# SECTION 42A REPORT

Rebuttal Evidence

# Hearing 8A:

## Hazardous Substances and Contaminated Land

Report prepared by: Katherine Overwater

Date: 20 January 2020

DISTRICT COUNCIL

*Te Kaunihera aa Takiwaa o Waikato*

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# 1 Introduction

## 1.1 Background

1. My full name is Katherine Elizabeth Overwater. I am employed by Waikato District Council as a Senior Policy Planner and am the writer of the original S42A report for Hearing 8A Hazardous Substances and Contaminated Land.

2. My qualifications and experience are set out in the introduction of the s42A report together with my statement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014.

3. The recommended text changes as a result of this rebuttal evidence are set out in Rebuttal Appendix 1. Recommended amendments that are the result of the original s42A report are shown in red, with recommended changes arising from this rebuttal evidence shown in blue.

# 2 Purpose of the report

4. In the directions of the Hearings Panel dated 26 June 2019, paragraph 18 states:

   *If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.*

5. The purpose of this report is to consider the primary evidence and rebuttal evidence filed by submitters. I respond only to the points where I consider it is necessary to clarify an aspect of my s42A report, or where I am persuaded to change my recommendation. In all other cases, I respectfully disagree with the evidence, and affirm the recommendations and reasoning in my s42A report.

6. Evidence was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel[1]:

   a. Genesis Energy Limited [924] [FS1345]
   b. Tuakau Proteins Limited [402] [FS1353]
   c. Federated Farmers of New Zealand [680] [FS1342]
   d. Ports of Auckland [578] [FS1087]
   e. Kainga ora [749] [FS1269]
   f. NZ Steel [827] [FS1319]
   g. Waikato Regional Council [81]
   h. Fellrock Development Limited/TTT Products [543]
   i. Livestock Improvement Corporation [637]
   j. WEL Networks Limited [692]
   k. Transpower [576] [FS1350]
   l. LPG Association [573]
   m. Horticulture New Zealand [419] [FS1168]

[1] Hearings Panel Directions 21 May 2019

7. Evidence was filed late with panel approval from the following submitters:

    a. BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited (The Oil Companies) [785] and [FS1089]

    b. Fire and Emergency New Zealand [378]

8. Further rebuttal evidence was filed by Horticulture New Zealand (419) on the 14th of January 2020.

# 3 Consideration of evidence received

## 3.1 Evidence in support of the s42A report recommendations

9. Evidence in support of the s42A report recommendations was received from the following parties:

    a. Wel Networks Limited [692];

    b. Waikato Regional Council [81];

    c. New Zealand Steel Holdings Limited [827];

    d. Fellrock Developments Limited/TTT Products Limited [543]; and

    e. Livestock Improvement Corporation [637].

## 3.2 Matters addressed by this report

10. The main topics raised in evidence and rebuttal evidence from submitters included:

    **Hazardous Substances**

    a. Objectives and Policies

    b. Definitions

    c. Proposed Rules and the duplication of Hazardous Substances and New Organisms 1996 (HSNO) and Health and Safety at Work Act 2015 (HSWA)

    d. Activity Status Table (AST) in Appendix 5

    **Contaminated Land**

    a. Objectives and Policies

11. There are a number of points raised within the evidence and rebuttal evidence from submitters which support the recommendations contained within the original S42A report for Hearing 8A: Hazardous Substances and Contaminated Land. While I acknowledge the comments made in that evidence, in the interests of succinctness I do not comment upon these within this report.

12. I have structured my response as follows:

    a. Hazardous Substances – Objective 10.1.1

    b. Hazardous Substances – Policy 10.1.2

    c. Hazardous Substances – Policy 10.1.3

    d. Hazardous Substances – Policy 10.1.4

e. Hazardous Substances – Definitions

f. Hazardous Substances – Rule Framework

g. Contaminated Land – Objective 10.2.1

h. Contaminated Land – Policy 10.2.1

# 4 Hazardous Substances – Objective 10.1.1 Effects of Hazardous Substances

## 4.1 Analysis

13. Ms Broughton on behalf of WEL Networks Limited [692], Ms Balsom on behalf of Waikato Regional Council [81], Ms McCarter on behalf of New Zealand Steel Holdings Limited [827, FS1319] and Mr Arbuthnot on behalf of Ports of Auckland Limited [578, FS1087] support the amendments to Objective 10.1.1 included in the S42A report.

14. Ms McPherson for the Oil Companies [785, FS1089] supports the deletion of the word 'residual' from Objective 10.1.1. However the Oil Companies do not support the reference to the 'transport' of hazardous substances as a requirement of Policy 10.1.2 (iii), and that all adverse effects associated with the operation at a hazardous facility is contained within the site. I note that Ms Wharf on behalf of Horticulture New Zealand [419] supports Ms McPherson's point through rebuttal evidence.

15. I agree with Ms McPherson that inclusion of 'transport' in the policy can be difficult to determine who has jurisdiction to manage and enforce this aspect of the policy when there are multiple authorities who are responsible for transportation. For example, the Regional Council is often the primary point of contact in emergency situations particularly where there is a risk of hazardous substances being discharged to land and waterways.

16. Policy 4.2.9 of the Waikato Regional Policy Statement does not provide any direction as to whether transportation needs to be covered by the Regional or District Council. However prior to the Resource Legislation Amendment Act 2017 (RLAA), section 31(1)(b)(ii) included the provision of transportation as a function for District Councils.

17. For reference, Policy 4.2.9 of the Waikato Regional Policy Statement (WRPS) states:

***4.2.9 Hazardous substances***

*Regional and district plans shall recognise and provide for the following division of responsibilities when developing provisions for the control of the use of land for the prevention or mitigation of any adverse effects of the storage, use, disposal or* ***transportation*** *of hazardous substances:*

*a) Waikato Regional Council shall be responsible for developing objectives, policies, rules and other methods for land in the coastal marine area and the beds of lakes and rivers; and*

*b) Territorial authorities shall be responsible for developing objectives, policies, rules and other methods for all other land.*

[Emphasis added]

18. In terms of the Waikato District Council's responsibilities, I still consider the transport of hazardous substances to be a valid consideration for consenting new hazardous facilities and the District Council needs to consider the potential adverse effects that a proposed hazardous facility will have on the environment. In some cases there may not be any effects on transport due to the nature of the activity. However cases where hazardous facilities trigger significant volumes and quantities of hazardous substances being moved on a daily

basis, the landuse activity may require conditions of consent. Conditions of consent may include the route, frequency of trips; and times as an example. From my experiences, I would deem such conditions to be appropriate, particularly where there may be a risk to the public's health and safety from that particular landuse activity.

19. For clarification, I note that conditions would not be concerned about the transportation vessel itself or any matters governed by other legislation.

