complying and noting that under the recommended

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<sup>120</sup> Interim Reply 23 June 2025, Appendix B – JWS, Willis and Irvine 20 June 2025.

<sup>121</sup> Previously NH-R4 and natural hazard aspects of CE-R4

<sup>122</sup> Now renumbered NH-R5 in the Decision Version of the provisions.

PER-3 there is a distinction between natural hazard sensitive activities within high hazard areas versus non high hazard areas.

[290] Rangitata Dairies [44.4] considered that the rule captures existing natural hazard sensitive activities and structures and there is some uncertainty over the extent of any overland flowpaths, and as such how this rule may apply. Mr Willis clarified that the rule does enable the re-instatement of existing natural hazard sensitive activities and existing structures within Flood Assessment Area Overlays as a permitted activity as the rule does not extinguish existing use rights. Further a number of buildings are not defined as 'natural hazard sensitive activities'<sup>123</sup> so would not be captured by the rule.

[291] Mr Willis generally agreed with the structural changes requested by ECan [183.42] and noted that extensions and additions are addressed in the definition of "natural hazard sensitive activities".

[292] Many of the changes to this rule are intended to improve clarity (e.g. the changes to PER-1) or are a change required as a result of other recommended changes (e.g. the deletion of PER-3 due to changes to NH-R1). The substantive changes to this rule involve amendments to introduce an urban zoned area / non-urban zoned area split in approach and matters of discretion for when activities are located in the MPZ. The s32AA assessments of these changes were undertaken as part of assessing the changes proposed in the Waipopo Huts section and under NH-O1. Overall, Mr Willis considered that the amendments are the most appropriate for achieving NH-O1 and the purpose of the Act.

[293] We note that the other changes to the rule were made when merging the natural hazard aspects of CE-R4 into NH-R5. Submissions on the CE-R4 aspects are addressed below.

[294] Silver Fern Farms [172.89] considered that minor developments at the submitter's Pareora processing site will be subject to a restricted discretionary consenting pathway under Rule CE-R4.2<sup>124</sup> for buildings > 150m<sup>2</sup> because the site is not in a defined "urban area". The submitter does not support CE-R4 given the scale of existing development and value of the investment in this site. The submission point included a restricted discretionary pathway for GIZ parts of their site in the Sea Water Inundation Overlay.

[295] Paul Smith [204.3] considered the requirements of the Sea Water Inundation Overlay are too restrictive given the underlying GIZ of 86 Sheffield Street. Mr Willis responded by noting that, in response to Te Rūnanga o Ngāi Tahu [185.46], he recommended a new definition of 'urban zoned areas' that would make the submitter's Pareora site 'urban'. Buildings and structures in the GIZ portion of the site would be permitted under CE-R4.1 (now NH-R5.3) as requested, if they meet the standards. Mr Willis recommended a restricted discretionary activity pathway would exist under CE-R4.4 (now NH-R5.3) for the GIZ parts of the site located in the proposed Sea Water Inundation Overlay that do not meet the permitted activity standards. This would also address Paul Smith's submission as the submitter's site is zoned urban.

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<sup>123</sup> Now 'natural hazard sensitive buildings' in Final Reply

<sup>124</sup> Now split into CE-R4 and NH-R5 in the Decision Version of the provisions.

[296] Lineage Logistics [107.9], Simo Enterprises [148.3], Paul Smith [204.3] and Fenlea Farms [171.23] opposed the rules as being overly restrictive.

[297] The New Zealand Defence Force [151.15] requested an exclusion for temporary military training exercises (TMTA) in the Coastal Erosion Overlay as the majority of buildings and structures will be temporary and therefore have a low vulnerability to coastal erosion. Mr Willis agreed with the submission point and included the outcome sought in the redrafted rule.

[298] PrimePort [175.50] and TDHL [186.28] stated that the provision for buildings and structures as a permitted activity in urban areas of the coastal environment under CE-R4.1 is appropriate. However, they considered that the requirement for buildings to be able to be made completely watertight may not be able to be economically achieved and that provided the materials of the building below the required minimum floor level are resilient and hazardous substances are not stored below that level (addressed via Rule HS-R1 PER-2), that should be sufficient to mitigate adverse effects from seawater inundation.

[299] ECan also identified that the rule does not address whether an area is subject to high hazard, and there is no policy response that directs how high hazards are to be addressed. ECan considers it is not clear why 25m<sup>2</sup> is used as the threshold for additions in the CE Chapter, while 30m<sup>2</sup> is used for additions in the NH flooding provisions. ECan raised a concern that under CE-R4 PER-1 and 2, large and/or high value buildings will be allowed, as they do not meet the 'natural hazard sensitive activity' definition, and there is no obvious mechanism to control their use after they have been built. ECan was also concerned that under PER 4 any building can be constructed within areas subject to seawater inundation so long as it is made of watertight materials. ECan considered that if the rule is to facilitate development at the port, the rule could apply to just the port area/zone.

[300] Mr Bosserelle's evidence was that some development in the Sea Water Inundation Overlay in the PORTZ should be allowed to ensure the economic viability of the region. However, he considered that a restricted discretionary activity pathway is required to avoid development that increases the risk to people in the medium to long term. He also supported the use of port-specific rules to enable adaptive management.

[301] Outside of the PORTZ Mr Bosserelle's<sup>125</sup> evidence stated that the Sea Water Inundation Overlay extends a significant way inland and may, in first instance appear restrictive. However, in most areas, the Sea Water Inundation Overlay and the Flood Assessment Area Overlay are overlapping, and the restrictions are relatively consistent. He considered that having a consistent 30m<sup>2</sup> limit for both the Sea Water Inundation Overlay and Flood Assessment Area Overlay may help to make the rules more uniform and simplify the application of the rules. In addition, the Flood Assessment Area Overlay allows for new buildings outside of urban areas under a restricted discretionary pathway but not for the Sea Water Inundation Overlay. Mr Bosserelle considered this distinction seems inconsistent and may unnecessarily prevent farming development where these involve buildings and structures in areas of productive land. Mr Bosserelle considered that restricted discretionary activity consent would allow buildings with suitable restrictions (e.g. adequate floor levels, etc) but

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<sup>125</sup> S42A Report Appendix 4

could additionally prevent building in areas currently exposed to sea water inundation at present sea levels.

[302] Mr Willis, having reviewed the evidence considered that the approach within the Flood Assessment Area Overlay and Sea Water Inundation Overlay are inconsistent because under the CRPS any area subject to sea water inundation is automatically “high hazard”, irrespective of the level of sea water inundation, and these provisions have been developed in response to that higher order direction. As such, he was of the view that distinction is required. ECan [183.125] sought amendments to CE-R4.4, CE-R4.5 and CE-R4.6 to give effect to Policy 11.3.1 and Policy 11.3.2 and the NZCPS. Mr Willis considered amendments to be justified to ensure CE-R4.4, CE-R4.5 and CE-R4.6 only apply to natural hazard sensitive activities, rather than all structures. Accordingly, his recommendations separate out the rules for these overlays, now incorporated into NH-R5, and are focused on natural hazard sensitive activities.

[303] In response to ECan’s submissions on the CE hazard rules, Mr Willis generally agreed with the points made and has accommodated these in the revised drafting of NH-R5. In response to an ECan submission he recommended amending the definition of ‘high hazard’ which requires flooding from any source (including sea water inundation) to meet a depth / velocity threshold, rather than just any quantum of sea water inundation which is the current CRPS high hazard definition (however any land subject to coastal erosion over the next 100 years remains high hazard), noting that the Plan and the recommended amended definition of ‘high hazard’ must give effect to the CRPS.

[304] The submission from Te Rūnanga o Ngāi Tahu [185.47] is addressed in our decision on Waipopo Huts above.

[305] In terms of a s32AA assessment, Mr Willis concluded the changes better achieve CE-O1, CE-O2, CE-O4<sup>126</sup> and CE-O6<sup>127</sup> (and we interpolate their merged counterparts) as they are more precise in their management of natural hazard sensitive buildings and activities that adversely affect coastal qualities. Accordingly, they are more efficient and effective. The changes in relation to natural hazard risk better respond to the level of certainty available in the modelling. Overall, he concluded that the amendments are the most appropriate for achieving the relevant objectives and the purpose of the Act. We agree with his assessment.

### 2.38.2 Decision

[306] We adopt the analysis and recommendations of Mr Willis on NH-R5.<sup>128</sup> The amended provisions are set out in **Appendix 3**.

[307] We adopt the s32AA evaluations undertaken by Mr Willis in relation to the changes made arising from both the NH and CE Chapters as they relate to natural hazards.

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<sup>126</sup> Now relocated and renumbered NH-O2 in the Decision Version of the provisions.

<sup>127</sup> Now renumbered CE-O4 in the Decision Version of the provisions.

<sup>128</sup> Previously NH-R4 and natural hazard aspects of CE-R4

## **2.39 RULE NH-R6 NATURAL HAZARD SENSITIVE BUILDINGS WITHIN THE PORT ZONE<sup>129</sup>**

### **2.39.1 Assessment**

[308] This new rule is in response to submissions from PrimePort [175] and TDHL [186] and the consequential changes arising from the extension of the Coastal Erosion Overlay. The provision was agreed between the Council, ECan and the Port.

[309] The drafting was reviewed as part of the JWS drafting process for the merging of the NH and CE Chapters as they related to the Port.<sup>130</sup>

### **2.39.2 Decision**

[310] We adopt the recommendations of Mr Willis. The amended provisions are set out in **Appendix 3**.

[311] We adopt the s32AA evaluation undertaken by Mr Willis in relation to the Port of Timaru in Section 2.3 of this Report.

## **2.40 RULE NH-R7 REGIONALLY SIGNIFICANT INFRASTRUCTURE- MAINTENANCE, REPAIR, REPLACEMENT AND UPGRADING<sup>131</sup>**

### **2.40.1 Assessment**

[312] Transpower [159.64] submitted that the rule provides for the maintenance and upgrading of RSI. The submitter noted the rule applies to existing RSI and as such, the infrastructure is already located in the various overlays. Transpower sought to include “repair” in the rule and does not support PER-2 as notified as it is not clear how this standard would apply to a transmission line. Mr Willis agreed to include reference to repair for clarity reasons. He accepted there was merit in the changes requested by the submitter, but he preferred alternative wording.

[313] PrimePort [175.30] supported the provision for the maintenance, replacement and upgrading of RSI, although considered PER-1 is too restrictive, particularly where infrastructure is large scale and sought that this be amended from 5m to 20m. Mr Willis accepted the changes as being appropriate and these are incorporated into the Port Zone equivalent rule (NH-R2).

[314] ECan [183.43] submitted that earthworks from infrastructure can displace flood storage capacity (i.e. additional fill taking up flood storage space in a ponding area) and that this will not always be disturbance to an ‘overland flowpath’ as defined in the plan, which is the route along which stormwater flows over land in a rain event. The submitter requested drafting changes to that effect. Mr Willis agreed with the changes requested.

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<sup>129</sup> New rule arising from bespoke rules for PORTZ. Previously part of NH-R4

<sup>130</sup> JWS, Willis and Walsh, 30 June 2025

<sup>131</sup> Previously NH-R5 and CE-R7

[315] BP Oil, et al [196.54] submitted that NH-R5 (as notified) permits maintenance, replacement and upgrading of RSI, which is supported, however the definition of 'upgrade' already includes 'replacement' so the necessity of including this term is questionable. The submitter opposed PER-1, as there could be instances where locating infrastructure more than 5m from its existing location would not generate more of a risk or adverse effect on or from a natural hazard, especially if, after works, the ground levels remain unchanged. Mr Willis agreed with the changes but preferred alternative wording.

[316] In terms of a s32AA, Mr Willis concluded that the recommended amendments generally seek to refine the rule or clarify its application. The key substantive change is the inclusion of an additional PER clause for underground infrastructure and an increase for the distance from existing RSI for replacement and upgraded RSI. In his opinion these changes seek to provide increased flexibility and efficiency for RSI in areas subject to flooding and earthquake faults whilst still achieving NH-O1. We agree with his evaluation.

