

SECTION 42A REPORT

Report on submissions and further submissions on the
Proposed Waikato District Plan – Stage 1

Hearing 8A: Hazardous Substances & Contaminated Land

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Date: 2 December 2019



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Genesis Energy Limited	924
Andrew and Christine Gore	330
Tainui	942
Balle Bros Group Limited	466
Buckland Marine Limited	465
Dairy NZ Incorporated	639
Environmental Management Solutions Limited	800
Environmental Management Solutions Limited	463
Federated Farmers of New Zealand	680
Fellrock Developments Limited and TTT Products Limited	543
Fire and Emergency New Zealand	378
Fonterra Limited	797
Housing New Zealand Corporation	749
Kim Robinson	349
Mercer Residents and Ratepayers Committee	367
Livestock Improvement Corporation	637
Lucy Deverall Horticulture New Zealand	419
New Zealand Steel Holdings Ltd	827
Synlait Milk Limited	581
LPG Association of New Zealand	573
Ports of Auckland Limited	578
Reid Investment Trust	783
Sharp Planning Solutions Ltd	695

Submitter	Submission number
<i>Bathurst Resources Limited and BT Mining Limited</i>	<i>FSI198</i>
<i>Bootleg Brewery</i>	<i>FSI264</i>
<i>Counties Power Limited</i>	<i>FSI134</i>
<i>Federated Farmers</i>	<i>FSI342</i>
<i>HD Land Limited and Hampton Downs (NZ) Limited</i>	<i>FSI194</i>
<i>Horticulture New Zealand</i>	<i>FSI168</i>
<i>Hynds Pipe Systems Limited</i>	<i>FSI341</i>
<i>Genesis Energy Limited</i>	<i>FSI345</i>
<i>Mercer Airport</i>	<i>FSI302</i>
<i>Mercury Energy Limited</i>	<i>FSI386, FSI387, FSI388</i>
<i>NZTE Operations</i>	<i>FSI339</i>
<i>Pareoranga Te Kata</i>	<i>FSI035</i>
<i>Transpower Limited</i>	<i>FSI350</i>
<i>Tuakau Proteins Limited</i>	<i>FSI353</i>
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Please refer to Appendix I to see where each submission point is addressed within this report.

I Introduction

I.1 Qualifications and experience

1. My name is Katherine Elizabeth Overwater. I am employed by the Waikato District Council as a Senior Policy Planner.
2. My qualifications include a conjoint Bachelor of Social Sciences majoring in Resources and Environmental Planning and Law (BSocSc(REP)/LLB). I have also been admitted to the High Court of New Zealand as a Barrister/Solicitor however do not hold a current practicing certificate.
3. I am currently an Associate member of the New Zealand Planning Institute (NZPI) and have recently applied for Full Membership. I am also a member of the Resource Management Law Association.
4. I have been working as a professional planner for the past 14 years in Local Government. I have been employed by the Waikato District Council for the past 8.5 years as a Consents Planner (4 years) and Policy Planner (4.5 years).
5. As a consents planner I have processed a number of complex subdivision and land use consents and been involved in Environment Court appeals. I have prepared S42A reports and evidence for presentation at a number of hearings (both consents and policy).
6. I have been in the Senior Policy Planner role for the past 3 years and have been involved in the development of the Proposed District Plan from its early phases. I have prepared issues and options papers for Councillor workshops for the hazardous substances topic, solid waste, GMOs and rural subdivision. I have also assisted in drafting subdivision rules for the various zones in the District Plan along with the objectives and policies for the Rural Zone, which were notified in Proposed District Plan. With the technical assistance of Norbert Schaffoener from Resources Consulting, I also prepared the objectives, policies, rules and supporting section 32 report for the hazardous substances topic.
7. Upon notification of the Proposed District Plan, I was the lead planner on the Council submission working with teams across the Council and assisting Councillors through workshops prior to the final approval of the submission.
8. Following the Council submission, I summarised both original and further submissions on the Proposed District Plan.
9. In my role I have recently been involved in pre-consultation workshops with the Ministry for the Environment on the proposed National Policy Statement on Highly Productive Land and have recently prepared Council's submission on the proposed National Policy Statement (August 2019).
10. In the upcoming District Plan hearings I am the reporting planner on the hazardous substances and contaminated land topic, rural subdivision and the infrastructure chapter.

I.2 Code of Conduct

11. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

12. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners.

1.3 Conflict of Interest

13. I confirm that I have no real or perceived conflict of interest.

1.4 Preparation of this report

14. My role in preparing this report has been to evaluate all original and further submissions received in relation to hazardous substances and contaminated land.
15. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
16. In preparing this report I rely on expert advice sought from Norbert Schaffoener from Resources Consulting with regard to technical aspects of the hazardous substances topic, and Alan Parkes from Waikato District Council for expert advice sought on contaminated land. I have also sought legal advice from Bridget Parham and Kirsty Dibley from Tompkins Wake.

2 Scope of Report

2.1 Matters addressed by this report

17. The scope of this Section 42A report covers all provisions related to the management of Hazardous Substances and Contaminated Land.
18. Provisions relating to management of Hazardous Substances and Contaminated Land includes: objectives, policies contained within Chapter 10.1 and 10.2 rules across each zone chapter, definitions and Appendix 5 for hazardous substances. More specifically, the provisions addressed by this report include the following:
- Chapter 10: Hazardous Substances and Contaminated Land; and
 - All the provisions related to the management of hazardous substances in each of the zones including the following rules:
 - Rule 16.2.5
 - Rule 17.2.5.4
 - Rule 18.2.5
 - Rule 19.2.5
 - Rule 20.2.6
 - Rule 21.2.6
 - Rule 22.2.4
 - Rule 23.2.4
 - Rule 24.2.4
 - Rule 25.2.5
 - Rule 26.2.9

- Rule 27.2.11
- Rule 28.2.5
- The following definitions in Chapter 13:
 - Hazardous Substance
 - Non-hazardous gas
 - Hazardous facility
 - Hazard
 - Cumulative risk
 - Storage
 - Use
- Appendix 5 for hazardous substances

19. This report is prepared in accordance with section 42A of the RMA. This report considers submissions that were received by the Council in relation to the provisions relating to the management of Hazardous Substances and Contaminated Land within the Waikato Proposed District Plan.

2.2 Overview of the topics

20. Hazardous substances are currently defined in the Proposed District Plan (PDP) as any substance with hazardous properties, including radioactivity, high BOD (Biological Oxygen Demand) and those properties defined as hazardous for the purpose of the Hazardous Substances and New Organisms Act 1996.
21. The PDP manages hazardous substances by including objectives, policies and rules which relate to an Activity Status Table (AST) included in Appendix 5, which provides quantity thresholds for substances in different zones. The quantities are more restrictive in sensitive environments such as the Residential Zone, while more permissive for other zones, such as the Industrial zone. The District Plan contains only objectives and policies for contaminated land, as the rules from the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) prevail over the District Plan.