20. Further, it is important to put the above scenarios into context. Resource consent applications are generally not received by Council on a regular basis and would only relate to those activities that trigger consent (i.e. those activities that are storing, using or disposing larger volumes and quantities as set out in the Activity Status Table 5.1 of Appendix 5).

21. For the above reasons, I do not accept Ms McPherson's point on the removal of the word 'transport'.

22. Ms McPherson also does not support the recommendation to replace the word 'managed' with 'minimised'. I disagree with her comments at paragraph 7.9 of her evidence and maintain that 'minimised' provides clearer policy direction than 'managed'. I note that this point is also supported by Ms Wharf on behalf of Horticulture New Zealand [419] through rebuttal evidence. In my view, there is ambiguity about what the term 'managed' actually means, and what may be considered managed to one party may not be the same for another. Everyone can agree that the term 'minimised' means to reduce or make smaller.

23. I note that the term 'minimised' was in fact included in the original drafting of the policy in March 2018 prior to notification, but was amended through the editing process, hence Council's submission to re-instate the term.

24. Ms Wharf on behalf of Horticulture New Zealand [419] is generally supportive of Objective 10.1.1, however seeks to delete the word 'facilities' from the Objective to align with Horticulture New Zealand's other submission points. I disagree with this point and maintain the reasons set out in my S42A report at paragraph 123[2].

### 4.2 Recommendations

25. Having considered the points raised in evidence and rebuttal evidence I have not changed my recommendations in respect to Objective 10.1.1.

26. I therefore have no amendments to make to Objective 10.1.1.

# 5 Hazardous Substances – Policy 10.1.2 Location of New Hazardous Facilities

### 5.1 Analysis

27. Ms Broughton on behalf of WEL Networks Limited [692], Ms Balsom on behalf of the Waikato Regional Council [81], Ms McCarter on behalf of New Zealand Steel [827, FS1319] and Mr Arbuthnot on behalf of Ports of Auckland Limited [578, FS1087] support the recommended amendments to Policy 10.1.2 included in the S42A report.

28. Ms Walker on behalf of the Federated Farmers of New Zealand [680] ("Federated Farmers") maintains their submission point 680.121 which seeks to amend clause (a)(iii) to not require containment within the site and instead refer to "avoided, remedied or mitigated". Ms Walker's evidence also highlights that the s42A report incorrectly provides reasoning that the WRPS policy requires "prevention <u>and</u> mitigation".

[2] Section 42A Report, Hearing 8A: Hazardous Substances & Contaminated Land, 2 December 2019, para 123.

29. I agree with this point in respect to the WRPS reference to "and mitigation" in my report and should have provided some further discussion on the term "mitigation" in the S42A report. However, my view is that the policy must provide clear and strong policy direction to Plan users to ensure that the adverse effects of hazardous substances are to be "prevented" first and foremost. This sets an expectation in the District Plan that at the time of establishment of hazardous facilities and during operations, operators must contain actual and potential adverse effects of hazardous substances within their site. I do not agree that this is an unreasonable requirement of the District Plan given that the purpose of the RMA is to protect health and safety of people and the environment.

30. I acknowledge that there will always be exceptions to this approach, which is where a resource consent for a hazardous facility would assess the risk as part of the proposal and considers of consent might look at mitigation as part of the application.

31. Neither the submission nor the evidence submitted by Federated Farmers provides examples of circumstances where "mitigation" is considered an acceptable practice. From my experiences, the Plan needs to provide strong policy direction and set the expectation for not only operators, but also those persons whom may be adversely affected by a hazardous facility. In my opinion the policy achieves this.

32. Mr Sharman from Fire and Emergency New Zealand (378) supports Policy 10.1.2 in part. However Mr Sharman seeks clarity around what a 'sensitive environment' includes, as this is not defined in the District Plan.

33. I note that "sensitive land use" has been discussed in Hearing 5: Definitions at paragraph 577 of the S42A report as follows:

| Sensitive land use | Means:<br>(a) an educational facility, including a childcare facility, waananga and koohanga reo;~~,~~<br>(b) a residential activity, including papakaainga building, ~~rest home~~, retirement village, visitor ~~travellers~~ accommodation, student accommodation, home stay;<br>(c) health facility or hospital;<br>(d) place of assembly. |
|---|---|

34. I note that further changes have been discussed in respect to the above changes since the hearing.

35. I agree that having both "sensitive land use" and "sensitive environment" does cause confusion to Plan users. However I consider there is a clear distinction between the two terms. Essentially the definition of 'sensitive land use' covers the types of activities that the policy framework is seeking to ensure protection from new hazardous facilities and 'sensitive environments' is in reference to the 'environment' (i.e. a wetland, waterways). My view is that the policy does need to be wider than only 'sensitive land use' as defined above and while I agree that having a definition would alleviate the confusion, I do not consider that I have scope through submissions. However should the panel consider that there is sufficient scope, then I consider that a definition for sensitive environment would be helpful to assist interpretation of the policy and could include features such as wetlands, waterways and Significant Natural Areas (SNAs) for example.

36. Ms McPherson on behalf of Oil Companies [785, FS1089] has highlighted concerns with the wording of Policy 10.1.2, including the point regarding the definition of 'sensitive environments' and is still of the view that the Policy could be deleted. Ms McPherson has also suggested some amendments focusing on 'major hazardous facilities'. I note that Ms Wharf on behalf of Horticulture New Zealand [419] supports this point through rebuttal evidence. However Ms Wharf has indicated that if the Panel do not amend Policy 10.1.2 as

sought by Ms McPherson, then she would support the changes sought by Ms Walker on behalf of Federated Farmers; that is, not including the provisions relating to amenity, which should be addressed through other policies in the plan.

37. Based on the original submission received from the Oil Companies (785.42), submitters would anticipate an outcome somewhere between the deletion of Policy 10.1.2 altogether or amendments to the notified version. However no original submissions included the wording proposed by Ms McPherson including the terminology "major hazardous facilities" in their relief sought. Therefore submitters would not anticipate this change to Policy 10.1.2.

38. I consider that the revised wording sought by the evidence of Ms McPherson is outside the scope of original submissions received on Policy 10.1.2. Should the Panel consider that there is sufficient scope for the proposed changes, I still disagree with the proposed wording Ms McPherson has provided, as I consider this wording significantly weakens the policy.

39. Ms Wharf on behalf of Horticulture New Zealand [419] maintains the deletion of clause (iii) of Policy 10.1.2. I disagree with this point for the reasons outlined above and in my S42A report.

### 5.2 Recommendations

40. Having considered the points raised in evidence and rebuttal evidence I have not changed my recommendations, and therefore do not recommend any changes to Policy 10.1.2.