[317] Submissions on CE-R7 (the equivalent rule to NH-R5 as notified) that related to natural hazards included submissions from PrimePort [175.52] and TDHL [186.30] which have been accepted and addressed in the Port specific provisions referred to earlier.

[318] Te Rūnanga o Ngāi Tahu [185.48] submitted that the extent of any impact on cultural values should be a matter of discretion for all the activities requiring consent in the Coastal Erosion and Sea Water Inundation Overlays given the significance of the coastal environment on Kāti Huirapa values. Consistent with Mr Willis' recommendations on other NH provisions he considered that the matters of discretion should target the natural hazards issues arising, rather than be more general and covering economic, cultural, social, or environmental harm. While he acknowledged the significance of the coastal environment on Kāti Huirapa values, this rule is about natural hazards impacts on the activities being proposed and the consequences of not meeting the standards in relation to natural hazards impacts. He noted however that for CE-R7.2 in the HNC (and his recommended CE-R7.3 in the coastal environment), the matters of discretion refer to Policy CE-P6<sup>132</sup> which covers Kāti Huirapa values and as such there is already an existing (and proposed) reference to Kāti Huirapa values for this rule. We note that in Ms Pull's Memorandum in response to Minute 24, the two notified rules were not identified as requiring the addition of a specific matter of discretion. Ms Pull was comfortable that where non-compliance with built form standards occurred the existing matters of discretion are sufficiently broad to allow consideration of cultural values should they be relevant to the particular activity.

[319] ECan [183.126] submitted on this rule also, and a number of the matters raised were accepted by Mr Willis and have been incorporated into the updated recommended drafting.

[320] In terms of a s32AA assessment, Mr Willis concluded that the amendments he recommended provide greater clarity for the application of the provisions and better respond to the level of certainty available in the modelling. He concluded the changes to be more effective and efficient. We agree with Mr Willis' recommendation.

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<sup>132</sup> Now renumbered CE-P4 in the Decision Version of the provisions.

## 2.40.2 Decision

[321] We adopt the analysis and recommendations of Mr Willis on NH-R7.<sup>133</sup> The amended provisions are set out in **Appendix 3**.

[322] We adopt Mr Willis' s32AA evaluation in support of the changes made.

## 2.41 RULE NH-R8 REGIONALLY SIGNIFICANT INFRASTRUCTURE – NEW<sup>134</sup>

### 2.41.1 Assessment

[323] Mr Willis acknowledged that this rule is complex because it seeks to manage flood displacement and overland flowpath diversion while also protecting the RSI itself from flood risk. As a result, it adopts different approaches depending on the applicable overlay, whether the site is within an overland flowpath, and the size of the RSI. The rule also addresses earthquake fault risk. Adding to this complexity, the definition of RSI is very broad, encompassing the Timaru air and seaports, transport hubs, the strategic land transport network, and community three waters services.

[324] Transpower [159.65] supported that the rule provides for new RSI but considered that the exceptions to Rule NH-R6.1<sup>135</sup> need to clarify whether they relate to the footprint of a structure (and not any overhead lines component). It is critical that this exemption applies to the submitter given the linear nature of the National Grid and in order to give effect to the NPS-ET. Mr Willis agreed with the submitter and incorporated changes into the rule in his recommendations.

[325] OWL [181.56] submitted that under NH-R6.1<sup>135</sup> new RSI would be a restricted discretionary activity if the land is subject to flooding in the 0.5% AEP event (PER-5) irrespective of minimum floor levels. OWL considered this is inconsistent with NH-R4.1<sup>136</sup> which enables new RSI on such land if it complies with the minimum floor level requirement. OWL is concerned that new RSI on land classified as an overland flowpath would default to restricted discretionary status irrespective of whether the infrastructure has been designed to maintain the function of the overland flowpath and minimise any increase or new risk from flooding. They are also concerned new RSI on land within the High Hazard Area Overlay would default to restricted discretionary status irrespective of whether the infrastructure has been designed for the natural hazard.

[326] In response to OWL Mr Willis agreed that there should be a permitted activity standard for buildings built to the required finished floor level in a Flood Assessment Certificate. Regarding OWL's additional request to allow new RSI in overland flowpaths as a permitted activity, Mr Willis was of the opinion that a permitted activity standard could apply instead, as recommended for NH-R1 where the activity will not worsen flooding on another property through the diversion or displacement of flood water. He considered this to be addressed in NH-R1 so could be deleted from this rule.

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<sup>133</sup> Previously NH-R5 and CE-R7

<sup>134</sup> Previously NH-R6 and CE-R8

<sup>135</sup> Now renumbered NH-R8 in the Decision Version of the provisions.

<sup>136</sup> Now renumbered NH-R5 in the Decision Version of the provisions.

[327] Ms Crossman for OWL explained that rather than a permitted activity with a certification approach for new RSI in a High Hazard Area Overlay, an alternative could be a controlled activity (to address any uncertainty regarding an independent certifier of appropriate design).<sup>137</sup> Mr Willis did not provide any specific response to this alternative at the hearing. However, in the revised provisions in his Interim Reply and in the Final Reply, changes have been recommended to provide greater clarity as to the matters of discretion and having reviewed these we are satisfied that the general concerns raised by the submitter are appropriately addressed albeit not in the way the submitters specifically requested.

[328] TDC [42.32] considered that sometimes new RSI (e.g., stormwater pump stations) needs to be established on land within the Flood Assessment Area Overlay and that NH-R6.1<sup>135</sup> does not give appropriate recognition to the importance of RSI. The submitter considered that such infrastructure should be enabled within the Flood Assessment Area Overlay on land that is subject to flooding in a 0.5% AEP event if it complies with the minimum floor level requirements provided in NH-R4.1, PER-5. In response to this submission Mr Willis recommended that an additional standard is added for buildings built to the required finished floor level in a Flood Assessment Certificate.

[329] ECan [183.44] sought to simplify the provisions by removing reference to overland flowpaths in line with previous submissions and make PER-2 a subset of PER-1, with a new PER-1b to address flooding hazards, incorporating the second part of the rule which relates to activities in overland flowpaths. ECan sought to delete the crossovers within the rule e.g. infrastructure that is above ground, or it is more than 10m<sup>2</sup>, which triggers restricted discretionary activities requiring consent under both rules, and the title for the overlay should recognise the term Flood Assessment Certificate. The rule has now been re-structured to address many of the issues raised by ECan.

[330] KiwiRail Holdings [187.48] stated that this rule includes an exception for structures within a road corridor and sought the broadening of this exception to include structures within a rail corridor as there are cases where rail structures are required within Flood Assessment Area Overlays due to their functional or operational need to be located there. For this reason, they sought that these structures be excluded from NH-R6.1 and NH-R6.2<sup>138</sup> and requested that the notation within the rule and PER-3 be amended as follows "...located within a road or rail corridor". Mr Willis explained that the exception applied to the road corridor was informed by an assessment of the likely size of structures located in the corridor and their purpose but also noting that road corridors are often used for the conveyance of stormwater. He considered the inclusion of rail corridors to the exception has merit, but he was unsure of the nature of the RSI that could occur in the rail corridors and the extent to which these could be adversely affected by flood hazard events. Mr Willis noted that his recommendation to include a pathway for RSI that meets the minimum finished floor levels and deleting NH-R6.2, should be beneficial for KiwiRail. Ms Heppelthwaite<sup>139</sup> confirmed that KiwiRail were not pursuing this matter further in light of Mr Willis' recommendations.

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<sup>137</sup> Julia Crossman, Statement of Evidence, 15 April 2025, paragraph 4.18 – 4.23.

<sup>138</sup> Now renumbered NH-R8 in the Decision Version of the provisions.

<sup>139</sup> Catherine Heppelthwaite, Statement of Evidence, 9 April 2025, paragraphs 6 (d) and (h)

[331] BP Oil, et al [196.55] generally supported the rule as proposed as it generally enables minor structures and buildings, however, the submitter sought clarification on the process and cost for obtaining a flood risk certificate, whether the Council has the resource and capacity to prepare these, whether the certificates will be limited to a site or apply to a catchment and that the requirement promotes efficient management of natural hazards. Mr Willis clarified the process in his evidence.<sup>140</sup>

[332] in terms of a s32AA assessment, Mr Willis concluded that the majority of the changes consist of structural changes within the rule (e.g. the deletion of NH-R6.3 high hazard areas identified in a Flood Assessment Certificate and inclusion of new PER-3) and changes to improve clarity (for example the additions of “where any structure”). He recommended deletion of overland flowpaths under NH-R6.2, as it was already assessed under the changes to NH-R1. The substantive new change is the inclusion of the permitted standard (under PER-3b) for buildings complying with the minimum finished floor level. He considered this is an appropriate addition which better achieves NH-O1 and NH-O2. Accordingly, the amendments are the most appropriate to achieve the Act. We agree with that evaluation.

[333] In terms of the equivalent rule in the CE Chapter the submissions reflected those discussed above in relation to NH-R7, and Mr Willis’ responses and s32AA evaluation for the natural hazard aspects are the same.

#### **2.41.2 Decision**

[334] We adopt the analysis and recommendations of Mr Willis on NH-R8.<sup>141</sup> The amended provisions are set out in **Appendix 3**.

[335] We adopt Mr Willis’ s32AA evaluation in support of the changes made.

### **2.42 NH-SUBDIVISION<sup>142</sup>**

#### **2.42.1 Assessment**

[336] In response to submissions from Bruce Speirs [66.53], the natural hazard related subdivision rules are now located in the Subdivision Chapter.

[337] Other submissions on NH-R8 and CE-R11 as notified (as they relate to natural hazards) reflect the issues raised in relation to the rules discussed above. We record that we have accepted the recommendations of Mr Willis regarding specific drafting changes to subdivision rules to address natural hazards, to the extent they are not otherwise addressed in this chapter, and these changes are now included in SUB-R5 in the Decision Version of the provisions.

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<sup>140</sup> Andrew Willis S42A Report, 25 March 2025, paragraph 7.32.15

<sup>141</sup> Previously NH-R6 and CE-R8

<sup>142</sup> Previously NH-R8 and CE-R11

## 2.42.2 Decision

[338] We adopt the recommendations of Mr Willis. The amended provisions are set out in **Appendix 3**.

[339] We adopt Mr Willis' s32AA evaluation for his recommended changes now incorporated into SUB-R5.<sup>143</sup>

## 2.43 STANDARD NH-S1 FLOOD ASSESSMENT CERTIFICATE<sup>144</sup>

### 2.43.1 Assessment

[340] A key method for managing activities in areas subject to natural hazards is the requirement to obtain a 'Flood Assessment Certificate' within the Flood Assessment Area Overlay and Sea Water Inundation Overlay. This enables the proponents of particular activities and the Council to identify the potential risk profile of a site and achieve the objectives and policies which seek to protect people, RSI, and property from the worst effects of natural hazards and minimise the need for emergency services in hazard events.

[341] Submissions on the standard raised concerns about the application of the standard to the Sea Water Inundation Overlay as part of the notified High Hazard Area Overlay.<sup>145</sup> As we have discussed above<sup>146</sup> and below, the approach to the management of activities and the identification of Overlays was recommended to be modified in response to submissions from ECan and expert advice from Mr Griffiths (Science Team Leader, Natural Hazards at ECan). We have accepted the amended approach is appropriate.

[342] ECan [183.50] made recommendations that the standards can be improved for clarity. They sought to amend the standard to ensure that the wording of the standard is consistent throughout the plan, including ensuring freeboard levels are consistent, and climate change is taken into account for all sources of flooding. This also requires a consequential amendment to the "'Flood Assessment Certificate' definition to remove reference to the distance from stopbanks, as any flood risk regardless of distance from the stopbank will be assessed. Mr Willis recommended a number of drafting changes to address the issues raised.

[343] Harvey Norman [192.12] supported the requirement to obtain a Flood Assessment Certificate, however considered the process to apply for, and obtain, the Flood Assessment Certificate is unclear, particularly in regard to timeframes, information required to be supplied by the applicant, and if not obtained whether a non-complying activity consent under the notified subdivision rule NH-R8<sup>147</sup> would be required. They sought to amend NH-S1 to clarify the process of applying for and obtaining a Flood Assessment Certificate. Mr Willis responded by noting that the Flood Assessment Certificate approach is now being required by other

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<sup>143</sup> S42A Report, 25 March 2025, paragraph 7.34.17 and

<sup>144</sup> Previously 'flood risk certificate' however the definition was subsequently recommended to be amended in response to submissions as discussed in Section 2.11 above.