2.3 Statutory requirements

2.3.1 Legislation relating to Hazardous Substances

22. Hazardous Substances are largely regulated by the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Health & Safety at Work regulations. The Health and Safety at Work (HSWAA) reform came into effect on 1 December 2017, changing the enforcement regime for hazardous substances significantly.
23. The changes meant that all workplace-specific safety regulation relating to hazardous substances, including regulation of the storage, use and safety of hazardous substances in workplaces, moved from the HSNO Act into the HSWAA. Any enforcement undertaken in workplaces is under HSWAA, rather than the HSNO Act.
24. However these statutes do not cover the effects of hazardous substances on land use or discharge activities. These issues are covered by the Resource Management Act 1991 (RMA).
25. Table 1 on page 8 of the EPA's Annual HSNO Enforcement Report 2018¹ sets out the scope of regulation under HSNO, HSWAA and the RMA. The report outlines that the RMA purpose is to promote the sustainable management of natural and physical resources and

¹ HSNO Enforcement Report 2018, Environmental Protection Agency

involves considering effects of activities on the environment now and in the future when making resource management decisions. It is clear that territorial councils can manage the effects of land use and Regional Councils manage discharges of contaminants to land, air and water, identifying and monitoring contaminated land.

26. Of specific note, the report is clear that RMA rules and consents relating to hazardous substances and new organisms are additional to HSNO and are only valid when they provide additional requirements (i.e. they cannot remove HSNO requirements).
27. Council also has an enforcement role which crosses between the responsibilities included in the Local Government Act 2002 and the RMA. Table 2 of page 8 of the EPA's report states that the Local Government Act includes rules relating to solid waste collection, bylaws regulating solid wastes, trade wastes, waste management nuisance, public health and safety, It also states that Territorial councils manage the effects of land use.
28. More discussion on the statutory context for land use planning in relation to hazardous facilities is included in the background technical report from Norbert Schaffoener from Resources Consulting attached to this report as Appendix 4.

2.3.2 Hazardous Substances and New Organisms Act 1996

29. Section 4 of the Hazardous Substances and New Organisms Act 1996 sets out that the purpose of this legislation is to protect the environment, and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances and new organisms.
30. The Environmental Protection Authority (EPA) is responsible for approving pesticides, household chemicals and other dangerous goods and substances under the HSNO legislation. Once a hazardous substance is approved by the EPA it is recorded on the HSNO application register, which can be found at: <https://www.epa.govt.nz/database-search/hsno-application-register/>
31. It is important to note that since the 1st December 2017 reforms, rules relating to health and safety in the workplace were transferred to the HSWAA. Now HSNO focuses on some non-work aspects such as fireworks, general disposal and minimum requirements for substances with eco-toxic properties, as well as specific requirements on importers and manufacturers of hazardous substances.
32. Further discussion on HSNO is included in the background technical report from Norbert Schaffoener from Resources Consulting attached to this report as Appendix 4.

2.3.3 Health and Safety at Work 2015

33. Section 3 of Health and Safety at Work 2015 sets out the purpose of the legislation and is clear that it is to provide for a balanced framework to secure the health and safety of workers and workplaces by “protecting workers and other persons against harm to their health, safety and welfare by eliminating or minimising risks arising from work”...
34. Section 3, clause (2) is also very clear that “regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable.”
35. WorkSafe New Zealand administers the rules for the use of hazardous substances in the workplace and manages the risks related to hazardous substances within the workplace.
36. With the 1 December 2017 reforms the rules around managing hazardous substances that affect human health and safety in the workplace transferred from HSNO to the Hazardous Substances Regulations under HSWAA for work risks.

37. It is noted that there are new types of subordinate legislation such as EPA notices which apply to HSWAA in regard to the management and control of hazardous substances in the workplace.
38. Further discussion on HSWAA is included in the background technical report from Norbert Schaffoener from Resources Consulting attached to this report as Appendix 4.

2.3.4 Resource Management Act 1991

Section 5

39. Section 5 of The Resource Management Act 1991 sets out that the purpose of the Act is to promote the sustainable management of natural and physical resources. Clause (2) clarifies that sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety.

Section 31

40. Prior to the Resource Legislation Amendment Act 2017 (LGAA) amendments, Council had an explicit function to control the adverse effects of the storage, use, transportation and disposal of hazardous substances pursuant to section 31.
41. As set out in the legal opinion from Tompkins Wake, dated 21 November 2019, at paragraph 14, it states that the intent of the above changes was to remove the perception that councils must always place controls on hazardous substances under the RMA, and to ensure that councils only place additional controls on hazardous substances if they are necessary to control effects under the RMA that are not covered by the HSNO or HSW Acts. In addition, the fact sheet provides that in most cases HSNO and HWA controls will be adequate to avoid, remedy or mitigate adverse environmental effects (including potential effects) of hazardous substances.
42. The definition of hazardous substances in Section 2 of the RMA is as follows:

hazardous substance includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance

43. Section 2 of the HSNO Act is as follows:

hazardous substance means, unless expressly provided otherwise by regulations or an EPA notice, any substance—

(a) with 1 or more of the following intrinsic properties:

(i) explosiveness:

(ii) flammability:

(iii) a capacity to oxidise:

(iv) corrosiveness:

(v) toxicity (including chronic toxicity):

(vi) ecotoxicity, with or without bioaccumulation; or

(b) which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any 1 or more of the properties specified in paragraph (a)

44. Council can therefore define what a hazardous substance is for the purpose of the Waikato District. I note that the National Planning Standards (discussed further below in section 2.3.6) use the definition of 'hazardous substances' as set out in section 2.

Section 62 function for Regional Councils

45. As part of the LGAA amendments in 2017, the explicit function of Regional Councils to include provisions for hazardous substances in a Regional Policy Statement has been removed from the Resource Management Act 1991.
46. Given that the Waikato Regional Policy Statement does include provision for hazardous substances, further comment regarding ‘giving effect’ to the Regional Policy Statement is provided below at section 2.3.7 of my report.

2.3.5 National Policy Statements

47. There are five National Policy Statements that apply at a broad level to the topic of Hazardous Substances and contaminated land. They are set out as follows:
- New Zealand Coastal Policy Statement
 - National Policy Statement on Electricity Transmission
 - National Policy Statement for Freshwater Management
 - National Policy Statement on Renewable Electricity Generation
 - National Policy Statement on Urban Development Capacity
48. The most important national policies for consideration are where the policy aims to ensure that adverse effects on the applicable environments (i.e. coast, freshwater water bodies, Electricity Transmission Grid and the urban environments) are protected from the effects of hazardous substances and contaminated land.
49. Submissions in this report address issues such as the National Grid Transmission Lines to ensure that the most appropriate controls are imposed in the District Plan.