# 6 Hazardous Substances – Policy 10.1.3 Residual Risks of Hazardous Substances

### 6.1 Analysis

41. Ms Broughton on behalf of WEL Networks Limited [692], Ms McCarter on behalf of New Zealand Steel [827, FS1319] and Mr Arbuthnot on behalf of Ports of Auckland Limited [578, FS1087] support the recommended amendments to Policy 10.1.3 included in the S42A report.

42. Ms Walker on behalf of Federated Farmers [680] confirms that the s42A recommendations to include exemptions to the definition of Hazardous Facility will appropriately narrow the scope of this policy.

43. Ms McPherson on behalf of the Oil Companies [785, FS1089] considers the policy should focus on managing risks associated with hazardous substances storage at much greater thresholds, and could support the risk assessment requirements of the policy if they applied to major hazardous facilities only. She therefore suggested changes introducing the word "significant", or alternatively maintains that the policy should be deleted. I note that Ms Wharf on behalf of Horticulture New Zealand [419] supports this point through rebuttal evidence providing the terminology used is consistent – either "significant" hazardous facility or "major" hazardous facility.

44. I sought input from Mr Schaffoener on this matter, and we both disagree with this change as we consider there are deficiencies in the existing definitions of 'major' or 'significant' hazardous facilities in respect to other District Plans with regard to scope and applicability. We do not consider the Waikato District needs to adopt these specific definitions as the proposed provisions for hazardous substances do not solely focus on hazardous facilities that what would be considered to be 'major' or 'significant' landuse activities. The definitions and Activity Status Table included in Appendix 5 target the effects from large-scale hazardous facilities and provides scrutiny and a more rigorous process where the

landuse effects may be more significant. Further, we do not agree that the plan should focus on specific activities or hazardous facilities, but rather should focus on managing the effects of hazardous substances across District.

45. Further, I consider the suggested changes to be beyond the scope of the original submissions as the evidence is essentially seeking to introduce a completely new framework which focuses on 'major' or 'significant' hazardous facilities, rather than the management of hazardous substances regardless of the land use with which they are associated with. Based on the original submission received from the Oil Companies (785.43), submitters would anticipate an outcome somewhere between the deletion of Policy 10.1.3 altogether or amendments to the notified version. However no original submissions included the terminology "significant hazardous facilities" in their relief sought. Therefore submitters would not anticipate this change. Should the Panel consider these changes to be within scope, I still disagree with introducing the word "significant" into Policy 10.1.3 for the reasons set out above. Mr Schaffoener also agrees on this point.

46. Ms McPherson also does not agree with the inclusion of the term 'safety' in Policy 10.1.3 and considers it potentially creates an expectation that Council will seek to control matters that are already appropriately controlled by Worksafe.

47. I disagree with Ms McPherson on this point as the purpose of the RMA in section 5(2) refers to "health and safety" and therefore it is reasonable that this policy is directed at assessing potential adverse effects on the public's health and safety. I consider it to be entirely appropriate in achieving the purpose of the RMA. Further, I note that none of the original submissions sought to remove this word (only to delete the entire policy), therefore even if I were of a mind to accept the change, I do not consider that I would have scope.

48. Ms Wharf on behalf of Horticulture New Zealand [419] maintains their submission point to delete Policy 10.1.3. I disagree with this point for the reasons outlined in my S42A report.

### 6.2 Recommendations

49. Having considered the points raised in evidence and rebuttal evidence I have not changed my recommendations. Therefore I have not recommended any changes to Policy 10.1.3.

# 7 Hazardous Substances – Policy 10.1.4 Reverse Sensitivity Effects

### 7.1 Analysis

50. Ms Broughton on behalf of WEL Networks Limited [692], Ms McCarter on behalf of New Zealand Steel [827, FS1319] and Mr Arbuthnot on behalf of Ports of Auckland Limited [578, FS1087] support the recommended amendments to Policy 10.1.4 included in the S42A report.

51. Ms McPherson for the Oil Companies [785, FS1089] supports the deletion of clauses (b) and (c), and the intent of the changes to clause (a) to focus on managing reverse sensitivity effects as a whole rather than requiring separation between hazardous facilities and sensitive land uses. However Ms McPherson does not support the qualifier 'as far as practicable' and considered this may result in unintended consequences.

52. I disagree with Ms McPherson's point on this wording in proposed Policy 10.1.4 as I consider the wording provides some flexibility. Without this flexibility, the policy is very directive given the use of the wording "effects are avoided". My view is that if I were to accept Ms McPherson's proposed changes, the policy would set a high hurdle and there may be some

circumstances where it is appropriate (i.e. if the hazardous facility does not involve high risk or the landuse activity that will not compromise the existing hazardous facility). It is my view that Ms McPherson's point does not provide fairness or flexibility. I also do not imagine that the Oil Companies would accept a similar policy which required hazardous facilities to ensure all effects (and this would include positive effects) were avoided.

53. Ms Wharf on behalf of Horticulture New Zealand [419] generally supports the benefit of the revised wording contained in my s42A report. However she does not agree that the wording makes it clear that sensitive land uses should not locate in areas where hazardous substances are stored and used. Ms Wharf has provided revised wording of the policy in paragraph 17.7 of her evidence.

54. Similar to the discussion above with respect to the Oil Companies evidence, I disagree with Ms Wharf's point as the proposed wording places a too high a hurdle on sensitive land use activities.

### 7.2 Recommendations

55. Having considered the points raised in evidence and rebuttal evidence I have not changed my recommendations. I have not recommended any further changes to Policy 10.1.4.

# 8 Hazardous Substances – Definitions

## 8.1 Analysis

### 8.1.1 Definition of 'hazardous substance'

56. Ms Walker on behalf of Federated Farmers [680] and Ms Wharf on behalf of Horticulture New Zealand [419, FS1168] support the S42A recommendation to adopt the National Planning Standards definition of Hazardous Substance.

### 8.1.2 Definition of 'hazardous facility'

57. Ms Walker on behalf of Federated Farmers [680] has not confirmed whether they continue to support or oppose the definition of 'hazardous facility'. The evidence only states that:

> *The S42A response, whilst sympathetic to most of the issues raised, serves to highlight that the Hazardous Facility definition will remain contentious until the rules framework, with regards to what activities/hazardous substances, may or may not be captured are addressed.*

58. Mr Arbuthnot on behalf of Ports of Auckland Limited [578, FS1087] continues to seek an exclusion for the temporary storage, handling and distribution of national or international cargo from the definition of 'hazardous facility' for two reasons. Firstly Mr Arbuthnot considers hazardous substances are already highly regulated under HSWA (Hazardous Substances) Regulations 2017, and secondly due to inefficiencies which would result if Ports of Auckland Limited were required to apply for resource consent every time a container containing hazardous substances arrives at the Waikato Inland Freight Hub for export or distribution that exceeds the permitted thresholds.