<sup>145</sup> Silver Fern Farms [172.33] and Alliance Group [173.30]

<sup>146</sup> See introduction to this part of the decision at Section 2.34, discussion regarding the definition of 'High Hazard Area', and General Submissions at Section 2.11.

<sup>147</sup> Previously NH-R6 and CE-R8

Councils and that TDC will have details available as to the process to obtain certificates on their website. We agree with the approach and drafting changes recommended by Mr Willis.

### **2.43.2 Decision**

[344] We adopt Mr Willis' analysis and recommendations on NH-S1 for the reasons stated above. The amended provisions are set out in **Appendix 3**.

[345] We adopt Mr Willis' s32AA assessment in support of the changes made, and we have applied this to the application of the standard to the Sea Water Inundation Overlay.

## **2.44 STANDARD NH-S2 VOLUME OF EARTHWORKS**

### **2.44.1 Assessment**

[346] Mr Willis explained that NH-S2 was included to manage works that might cause flood water displacement and flowpath disruption. In response to submissions on NH-R1 (e.g. Dairy Holdings [89.6] and ECan [183.38]) he recommended changes to NH-R1 to include a permitted activity standard that ensures earthworks will not cause flood water displacement or flowpath disruption and to delete NH-S2. We have adopted Mr Willis' recommendations on NH-R1 and agree with the deletion of NH-S2.

### **2.44.2 Decision**

[347] We adopt Mr Willis' recommendations and delete NH-S2, as set out in our decision on Rule NH-R1.

## **2.45 FLOOD ASSESSMENT AREA OVERLAY**

### **2.45.1 Assessment**

[348] There were a number of submitters who sought to exclude their properties from the Flood Assessment Area Overlay or expressed general opposition<sup>148</sup> and provided the following various reasons, including but not limited to:

- (a) It creates an unnecessary consent burden that can be dealt with through other legislation i.e., building consent;
- (b) The topography of the site means there is no history of flooding, and it is unlikely to flood;
- (c) The data is out of date;
- (d) The overlay should be removed from identified roads as stormwater management is a fundamental part of roading design;
- (e) The property is used for primary production purposes;

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<sup>148</sup> G.D.M. Offices [38.1], Port Bryson [104.1], Broughs Gully Development [167.3], Hilton Development Trust [205.1], Waipopo Huts Trust [189.7], Te Kotare Trust [115.5], KJ Rooney Limited [197.7 and 197.9], Fenlea Farms [171.33 and 171.34] and Barkers Fruit [179.3] Noel Edward Glass [83.2]

- (f) It would be practicable for plan implementation purposes, for the Flood Assessment Area Overlay to follow the site boundary;
- (g) This overlay, along with other overlays mean new or replacement dwellings, buildings and structures will be non-complying activities on the submitters' properties. Some submitters considered a more permissive planning regime is appropriate to reflect the historical commitment the Crown made to enabling Māori to carry out their needs and wants;
- (h) The property has never experienced a flooding issue and due to the topography, such an event is highly unlikely. The Proposed Plan does not provide a baseline to support the identification of flood risk; and
- (i) Flood plains have no place on these maps and that waterways are for all New Zealanders and seeks these are removed from the planning maps.

[349] Harvey Norman [192.3] challenged the extent of the Flood Assessment Area Overlay across the submitter's site as it did not take into account the construction of culvert upgrades at State Highway 1 and at the Main North railway line. The submitter sought a reduction of the Flood Assessment Area Overlay at 266 Evans Street and provided technical evidence in support of its submission.<sup>149</sup>

[350] ECan [183.28] submitted that the areas identified as potentially subject to flooding are too narrow. ECan sought to amend the Planning Maps to encompass a wider area that is potentially subject to flood hazard risk. ECan did not provide proposed amendments to the Planning Maps in its submission, however the proposed amended Flood Assessment Area Overlay is contained in the memorandum provided by Mr Griffiths (Science Team Leader, Natural Hazards at ECan) attached to Mr Willis' s42A Report.<sup>150</sup> For clarity, this revised overlay includes the Sea Water Inundation Overlay, thereby creating a single overlay that recognises flood risk from multiple sources of flooding.

[351] The Panel accepts that the Council is required to manage natural hazard risk, and flood risk is a significant natural hazard for the Timaru District and that overlays are a common and accepted tool in District Plans across New Zealand.

[352] Mr Willis explained that the approach to the Flood Assessment Area Overlay is to identify areas that 'may' flood in a modelled event, to enable a site-specific assessment to be undertaken. He said that the overlay is not based on areas that have historically flooded.

[353] There were two significant issues that arose out of submissions on the overlay that concerned the Panel. The first was that the evidence from Mr Throssell, for Harvey Norman demonstrated that there were modelling/mapping errors in relation to that site which called into question the accuracy of the modelling. The second issue was that the submission from ECan that sought an extended overlay was not accompanied by a map, and there was the potential that landowners who were not previously within the overlay may not have lodged a

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<sup>149</sup> Ben Throssell, Statement of Evidence, 8 April 2025.

<sup>150</sup> S42A Report, Appendix 8

submission on the plan. The extension, if we accepted it, raised issues of scope and procedural fairness.

[354] Dealing with the Harvey Norman submission point, we asked Mr Kemp, the Council's technical advisor to conference with Mr Throssell to verify the accuracy of the modelling in relation to that site, and we also asked Mr Kemp to advise if there were likely to be other examples of errors.<sup>151</sup>

[355] Mr Kemp explained in supplementary evidence<sup>152</sup> that the processing of the 2010 LiDAR created depressions where large structures, such as the Harvey Norman site, are located and that further depressions, particularly around the Timaru town centre are apparent (where other large areas of continuous elevated structures were processed out of the LiDAR data gathered in 2010). In 2020 and 2021, the Council procured more up-to-date LiDAR data gathered across the Timaru urban area, including Washdyke, a portion of the Levels Plain and Pleasant Point, and that the depressions processed into the 2010 Digital Elevation Model (DEM) have been rectified within the 2020 DEM. The Council provided an updated modelling output in the extended Flood Assessment Area Overlay (which we discuss further below). The amendments removed the part of the Harvey Norman Site identified as an error by Mr Throssell and also removed some other sites within the urban area of Timaru due to errors.

[356] In response to the Panel concerns regarding ECan's request to extend the Flood Assessment Area Overlay Ms Vella canvassed the options for addressing any fairness issues in her legal submissions.<sup>153</sup> The Panel formed the preliminary view that the Plan should include the most up to date data, however we needed to be satisfied that the process for updating that data is fair.<sup>154</sup> We considered Ms Vella's submissions and directed that the ECan submission should be renotified with maps and a process for late further submissions established. Ms Vella set out how this would be accommodated within the Proposed Plan timelines.<sup>155</sup>

[357] In response to renotification, 11 further submissions were received, raising similar concerns that were addressed by primary submitters opposed to the inclusion of the overlay in the plan. We set aside further hearing time (Hearing I) to consider the further submissions. No late further submitters took the opportunity to be heard. Mr Willis provided a further s42A Report and ECan provided further evidence from Mr Griffiths<sup>156</sup> and Ms Francis.<sup>157</sup>

[358] The Panel has considered Mr Willis' original s42A Report responses to the issues raised by submitters on the notified overlay<sup>158</sup>, and the additional further submissions on the revised overlay.<sup>159</sup>

[359] We accept Mr Willis' opinion that the overlay, as updated, is an appropriate regulatory response to the duties and responsibilities of the Timaru District Council to manage risk to life,

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<sup>151</sup> Minute 34

<sup>152</sup> Interim Reply, Appendix D Memorandum from Kevin Kemp Stormwater Team Leader, 19 June 2025

<sup>153</sup> Legal Submissions on behalf of TDC, 16 April 2025, paragraph 41-47.

<sup>154</sup> Minute 33

<sup>155</sup> Memorandum of Counsel for TDC, 9 June 2025

<sup>156</sup> Nick Griffiths, Statement of Evidence, 16 September 2025

<sup>157</sup> Deidre Francis, Statement of Evidence, 16 September 2025

<sup>158</sup> S42A Report, 25 March 2025, paragraphs 7.38.6-7.38.18

<sup>159</sup> S42A Report, 2 September 2025 and Summary Statement, 29 September 2025.

RSI, and property as articulated in the objectives and policies in the Final Reply. We are satisfied that they give effect to the relevant objectives and policies in the CRPS. We accept Ms Francis' and Mr Griffiths' evidence in Hearing I that the approach adopted by ECan was to establish a consistent approach across the District.

[360] At Hearing I we questioned whether the overlay represented a duplication of regulation given that for many buildings the building consent process would require risk from natural hazards to be addressed. Mr Willis explained that there is duplication, however, in his experience with other plans, some development does not require building consent, and this is evolving with government direction to reduce building regulation. We clarified that in the Proposed Plan regulation only applied to 'Natural Hazard Sensitive Buildings'.<sup>160</sup> The example given was 'Granny Flats'.<sup>161</sup> He also considered, that consistent with the CRPS, it is appropriate to have a higher standard than the 50-year event in the Building Act, given the life of buildings in urban areas, a higher standard is often applied. He emphasised the Council's responsibilities to manage natural hazards in the RMA s30 and s31, and the fact that it is a matter of national importance under s6(h).

[361] Regarding the appropriateness of transferring the cost to individual applicants to obtain Flood Assessment Certificates if they are within the Flood Assessment Area Overlay (to establish the extent, if any, site-specific risk), Mr Willis noted that the approach is appropriate given that the Council does not have site-by-site modelling across the rural extent of the District. The alternative is that District-wide modelling is undertaken at significant cost to the ratepayer in areas where there may never be any proposals to construct buildings or infrastructure. Mr Willis explained that the Flood Assessment Certificate approach places that cost on those who benefit from development proposals. He further explained that the cost is not significant in the context of the risk being assessed, and he considered that the risk of not acting is significantly greater than the recommended approach.

[362] We acknowledge that submissions such as Harvey Norman, and the further submissions from Blandwood submitters highlighted that there are likely to be discrepancies across the District. They are less likely in the urban area given the modelling is more comprehensive. Mr Griffiths was comfortable that the mapping produced an appropriate outcome. We received no other technical evidence to the contrary (aside from Mr Throssell's evidence we have considered above).

[363] On balance we agree with Mr Willis' recommendations and the evidence of ECan that incorporating the extended overlay is the most appropriate approach in the circumstances. We have considered the Council's published s32 Report, which focused on areas highly likely to flood and the now extended approach which includes areas that might flood, including from sea water inundation. Mr Willis considered it was an appropriate approach to take because the rules still identify the higher likelihood flooding areas. The extended overlay is a trigger, to see if the rules apply. We agree this is an efficient and effective approach to the management of risks from natural hazards.

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<sup>160</sup> Previously 'natural hazard sensitive activities'

<sup>161</sup> We note that the anticipated exemptions for Granny Flats up to 70m2 is now in force.

[364] We have satisfied ourselves that any fairness issues that may have arisen by accepting ECan's relief without a mapped extended area, have been resolved through the renotification of their submission in accordance with the RMA Schedule 1 process.

## **2.45.2 Decision**

[365] We adopt the analysis and recommendation of Mr Willis on the Flood Assessment Area Overlay. The amended overlay is set out in **Appendix 2**.

[366] We have considered the evidence of Mr Willis and Mr Griffiths; we are satisfied that the approach to include the extended Flood Assessment Area Overlay remains appropriate for the reasons set out in the Council's s32 Report and that the extension is an efficient and effective means to address natural hazard risk across the District in accordance with s32AA.