2.3.6 National Planning Standards

50. The National Planning Standards (planning standards) were introduced as part of the 2017 amendments to the RMA.
51. Chapter 7 of the National Planning Standards provides mandatory direction for a stand-alone chapter on “Hazards and risks”.
52. The direction is very clear that if provisions to manage contaminated land are addressed in the District Plan, they must be located in the “*Contaminated Land*” chapter. If provisions relate to hazardous substance are addressed, they must be located in a chapter entitled “*Hazardous Substances*” under the “*Hazards and Risks*” heading.
53. Additionally, section 13 of Chapter 7 states that:
- If the following matters are addressed, they must be located in a *Hazardous substance* chapter:
- a. *Any provision required to manage the land use aspect of hazardous substances.*
 - b. *Provisions relating to the use, storage and disposal of hazardous substances on land that presents a specific risk to human or ecological health, safety and property.*
 - c. *Provisions required to manage land use in close proximity to major hazard facilities to manage risk and reverse sensitivity issues.²*
 - d. *Any additional chapters to address other hazards and risks must be included alphabetically under the Hazards and risks heading.*
54. The National Planning Standards direct that any additional chapters to address other hazards and risks must be included alphabetically under the Hazards and risks heading. This chapter is likely to accommodate Natural Hazards as part of Stage 2 to the Proposed District Plan.

² Ministry for the Environment. 2019. National Planning Standards.

55. The National Planning Standards direct District Plans to include National Direction Instruments and include a chapter addressing the National Environmental Standards. In the context of this topic for hazardous substances and contaminated land, the chapter would need to address the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS), as shown in Table 10 of the National Planning Standards³. This matter will be addressed through the outcomes of Hearing 2 (all of plan) as well as other hearings, given that there will be other NES the District Plan would need to have regard to. However, I will address amendments required to the contaminated land chapter to ensure linkage with the NESCS.

2.3.7 Waikato Regional Policy Statement

56. The Waikato Regional Policy Statement (WRPS) includes the following policy for hazardous substances:

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.*
57. Section 75(3)(c) of the RMA provides that a district plan must give effect to any regional policy statement. Case law has determined that “give effect” means to implement.
58. The legal opinion provided by Tompkins Wake, dated 21 November 2019 attached as Appendix 6, sets out that section 73 – 75 of the RMA requires the proposed District Plan to give effect to the RPS. Section 73(5) requires that this compliance is either within a time specified in the statement, or as reasonably practicable, in any other case.
59. Given that Policy 4.2.9 of the WRPS is operative, the Proposed District Plan (PDP) must necessarily give effect to it. This means, in effect, that the PDP must contain objectives, policies, rules and other methods for all land (other than the coastal marine area and the beds of lakes and rivers) to control the use of land for the prevention or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances.
60. The legal opinion reinforces that RMA plans should not double up controls that are provided under HSNO or HSWA. Rather, Policy 4.2.9 in the RPS should be read alongside that conclusion as requiring provisions that control the storage, use, disposal or transportation of hazardous substances where it is considered the HSNO or HSWA controls are insufficient to mitigate the associated risk.⁴
61. In regards to contaminated land, the Waikato Regional Policy Statement includes policies 14.3 for soils contaminants and 14.4 for contaminated land as follows:

Policy 14.3

Ensure that contaminants in soils are minimised and do not cause a reduction in the range of existing and foreseeable uses of the soil resource. Particular attention will be given to the potential for effects on:

- a) *Human health;*
- b) *Animal health;*

³ Ministry for the Environment. 2019. National Planning Standards.

⁴ Legal Opinion from Tompkins Wake, dated 21 November 2019

- c) *Suitability of soil for food production;*
- d) *Micro-nutrient availability;*
- e) *Soil ecology; and*
- f) *Groundwater.*

Policy 14.4 Contaminated land

Identify and manage contaminated land to ensure human, plant and animal health, and water, air and soil quality are protected from unacceptable risk.

- 62. Policy 14.3 is a Waikato Regional Council policy that controls discharges to land to ensure that the accumulation of soil contaminants does not reduce the range of existing and foreseeable uses of the soil resource.
- 63. Policy 14.4 requires district plans to include provisions that support the implementation of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

2.3.8 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) Regulations 2011

- 64. Contaminated land occurs from past use of hazardous substances often caused by practices including storage and use of hazardous substances, and disposal of hazardous wastes.
- 65. The NESCS was prepared in accordance with sections 43 and 44A of the RMA, and was passed through the Executive Council on 10 October 2011. It came into effect on 1 January 2012.
- 66. The NES establishes a nationwide set of planning controls that regulate activities on contaminated or potentially contaminated land and provides for a nationwide approach to site investigations and reporting by referencing the Ministry for the Environment's best practice guidelines for investigating and reporting on contaminated or potentially contaminated land.
- 67. This regulation provides restrictions for five specific activities on land where soil may be contaminated in such a way as to be a risk to human health. The potential for the soil on a piece of land to be contaminated is determined by the likelihood of the previous and/or current activities being undertaken on that piece of land, to be potentially contaminating activities. Potentially contaminating activities are listed on the current version of the Ministry for the Environment's Hazardous Activities and Industries List (HAIL).
- 68. The NESCS provides a set of rules for assessing and managing contaminants in soil to protect human health (excludes environmental protection) and provides reference to the Ministry for the Environment's Contaminated Land Management Guidelines for a 'best practice' approach. The NESCS applies when specified activities are proposed to be undertaken on a piece of land and where that land is more likely than not to be contaminated. The specified activities, as set out in the NESCS, include removal or replacement of a fuel storage system, sampling the soil, disturbing the soil, subdividing the piece of land and changing the use of the piece of land. The landowner can confirm whether the land is likely to be contaminated by way of either a preliminary site assessment 'or' by checking council records, i.e. property files, a hazard register or any other relevant council record. For this reason, it will be important for councils to keep accurate and up to date records.
- 69. Where the NESCS applies to a proposed activity, the provisions of the NESCS specify the activity status for each activity, ranging from permitted through to discretionary activity criteria. The activity status is determined by compliance with the specified criteria, and the

rules function in a cascading format so that, for example, the inability to comply with the criteria for a permitted activity automatically defaults to a controlled activity, and if the criteria for a controlled activity cannot be achieved the activity defaults to a restricted discretionary activity and so on.

70. The District Plan cannot replicate or conflict with the rules contained in the NESCS (pursuant to section 44A of the RMA), however it can include objectives and policies regarding the assessment and management of contaminated land.
71. Many district plans include the regulations as an appendix to the plan (which Waikato District Council has also previously done in the Operative District Plan – refer to Appendix Of). In the notified version of the proposed District Plan the regulations have not been included; therefore the plan user would refer to the Ministry for the Environment website.

2.3.9 Vision and Strategy for the Waikato River

72. The Vision and Strategy for the Waikato River is the key document for restoring and protecting the health and wellbeing of the Waikato River. While the document does not contain specific matters relating to the control of hazardous substances and contaminated land, it is relevant in the context of managing the adverse effects from hazardous substances on soil and water resources through the District Plan.