59. While I agree with Mr Arbuthnot's first reason in respect to avoiding duplication of regulation, I am not persuaded by his second reason that resource consent would be required every time a container of hazardous substances arrives at the Waikato Inland Freight Hub. I have read through the application for resource consent lodged with Waikato District Council and the resource consent decision (LUC0131/17) for the establishment of the inland freight hub in the Horotiu Industrial Park Zone.

60. At paragraph 42 of the application by Ports of Auckland Limited[3] it states:

> *No processing or handling of environmentally hazardous substances will be undertaken on the site, except for those which are contained in cargo, and are pre-packaged (e.g. household cleaning items). POAL's experience in handling environmentally hazardous substances in cargo is that there is a low risk of discharge occurring as within the container yard, cargo container are well-sealed, providing an additional barrier to discharge over and above the individual packaging of cargo items.*

61. If there was a concern that POAL would need resource consent for hazardous substances at the Waikato Inland Freight Hub, I consider this matter could have been considered at the time of lodging the landuse application for the activity and managed under the Operative District Plan rules.

62. While I am not averse to providing an exemption for cargo in the definition of hazardous facility, I am concerned that POAL activities extend beyond just cargo in transit, which as Mr Arbuthnot points out is covered by HSW Location Compliance Certificates and other regulations. The 'vanning' and 'devanning' operations he refers to indicates that some of the containers being stored on site are opened and therefore would not be subject to Location Compliance Certificates but would be covered by other HSW regulations and the District Plan.

63. I am also not in favour of providing an exemption for the POAL activities specifically in the District Plan definition of hazardous facility. I consider the definition needs to apply to all activities across the District and should not single out specific operations, unless there is a significant reason for this.

64. Given the Industrial zoning for the POAL activities, based on the thresholds included in Table 5.1 of Appendix 5 any hazardous substances stored at the freight hub would require significantly large quantities stored "for more than short periods of time" (as currently provided for in the definition of hazardous facility) to trigger resource consent. No evidence in respect to quantities and volumes and the frequency that the hazardous substances come through the freight hub has been provided to indicate that this would be the case.

65. Ms McPherson on behalf of the Oil Companies [785] supports the intent of the changes in my s42A report, but considers the changes do not go far enough. The Oil Companies want to amend the definition of "hazardous facility" to "Significant Hazardous Facility". Ms Wharf from Horticulture New Zealand [419] also supports this point in her rebuttal evidence.

66. As discussed previously in paragraph 43 and 44, I disagree with these changes and do not consider this amendment to be within scope, as it is not a term used by any other submitter (including the original submission point from Horticulture New Zealand (419.123) who sought to delete the definition). If the Panel are of a mind to consider the change is within scope, I still disagree with the additional wording for the reasons set out in paragraph 44.

67. Mr Sharman from Fire and Emergency New Zealand [378] seeks further clarity on Mr Schaffoener's comment in section 24 of the S42A report "…which would include what is stored on up to 10 HAZMAT and other response vehicles" and whether this statement means that he considers breathing apparatus used by the Fire Service to be independent of the amount of corrosives held.

68. I sought input from Mr Schaffoener who advised me that compressed air in breathing apparatus and corrosive substances are completely different hazard categories and therefore different thresholds apply. Therefore I consider that Mr Sharman's concerns are addressed by the different hazard categories.

[3] Ports of Auckland Limited, Application for Resource consent & Assessment of Environmental Effects to establish an inland freight hub at the Horotiu Industrial Park, Horotiu, Bently & Co Limited, September 2016, para 44 at page 11.

69. I also agree with Mr Sharman's comment at paragraph 28 of his evidence that clarity is required for the entry under non-hazardous gases in Table 5.1 of Appendix 5, and that this be amended to read 'All non-hazardous gases, compressed or liquefied'. This is an oversight whilst drafting the S42A report.

70. Ms Wharf on behalf of Horticulture New Zealand [419] considers the definition would mean that a grower with a spray tank of agrichemicals or load of fertiliser would be regarded as a hazardous facility and that a whole farm would be a hazardous facility. I disagree with this point and consider that the S42A report[4] at paragraph 302 which states that "in most instances, farminger operations (including the transport of agrichemicals or fertiliser) would not trigger any consent requirements, due to the exemptions included in Rule 1 of Appendix 5". I consider this addresses the matters raised in Ms Wharf's evidence and confirms that the activities would generally be permitted activities.

### 8.1.3 Definition of 'hazard'

71. Mr Lindenberg on behalf of Kainga Ora (formerly Housing New Zealand Corporation) [749, FS1269] supports the deletion of the definition of "hazard", however highlights that this recommended change has not been included in Appendix 2 of the S42A report.

72. I agree with Mr Lindenberg that this is an omission from Appendix 2 which needs to be corrected.

### 8.1.4 Definition of 'use'

73. Mr Lindenberg on behalf of Kainga Ora [749, FS1269] does not support the recommendation to retain the term "use" as notified and seeks to add the term "hazardous" to increase clarity of the definition to plan users when used within the Plan itself, without changing the intent of the definition.

74. I disagree with this point and maintain the reasons as set out in paragraph 342 of the S42A report that the definition is clear when it is read, in that it relates to the "use" of hazardous substances. I reiterate that it is not the 'use' which is hazardous, but the hazardous substances used.

75. Ms Wharf on behalf of Horticulture New Zealand [419] maintains their submission point to amend the definition of 'use' as set out in their submission. I still disagree with this point for the reasons outlined in my S42A report.

### 8.1.5 Storage

76. Ms Wharf on behalf of Horticulture New Zealand [419] maintains their submission point to remove the second sentence of the definition. I disagree with this point for similar reasons to the discussion in respect to the definition of 'hazardous facility'.

### 8.1.6 Sensitive Land Use

77. Ms Wharf on behalf of Horticulture New Zealand [419] refers to the term 'sensitive land use'. This was raised above in respect to Policy 10.1.2 by Mr Sharman on behalf of Fire and Emergency New Zealand. I have indicated that the term is important to retain, as there is a difference between 'sensitive land use' and 'sensitive environment'. However I have indicated that I am not averse to including a definition of sensitive environment to increase certainty and clarity of the policy, but do not consider that I have scope to make this change.

## 8.2 Recommendations

78. Having considered the points raised in evidence and rebuttal evidence I have changed my recommendations in respect to the point (original submission point 378.81) raised by Mr Sharman on behalf of Fire and Emergency New Zealand [378] in his evidence to update Table 5.1 to reference 'All non-hazardous gases, compressed or liquefied'.