## **2.46 OTHER NATURAL HAZARDS OVERLAYS / PLANNING MAPS SUBMISSIONS**

### **2.46.1 Assessment**

[367] Kāinga Ora [229.39] supports the identification of natural hazards, however due to the dynamic nature of natural hazards it sought amendments so that these areas are mapped on GIS layers available outside of the statutory maps. Mr Willis considered the Plan's approach of including hazard overlays is appropriate and provides greater certainty than having no hazard overlays included in the Plan, with the exception of the High Hazard Area Overlay. We agree.

[368] Waipopo Huts [189.5] sought to remove the High Hazard Area Overlay from their sites, stating that recent flood information is available from ECan which shows that the flood risk to the submitter's land is not as significant as indicated by the High Hazard Area Overlay and that the stopbank in the vicinity of the Waipopo Settlement has not breached in historic floods, while other areas of the lower Opihi Stopbank have been breached. Waipopo Huts [189.9] and Te Kotare [115.6] also opposed the Liquefaction Awareness Area Overlay, and Waipopo Huts [189.4] also opposed the Regional Council Stopbank Overlay on the submitter's properties and sought its removal, or amendment of the rules affecting development on the site. The submitters considered a more permissive planning regime is appropriate to reflect the historical commitment the Crown made to enabling Māori to carry out their needs and wants. These submissions are also responded to in the Waipopo Huts section.

[369] Mr Willis addressed the submissions in part through the removal of the High Hazard Area Overlay and the revised approach to the management of natural hazards. The remaining issues were not addressed in evidence from the submitters at the hearing. We accept Mr Willis' recommendations.

[370] Barkers Fruit [179.4] considered it would be practicable for plan implementation purposes for the Liquefaction Area Overlay to follow the site boundary. They sought to amend the Liquefaction Area Overlay to reflect the site boundary of 72 Shaw Road, Geraldine. Mr Willis agreed with the submission, and we accept his opinion for the reasons outlined in his s42A Report and have removed the Liquefaction Area Overlay from the submitter's site.

[371] Three identical submissions from Robert Whittam [121.1], Amy Alison [126.1] and Nicolas Twaddle [127.1] opposed the proposed Open Space zoning of Blandswood due to the absence of specific Proposed Plan provisions to manage natural hazard risk and effects on existing and future landowners and council infrastructure from Kowhai Stream. The submitters were specifically concerned with maintaining safe access for existing and future residents, and visitors to the national park. Mr Willis did not consider the submissions relevant to the management of natural hazards in the Proposed Plan. We agree and have not considered them further.

[372] South Rangitata Reserve [206] made a number of submissions in relation to NH and CE rules which we have responded to in our decisions above, however at the hearing it was clear that the submitters fundamental concern was the perception that the Plan prevented them from exploring with the Council potential mitigation measures to provide protection for the hut community.<sup>162</sup> In particular they were concerned about the High Hazard Area Overlay and whether it prevented a pathway for modifications to huts and the provision of mitigation measures.

[373] We asked Mr Todd to review their presentation and provide some clarification as to the application of the various hazard overlays in the Canterbury Regional Coastal Environment Plan (RCEP) and the Proposed Plan. Mr Todd provided a supplementary statement.<sup>163</sup> Mr Todd assessed the submission by South Rangitata Reserve [206] with reference to: the CRCEP hazard and inundation lines; the Proposed Plan's High Hazard Area Overlay, Sea Water Inundation Overlay and Coastal Erosion Overlay; NZCPS Policy 25; and his significant experience with coastal hazards in the area. Of note, Mr Todd also identifies past inundation events at the Rangitata Huts. Mr Todd supports the Proposed Plan's Sea Water Inundation Overlay and Coastal Erosion Overlay and noted that the Plan's coastal erosion hazard line is generally seaward of the RCEP's Hazards Zones 1 and 2 in the RCEP. This reduces the projected erosion hazard extent in the Rangitata Huts area from that which exists under the RCEP.

[374] Mr Todd considered the options for a consenting pathway which would allow mitigation of risk and if amendments are required to the Proposed Plan's provisions. Mr Todd supported Mr Willis' s42A Report recommendation to remove the High Hazard Area Overlay from the Rangitata Huts area and instead rely on a Flood Assessment Certificate approach for determining site specific risk. Mr Todd supported a restricted discretionary pathway for activities proposed in areas not identified as high hazard and a non-complying pathway for those identified as being located within high hazard areas.

[375] Mr Todd identified a "potential anomaly" in the erosion hazard areas managed by the respective councils due to the age and inferior methodology of the RCEP coastal erosion mapping. ECan and TDC are agreed the Proposed Plan's erosion provisions should only apply landward of the RCEP's Hazard Lines, with the Coastal Erosion Overlay used to identify which plan (the Proposed Plan or RCEP) applies. For the South Rangitata Huts, as shown on the

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<sup>162</sup> Mathew Hall and Bob Mortimer, Statement of Evidence presented at Hearing H.

<sup>163</sup> S42A Interim Reply, 23 June 2025, Appendix C

map in Mr Todd's evidence, the Proposed Plan's erosion provisions will only apply at the very southeast end of the area.

[376] We are satisfied that the provisions of the Plan will enable a pathway to address mitigation measures in appropriate cases, however as we have discussed above, we find that the Council's recommended approach of hazard overlays and a requirement for a Flood Assessment Certificate is appropriate for managing risk in the District and that restricted discretionary status is appropriate for natural hazard sensitive buildings in the Coastal Erosion Overlay for the reasons outlined by Mr Todd and Mr Willis.

## **2.46.2 Decision**

[377] We adopt the analysis and recommendations of Mr Willis to remove the High Hazard Area Overlay from the Planning Maps, to amend the Liquefaction Area Overlay to reflect the site boundary of 72 Shaw Road, Geraldine and to update the Coastal Erosion hazard mapping to identify those areas that are within the jurisdiction of the Proposed Plan and those that are within the jurisdiction of the RCEP. The amendments to the Planning Maps are illustrated in **Appendix 2**.

[378] In terms of s32AA, we adopt Mr Willis' evaluation in support of the changes made.

## **3 DRINKING WATER PROTECTION**

### **3.1 DWP CHAPTER– GENERAL AND DPW-P2**

#### **3.1.1 Assessment**

[379] Mr Willis' s42A Report sets out in detail the submissions and further submissions received in relation to the DWP Chapter.<sup>164</sup>

[380] The main issues of contention expressed by submissions was the degree of regulation that was appropriate in a District Plan compared with the requirements of the Regional Planning jurisdiction. TDC [42.41] sought to expand the degree of regulation over certain land uses that could threaten drinking water supplies and sources. The Council sought a non-complying activity status for a greater range of land uses. These included:

Hazardous facilities; Earthworks; Composting facilities; Buildings that require septic/sewage facilities; Offal pits; Silage storage; Vegetation clearance; Exotic tree planting/plantation forestry; Intensive primary production.

[381] The TDC submission attracted a number of further submissions opposed to the additional regulation. Further submitters raised concerns about duplication of regional rules, lack of evidential basis and additional consenting burden on rural land uses. Mr Willis' recommendations in response to submissions relied on the technical evidence of Mr Hall<sup>165</sup> (Principal Three Waters Specialist at TDC) <sup>166</sup> (providing expert evidence on behalf of TDC).

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<sup>164</sup> Andrew Willis, s42A Report, Natural Hazards, Coastal Environment and Drinking Water Protection, 25 March 2025, paragraph 9.1-9.2

<sup>165</sup> Grant Hall, s42A Report, Appendix 6

<sup>166</sup> Neil Thomas, s42A Report, Appendix 7

[382] We accept the evidence of Mr Hall and Mr Thomas, and Mr Willis' analysis of that evidence in light of the requirements of the higher order documents. We did not receive any other evidence in support of submissions.

[383] Mr Willis recommended changes to the notified provisions to include:

- (a) Amendments to DWO-P2 to be more directive and certain in terms of avoiding land use and subdivision activities that have, rather than 'have the potential' to negatively affect drinking water quality.
- (b) New Rule DWP-R2 to address earthworks.
- (c) New Rule DWP-R3 for buildings that utilise on site and septic facilities and disposal.
- (d) New Rule DWP-R7 for Composting facilities, Offal pits, Silage storage, vegetation clearance and Intensive Primary Production and associated definitions specific to this chapter.

### 3.1.2 Decision

[384] We adopt Mr Willis' analysis and recommendations in relation to DWP-P2, DWP-R2, DWP-R3 and DWP-R7, and have included the recommended definitions. The amendments to the provisions are included in **Appendix 3**.

[385] We adopt Mr Willis' s32AA evaluation in support of the changes made.

## 3.2 RULE DWP-R2<sup>167</sup> – SUBDIVISION NOT CONNECTED TO A COMMUNITY SEWAGE SYSTEM

### 3.2.1 Assessment

[386] In response to submissions from TDC [42.81], MFL [60.29], the Rooney Group<sup>168</sup> and Bruce Speirs [66.29, 66.54], Mr Willis recommended structural changes to the rules. We note the notified rule DWP-R2 has now been relocated to the Subdivision Chapter and renumbered SUB-R14. We accept his recommendation as appropriate for the reasons given.

[387] Waipopo Trust [189.45], sought special dispensation from provisions in the MPZ for cultural reasons. However, Mr Willis did not agree that the concerns raised should override risk to human health. We accept Mr Willis' opinion on that issue.

### 3.2.2 Decision

[388] We adopt Mr Willis' recommended amendments to DWP-R2<sup>167</sup> and have included them in **Appendix 3**.

[389] We adopt Mr Willis' s32AA evaluation in support of the changes.

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<sup>167</sup> Rule now relocated and renumbered SUB-R14 in the Decision Version of the provisions.

<sup>168</sup> Rooney Holdings [174.61], Rooney, GJH [191.61], Rooney Group [249.61], Rooney Farms [250.61], Rooney Earthmoving [251.61], TDL [252.61].

### **3.3 RULE DWP-R3<sup>169</sup> – MINING OR QUARRYING**

#### **3.3.1 Assessment**

[390] ECan [183.142] sought clarification regarding the jurisdiction of controlling gravel extraction within the beds of rivers. Mr Willis recommended an advisory note to provide the clarification requested.

#### **3.3.2 Decision**

[391] We adopt Mr Willis' recommendations and have included the note in **Appendix 3**.

[392] We are satisfied that the original s32 evaluation continues to apply.

### **3.4 RULE DWP-R5<sup>170</sup> – INDUSTRIAL ACTIVITIES INCLUDING RURAL INDUSTRY**

#### **3.4.1 Assessment**

[393] Fonterra [165.95] requested exemptions for existing rural industrial activities, particularly its own activities. Silver Fern Farms [172.99] also requested exemptions by removing DWPA Overlays or the non-complying activity status on its landholding at Pareora. Te Rūnanga o Ngāi Tahu also requested exemptions from MPZ.

[394] Mr Thomas (providing expert evidence on behalf of TDC) considered that it is reasonable that existing industrial activities within Industrial Zoned land be exempt from the non-complying activity status and that the non-complying industrial activity rule would only apply to new industry proposed to be established within the DWPA (outside of Industrial Zones). Mr Willis agreed and recommended amendments to the rule.

[395] Mr Willis did not support removing the application of these rules to the MPZ for the reasons outlined by Mr Hall and Mr Thomas. We accept that evidence.

#### **3.4.2 Decision**

[396] We adopt the analysis and recommendations of Mr Willis on DWP-R5<sup>170</sup>. The amendments to the rule have been included in **Appendix 3**.

[397] We adopt Mr Willis' s32AA evaluation in support of the changes.

### **3.5 DWP CHAPTER – APP6 – TABLE 1 – GROUNDWATER COMMUNITY DRINKING WATER SUPPLY PROTECTION DISTANCES**

#### **3.5.1 Assessment**

[398] MFL [60.60] raised concerns about the data referenced in the Plan relying on the LWRP, which they noted although based on science at the time was being updated regularly.

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<sup>169</sup> Now renumbered DWP-R4 in the Decision Version of the provisions.

<sup>170</sup> Now renumbered DWP-R6 in the Decision Version of the provisions.

Mr Willis relied on Mr Thomas' advice that the requested amendment to reference the LWRP generally instead of specific figures is not necessary.

### **3.5.2 Decision**

[399] We adopt Mr Willis' recommendation that no change is required in response to the submission.