2.3.10 Waikato Regional Plan

73. The Waikato Regional Plan does not include any specific controls for the management of hazardous substances, but does include provision for the control of contaminants discharging to land and water.
74. Objective 3.5.2 applies to discharges of contaminants and 3.5.3 - Policy 4 for discharges to land “ensure that the discharge of contaminants onto or into land maximises the reuse of nutrients and water contained in the discharge.” There are a number of rules contained in the Waikato Regional Plan that manage the discharge of contaminants to water and land.
75. A list of high risk facilities has been included in Chapter 3.5.12 in relation to discharges. This table is particularly helpful in identifying the industries that are classified as high risk and those activities that typically have a high Biological Oxygen Demand (BOD).

2.3.11 Iwi Management Plans

76. There are two relevant iwi management plans that have been considered as part of this hearing report. They are:

Waikato-Tainui – Environmental Plan

77. In the Waikato-Tainui Environmental Plan, the Waikato River is of key importance, along with ensuring the objectives included in the Vision and Strategy are upheld.
78. Control Agents are discussed in reference to chemical herbicides and pesticides used to control weed and pest species. The plan discusses the bio-accumulation of these in the environment and that they remain active in the soil for prolonged periods.
79. Water quality is also a key issue for Waikato-Tainui and there are a number of issues, objectives and policies for the different aspects of managing this resource (i.e. quality of the water, allocation, relationship between Waikato-Tainui and water).
80. Land contamination is specifically identified in section 21.26 as an issue and the plan acknowledges the lack of knowledge of existing and historical contaminated sites within the rohe and their on-going impact on the environment. Objective 21.3.3 seeks to effectively manage the impact of contaminated land on the environment. Additionally the policy is to ensure that contaminated land is effectively managed and where possible and practicable, mitigate and restore the contaminated land.

Maniapoto Environmental Management Plan

81. In the Maniapoto Environmental Plan priority is given to fresh water, particularly in relation to the waters that flow into and form part of the Waipa River. Similar to the issues addressed in the Waikato-Tainui Environmental Plan, issues such as water allocation, water quality, catchment management and monitoring tools are highlighted.
82. Part 18 discusses soil conservation in regards to land and includes an objective for unsustainable and inappropriate land use practices. Policy 18.3.1.2 aims to ensure contaminated land is managed effectively and where possible and practicable, contamination is mitigated and the land is restored. The Management Plan also refers to making records and information about the location and nature of contaminated sites accessible; ensuring clean-up of contaminated sites and where possible, those responsible for the contamination of sites are held accountable; and future land use effectively avoids contaminating land.

2.4 Procedural matters

83. During preparation of this section 42A report, I sent a memorandum without prejudice to Fire and Emergency New Zealand (submission number 378) to request further information in order to assist my understanding of their specific submission points. The memorandum is included in Appendix 5 to this report.
84. Fire and Emergency New Zealand responded on 8 November 2019 with additional information. Their response has been provided at Appendix 5.

3 Consideration of submissions received

3.1 Overview of submissions

85. 159 submissions were received on hazardous substances and contaminated land (140 for hazardous substances and 19 for contaminated land).
86. The submissions received covered objectives and policies for contaminated land only and objectives, policies, rules, definitions and Appendix 5 for hazardous substances. It was a relatively even spread of submissions across each zone chapter, in relation to hazardous substances.
87. There are a few key themes to submissions, particularly that Council should not duplicate HSNO or HSWA legislation and that Council no longer has a function under sections 30 and 31 of the RMA since the 2017 legislative amendments. There are also some industry themes that propose specific rules in certain zones. For instance, Fire and Emergency New Zealand are seeking specific exemptions for fire stations and operations across all zones; Federated Farmers and Horticulture New Zealand are seeking specific exemptions for Horticultural and Agricultural activities; and Genesis Energy and Ports of Auckland are seeking specific provisions for their operations at Huntly Power Station and Horotiu Industrial Park.
88. The chapter containing the objectives and policies for hazardous substances and contaminated land is a standalone chapter in Chapter 10. However, the zone chapters contain rules for hazardous substances which also relate to Appendix 5 as follows:
 - Chapter 16 - Residential Zone
 - Chapter 17 – Business Zone
 - Chapter 18 – Business Town Centre Zone
 - Chapter 19 – Business Zone Tamahere
 - Chapter 20 – Industrial Zone
 - Chapter 21 – Industrial Zone Heavy

- Chapter 22 – Rural Zone
- Chapter 23 – Country Living Zone
- Chapter 24 – Village Zone
- Chapter 25 – Reserve Zone
- Chapter 26 – Hampton Downs Motor Sport and Recreation Zone
- Chapter 27 – Te Kowhai Airpark Zone
- Chapter 28 – Rangitahi Peninsula Zone

89. There are 184 further submissions that will be addressed within this report. The majority of these relate to original submissions, with the exception of Mercury Energy Limited, who have made further submissions on a wide range of original submissions. I note that as all further submissions are in opposition to original submission points, I have not addressed them.

3.2 Structure of this report

90. Given the number, nature and extent of the submissions and further submissions received, I have structured the Section 42A report based largely on topics as follows:

Topic 1: Chapter 10 Hazardous Substances and Contaminated Land – 10.1 Hazardous Substances – All of Chapter Submissions

Topic 2: Objective 10.1.1 – Effects of hazardous substances

Topic 3: Policy 10.1.2 - Location of new hazardous facilities

Topic 4: Policy 10.1.3 - Residual risks of hazardous substances

Topic 5: Policy 10.1.4 - Reverse sensitivity effects

Topic 6: Objective 10.2.1 – Contaminated Land

Topic 7: Policy 10.2.2 – Managing the use of contaminated land

Topic 8: Definitions

Topic 9: Appendix 5: Hazardous Substances

Topic 10: Infrastructure

- Rule 14.4.4

Topic 11: Residential Zone

- Rule 16.2.5 Hazardous substances

Topic 12: Business Zone

- Rule 17.2.5.4 Hazardous substances

Topic 13: Business Town Centre Zone

- Rule 18.2.5 Hazardous substances

Topic 14: Business Zone Tamahere

- Rule 19.2.5 Hazardous substances

Topic 15: Industrial Zone

- Rule 20.2.6 Hazardous Substances

Topic 16: Industrial Zone Heavy

- Rule 21.2.6 Hazardous substances

Topic 17: Rural Zone

- Rule 22.2.4 Hazardous substances

Topic 18: Country Living Zone

- Rule 23.2.4 Hazardous substances

Topic 19: Village Zone

- Rule 24.2.5 Hazardous substances

Topic 20: Reserve Zone

- Rule 25.2.5 Hazardous substances

Topic 21: Hampton Downs Motor Sport and Recreation Zone

- Rule 26.2.9 Hazardous substances – All precincts

Topic 22: Te Kowhai Airpark Zone

- Rule 27.2.11 Hazardous substances

Topic 23: Rangitahi Peninsula

- Rule 28.2.5 Hazardous Substances

4 Topic I: Chapter 10 Hazardous Substances and Contaminated Land – 10.1 Hazardous Substances

4.1 Introduction

91. There are a number of submissions relating to all of Chapter 10.1 for Hazardous Substances. Eight submissions were received seeking to either delete, retain or amend Chapter 10.1. Two submissions seek to retain or amend Chapter 10.1 and six seek to delete the chapter.