[4] Section 42A Report, Hearing 8A: Hazardous Substances & Contaminated Land, 2 December 2019, para 302.

79. I also accept the points raised by Mr Lindenberg on behalf of Kainga Ora (formerly Housing Corporation) [749] to reflect the deletion of the term 'hazard' in the recommended amendments, which I had omitted to show.

### 8.3 Recommended amendments

80. I therefore recommend the following further amendments to my initial recommendation:

| | |
|---|---|
| ~~Hazard~~[5] | ~~Means in the context of hazardous substances, physical situations, processes and action in relation to a hazardous substance that has the potential for adverse effects on people, ecosystems or the built in environment.~~ |

| Non-hazardous gases | Maximum quantity (measured in tonnes or $m^3$) | | |
|---|---|---|---|
| All non-hazardous gases, compressed or liquefied | 5 (10,000$m^3$) | 2 (4,000$m^3$) | 0.1 (200$m^3$) |

### 8.4 Section 32AA evaluation

81. I do not consider the above changes need to be evaluated in accordance with section 32AA, as they provide clarification and correction to the amendments already sought in the original S42A report.

## 9 Hazardous Substances – Rule Framework

### 9.1 Introduction

82. Ms Wharf from Horticulture New Zealand [419] has indicated support for the Introduction if it was amended to reflect a more focused approach to management of hazardous substances in the district and discussed the relationship between the RMA and other legislation. While I am not averse to making changes to the introduction to clarify what the relationship between HSNO and the RMA is, Ms Wharf's evidence does not propose any suggested amendments for consideration.

83. To assist the panel, I have included some suggested wording below, which I consider may address Ms Wharf's point by making the Introduction clear that both HSNO and HSWA work in conjunction with the RMA in respect to managing hazardous substances.

#### 9.1.1 Rule 20.2.6 – Industrial Zone Rule

84. Mr Arbuthnot on behalf of Ports of Auckland Limited [578, FS1087] does not support the proposed discretionary activity rule that applies where an activity cannot meet the permitted or controlled activity rules and prefers that the rule is a restricted discretionary activity. Mr Arbuthnot's evidence proposes to remove clauses (vi), (vii), (viii), (ix) and (xi) from the original proposed rule comprised in submission 578.4, which is comprehensive. Further he provides an explanation of each criterion that is included in the revised list of matters of discretion.

[5] Submission [749.49] Housing New Zealand Corporation

85. Upon reflection of the reasons I provided in paragraphs 501 to 507, I agree that full discretion is not necessarily justified for activities such as POAL. I also agree strongly that the District Plan should aid Plan users to assess matters that do not go not beyond the role of the RMA or its functions in relation to hazardous substances.

86. At the time of writing the s42A report, I had concerns about the number of individual matters covered in the proposed rule provided by POAL to ensure that the rule covered all industrial sites in the context of Rule 20.2.6. I have re-considered the individual matters proposed in the evidence from Mr Arbuthnot and concur that these revised matters are more relevant and could certainly be used in the context of the POAL site. However my preference would be to provide one rule for the entire Industrial Zone and I am still concerned about whether this rule could be applied generically across the Industrial Zone and would accommodate all other Industrial activities.

87. Therefore I could be persuaded to amend the rules to reflect either the POAL site or the Industrial Zone generally, should the Panel be of the view that the matters of restricted discretionary are appropriate across the zone. However I do not agree that the rule should be used generically across the plan for all activities that do not meet the permitted and controlled activity conditions (i.e. in Rule 10.3.1). This is because activities with hazardous substances in other zones may have different effects to those in the industrial zone (ie. higher likelihood of sensitive land uses) and needs a greater level of rigour when assessing the effects of the hazardous substances.

### 9.1.2 Rule 22.2.4 – Rural Zone Rule

88. Ms Walker on behalf of Federated Farmers [680] maintains that the rules and Table 5.1 Rule 1 provides a layer of complexity, uncertainty and the potential for unintended consequences.

89. Ms Walker states that she is unclear how the sub-classes of substances which are exempt from the threshold limits in Table 5.1 can comply with permitted activity Rule 22.2.4 and that non-compliance with Rule 22.2.4(P1) triggers the need for a discretionary consent.

90. In response to the concerns raised in Ms Walker's evidence, my view is that Rule 1 is clear that "Use, storage and disposal of hazardous substance sub-classes 1.4, 1.5, 1.6, 6.1D, 6.1E, 6.3, 6.4, 6.5, 9.1D, 9.2D, and 9.3 are exempt from this table" which would mean that they are permitted.

91. In regards to the point about making Rule 1 clear that it is a permitted activity in Rule 22.2.4, my interpretation of submission point 680.209 was that Federated Farmers wanted to provide exemptions for particular activities and substances not listed in Rule 1. For reference I have included the original submission point as follows:

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|---|---|---|
| 680.209 | Federated Farmers of New Zealand | Submitter seeks to amend Rule 22.2.4 P1 Hazardous Substances, as follows:<br>(a) The use, storage or disposal of any hazardous substances where:<br>(i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Rural Zone in Table 5~~6~~.1 contained within Appendix 5~~6~~ (Hazardous Substances), *with the exception of:* ...<br>*(ii) Activities that involve the storage, use, disposal and transportation of agrichemicals, hazardous substances and fuels on land used for primary production that complies with:*<br>*(a) NZS8409:2004 Management of Agrichemicals;* |

| | | |
|---|---|---|
| | | *(b) The Hazardous Substances and New Organisms Act 1996 (HSNO) and Regulations*<br>*(c) The storage and use of Class 3 fuels within the Rural Zone in accordance with the Environmental Protection Agency's Approved Practice Guide for Above Ground Fuel Storage on Farms, September 2010;*<br>*(d) The storage and use of fertiliser within the Rural Zone in accordance with the:*<br>• *Fertiliser (Corrosive) Group Standard HSR002569, and*<br>• *Fertiliser (Oxidising) Group Standard HSR002570, and*<br>• *Fertiliser (Subsidiary Hazard) Group Standard HSR002571, and*<br>• *Fertiliser (Toxic) Group Standard HSR002572, and*<br>• *Fert Research's Code of Practice for Nutrient Management 2007.*<br>AND<br>Any consequential changes needed to give effect to this relief.<br>AND<br>Any consequential amendments to Chapter 23: Country Living Zone to address areas of existing farmland zoned as Country Living Zone. |

92. Given that the proposed changes above do not specifically refer to Rule 1 and make it clear that any substance class listed in Rule 1 is a permitted activity, I do not consider I have scope to make a change to Rule 10.3.1 P1 to make it clearer that the intention is that any sub-classes included in Rule 1 of Table 5.1 in Appendix 5 are permitted activities.