## **3.6 DWP CHAPTER – PLANNING MAPS – DRINKING WATER PROTECTION AREA OVERLAY**

### **3.6.1 Assessment**

[400] Waipopo Trust [189.10] sought deletion or a more permissive regime in the MPZ recognising the historic circumstances of the zone. Mr Willis recommended that the submission is rejected for the reasons outlined in the evidence of Mr Hall and Mr Thomas. We accept that evidence.

[401] Fulton Hogan [170.7] requested the removal of the DWPA Overlay from 470 Pleasant Point Highway as the bore is not used for drinking water. This was checked by Mr Thomas who agreed and advised the Overlay should be removed from that property.

[402] Barkers Fruit [179.2] identified two bores on their property at 72 Shaw Road that needed to be included in the DWPA Overlay. They requested inclusion of private drinking water supply bores. Mr Willis recommended acceptance of the submission.

[403] Mr Willis also accepted the alternative relief to exclude the Silver Fern Farms site from the application of DWP-R5<sup>171</sup>, and as such the mapping change to remove the Silver Fern Farms Pareora Site from the DWPA Overlay is not required.

### **3.6.2 Decision**

[404] We adopt the recommendations of Mr Willis and have included the amendments to the DWPA Overlay in **Appendix 2**.

[405] We accept the original s32 evaluation continues to apply.

## **4 CONTAMINATED LAND**

[406] Mr Willis was the author of the s42A Report for this chapter.<sup>172</sup> We adopt his summary of the statutory framework, relevant issues, and submission points. Of note is that this chapter only provides objective and policy direction for resource consent applications made under the NES-CS and no rules. There are definitions, which we consider below. The focus of the chapter is the management of land to protect human health.<sup>173</sup>

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<sup>171</sup> Now renumbered DWP-R6 in the Decision Version of the provisions.

<sup>172</sup> Mr Andrew Wills, s42A Report Contaminated Land and Hazardous Substances, 11 October 2024

<sup>173</sup> Ibid paragraph 2.1.2

## 4.1 DEFINITION OF POTENTIALLY CONTAMINATED LAND

### 4.1.1 Assessment

[407] Hort NZ [245.18] considered the definition of potentially contaminated land is very broad and should only include sites which are known to have had an activity undertaken on them. They sought the definition be amended to remove reference to the probability that the listed hazardous activities and industries have been undertaken, as follows:

means land on which an activity or industry that is described in Appendix 2 - Hazardous Activities and Industries List is being, has been ~~or is more likely than not to have been~~ undertaken. This definition does not include land for which a detailed site investigation demonstrates that any contaminants present are at, or below, background concentrations.

[408] Mr Willis noted that the notified definition was based on the application of NES-CS which applied both known and the likelihood (more likely than not) that the activities had occurred.<sup>174</sup> Hort NZ did not appear at the hearing for this chapter. We accept Mr Willis' reasoning.

### 4.1.2 Decision

[409] The submission from Hort NZ [245.18] is rejected. No change to the definition is required.

## 4.2 CL CHAPTER – GENERAL

### 4.2.1 Assessment

[410] BP Oil New Zealand Limited, Mobil Oil New Zealand Limited, and Z Energy Limited (the Fuel Companies) [196.43] sought the replacement of the term 'land disturbance' with 'soil disturbance' throughout the Contaminated Land Chapter. Mr Willis accepted that was appropriate in the context of the NES-CS and he recommended that the submission point is accepted.<sup>175</sup>

[411] Road Metals [169.2] and Fulton Hogan [170.2] support the definition of 'cleanfill' but are concerned it only extends to depositing 'virgin material' which limits the ability to rehabilitate quarry areas due to the lack of availability of such material at any reasonable cost. They were also concerned about additional regulatory requirements. As noted by Mr Willis there are no rules in this chapter, therefore the submitters concerns relate to plan controls that do not arise in this chapter.<sup>176</sup>

### 4.2.2 Decision

[412] We adopt the recommendations and analysis provided by Mr Willis. We make no amendments to the definition of 'cleanfill'. The amendments to replace 'land disturbance' with 'soil disturbance' in the Contaminated Land Chapter are set out in **Appendix 3**.

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<sup>174</sup> Ibid paragraph 6.4.3

<sup>175</sup> Ibid paragraph 6.5.5

<sup>176</sup> Ibid paragraph 6.5.6

[413] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

### 4.3 OBJECTIVE CL-O1 MANAGEMENT OF CONTAMINATED LAND

#### 4.3.1 Assessment

[414] A number of submitters requested drafting changes to the objective. Forest and Bird [156.80] sought to include reference to the health of indigenous biodiversity in the objective. Mr Willis recommended that the submission point is rejected as it goes beyond the role of this chapter which supports the implementation of the NES-CS.<sup>177</sup> We agree with his reasoning.

[415] Transpower [159.58] requested changes to the objective to focus on outcomes and better align with the policies. Road Metals [169.12] and Fulton Hogan [170.13] opposed the objective and sought for it to be made clearer. Silver Fern Farms [172.20] and Alliance Group [173.17] considered the objective implies that contaminated land should be made safe for its intended use before any land disturbance, but that the objective should recognise that land disturbance is often part of the site remediation prior to a change of use.

[416] Mr Willis initially recommended drafting changes in response to those submissions to improve clarity, and to accept in part the submission from Transpower.

[417] BP Oil, et al, however, were concerned about the drafting recommended by Mr Willis to include reference to "...contaminated land does not result in a risk to human health." Ms Westoby and Mr Trevilla noted that the amendment proposed would conflict with how contaminated land, and more broadly, risk is managed by the RMA, NES-CS and the Plan's contaminated land policies. In Minute 19, the Panel requested that Mr Willis review the relationship between CL-O1, CL-P2 and CL-P3 to clarify the intent of the objective and policies in relation to risk. In his Interim Reply Mr Willis reported that discussions were held with BP Oil, et al on these provisions and consequentially he recommended that CL-O1 is reverted to the original wording to focus on making contaminated land safe for human health, as opposed to focusing on risk to human health. He provided an updated drafting change which is now supported by BP Oil, et al.<sup>178</sup> We address the further changes to the policies below.

#### 4.3.2 Decision

[418] We accept the changes recommended by Mr Willis in his Interim Reply and his response to submissions, reverting the objective to its notified version, with the change to refer to soil disturbance, rather than land disturbance. The amendments are set out in **Appendix 3**. No further s32AA evaluation is required for this consequential drafting change.

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<sup>177</sup> Ibid paragraph 6.6.7

<sup>178</sup> Mr Andrew Willis, Interim Reply, 18 December 2024, paragraph 6.

#### **4.4 POLICY CL-P1 INVESTIGATION OF CONTAMINATED AND POTENTIALLY CONTAMINATED LAND**

##### **4.4.1 Assessment**

[419] Forest and Bird [156.81] requested additions to the policy to refer to ecosystem health. However, as noted above this is not appropriate given the role of the chapter. Road Metals [169.13] and Fulton Hogan [170.14] requested changes to address exceptions where it was not safe or practical to undertake preliminary investigations. Mr Willis recommended these submission points are rejected, noting the NES-CS provides for preliminary desktop investigations.<sup>179</sup> We agree with Mr Willis on this point.

##### **4.4.2 Decision**

[420] We accept the recommendations of Mr Willis, no change is required to this policy.

#### **4.5 CL CHAPTER – POLICY CL-P2 SUBDIVISION, USE AND DEVELOPMENT OF CONTAMINATED LAND**

##### **4.5.1 Assessment**

[421] Forest and Bird [156.82] sought changes to refer to ecosystem health which we have rejected in relation to the objective and CL-P1 and do so here.

[422] Silver Fern Farms [172.21] and Alliance Group [173.38] requested changes to the policy to replace 'best practice' with a reference to the guidelines or procedural manual that applications will be assessed against. Mr Willis recommended the submission points are rejected on the basis that 'best practice' is appropriate.<sup>180</sup>

[423] In Minute 19, the Panel requested that Mr Willis reconsider the relationship between CL-P2 and CL-P3 as there appeared to be some overlap. In his Interim Reply, he agreed that there is overlap between these policies, such that CL-P3 could be deleted. However, he was concerned about scope to make this change, noting that BP Oil et al submitted in support of both CL-P2 [196.46] and CL-P3 [196.47].

[424] The Panel received legal submissions following Hearing E from Ms Vella,<sup>181</sup> who noted the powers available to the Panel to make consequential changes where necessary. We understand that we can make changes which are more than desirable and expedient, but somewhat less than essential. We consider that notwithstanding the absence of a specific submission to delete CL-P3, the change is necessary to avoid potential confusion on the interpretation of the Plan in the context of the implementation of NES-CS. In a general sense, submitters had raised concerns regarding the drafting of the policy. Ms Westoby and Mr Trevilla for BP Oil, et al noted in their evidence the potential confusion and requested that CL-P2 and CL-P3 be made clearer and differentiated in some way.<sup>182</sup>

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<sup>179</sup> Ibid paragraphs 6.5.6 - 6.5.7

<sup>180</sup> Ibid paragraph 6.8.6

<sup>181</sup> Memorandum of Counsel for TDC, 17 April 2025, paragraphs 42-44

<sup>182</sup> Joint Evidence of Sarah Westoby and Thomas Trevilla, 25 October 2024, paragraph 7.18.

#### **4.5.2 Decision**

[425] We accept the recommendations of Mr Willis and CL-P2 is retained as notified with the addition of 'remediation' as a consequence of submissions on CL-P3, as discussed below. The amendment to CL-P2 is set out in **Appendix 3**.

[426] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

### **4.6 POLICY CL-P3 REMEDIATION AND MANAGEMENT WORKS**

#### **4.6.1 Assessment**

[427] Forest and Bird [156.83], Fulton Hogan [170.15] and Road Metals [169.14] requested drafting changes to the policy consistent with those discussed above. BP Oil, et al [196.47] sought the retention of the policy.

[428] As discussed above, Mr Willis considered that on reflection the policy could be deleted if there was scope to do so. In his updated table in the Interim Reply, he had considered whether the reference to management works could be deleted. We remained concerned about the overlap and consider that the drafting could be addressed by effectively merging P2 and P3 and addressing the overlap as a consequential drafting correction. That is that the 'management works' is already addressed in the phrase 'use' and that we could incorporate 'remediation' in P2 for completeness. We are of the view that we can then delete Policy CL-P3 in reliance on cl16 of the RMA on the basis it is a necessary change. We took the precaution of seeking the views of the submitters on this policy to ensure no unforeseen consequences of our suggestion.

#### **4.6.2 Decision**

[429] Delete CL-P3 as a consequential change arising from submissions. The deletion of CL-P3 is set out in **Appendix 3**.

[430] Our s32AA evaluation for the changes to CL-P2 and consequential deletion of CL-P3 is set out above.

### **4.7 RULES**

#### **4.7.1 Assessment**

[431] Forest and Bird [156.84] requested that the CL Chapter include a rule or standard in addition to the NES-CS to ensure surrounding environmental health / indigenous biodiversity is protected. Hort NZ [245.50] considered that the Plan should make it clear that the NES-CS does not apply to production land if it continues to be used for production purposes and that it is only when a change of land use occurs that the NES-CS provisions apply to production land. They requested an amendment to the rules note to the CL Chapter to make that clear. Mr Willis recommended the Forest and Bird submission be rejected for the reasons addressed

above, and that the request from Hort NZ was not necessary.<sup>183</sup> We agree with Mr Willis' recommendations and no changes are necessary to the rules note.

#### **4.7.2 Decision**

[432] We adopt Mr Willis' recommendation, and find no change is required to the rules note.

## **5 HAZARDOUS SUBSTANCES AND SCHED 2 - MAJOR HAZARDOUS FACILITIES**

### **5.1 DEFINITION OF HAZARDOUS FACILITY**

#### **5.1.1 Assessment**

[433] A number of submissions requested drafting changes to the definition of 'hazardous facility', in particular Enviro NZ [162.3] sought exclusions for particular activities such as landfills and transfer stations, Helicopters Sth Canterbury [53.11], the NZAAA [132.10] and Hort NZ [245.9] sought to delete various aspects from the wording, and Hort NZ sought a new Clause 9 as follows "agrchemicals used, stored, and disposed of in accordance with NZS8409:2021 Management of Agrichemicals". FENZ [131.2] also sought an additional Clause 9: "Emergency Services Facilities and emergency management activities". TDC [42.5] noted a drafting omission from the definition which we agree needs correction.