4.2 Submissions

92. The following submissions were received seeking to retain and amend Chapter 10.1 Hazardous Substances:

Submission point	Submitter	Summary of submission
81.229	Waikato Regional Council	Submitter seeks to retain Chapter 10.1 Hazardous Substances.
<i>FS1223.58</i>	<i>Mercury NZ Limited</i>	<i>Support</i>
697.569	Waikato District Council	Submitter seeks to add a new introduction in Chapter 10: Hazardous Substances and Contaminated Land as follows: <i><u>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.</u></i>

		<p><u>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.</u></p> <p><u>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 be exposed to them, and the surrounding environment.</u></p> <p><u>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.</u></p> <p><u>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.</u></p> <p><u>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.</u></p> <p><u>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.</u></p>
FS1168.161	Horticulture New Zealand	Oppose
FS1342.182	Federated Farmers	Oppose
FS1345.71	Genesis Energy	Oppose
FS1387.615	Mercury NZ Limited	Oppose

93. The following submissions were received proposing to delete Chapter 10:

Submission point	Submitter	Summary of submission
680.119	Federated Farmers of New Zealand	<p>Submitter seeks to delete Chapter 10 – Hazardous substances</p> <p>AND</p> <p>Replace with an advice note which states that it is no longer a district council function to control any actual or</p>

		potential effects of the use, development, or protection of land, for the purpose of the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances. Hazardous substances are adequately managed by the Hazardous Substances and New Organisms Act (HSNO) and there is no need for further regulation in the Waikato District Plan.
<i>FS1168.162</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
<i>FS1387.184</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
419.96	Horticulture New Zealand	No specific decision sought. However the submitter opposes the approach to hazardous substances in the Proposed District Plan and seeks amendments to the provisions for hazardous substances. AND Any consequential or additional amendments as a result of changes sought in the submission.
419.97	Horticulture New Zealand	Submitter seeks to amend the Proposed District Plan to ensure the safe, responsible and appropriate storage and use of hazardous substances that does not require unnecessary compliance AND Amend the Proposed District Plan to incorporate an approach to managing hazardous substances that ensures most appropriate, effective and efficient methods are used for storage and use of hazardous substances, which are simple and clear, do not duplicate the requirements under the Hazardous Substances and New Organisms Act 1996 and avoid confusion for users. AND Delete the use of Activity Status Tables or quantity trigger limits for the management of hazardous substances.
466.49	Balle Bros Group Limited	No specific decision sought but submission considers that the provisions set out within the Plan should not duplicate requirements set out in the Hazardous Substances and New Organisms Act and in the Health and Safety at Work Regulations, 2017, and that the submitter 'opposes in part' Section 10.1 Hazardous substances.
<i>FS1388.424</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
<i>FS1302.15</i>	<i>Mercer Airport</i>	<i>Support</i>
<i>FS1353.33</i>	<i>Tuakau Proteins Limited</i>	<i>Support</i>
466.75	Balle Bros Group	No specific decision sought, but submission considers that hazardous substances are managed through existing

	Limited	legislation and the approach of the Proposed District Plan is over-regulation and unnecessary.
573.1	LPG Association of New Zealand	Delete the quantity limits for hazardous substances throughout the Proposed District Plan; AND Consequently amend the hazardous substances provisions to comply with the Resource Management Act so that they manage hazardous substances on a site specific basis, only when the Health and Safety at Work Act (2015) or the Hazardous Substances and New Organisms Act 1996 controls are considered insufficient. The sections affected include: Issues: Management of Hazardous Substances Section 32 Report: 5.3 - Objective - Hazardous Substances Chapter 10.1 - Hazardous substances Rules Appendix 05 - Table 5.1 - Activity status table - permitted activity thresholds.
FS1353.34	Tuakau Proteins Limited	Support

4.3 Analysis

94. The submission from the Waikato Regional Council [81.229] is supportive of the proposed provisions relating to hazardous substances and seeks to retain them. I agree with this submission and consider the district plan needs to provide provisions for the control of hazardous substances. Therefore I recommend accepting this submission.
95. The submission from Waikato District Council [697.569] proposes to include an introduction to Chapter 10.1 which provides an overview of the hazardous substances topic and explains the purpose of the provisions. Specifically, the submission explains the aspects of hazardous substances in relation to managing the land use effects of hazardous facilities, and is clear that that the provisions which manage and control hazardous substances are additional controls to the functions of HSNO and HSWA.
96. Four further submissions were received on submission point [697.569]: [FS1168.161] from Horticulture New Zealand, [FS1342.182] from Federated Farmers, [FS1345.71] from Genesis Energy and [FS1387.615] from Mercury New Zealand Limited. All four further submissions are opposed to the original submission point [697.569], as they are generally opposed to the District Plan managing hazardous substances. The further submission from Federated Farmers [FS1342.182] suggested removing the wording “The sites where such activities take place are defined as hazardous facilities”. This submission was made on the basis of changes to the hazardous facility definition.
97. I consider that an introduction section would provide more context to the topic and make it clear to plan users that the provisions are additional controls to HSNO and HSWA legislation. For this reason, I disagree with all four further submissions that are opposed to the District Plan managing hazardous substances. Further, while Federated Farmers [FS1342.182] indicates that an introduction would be useful, they are opposed to the point

for the reasons they outline in regard to the definition of 'hazardous facility', which is addressed later in this report in relation to definitions in Chapter 10. Therefore I recommend that the submission from the Waikato District Council is accepted.

98. The submission point from Federated Farmers [680.119] seeks to delete and replace Chapter 10 with an advice note which states that it is no longer a specific district council function to control any actual or potential effects of the use, development, or protection of land, for the purpose of the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances. Further, the view is expressed that Hazardous substances are adequately managed by the Hazardous Substances and New Organisms Act (HSNO) and there is no need for further regulation in the Waikato District Plan. This point is supported by Horticulture New Zealand [FS/168.162].
99. Submission points [419.96] and [419.97] from Horticulture New Zealand take a similar approach to submission [680.119] and oppose the inclusion of hazardous substances in the Proposed District Plan. The submission from Horticulture New Zealand [419.97] seeks to amend the provisions to ensure that the safe, responsible and appropriate storage and use of hazardous substances does not require what is perceived to be unnecessary compliance.
100. These submissions seek to amend the Proposed District Plan to incorporate an approach to managing hazardous substances that ensures, in the view of the submitter, that most appropriate, effective and efficient methods are used for storage and use of hazardous substances, which are simple and clear and do not duplicate the requirements under the Hazardous Substances and New Organisms Act 1996 and avoid confusion for users. They also propose to delete the use of Activity Status Tables or quantity trigger limits for the management of hazardous substances (contained in Appendix 5).
101. The submission points from Balle Bros Group [466.49] and [466.75] oppose Section 10.1 in part, and their reasons are that the provisions set out within the plan should not duplicate requirements set out in the Hazardous Substances and New Organisms Act and in the Health and Safety at Work Regulations, 2017. Additionally, hazardous substances are considered to be managed through existing legislation and the approach of the Proposed District Plan is over-regulation and unnecessary. Two further submissions from Mercer Airport [FS/302.15] and Tuakau Proteins Limited [FS/353.33] both support this point.
102. The LPG Association [573.1] seeks to delete the quantity limits for hazardous substances throughout the Proposed District Plan and to amend the hazardous substances provisions to comply, in the opinion of the submitter, with the Resource Management Act so that they manage hazardous substances on a site specific basis, only when the Health and Safety at Work Act (2015) or the Hazardous Substances and New Organisms Act 1996 controls are considered insufficient.
103. In order to address the above submission points, I have relied on technical advice from Norbert Schaffoener included in Appendix 4 and a legal opinion from Tompkins Wake included at Appendix 6. Both are clear that, although Council's explicit functions under section 31 of the RMA have been removed, there is still a role for Council to play in respect to managing the effects of land use.
104. Based on the technical and legal advice provided by Norbert Schaffoener and Tompkins Wake, I do not consider that the rules in the District Plan duplicate HSNO or HSWA. The