93. However if the Panel considers there is scope through consequential amendments, I would support a change to Rule 10.3.1 to exclude Rule 1. I would also support "Rule 1" being changed to read "Hazardous Substances excluded from Table 5.1" to make it clear that Rule 1 is not actually a rule. I note that "Rule 1" was included in an error at the time the Plan was notified, as it had previously been labelled "Note 1".

94. Ms Wharf on behalf of Horticulture New Zealand [419] maintains that they do not support the use of AST as a threshold in the Plan. I disagree with this point for the reasons set out in my S42A report.

### 9.1.3 General approach to Hazardous Substances

95. Ms Walker on behalf of Federated Farmers [680] considers the notified provisions of the Proposed District Plan have gone beyond the scope of Council's role to control landuse effects which are more appropriately covered by HSNO or HSWA.

96. Ms Williams on behalf of Tuakau Proteins Limited [402, FS1353] highlights other district plan provisions including the recent Proposed New Plymouth District Plan, Proposed South Taranaki District Plan and Christchurch Replacement Plan in reference to "significant hazardous facilities".

97. Ms Williams considers that while it is important to include a specific chapter on hazardous substances that provides a policy framework to manage the use, storage, disposal and

transportation of hazardous substances to ensure that unacceptable risks are avoided, it is not appropriate for the Proposed District Plan to create unnecessary overlaps between the HSNO Act and the District Plan. In Ms William's view only *significant* hazardous facilities need to be managed through the rules of the Proposed District Plan.

98. I disagree with this evidence as it does not account for any plan examples which are within proximity to the Waikato District (i.e. Auckland Unitary Plan, Hamilton City, Matamata Piako, Hauraki, Waipa, Otorohonga, Hauraki). Waikato District Council needs to meet section 74(2) of the RMA which states in clause (c) that when preparing or changing a district plan territorial authorities must have regard to "the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities".

99. Further, the Waikato District does not currently contain many hazardous facilities that would be considered "significant hazardous facilities" (i.e. oil refineries), however this is not to say that applications would not be received by the Waikato District Council in the future.

100. I have reviewed applications Council has received recently on hazardous substances and they generally relate to the following examples: services stations, truck stops, abattoirs (i.e. AFFCO), dairy factories (i.e. Yashili, Synlait, Open Country), chemical or explosive manufacturing operations (i.e. Orica, Redbull, Rocket Labs), facilities such as the Hampton Downs Motorsport Park, and designations, including the NZTA expressway works.

101. In my view (and supported by Mr Schaffoener), the Proposed District Plan provides rules requiring assessment of any hazardous facilities which have quantities and volumes of hazardous substances stored, used and disposed of that exceed the stated thresholds. In most cases the non-compliances will be for hazardous facilities of sufficient size to trigger consent but not necessarily large by international standards. Any activities falling below the District Plan thresholds are permitted by the District Plan.

102. Mr Matthews on behalf of Genesis Energy Limited [924] considers that the hazardous substances provisions in the Proposed Waikato District Plan should be deleted entirely or amended to ensure that there is no overlap between the District Plan requirements and what he believes to be required under other regulations.

103. Similarly, Ms McPherson on behalf of the Oil Companies [785, FS1089] raises a number of issues in respect to the proposed rules including: precedent effect around the approach taken, section 32, and the recommended rules for service stations (the activity).

104. I disagree with both of these submitters and maintain the reasons set out in the S42A report and appendices, which set out that Council do have a role to play and the District Plan provisions are not a duplication of the requirements of HSNO and HSWA because they seek to manage the landuse effects of hazardous substances.

105. With respect to the matter of service stations, I disagree with the comments provided in Ms McPherson's evidence in respect to the reference to service stations being either a Controlled or a Non-Complying activity (depending on zoning). The section 32AA was certainly not focused on the activity of the service station and related amenity effects. It was focused on the location and storage of fuel for retail sale, which in my opinion is not attempting to duplicate HSNO or HSWA. In my S42A report I have been clear that the proposed rules are not covering existing hazardous facilities (i.e. existing service stations), but the location and storage of fuel for new service stations.

106. I agree that the HSNO and HSWA regulations have a role to play in terms of managing the fuel on site. These aspects are technical matters that I am not qualified to provide comment on. Mr Schaffoener is best placed to provide advice on these technical matters. However I am qualified to discuss the planning aspects of the proposed rules and consider that there is a need to ensure tighter controls in the District Plan to ensure the communities within the Waikato District are protected from the potential risks of the storage of fuel and the location of the service stations.

107. I agree that there is a change between the activity status for the storage of fuel for retail sale within a service station from being a permitted activity in the Operative Waikato section to being a controlled activity in the Proposed District Plan. I accept that the reasons for this change were not discussed as thoroughly as they could have been in the S32 report to highlight any issues with the permitted activity status and why a controlled activity status was more appropriate.

108. I could be persuaded to amend the activity status of the hazardous substances component of the landuse to a permitted activity for service stations in the Rural, Business Town Centre, Business, Industrial, Heavy Industrial and the Motorsport and Recreation zones, however I am of the view that a controlled activity status provides a relatively permissive activity status and I also consider the matters of control which are specifically focused on the control of hazardous substances, such as: the location of the fuel tanks in proximity to sensitive landuse and environments; cumulative risks with other facilities; and the interaction with natural hazards are important matters to ensure that the effects of the fuel storage are appropriate within the Rural, Business Town Centre, Business, Industrial, Heavy Industrial and the Motorsport and Recreation zones .

109. With respect to the non-complying activity status for the use, storage of fuel for retail sale within a service station in the Residential, Country Living, Village, Rangitahi Peninsula zones, in the Tamahere Business Zone or Agricultural Research Centre and in the Reserve Zones, while I agree that a Discretionary activity status is more appropriate for the hazardous substances component of the landuse activity, I do not consider that I have scope to make these changes.

110. Mr Gilbert on behalf of the LPG Association [573] raises objection to the proposed activity table approach, indicating that he believes it is not compliant with the RMA, increases costs for users of relatively small amounts of LPG who have to apply for resource consents, duplication of the requirements of existing legislation, and complicates the planning process.

111. Ms Wharf on behalf of Horticulture New Zealand [419] also opposes the approach taken to hazardous substances in the Proposed Plan and using the Activity Status Table (AST) proposes a permitted activity rule referring to HSNO. She considers that it introduces a level of regulation that is unnecessary given existing regulations under HSNO and Health and Safety at Work Acts. In paragraph 3.2 of Ms Wharf's evidence she notes that the 2017 RMA Amendment Act deleted specific requirements for the council to include the control of hazardous substances in the Plan. I do not agree with this statement. The legal opinion appended to my S42A report demonstrates that Council's do have role to play in conjunction with HSNO and HSWA.