[434] Fonterra [165.13] sought deletion of the policy, in line with their submission in relation to the Introduction that other legislation manages hazardous substances. Mr Willis recommended retaining a definition.

[435] Mr Willis recommended the submission from FENZ be accepted, and whilst initially not persuaded by the request from Enviro NZ, after hearing from Ms Rosser, who clarified the request related to existing activities, he recommended including an exemption for "existing municipal waste transfer stations and the Redruth Landfill and Resource Recovery facility of Timaru. Mr Willis did not consider the changes requested by Helicopters Sth Canterbury, the NZAAA and Hort NZ to be necessary. The deletion of "land based" created inconsistencies with the application of the provisions to primary production and activities on the surface of water. He did not consider the deletion of "on site" to be appropriate because that also impacted the application of the exclusion in Clause 8, specifically to ensure a facility for mixing hazardous substances for use elsewhere was captured by the definition. Mr Willis did not agree to the additional Clause 9 exclusion for agrichemicals as these are already covered in Clause 3 and primary production includes horticulture.<sup>184</sup> We agree with his recommendations.

[436] We agree with Mr Willis for the reasons he outlined in his report that the definition of hazardous facility should incorporate the omission of the Drinking Water Protection Area Overlay and include the exemptions requested by FENZ and modified request from EnviroNZ.

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<sup>183</sup> Ibid paragraphs 6.10.5 – 6.10.6

<sup>184</sup> Ibid paragraph 6.12.9

### **5.1.2 Decision**

[437] We accept the recommendations of Mr Willis, as updated in his Interim Reply. The amendments to the definition of 'hazardous facility' are set out in **Appendix 3**.

[438] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

## **5.2 DEFINITION OF UNACCEPTABLE RISK**

### **5.2.1 Assessment**

[439] Mr Speirs [66.9] requested a minor formatting correction in the definition, which we agree is appropriate. BP Oil, et al [196.14], requested changes to the definition to delete reference to hazardous substances. Mr Willis considered that the requested change to the definition title is a drafting style matter and is replicated in other definitions (e.g. 'fully shielded' and 'hard engineering'). For drafting consistency reasons, he rejected the requested change.<sup>185</sup>

### **5.2.2 Decision**

[440] We accept the recommendations of Mr Willis and make a minor edit to the definition of 'unacceptable risk'. The amendments to the definition are set out in **Appendix 3**.

[441] In terms of s32AA, we are satisfied that the original s32 evaluation continues to apply.

## **5.3 GENERAL SUBMISSIONS**

### **5.3.1 Assessment**

[442] In response to a submission from Timaru Oil Services [155.1] which requested various changes to the HS Chapter to reference risk standards and international norms for risk targets, Mr Willis considered that the issues are addressed elsewhere in the Chapter, including the Introduction and definition of 'unacceptable risk'. He considered that rather than amending the provisions to include a risk target that is aligned with international norms, the risk target should be removed from the provisions and retained only in the definition of 'unacceptable risk'. Mr Willis therefore recommended a change to HS-P1 in response to this submission.

[443] Mr Willis noted that he also recommends that the clause on sensitive activities is deleted from the Introduction as this detail is better located within the provisions in response to submissions from Fonterra [165.53]. On that basis Mr Willis recommended accepting the submission of Timaru Oil Services in part<sup>186</sup>. We did not receive evidence from Timaru Oil Services to the contrary. Accordingly, we have accepted Mr Willis' recommendation.

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<sup>185</sup> Ibid paragraph 6.13.6.

<sup>186</sup> Ibid paragraph 6.14.4

### 5.3.2 Decision

[444] We accept the recommendation of Mr Willis to amend the Introduction and HS-P1. The amendments to the provisions are set out in **Appendix 3**.

[445] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

## 5.4 INTRODUCTION

### 5.4.1 Assessment

[446] Fonterra [165.53] opposed the purpose of this chapter to manage 'hazardous facilities' as they consider that the use, storage, disposal, and transportation of hazardous substances is controlled by other legislation, including in areas subject to natural hazards.

[447] Mr Willis referred us to the s32 Report for the Hazardous Substances Chapter which acknowledges that Hazardous Substances and New Organisms Act (HSNO) aims to protect the environment and the health and safety of people from the adverse effects of hazardous substances while the Health and Safety at Work Act (HSWA) aims to protect people against harm to their health, safety and welfare caused by risks arising from work. It also acknowledges that Sections 30 and 31 of the RMA were amended in 2017 to remove the control of hazardous substances as an explicit function of councils. This means councils no longer have a specific obligation to regulate the use of hazardous substances in RMA plans.

[448] Mr Willis was of the opinion that there is still scope for District Councils to address hazardous substances. He referenced the s32 Report<sup>187</sup> which outlined there is scope within the RMA to address the following matters relating to the management of hazardous substances and facilities to ensure any gaps between legislative frameworks are covered and any adverse environmental effects are comprehensively managed in accordance with Part 2 of the RMA:

- (a) Substances not included in HSNO;
- (b) Facilities in relation to incompatible and sensitive land uses;
- (c) Facilities in relation to sensitive natural environment/ecosystems;
- (d) Reverse sensitivity issues in relation to risk;
- (e) Cumulative risks; and
- (f) Interaction with identified natural hazards.

[449] He noted that the s32 Report also assessed best practice and other council approaches which included coverage for hazardous substances.<sup>188</sup>

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<sup>187</sup> s32 Report Hazardous Substances Chapter (May 2022)

<sup>188</sup> s32 Report Hazardous Substances Chapter (May 2022), Section 1.4.3.

[450] Mr Willis was of the opinion that it is appropriate that the chapter covers the risks to hazardous facilities and major hazardous facilities (MHF) from such things as natural hazards (these are not, in his view adequately covered under HSNO and HSWA) and focuses on higher risk facilities, including hazardous facilities. He considered it appropriate that a Quantitative Risk Assessment (QRA) is required for new MHF (and additions to MHF). However, the detail on what is unacceptable risk and the text on sensitive activities should be deleted from the Introduction as this detail is better located within the definition and provisions. Accordingly, he recommended that this submission is accepted in part. Mr Willis recommended minor and consequential changes to the Introduction in response to submissions in his s42A Report, which we find to be appropriate for the reasons he has outlined.

#### **5.4.2 Decision**

[451] We accept the changes recommended by Mr Willis. The amendments to the Introduction are set out in **Appendix 3**.

[452] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

### **5.5 OBJECTIVE HS-O1 HAZARDOUS SUBSTANCES, USE, STORAGE AND DISPOSAL**

#### **5.5.1 Assessment**

[453] Fonterra [165.54] sought to delete HS-O1 as they consider that the use, storage, disposal, and transportation of hazardous substances is controlled by other legislation.

[454] BP Oil, et al [196.58] considered that there are inconsistencies between the HS Chapter and the objective itself with respect to transportation, noting that the objective is aimed at MHF and 'unacceptable risks' applies only to MHF.

[455] Mr Willis recommended the Fonterra submission point be rejected for the reasons outlined above in the HS Introduction Section. In relation to the amendments requested by BP Oil, et al he generally agreed that the drafting could be improved, and the objective did not need to include transportation but considered that the reference to 'environment and human health' should be retained.<sup>189</sup> He noted that MHF should be set out in full. We agree with Mr Willis' recommendations as set out in his s42A Report.<sup>190</sup>

#### **5.5.2 Decision**

[456] We adopt the analysis and recommendation of Mr Willis on HS-O1. The amendments are set out in **Appendix 3**.

[457] We are satisfied that the original s32 evaluation continues to apply.

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<sup>189</sup> Ibid paragraph 6.16.6

<sup>190</sup> Andrew Willis, s42A Report, Contaminated Land and Hazardous Substances, 11 October 2024

## 5.6 OBJECTIVE HS-O2 SENSITIVE ACTIVITIES

### 5.6.1 Assessment

[458] Silver Fern Farms [172.37] and Alliance Group [173.34] sought an amendment to ensure that this objective includes an ‘avoidance’ directive, given the significant resource management issues that can arise as a result of reverse sensitivity effects. BP Oil, et al [196.59] sought to ensure that unacceptable risks associated with the intensification of any existing sensitive activities (consistent with the definition of reverse sensitivity) are also addressed.

[459] PrimePort [175.80FS] lodged a further submission in respect of the BP Oil, et al submission on HS-O2. Ms Seaton presented evidence at the hearing on behalf of the submitter and supported the extension of the objective to increased scale and intensity of existing sensitive activities.<sup>191</sup>

[460] Mr Willis did not agree with the change requested by Silver Fern Farms or Alliance Group. Both of those submitters filed letters recording their acceptance of Mr Willis’ recommendations.<sup>192</sup>

[461] In response to the requested change from BP Oil, et al, Mr Willis noted that all the MHF listed in SCHED2 are located within the Timaru Port, within an Industrial Zone where the activity status of sensitive activities is non-complying. However, he acknowledged that there is a proposed Mixed-Use Zone bordering Turnbull Street that is within 250m of an MHF and that sensitive activities (e.g. household units) can establish as permitted activities within the MUZ. While he was not aware that there are any existing sensitive activities within 250m (HS-R3) of these MHF, there is the potential for these to establish and expand over time. Although he considered that the risk is low, given it is a possibility he recommended also referring to the expansion of sensitive activities in HS-O2.<sup>193</sup>

[462] We adopt the recommendations of Mr Willis with regard to his amendments to HS-O2.

### 5.6.2 Decision

[463] We accept Mr Willis’ recommendation to amend HS-O2. The amendments are set out in **Appendix 3**.

[464] We are satisfied that the original s32 evaluation continues to apply.

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<sup>191</sup> Kim Seaton, Statement of Evidence, 25 October 2024, paragraph 17 and 18.

<sup>192</sup> Letters from Mitchell Daysh on behalf of Silver Fern Farms, 22 October 2024 and on behalf of Alliance Group, dated 21 October 2024.

<sup>193</sup> Ibid paragraphs 6.17.5 – 6.17.5.

## 5.7 POLICY HS-P1 NEW MAJOR HAZARD FACILITIES AND ADDITIONS TO EXISTING MAJOR HAZARD FACILITIES

### 5.7.1 Assessment

[465] Forest and Bird [156.90] considered the policy should only consider MHF in places where unacceptable risks to the environment, other than sensitive environments, are avoided. Silver Fern Farms [172.38] and Alliance [173.35] requested changes, however following the receipt of the s42A Report they sent correspondence confirming their acceptance of Mr Willis' recommendation.<sup>194</sup>

[466] PrimePort [175.32] and TDHL [186.17] raised the concern that under Clause 3, new or additional MHF could potentially not establish in the PORTZ and that this is impractical and onerous given the operational requirement for those facilities to locate at the Port. They support Clause 4 which provides for MHF to locate in natural hazard areas where measures are taken to minimise adverse effects as this is considered a practicable requirement.

[467] Ixom Operations [49.3] considered that in relation to HS-P1.4(a) the controls imposed need to be reasonable and practical. For example, tsunami defences would be very costly, and the word 'minimise' makes the policy unclear.

[468] BP Oil, et al [196.60] have concerns about the practical implications of this policy. They question the use of the word "additions" without qualification and state that Clause 1 does not clearly reflect the intent to avoid unacceptable risks. They also consider that "effects" already includes "cumulative effects", and that as all MHF are already located within sensitive environments Clause 3 should only apply to new facilities. Finally, they considered that the avoid or mitigate approach in Clause 4 is contrary to the principal policy intent for new facilities and that this could cause difficulty in a policy assessment.