rules notified in the Proposed District Plan use an Activity Status Table (AST) to determine quantity thresholds for hazardous substances. The AST uses different quantity thresholds for different zones across the district to ensure that any hazardous facilities within the zones are appropriately managed (particularly in sensitive zones). There are also specific rules for service stations (which are controlled activities in some zones) and activities involving radioactive materials.

105. Many existing hazardous facilities have existing use rights pursuant to section 10 of the RMA. Therefore, the rules included in the District Plan would only apply to new activities and facilities. For example, an industrial activity expanding its operation may not require resource consent if the volumes of hazardous substances involved in the operation are below the thresholds specified in Appendix 5.
106. It needs to be emphasised that the primary focus of the District Plan rules in relation to hazardous substances is to manage the land use effects on public health and safety, and the natural environment. I consider that the proposed rules to be discussed further in this report relate to the purpose and function of the RMA and do not duplicate the role or functions of HSNO or HSWA.
107. In my view, the above submissions have not demonstrated how the proposed rules duplicate HSNO or HSWA or explain how Council should ensure that the risks (particularly in sensitive environments) are minimised to a level that is acceptable to the community. Therefore I recommend that the submissions from Federated Farmers, Horticulture New Zealand, Balle Bros Group and the LPG Association are rejected.

4.4 Recommendations

108. I recommend, for the reasons given above, that the Hearings Panel:
- a. **Accept** submissions from Waikato Regional Council [81.229] and from Waikato District Council [697.569].
 - b. Therefore **accept** further submission from Mercury New Zealand Limited [FS1223.58] and **reject** further submissions from Horticulture New Zealand, [FS1168.161], Federated Farmers [FS1342.182], Genesis Energy [FS1345.71] and Mercury New Zealand Limited [FS1387.615].
 - c. **Reject** submissions from Federated Farmers of New Zealand [680.119], Horticulture New Zealand [419.96] and [419.97], Balle Bros Group Limited [466.49] and [466.75] and LPG Association of New Zealand [573.1].
 - d. Therefore **accept** submissions from Mercury NZ Limited [FS1387.184 and FS1388.424] and **reject** further submissions [FS1168.162] from Horticulture New Zealand, Mercer Airport [FS1302.15] and Tuakau Proteins Limited [FS1353.33] and [FS1353.34].

4.5 Incorporating the National Planning Standards

109. The National Planning Standards, addressed in section 2 of my report, set out the mandatory requirements for a single chapter to manage ‘hazards and risks’, which would include hazardous substances and contaminated land.
110. I consider that a single chapter relating to hazardous substances and contaminated land would provide efficiencies from a plan user perspective and would meet the mandatory direction. However, I note that some provisions may have implications in other zone chapters (e.g. in relation to the National Grid Transmission Lines (addressed through this report).
111. The following submissions from section 4.1.2 of the All of Plan hearing (Hearing 2) provides scope within the District Plan review process to adopt the National Planning Standards:
- a. Property Council [198.1]
 - b. The Surveying Company [746.138]
 - c. Zeala Ltd (Planman) [281.1]
 - d. Anna Noakes (Planman) [524.6]
 - e. Heritage New Zealand [559.1]
 - f. T Withers (Planman) [598.1]
 - g. Spark (Incite) [644.1]
 - h. Chorus (Incite) [648.1]
 - i. Vodafone (Incite) [646.1]

I recommend a single chapter (Chapter 10) that contains all the provisions addressing hazardous substances and contaminated land. Therefore, I recommend accepting the submission points of the above submitters insofar as they relate to restructuring the plan for hazardous substances and contaminated land.

112. There are definitions for ‘contaminated land’, ‘contamination’ and ‘hazardous substances’, which are included in the National Planning Standards. These are specifically addressed further in Topic 8 of this report on definitions (refer to section 10).

5 Topic 2: Objective 10.1.1 – Effects of hazardous substances

5.1 Introduction

113. Objective 10.1.1 – Effects of hazardous substances is the over-arching objective covering the topic of hazardous substances in the Proposed Waikato District Plan. The notified objective is set out as follows:

10.1.1 Objective – Effects of hazardous substances

- (a) Residual risk associated with the storage, use, or disposal of hazardous substances is managed to ensure that the effects on people, property and the environment are acceptable, while recognising the benefits of facilities using hazardous substances.

114. The Objective seeks to manage the risks associated with hazardous substances and to ensure that the effects on people, property and the environment are acceptable. The objective also recognises the benefits of facilities using hazardous substances.

5.2 Submissions

115. 10 submission points were received on Objective 10.1.1 – Effects of hazardous substances. Two submissions seek to delete Objective 10.1.1, five submissions seek to retain objective 10.1.1 and four seek to amend Objective 10.1.1.

116. The following submissions seek to delete Objective 10.1.1:

Submission point	Submitter	Summary of submission
797.18	Fonterra Limited	Submitter seeks to delete section 10.1 Hazardous Substances, comprising objectives 10.1.1 and Policies 10.1.2, 10.1.3. AND Any consequential amendments or further relief to give effect to the concerns raised in the submission.
<i>FS1387.1264</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
<i>FS1168.164</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
581.42	Synlait Milk Limited	Submitter seeks to either delete section 10.1.1. OR Amend section 10.1 so that the objectives and policies in the Proposed District Plan only concern the management of the Hazardous substance in highly sensitive environments such as Significant Natural Areas.
<i>FS1388.957</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
<i>FS1168.163</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
<i>FS1341.59</i>	<i>Hynds Pipe Systems</i>	<i>Support</i>

117. The following submissions seek to retain Objective 10.1.1:

Submission point	Submitter	Summary of submission
378.8	Fire and Emergency New Zealand	Submitter seeks to retain Objective 10.1.1 as notified.
<i>FS1035.113</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
<i>FS1388.20</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
419.77	Horticulture New Zealand	Submitter seeks to retain Objective 10.1.1 as notified.
<i>FS1388.212</i>	<i>Mercury Energy Limited</i>	<i>Oppose</i>

692.39	WEL Networks Limited	Submitter seeks to retain Objective 10.1.1 as notified.
FS1345.72	Genesis Energy Limited	Oppose
827.22	New Zealand Steel Holdings	Submitter seeks to retain Objective 10.1.1 as notified.
923.131	Waikato District Health Board	Submitter seeks to retain Objective 10.1.1 as notified.
FS1387.1535	Mercury Energy Limited	Oppose
578.110	Ports of Auckland Limited	Submitter seeks to retain Objective 10.1.1 Effects of hazardous substances as notified.