112. The evidence provided from Ms Wharf considers that the section 32 report was deficient and did not go far enough to provide options or demonstrate why blanket controls are justified, such as the example from the Christchurch Replacement Plan or Hastings District Plan.

113. While I understand the position of these submitters and have taken on board the concerns raised, the MFE Fact Sheet does not provide any specific guidance or direction to Council as to how to develop rules for Hazardous Substances. In my s42A report I have acknowledged that there is an overlap between the three key pieces of legislation (HSNO, HSWA and RMA).

114. I maintain that Council do have a role to play in terms of ensuring that any environmental effects generated by Hazardous Substances are managed by the District Plan, particularly in respect to sensitive environments and this has been discussed in my S42A report, the technical report provided by Mr Schaffoener and the legal opinion from Tompkins Wake appended to my report.

115. I maintain that the rules are intended to operate in conjunction with the requirements of HSNO and HSWA. With respect to the s32 report prepared by Waikato District Council, I agree that it could have provided a more robust analysis of the rules relating to hazardous substances. However, to establish necessity of a rule is not a requirement of s32 which instead asks for an examination of the most appropriate way to achieve the objective of a proposal. I consider that that has been achieved in this instance.

116. With respect to the decisions made in Christchurch and Hastings District Council, it is important to highlight that the process the Christchurch Replacement Plan went through was significantly different to that of a 'regular' District Plan Review and the communities of each district will have a differing view with respect to how hazardous substances should be managed. Therefore simply replicating the rules from one district to another may not necessarily be a good fit for the Waikato District. What is relevant is the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities, not of others.

### 9.1.4 Appendix 5

117. Mr Mathieson on behalf of Livestock Improvement Corporation ("LIC") [637] supports the S42A recommendation to provide for an Agricultural Research Centre Campus in Table 5.1 of Appendix 5.

118. Mr Sharman from Fire and Emergency New Zealand supports in part Appendix 5. However he has raised concerns that this could affect Fire and Emergency's ability to operate as easily and smoothly as needed. The evidence points out a number of challenges and limitations FENZ has encountered with rules in District Plans including: unrealistic quantity limits, bunding requirements that do not differentiate between solids and liquids and/or that are significantly different to Health and Safety at Work Act 2015/HSNO Act, the use of the hazard ratio system, and that a number of fire stations are located in urban areas but there are no provisions to account for their specialist activities.

119. Mr Sharman is concerned that FENZ's fire retardants and foams have 8.3 classification and this limit could potentially require that Fire and Emergency need a resource consent to hold a small amount of these chemicals on site, as a lower limit would be largely taken up by ordinary consumer products. Therefore Mr Sharman is requesting that class 8.3A consumer products be excluded from the quantity limits across the District's zones to remove the potential for consumer products to put fire stations over the maximum thresholds.

120. Upon review of the definition of 'hazardous facility' at section 10.10 of my S42A report, I have recommended the exclusion of "the incidental use and storage of hazardous substances in domestic scale quantities" from the definition of hazardous facility, which I consider would address the concerns raised by Mr Sharman.

121. Mr Sharman also requests that Council consider removing the more restrictive thresholds in Appendix 5 for hazardous substances in proximity to waterways where the substance is in solid form. I have discussed this point with Mr Schaffoener and we are both of the view that it is not appropriate to amend the thresholds in Appendix 5. This would add undue complexity to a methodology which is overall easy to understand and apply.

122. Mr Sharman also requests further clarity around Rule 1 of Appendix 5. FENZ consider that this rule is unclear as to whether the use, storage and disposal of hazardous substances sub-classes listed in this rule are exempt from Table 5.1 of Appendix A and therefore permitted in any quantity or whether they automatically default to a discretionary activity. This point has been discussed previously in my rebuttal in relation to the Federated Farmers submission point, at paragraphs 91 and 92 above.

123. Fire and Emergency New Zealand support in part the recommended new Rule 10.3.1 – Hazardous Substances in All Zones. However they seek clarification of the permitted

activity rule (P1) and whether those activities excluded in Rule 1 automatically default to a discretionary activity or whether they are a permitted activity.

124. In response, Rule 1 should be clear that the basic rule is that everything is essentially permitted unless otherwise stated. No threshold means that it is permitted in any quantity. In respect to the rule, while P1 of Rule 10.3.1 does not specifically refer to Rule 1 of Table 5.1 of Appendix 5, if the substance is excluded from Table 5.1, it is therefore permitted.

125. I suggest that if the Panel considers there is scope to amend P1, the insertion of a second criterion could be inserted to avoid any mis-interpretation in respect to Rule 1.

126. In respect to Mr Sharman's concerns with respect to the lack of provision for the temporary use and bulk storage of hazardous substances during emergency events, I have conferred with Mr Schaffoener on this point, who considers this point to be addressed through the 'temporary' ('short period of time') qualification for storage as discussed in my S42A in relation to the definition of "hazardous facility" at paragraph 301. I note that I have looked at neighbouring council's District Plan provisions and not found any exemptions specific to temporary emergency events associated with fire service operations. I am also not aware of any exemptions in other District Plans for the storage of hazardous substances during emergency events.

127. In response to Fire and Emergency having specific provisions in the District Plan for fire stations and fire service operations, I am not averse to making provision for both fire stations and fire service operations in the District Plan. However to date I have not had sufficient evidence to suggest that fire stations and associated operations would in fact trigger resource consent using Table 5.1 in Appendix 5. Further, I am of the view that unless there is a good reason to single out a particular activity or operation, the rules should be able to apply to all hazardous facilities across the District (without singling out any in particular).

### 9.1.5 NC2/ Rule 14.4.4

128. Ms Whitney on behalf of Transpower [576, FS1350] supports the recommendation to reject further submission FS1350.88 in relation to retaining Rule 14.4.4(a) seeking identification of hazardous substances to be stored in the National Grid Yard be defined by HSNO class 2-4.

129. However Ms Whitney has highlighted that the officer recommendations on the eight further submission points by Transpower regarding the placement of the National Grid Hazardous Substances specific rule is not clear and indicates that the s42A reasoning does not match the drafted recommended plan amendments (i.e. Rule 14.4.4(a) NC8 is not shown to be deleted on the recommended amendments table or Appendix 2).

130. Upon reflection of the S42A report and appendices, I agree that the amendments have not been made, primarily as Rule 14.4.4 will also be considered in Hearing 22 for Infrastructure. While I have recommended that the rules relating to hazardous substances be deleted from Chapter 14 and relocated to Chapter 10 where a new set of provisions relating to hazardous substances will incorporate proposed NC2, I am open to the Panel's preference as to whether they wish to duplicate the rules in both Chapter 14 (Rule 14.4.4 NC8) and Chapter 10 (Rule 10.3.1). Until the Panel provide this direction, I have recommended that a note is added to Rule 10.3.1 making it clear that there is a link to rule 14.4.4 NC8 in Chapter 14 (Infrastructure).