[469] Mr Willis recommended rejecting the Forest and Bird submission on the basis that non-District Plan provisions already manage the risks of hazardous substances entering a non-sensitive environment (e.g. HSWA and HSNO).<sup>195</sup>

[470] In terms of the PrimePort and TDHL submission Mr Willis acknowledged the impracticality and onerous impact on new or additional MHF, however rather than exclude the PORTZ he considered changes that he recommended to HS-P4 to replace the definition of 'sensitive environments' with a definition of 'sensitive location', where the PORTZ could be excluded from the definition. Ms Seaton noted that at least half of the PORTZ would still likely be captured by the proposed definition of 'sensitive location'. Therefore, whilst it is an improvement, her view was that the amended policy does not go far enough in providing for consideration of MHF in all of the Port Zone. Ms Seaton also noted that on reflection there were difficulties with the drafting of Clause 3. Ms Seaton's clear preference was that the Port Zone needed to be clearly exempted from HS-P1.3, and she suggested wording to address

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<sup>194</sup> Letters from Mitchell Daysh on behalf of Silver Fern Farms, 22 October 2024 and on behalf of Alliance Group, dated 21 October 2024.

<sup>195</sup> Ibid paragraph 6.18.6

this, by front ending Clause 3 with an exemption within the PORTZ, she also proposed additional drafting improvements.<sup>196</sup>

[471] Ms Seaton's evidence also addressed the drafting of HS-P1.4 which was supported by PrimePort and TDHL on the understanding that the PORTZ was not a 'high hazard area', and that it was appropriate for natural hazards be considered for new or expanded MHF. Ms Seaton noted that, Clause 4 both as notified and as amended in the s42A Report, would only apply to those parts of the PORTZ that are not defined as a 'high hazard area', which is potentially less than half of the PORTZ. In her view, Clause 4 should apply to the entirety of the PORTZ and similarly should apply in all natural hazard areas in other zones. It was her understanding that from reading of the s42A Report and subsequent discussions with Mr Willis, that 'high hazard areas' were excluded from Clause 4 out of concern that Clauses 3 and 4 could contradict each other if Clause 3 sought to avoid MHF in 'high hazard areas but Clause 4 implied otherwise. Ms Seaton considered that this potential conflict could be resolved, and natural hazard issues addressed in all zones, by accepting BP Oil, et al submission [196.60] that sought Clause 4 to be a separate policy. There remains a possibility that Clause 4 or a separate policy could be seen to undermine Clause 3 of HS-P1. However, Ms Seaton's interpretation was that HS-P1 is more specific and directive with regard to 'high hazard areas' and that read together, HS-P1 would carry greater weight.

[472] Mr Willis' Interim Reply<sup>197</sup> indicated that the structure and drafting of the rules would be considered further as part of the s42A Report for Natural Hazards. We note that as a consequence of further work between the Council and PrimePort planning representatives the restructured NH Chapter now provides appropriate management of activities within the Port Zone. We address these provisions in the Natural Hazards Section of this Part of the Decision.

[473] Having reflected on these provisions and Mr Willis' suggested amendment to the definition of sensitive locations, to exclude the Port Zone, we are satisfied that collectively the provisions in the HS and NH Chapters that manage hazardous substances within the Port Zone are effective and efficient.

[474] Mr Willis did not agree that tsunami risk should be excluded as requested by Ixom, despite some uncertainty regarding the use of the word 'minimise' in this context.

[475] Regarding the BP Oil, et al [196.60] submission, in response to a submission from Timaru Oil Services [155.1] considered under 'General', Mr Willis recommended replacing the reference to individual human fatality risk with the defined term 'unacceptable risk'. He considered that the reference to 'additions' without qualifiers leaves some uncertainty but noted his response to Silver Fern Farms [172.38] and Alliance Group [173.35] regarding additions and that these are now covered by an amended HS-P2 and HS-R2 which provides greater clarity on permitted upgrades. He agreed Clause 3 should be amended to refer to 'new' MHF. Regarding cumulative effects, he agreed that 'effects' already include 'cumulative effects' but considered it appropriate to include this clause to clarify that these effects are relevant for MHF. Regarding the requested deletion of Clause 4, his view was that this clause

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<sup>196</sup> Kim Seaton, Statement of Evidence, paragraph 23-29

<sup>197</sup> Andrew Willis, Hearing D Interim Reply, 18 December 2024, paragraph 7.

provides value regarding how to respond to natural hazard risk and that it is important to consider natural hazards as these can damage MHF which could lead to environmental and human health risk. His view was that 'avoid or minimise' provides flexibility in how operators address risk and other MHF operators have submitted to retain these clauses. Overall, he recommended that this submission is accepted in part, noting the change to HS-P1 Clause 1 in response to Timaru Oil Services [155.1].<sup>198</sup>

[476] The Panel accepts Mr Willis' recommended changes with the exception of his proposed resolution of the PrimePort and TDHL submission point and the request from BP Oil et al, to separate out Clause 4 from the policy and create a new policy. We address that below under the heading 'New Policy'.

[477] Following the Panel's technical review process, as outlined in Part 1 of the Decision Report, Mr Willis and Ms Seaton advised that due to an oversight, they had not revisited the policy during the NH hearings. This resulted in an inconsistency with the NH and PORTZ chapters. To address this Mr Willis and Ms Seaton provided a JWS setting out their agreed position on an appropriate drafting correction.<sup>199</sup> They identified that the 'avoid' directive for new or additions to major hazard facilities in high hazard areas of the PORTZ is inconsistent with the approach otherwise adopted in the NH and PORTZ chapters which is enabling to a wide range of facilities, that for functional and operational reasons need to be located in the PORTZ, subject to hazards being mitigated as far as practicable. Their solution does not provide a permitted pathway for major hazard facilities in the PORTZ, it simply enables such facilities to be assessed through a resource consent under rule HS-R2 and HS-R4.

[478] We accept that was an unintended omission in the draft decision documents, and it is appropriate to amend our draft reasoning. We have done so for the reasons set out in the JWS.

### 5.7.2 Decision

[479] We adopt the analysis and recommendations of Mr Willis on NH-P1 except in relation to Clause 4, which we delete from NH-P1 and create a new policy (NH-P5). We have also adopted the recommended amendments to NH-P1 outlined in the post hearing JWS.<sup>200</sup> The amendments are incorporated in **Appendix 3**.

[480] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

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<sup>198</sup> Ibid paragraph 6.18.1

<sup>199</sup> Andrew Willis and Kim Seaton JWS providing technical feedback, 3 March 2026

<sup>200</sup> ibid

## **5.8 POLICY HS-P2 REPAIR AND MAINTENANCE OF EXISTING MAJOR HAZARD FACILITIES**

### **5.8.1 Assessment**

[481] Silver Fern Farms [172.39], Alliance Group [173.36], and Southern Proteins [140.10] requested changes to the policy to address upgrades or expansion of existing MHF. Ixom Operations [49.4] requested deletion of the policy. In terms of the Ixom submission, they did not attend the hearing to elaborate on their request, and we had no basis to consider that relief on its merits. Mr Willis did not agree that any change was needed to the policy, and he was satisfied that expansion or upgrades were adequately addressed in HS-P1. He recommended no changes. We accept Mr Willis' recommendation for the reasons he has set out in his s42A Report.<sup>201</sup>

### **5.8.2 Decision**

[482] We adopt the analysis and recommendations of Mr Willis on HS-P2 and retain the policy as notified.

## **5.9 POLICY HS-P3 SENSITIVE ACTIVITIES IN PROXIMITY TO MAJOR HAZARD FACILITIES**

### **5.9.1 Assessment**

[483] Silver Fern Farms [172.40] and Alliance Group [173.37] requested amendments to the policy, which were not recommended by Mr Willis. Both submitters confirmed in correspondence their acceptance of the s42A recommendation.<sup>202</sup> We have not considered the submissions further and accept Mr Willis' recommendation.

[484] BP Oil, et al [196.63] support HS-P3 but sought amendments to include existing sensitive activities:

Require sensitive activities and increased scale or intensity of existing sensitive activities to be sufficiently separated from Major Hazard Facilities to minimise reverse sensitivity effects on the Major Hazard Facility and to avoid unacceptable risks to the sensitive activity.

[485] Mr Willis recommended including a reference to expanded sensitive activities in HS-O2 (in response to BP Oil, et al [196.59]). He did not consider this is necessary here as HS-P3 is worded differently, with sensitive activities, whether they are new or expanded existing activities, needing to be separated from MHF. Accordingly, he recommends that this submission is rejected. BP Oil, et al did not pursue this submission point at the hearing.

[486] We accept Mr Willis' recommendations and reject the submission.

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<sup>201</sup> Ibid paragraphs 6.19.6 – 6.19.8

<sup>202</sup> Letters from Mitchell Daysh on behalf of Silver Fern Farms, 22 October 2024 and on behalf of Alliance Group, dated 21 October 2024.

## 5.9.2 Decision

[487] We accept Mr Willis' analysis and recommendations and retain HS-P3 as notified.

## 5.10 POLICY HS-P4 - HAZARDOUS FACILITIES (OTHER THAN MAJOR HAZARD FACILITIES)

### 5.10.1 Assessment

[488] The key concerns in submissions related to the definition and use of the term 'sensitive environments', which BP Oil et al [196.64], were concerned included matters not specific to hazardous substances. They were also concerned about the lack of clarity of its application to works within and extensions of existing facilities. They requested the policy be deleted. Fonterra [165.55] also requested deletion due to duplication with other legislation. PrimePort [175.34] and TDHL [186.19] considered Clause 1 to be problematic for hazardous facilities located in the PORTZ because it was entirely within the so defined 'sensitive environment' being in the CE. They requested amendments to exempt hazardous facilities within the PORTZ. Ixom [49.5] requested exemptions for hazardous facilities within 250m of an MHF.

[489] Mr Willis generally agreed with BP Oil et al and suggested narrowing the range of restrictions on sensitive environments. He went further to suggest that in the context of these provisions this submission is accepted in part and HS-P4 is amended along with HS-P1 and HS-R1 to limit the provisions applying to areas affected by natural hazards, Drinking Water Protection Areas, the area within 100m from the edge of a Riparian Margin and a Wetland and within 250m of an MHF. Because of the number of areas identified, rather than listing these separately within a policy and the rules he recommended creating a new definition for "sensitive locations" for this purpose.<sup>203</sup>

[490] In response to PrimePort [175.32] and TDH [186.17], Mr Willis recommended excluding the PORTZ from needing to comply with the 'sensitive environment' / 'sensitive location' restrictions given its operational and functional needs. He noted that the matter of natural hazards affecting the Port and the appropriate policy response would be covered in the Natural Hazards and Coastal Environment hearing therefore this matter may need to be revisited as a result of developing Port specific natural hazard provisions, which will also apply to the PORTZ. Mr Willis' recommendation would also address in part the submission from Ixom to the extent that if the PORTZ are exempt from this policy then the 250m separation is resolved and would only apply to activities outside the Port. We have already addressed the Fonterra concern regarding duplication. We are satisfied that the Proposed Plan can have a role in managing hazardous facilities.

[491] BP Oil et al were generally supportive of Mr Willis' recommended approach and changes but Mr Trevilla and Ms Westoby suggested further changes to the reference to riparian margins and wetlands for clarity:<sup>204</sup> This definition was accepted by Mr Willis in his Interim Reply.<sup>205</sup>

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<sup>203</sup> Ibid paragraph 6.18.10

<sup>204</sup> Sarah Westoby and Thomas Trevilla, Joint Statement of Evidence, 25 October 2024, paragraph 8.20

<sup>205</sup> Andrew Willis, Hearing D Interim Reply, 18 December 2024, Appendix B.

[492] We accept Mr Willis' Interim Reply definition of 'sensitive location' as appropriate except to the extent that it applies to the PORTZ.

[493] Mr Willis undertook a further s32AA evaluation, which we adopt.<sup>206</sup>

## 5.10.2 Decision

[494] We adopt Mr Willis' analysis and recommendations on NH-P4 and the associated new definition of 'sensitive location'. These amendments are set out in **Appendix 3**.

[495] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

## 5.11 NEW POLICY

### 5.11.1 Assessment

[496] BP Oil, et al [196.61] proposed a new policy requiring good practice measures be undertaken to avoid or minimise effects or risks.