118. The following submissions seek to amend Objective 10.1.1:

Submission point	Submitter	Summary of submission
697.570	Waikato District Council	Submitter seeks to retain Objective 10.1.1(a) with amendments sought as follows: <i>Residual Risks associated with the storage, use, <u>transport</u> or disposal of hazardous substances is managed are minimised to ensure that the effects on people, property and the environment are acceptable, while recognising the benefits of facilities using hazardous substances.</i>
FS1345.72	Genesis Energy Limited	Oppose
785.41	Z Energy Ltd, BP Oil NZ Limited	Submitter seeks to retain Objective 10.1.1(a), except for the amendments sought below. AND Amend Objective 10.1.1 Effects of hazardous substances <i>Residual risk associated with the storage, use, or disposal of hazardous substances is managed to ensure that the effects on people, property and the environment are acceptable, while recognizing the benefits of facilities <u>storing, using or disposing of</u> hazardous substances.</i> AND Any consequential amendments or further relief to give effect to the submission.
680.120	Federated Farmers of New Zealand	Submitter seeks to amend objective 10.1.1 as follows: <i>(a) Residual risk associated with the storage, use, or disposal of hazardous substances is managed to ensure that the effects on people, property and the environment are acceptable, while recognising the benefits of facilities using hazardous substances.</i> AND Any consequential changes needed to give effect to this

		relief.
<i>FS1168.165</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
581.42	Synlait Milk Limited	Submitter seeks to either delete section 10.1.1. OR Amend section 10.1 so that the objectives and policies in the Proposed District Plan only concern the management of the Hazardous substance in highly sensitive environments such as Significant Natural Areas.
<i>FS1168.163</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
<i>FS1341.59</i>	<i>Hynds Pipe Systems</i>	<i>Support</i>

5.3 Analysis

119. The submission from Fonterra Limited [797.18] seeks to delete section 10.1 including Objective 10.1.1, while the submission from Synlait Milk Limited [581.42] seeks to either delete Objective 10.1.1 Effects of hazardous substances or amend section 10.1 so that the objectives and policies in the Proposed District Plan only concern the management of the Hazardous substance in highly sensitive environments such as Significant Natural Areas. Further submissions were received from Hynds Pipe Systems [FS1341.59] and Horticulture New Zealand [FS1168.163] in support of submission [581.42].
120. While these submissions seeking to delete section 10.1 on the basis that the Hazardous Substances and New Organisms Act 1996 (HSNO) controls the use of hazardous substances, I do not consider that this approach addresses the potential effects of hazardous substances on land use activities. Whilst the District Plan does not control the use of hazardous substances, it still has a role to play in managing the risks associated with the storage, use or disposal of hazardous substances. I therefore recommend that these submissions be rejected.
121. Submissions from Fire and Emergency New Zealand [378.8], Horticulture New Zealand [419.77], Ports of Auckland [578.110], WEL Networks Limited [692.39], New Zealand Steel Holdings [827.22] and Waikato District Health Board [923.131] seek to retain Objective 10.1.1 Effects of hazardous substances. I consider that these submissions support the approach that the PDP is taking to ensure that the adverse effects of hazardous substances are appropriately managed, and therefore recommend that these submissions are accepted.
122. Submissions from Waikato District Council [697.570] and from the Oil Companies [785.41] seek to retain Objective 10.1.1 Effects of hazardous substances, subject to amendments. Both of these submissions provide appropriate changes to the objectives which strengthen and clarify the objective. I therefore recommend that both submissions be accepted in part, given that aspects of each submission are recommended.
123. The submission from Federated Farmers New Zealand [680.120] seeks amendments to Objective 10.1.1 to delete the word 'facilities' from the objective. My view is that without the inclusion of the term "facilities" in this objective, it broadens the objective to include all hazardous substances (based on definitions). I consider that the intention of the objective clear that it applies to hazardous facilities.

5.4 Recommendations

124. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Reject** submissions from Federated Farmers New Zealand [680.120], Fonterra Limited [797.18] and Synlait Milk Limited [581.42].
- (b) Therefore **accept** further submissions from Mercury NZ Limited [FS1387.1264] and [FS1388.957] and **reject** the further submissions from Horticulture New Zealand [FS1168.164], [FS1168.163] and [FS1168.165] and Hynds Pipe Systems [FS1341.59].
- (c) **Accept** submissions from Fire and Emergency New Zealand [378.8], Horticulture New Zealand [419.77], Ports of Auckland [578.110], WEL Networks Limited [692.39], New Zealand Steel Holdings [827.22] and from Waikato District Health Board [923.131].
- (d) Therefore **accept** further submissions from Pareoranga Te Kata [FS1035.113] and **reject** further submissions from Mercury Energy Limited [FS1388.212] and [FS1387.1535], and Genesis Energy Limited [FS1345.72].
- (e) **Accept in part** the submission from Waikato District Council [697.570] and the Oil Companies [785.41] in respect to the amendments sought to Objective 10.1.1(a).
- (f) Therefore **reject** further submission from Genesis Energy Limited [FS1345.72].

5.5 Recommended amendments

125. For the reasons outlined above, I recommend that Objective 10.1.1 be retained, subject to the amendments below:

Objective 10.1.1 (a)

- (a) ~~Residual~~ Risks⁵ associated with the storage, use, transport⁶ or disposal of hazardous substances ~~is managed~~ are minimised⁷ to ensure that the effects on people, property and the environment are acceptable, while recognising the benefits of facilities storing⁸ using or disposing of⁹ hazardous substances.

5.6 Section 32AA evaluation

126. Given the recommended amendments to Objective 10.1.1, I consider that these additional changes are relatively minor. However, they provide additional clarification and ensure that the objective is clear and focused.
127. The addition of the word “transport”, while not included in the original section 32 report, is included in the wording of WRPS policy 4.2.9 and ensures that the risks associated with the transportation of hazardous substances are covered. Additionally, regarding the changes to include “minimised” (as opposed to manage), while the RPS policy says “control” (which is synonymous with “manage”), I consider using the word “minimised” makes the policy clear that the expectation is to minimise the risk, which I consider aligns better with section 5 of the RMA in respect to providing for the health and safety of people and communities.
128. Further, the addition of the words “storing” and “disposing of”, align to the purpose of the rules relating to the risks of hazardous substances, which are about the storage, use, transport and disposal.