131. I agree with Ms Whitney's suggestion to provide cross reference to the National Grid rule from Chapter 10 to Chapter 14.

132. Ms Wharf on behalf of Horticulture New Zealand [419] maintains their submission with respect to referring to Class 2 – 4 and notes that class 1 Explosives were omitted from their submission. I disagree with this point and rely on the reasons included in my S42A report at paragraph 382 which are based on technical advice from Mr Schaffoener who indicated that hazardous substances with explosive properties are included in class 1, not classes 2-4.

## 9.2 Recommendations

133. Having considered the points raised in evidence and rebuttal evidence I am persuaded by the evidence of Ms Wharf on behalf of Horticulture New Zealand (419) in relation the introduction to Chapter 10 and Ms Whitney on behalf of Transpower (576) in relation to providing a link from Rule 10.3.1 to Rule 14.4.4 NC8.

## 9.3 Recommended amendments

134. I therefore make the following amendments to my initial recommendation:

**Changes to Introduction in Chapter 10:**

Hazardous Substances are regulated in part under the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Health and Safety at Work Act 2015.

The Resource Management Act has the role of controlling the land use activities including man-made hazards of a chemical nature.

The provisions of this chapter are designed to minimise the adverse effects of hazardous substances in relation to sensitive landuse activities (i.e. residential activities, schools, places of assembly) and sensitive environments (i.e. wetlands, waterways), areas of identified natural hazards and cumulative effects where multiple hazardous facilities are located within proximity to each other. The rules in the plan use an Activity Status Table (AST) to determine which hazardous substances potentially pose significant risk to public safety with respect to the various zones across the Waikato District.

~~The provisions of this chapter are designed to prevent or minimise adverse effects of activities at sites that use, store, transport or dispose of hazardous substances.~~

These activities can include industrial operations (for example chemical warehousing, manufacturing plants or bulk storage facilities), workshops, agricultural and horticultural activities, and some occupations that are carried out from home. The sites where such activities take place are defined as hazardous facilities.

Land use activities involving hazardous substances have the potential to result in an increased risk of adverse environmental effects ~~and present a risk~~ to those ~~who use them or may~~ members of the public who could be exposed to them, and the surrounding environment.

Risks are influenced by the nature of the hazardous substances, the quantity of the substances, the effects the substance may have, the likelihood of an event occurring and which parts of the environment may be affected. An event may be an accidental release, spill, unintended chemical reaction, fire or explosion.

Risks are influenced by the location of an activity and the surrounding environment. For example, hazardous facilities located in areas subject to natural hazards may be exposed to greater risks of damage or failure resulting in an event involving a hazardous substance.
Facilities located in proximity to land uses that are sensitive to the potential effects of a hazardous substance may also result in a greater risk.

These provisions are a land use planning tool under the Resource Management Act and are designed to apply in addition to requirements of other legislation. Such requirements assist in the management of hazardous substances and they are recognised in the design of the provisions in this chapter.[6]

**Changes to Rule 10.3.1 NC2 in Chapter 10:**

| NC2[7] | Any new hazardous facility that involves the storage and handling of hazardous substances with explosive or flammable intrinsic properties within 12m of the centre line of a National Grid Transmission Line.<br>Note: This rule also relates to rule 14.4.4 NC8 in Chapter 14 (Infrastructure). |
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### 9.4 Section 32AA evaluation

135. As the changes only relate to the introduction section of Chapter 10 and the addition of an advice note in Rule 10.3.1 NC2, I do not consider a section 32AA evaluation to be necessary. My only comment would be that the purpose of the changes are to provide clarity to plan users.

# 10 Contaminated Land – Objective 10.2.1 Contaminated Land

### 10.1 Analysis

136. Evidence shows that there was a general support for Objective 10.2.1(a). Ms Broughton on behalf of WEL Networks Limited [692] and Ms Walker on behalf of Federated Farmers of New Zealand [680] support the amendments to Objective 10.2.1.

137. However Ms McPherson on behalf of the Oil Companies [785, FS1089] considers that some of the recommended changes lack clarity and create uncertainty around Council's expectations to achieve the Objective in respect to the wording 'sustainably managed'.

138. In response to this point, I refer to paragraph 220 of my S42A report, which details that the word 'sustainable' provides for sustainable remediation techniques and/or in-situ management.

139. Additionally, Ms McPherson does not agree that the terms 'safety' need to be included in the Objective. I disagree with this point and do not consider that it sets an expectation that Council will seek to control matters already controlled by Worksafe. Section 5 of the RMA specifically references "health and safety" and my view is that it is appropriate for Council to ensure that the public's health and safety are not compromised by the adverse effects from landuse or subdivision involving contaminated land. I consider that this amendment appropriately aligns with the purpose of the RMA.

### 10.2 Recommendations

140. Having considered the points raised in evidence and rebuttal evidence I have not changed my recommendations. I have not recommended any further changes to Objective 10.2.1.

[6] Submission 697.569 from Waikato District Council

[7] Refer to submissions from Waikato District Council [697.629], [697.703], [697.115], [697.873], [697.962] [697.778] and [697.1033].

# 11 Contaminated Land – Policy 10.2.2 Managing the Use of Contaminated Land

## 11.1 Analysis

141. Evidence shows that there was a general support for Objective 10.2.2. Ms Broughton on behalf of WEL Networks Limited [692] and Ms Balsom on behalf of the Waikato Regional Council [81].

142. In regards to the recommendation of submission point 81.234 from the Waikato Regional Council in relation to Policy 10.2.2(d), I agree that this submission point has been incorrectly rejected in section 9.4, paragraph 257(g) of the S42A report and should have been accepted. Therefore the further submission from Horticulture New Zealand [FS1168.175] should have been rejected.

143. Ms Walker on behalf of Federated Farmers of New Zealand [680] supports the recommended amendments to Policy 10.2.2 included in the S42A report, however considers that the policy should more appropriately relate to the risk from contaminants; not whether or not contaminants are at acceptable levels. Ms McPherson on behalf of the Oil Companies [785, FS1089] shares this view. Ms Wharf from Horticulture New Zealand has supported this approach in her rebuttal evidence.

144. I disagree with this point and consider the policy needs to focus on the contaminants, not the risk. I also note that proposed changes sought in Ms McPherson's evidence are not in scope of the original submissions. Should the Panel consider that the change is within scope, I still do not support the change suggested.

## 11.2 Recommendations

145. Having considered the points raised in evidence and rebuttal evidence I have not changed my recommendations. I have not recommended any further changes to Policy 10.2.2.