[497] Mr Willis did not favour the addition for the reasons set out in his s42A Report. We understood from the evidence of Ms Westoby and Mr Trevilla, that the new policy was in part to separate out Clause 4 from HS-P1. Their reasons were that HS-P1's policy direction is to avoid unacceptable risks of MHF which, by definition, is not related to avoiding or minimising the adverse effects of natural hazards on MHF (and the adverse effects resulting from damage to MHF). It would in their view be clearer for plan users that these two policy directions are kept separate. Additionally, they said in relation to HS-P1:<sup>207</sup>

(a) In the chapeau, "suitable measures" should be replaced with "good practice measures". We understand that the latter is often used in government practice guidelines, such as the WorkSafe Good Practice Guidelines for MHF, and consider it to be clearer direction than "suitable" while not ruling out the outcome of the measure being suitable.

(b) The policy should require the consideration of all relevant natural hazard areas. It is unclear from the PDP and the Hazardous Substances s 32 report as to why cl (4) excludes High Hazard Areas despite it directing the consideration all other natural hazards, including Flood Assessment Areas which, we understand, may pose less flood risks than High Hazard Areas.

(c) The PDP does not define "natural hazard areas" and as such it should not be capitalised, as capitalisation suggests that it is defined.

[498] The Panel agrees with Ms Westoby and Mr Trevilla that there are two separate issues being addressed in HS-P1 and it would be appropriate to separate these out. Ms Seaton had also noted there was a benefit to separating Clause 4 and supported the suggestion by Ms Westoby and Mr Trevilla. Mr Willis did not disagree with the BP Oil et al drafting changes but

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<sup>206</sup> s42A Report at 6.21.21

<sup>207</sup> Sarah Westoby and Thomas Trevilla, Joint Statement of Evidence, 25 October 2024, at para 8.9

noted that PrimePort supported the retention of the text of HS-P1.4. We prefer the evidence of Ms Westoby and Mr Trevilla and have separated out the drafting of HS-P1.4 into a separate new policy HS-P5.

### **5.11.2 Decision**

[499] We accept the submission from BP Oil et al to separate out HS-P1.4 into a separate policy HS-P5 while retaining the drafting in the Final Reply version of provisions.

[500] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

## **5.12 HS-R1 USE AND/OR STORAGE OF HAZARDOUS SUBSTANCES IN A HAZARDOUS FACILITY (EXCLUDING MAJOR HAZARD FACILITIES)**

### **5.12.1 Assessment**

[501] A number of submissions requested changes to HS-R1. In general terms the concerns mirrored the issues of concern in relation to the objectives and policies.<sup>208</sup> Rangitata Dairies [44.6] requested an amendment to allow the use and storage of hazardous substances in existing dairy sheds in Flood Assessment Areas as a permitted activity. PrimePort requested an exclusion for PORTZ in PER-1. BP Oil et, al [196.65] requested deletion of PER-1, and PER-2, so that a facility not located in a sensitive environment, other than Flood Assessment Area, was simply permitted without standards.

[502] Ms Westoby and Mr Trevilla, for BP Oil et al noted that for the Fuel Companies' activities, one example is the routine and necessary replacement of existing underground fuel storage tanks (UFTs) at service stations such that the physical works to enable the activity have been recognised and permitted at the national level through the NES-CS. They said that tank replacement can involve an increase in the volume of underground fuel storage (usually petrol or diesel) and, at the same time, result in no change to the risk profile both on and off site, in particular, no change to risks or effects to many of the sensitive environments listed in the definition, such as heritage buildings. In such, and many other, circumstances, a permitted activity pathway for UFTs is entirely appropriate.<sup>209</sup>

[503] Mr Willis did not recommend the change requested by BP Oil et al, given the recommendation to include the definition of 'sensitive locations'. He considered the deletion of PER-2 would be contrary to submission point requesting the new policy discussed above. He supported the consequential changes to HS-R1 arising from the changes recommended to HS-P4. He also confirmed that he was comfortable about the low risk of UFT's to flooding, including seawater inundation, but noted the absence of evidence to exclude Fault Awareness Areas, Liquefaction Awareness Areas or Drinking Water Protection Areas.<sup>210</sup>

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<sup>208</sup> In particular the submissions of Fonterra [165.56], Road Metals [169.16], Fulton Hogan [170.17], PrimePort [175.35], TDH [186.20], and Ixom [49.6] raised issues addressed in HS-P4.

<sup>209</sup> Sarah Westoby and Thomas Trevilla, Joint Statement of Evidence 25 October 2024, paragraph 8.21 and 8.22

<sup>210</sup> Andrew Willis, Interim Reply Appendix A.

[504] In their evidence Ms Westoby and Mr Trevilla continued to maintain that UFT's should be provided for as permitted activities without additional plan standards, and argued that generally these activities were low risk in terms of various natural hazards. Whilst they expressed the 'company view' of these matters we did not receive any technical evidence to support their assertions.

[505] Mr Willis noted that the definition of 'hazardous facility' excludes the incidental storage and use of agrichemicals, fertilisers and fuel for land based primary production activities, which would include dairying (Clause 3), so no change is needed in response to the submission from Rangitata Dairies.<sup>211</sup>

[506] We agree with Mr Willis' analysis of the submission points and prefer a more cautious approach to the risks associated with UFT's beyond flooding, by requiring an appropriate risk evaluation standard in the absence of specific technical evidence in this hearing.

[507] In relation to PrimePort and TDHL submission, Mr Willis indicated in his Interim Reply that he would revisit the rule in the NH hearing. This was overlooked at the time as was the case for HS-P1. For the same reasons we have considered the JWS submitted by Mr Willis and Ms Seaton during the technical review of the draft decision documents, and we agree that this was an unintended omission. We accept and adopt their recommended change to the relationship between PER 1 and PER 2 for the reasons they outline.

### **5.12.2 Decision**

[508] We adopt the analysis and recommendations of Mr Willis on HS-R1 along with the amendments set out in the JWS.<sup>212</sup> These amendments are set out in **Appendix 3**.

[509] In terms of s32AA, we are satisfied that the original s32 evaluation continues to apply.

## **5.13 HS-R2 MAINTENANCE AND REPAIR OF MAJOR HAZARD FACILITIES**

### **5.13.1 Assessment**

[510] Silver Fern Farms [172.43], Alliance Group [173.40], Southern Proteins [140.11] and BP Oil, et al [196.66] collectively sought changes to the rule to include upgrades, repairs, maintenance, changes, and expansions. Ixom Operations [49.7] consider it is unclear what HS-R2 would achieve and sought its deletion.

[511] Mr Willis responded by acknowledging that there is a large spectrum of what additions / alterations / upgrades could entail but he agreed that it would be appropriate to permit additions or upgrades which do not result in a change in the risk profile of the MHF, as proposed by BP Oil, et al. He noted that as currently drafted this rule could capture stormwater infrastructure works, new or changes to office buildings, or extensions to compounds which might have no impact on risk from the hazardous facility, while relocating a gantry, relocating a tank or installing a new tank might result in a change in risk profile and require an updated QRA. Mr Willis advised that he met with the BP Oil et al planning experts to explore drafting

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<sup>211</sup> Ibid paragraph 6.23.11

<sup>212</sup> Andrew Willis and Kim Seaton, JWS, 3 March 2026

to address the issues raised. In his s42A Report, Mr Willis recommended changes to enable upgrades, where the activity does not increase the risk profile of the MHF (subject to a suitable QRA) and a volumetric limit of 10%.<sup>213</sup>

[512] BP Oil et al, expressed support for the recommendations of Mr Willis.<sup>214</sup>

### **5.13.2 Decision**

[513] We adopt the analysis and recommendations of Mr Willis on HS-R2. These amendments are set out in **Appendix 3**.

[514] In terms of s32AA, we are satisfied that the amendments are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the Plan and for giving effect to other relevant statutory instruments.

## **5.14 HS-R3 SENSITIVE ACTIVITY, INCLUDING SUBDIVISION TO CREATE A NEW ALLOTMENT TO ACCOMMODATE FUTURE SENSITIVE ACTIVITY, IN PROXIMITY TO A MAJOR HAZARD FACILITY**

### **5.14.1 Assessment**

[515] Submissions on this rule were concerned that a QRA may not necessarily take into account additional/altered development of the MHF being assessed and this could affect the validity of the QRA. Mr Willis disagreed with the submitters' suggested relief and recommended no changes to the rule. Silver Fern Farms [172.44] and Alliance Group [173.41] confirmed their acceptance of the s42A recommendations, and Ixom [49.8] did not attend the hearing to elaborate on their concerns. We accept Mr Willis' reasoning and retain the rule as notified.

### **5.14.2 Decision**

[516] We adopt the analysis and recommendations of Mr Willis on HS-R3. The rule is retained as notified.

## **5.15 HS-R4 NEW MAJOR HAZARD FACILITIES AND ADDITIONS TO MAJOR HAZARD FACILITIES**

### **5.15.1 Assessment**

[517] The submissions are concerned with 'additions' and how this is interpreted and applied. Mr Willis noted that he had recommended adding in additions / upgrades into HS-R2, therefore it is not necessary to amend HS-R4 to also cover additions / upgrades. He confirmed that HS-R4 only applies to new MHF. Ms Westoby and Mr Trevilla for BP Oil et al [196.68] suggested deletion of the reference to 'additions' in the heading. Mr Willis accepted the change in his Interim Reply to modify the heading to make it clear it did not include additions. <sup>[OBJ]</sup>This was accepted by Silver Fern Farms [172.45] and Alliance Group [173.42]. Southern Proteins [140.12] did not attend the hearing.

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<sup>213</sup> Ibid 6.24.9 – 6.24.18

<sup>214</sup> Sarah Westoby and Thomas Trevilla, Joint Statement of Evidence 25 October 2024, paragraph 8.38

### **5.15.2 Decision**

[518] We adopt Mr Willis' recommendations and amend the heading of HS-R4. The amendments are set out in **Appendix 3**.

[519] We are satisfied that the original s32 evaluation continues to apply.

## **5.16 NEW RULES**

### **5.16.1 Assessment**

[520] Forest and Bird [156.91] submitted that new hazardous facilities should be restricted discretionary activities so that the location can be controlled and, if the risk to the environment is too high, it can be declined. They sought the inclusion of a new rule to this effect.

[521] Neither Mr Willis, nor the Panel are clear on the environmental issues that are likely to arise from new hazardous facilities that are not MHF where the facility has been constructed in accordance with the applicable hazardous substances regulations, the facility meets the applicable zone and overlay activity rules and standards and noting our recommendations on 'sensitive locations'. The submitter did not elaborate at the hearing. Mr Willis recommends that the submission from Forest and Bird is rejected and no new rule is recommended. We agree.

### **5.16.2 Decision**

[522] We adopt the analysis and recommendations of Mr Willis on the inclusion of a new rule. We find that no new rule is necessary.

## **5.17 PLANNING MAPS - MAJOR HAZARD FACILITIES OVERLAY AND SCHED 2 - SCHEDULE OF MAJOR HAZARD FACILITIES ASSESSMENT**

### **5.17.1 Assessment**

[523] Mr Willis summarised the various submission points<sup>215</sup>, which are largely technical matters in his s42A Report at paragraphs 6.28.4 and 6.28.5. It appears that there was a mistake in the mapping which drew a number of submissions that sought clarification of the mapping and SCHED2. SCHED2 and the notified provisions are correct, but the mapping is incorrect as it refers to SHF whereas it should refer to MHF and the number has been reduced to four MHF as identified by WorkSafe which are all located within the Timaru Port area. He recommended that the TDC submission is accepted, which includes amended maps, as the Planning Maps are clearly at odds with SCHED2 and the chapter. We accept Mr Willis' explanation of what occurred and the amendments he proposed in response.

### **5.17.2 Decision**

[524] We accept the analysis and recommendations of Mr Willis in relation to the Planning Maps. The amendments are included in **Appendix 2**.

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<sup>215</sup> TDC [42.74], PrimePort [175.3, 175.2, 175.95], TDH [186.3, 186.2, 186.69], Z Energy [116.15] and Alliance Group [173.152, 173.32]

[525] We are satisfied that the amendments will provide clarity for plan users. On this basis, no s32AA is required for these matters.