⁵ Submission [697.570] Waikato District Council

⁶ Submission [697.570] Waikato District Council

⁷ Submission [697.570] Waikato District Council

⁸ Submission [785.41] Z Energy Ltd, BP Oil NZ Limited

⁹ Submission [785.41] Z Energy Ltd, BP Oil NZ Limited

5.6.1 Effectiveness and efficiency

129. In terms of effectiveness and efficiency, as set out in the Council's section 32 report for this topic, the "do nothing" approach is unlikely to be an acceptable option to the Waikato District's communities in regard to managing the effects of hazardous substances, particularly in regard to sensitive land use activities.
130. The recommended objective strengthens the policy direction and provides clear guidance as to what is being covered in respect to hazardous substances.

5.6.2 Other reasonably practicable options

131. Not including the additional wording in the objective leaves the status quo option (the notified objective), which I consider may leave a gap in the policy direction. I consider that including transportation is important, as there are many industries and operations where the transportation of hazardous substances is a risk that needs to be considered in the context of the hazardous facility, bearing in mind that the function overlaps with the Land Transport Safety Authority.

5.6.3 Costs and benefits

132. There are no costs additional to those assessed in the section 32 report, therefore the costs of this change are likely to be the same. There are benefits to the environment with the revised objective, as it is clearer about its coverage and that the effects will be 'minimised', as opposed to 'managed'. Other benefits are that the objective is clear that transport is included as a consideration in the assessment of hazardous substances. Further, the objective recognises the benefits of facilities storing, using or disposing of hazardous substances, which assists in policy direction.
133. There is a wider benefit to the local and regional communities. The communities need assurance that the risk of hazardous substances is being appropriately minimised, particularly in sensitive environments where the risk may be unable to be prevented or mitigated.

5.6.4 Risk of acting or not acting

134. I consider that there are additional risks in not acting. As explained above, the "do nothing" approach is not an acceptable approach for the district's communities. If the objective provides clearer direction that 'transport' of hazardous substances is included and that the effects need to be minimised (as opposed to managed), this benefit needs to be balanced by the costs of not including it. The cost is that the effects of an activity involving hazardous substances would not likely be acceptable to communities, therefore the inclusion of additional direction is required.

5.6.5 Decision about most appropriate option

135. The amendment gives effect to the higher-order documents (particularly the WRPS, which includes direction regarding transportation). It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of Objective 10.1.1.

6 Topic 3: Policy 10.1.2 – Location of new hazardous facilities

6.1 Introduction

136. Policy 10.1.2 directs the location of new hazardous facilities. The policy is proposed as follows in the notified version of the District Plan:

10.1.2 Policy – Location of new hazardous facilities

- (a) New hazardous facilities minimise the risk to the environment (including people and property) to acceptable levels by:
- (i) Siting new hazardous facilities in appropriate locations that are separated from incompatible activities and environment;
 - (ii) Avoid locating near to sensitive land use activities and infrastructure
 - (iii) Designing, constructing and operating hazardous facilities in a manner that ensures the adverse effects of the operation or an accidental event involving hazardous substances can be contained within the site; and
 - (iv) Disposing hazardous wastes to authorised disposal or treatment facilities that have appropriate management systems in place.

137. Policy 10.1.2 provides policy direction for new hazardous facility operators, which aims to ensure that the effects of hazardous substances are appropriately managed to achieve acceptable risks to the environment.

6.2 Submissions

138. 11 submission points were received on Policy 10.1.2. Two submissions seek to delete Policy 10.1.2, while five submissions seek to retain Policy 10.1.2 and four seek to amend Policy 10.1.2.

139. The following submissions seek to delete Policy 10.1.2:

Submission point	Submitter	Summary of submission
797.18	Fonterra Limited	Submitter seeks to delete Objective 10.1 and Policies 10.1.2, 10.1.3 and 10.1.4.
<i>FS1387.1264</i>	<i>Mercury Energy Limited</i>	<i>Oppose</i>
<i>FS1168.164</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
785.42	Z Energy Limited, BP Oil NZ Limited 'Oil Companies'	Submitter seeks to delete Policy 10.1.2 Location of new hazardous facilities. AND Any consequential amendments or further relief to give effect to the submission.
<i>FS1168.168</i>	<i>Horticulture New Zealand</i>	<i>Support</i>

140. The following submissions seek to retain Policy 10.1.2:

Submission point	Submitter	Summary of submission
378.9	Fire and Emergency New Zealand	Submitter seeks to retain Policy 10.1.2 Location of new hazardous facilities.
<i>FS1388.21</i>	<i>Mercury Energy Limited</i>	<i>Oppose</i>

FS1035.114	Pareoranga Te Kata	Support
578.111	Ports of Auckland Limited	Submitter seeks to retain Policy 10.1.2 Location of new hazardous facilities as notified.
FS1388.882	Mercury Energy Limited	Oppose
692.59	WEL Networks Limited	Submitter seeks to retain Policy 10.1.2 Location of new hazardous facilities as notified.
FS1387.368	Mercury Energy Limited	Oppose
827.23	New Zealand Steel Holdings Ltd	Submitter seeks to retain Policy 10.1.2 Location of new hazardous facilities as notified.
923.132	Waikato District Health Board	Submitter seeks to retain Policy 10.1.2 Location of new hazardous facilities.
FS1387.1536	Mercury Energy Limited	Oppose

141. The following submissions seek to amend Policy 10.1.2:

Submission point	Submitter	Summary of submission
419.78	Horticulture New Zealand	Submitter seeks to amend Policy 10.1.2 Location of new hazardous facilities as follows: <p>(a) <i>New hazardous facilities <u>to store hazardous substances</u> minimise the risk to the environment (including people and property) to acceptable levels by:</i> </p>
FS1388.213	Mercury Energy Limited	Oppose
680.121	Federated Farmers of New Zealand	Submitter seeks to amend Policy 10.1.2(a) Location of new hazardous facilities, as follows: <p>(a) <i>New hazardous facilities minimise the risk to the environment (including people and property) to acceptable levels by:</i> (i) <i>Siting new hazardous facilities in appropriate locations that are separated from incompatible activities <u>such as sensitive land use and infrastructure.</u> and environment;</i> (ii) <i>Avoid locating near to sensitive land use activities and infrastructure</i> (iii) <i>Designing, constructing and operating hazardous facilities in a manner that ensures the adverse effects of the operation or an accidental event involving hazardous substances can be <u>avoided, remedied or mitigated</u> a contained within the site; and</i> (iv) <i>Disposing hazardous wastes to authorised disposal or treatment facilities that have appropriate management</i></p>

		systems in place. AND Any consequential changes needed to give effect to this relief.
FS1387.185	Mercury Energy Limited	Oppose
FS1168.166	Horticulture New Zealand	Support
697.571	Waikato District Council	Submitter proposes to amend Policy 10.1.2 Location of new hazardous facilities heading as follows: Policy – Location of new hazardous facilities
FS1345.73	Alice Barnett on behalf of Genesis Energy	Oppose
FS1387.616	Mercury NZ Limited	Oppose
FS1168.167	Horticulture New Zealand	Oppose
697.572	Waikato District Council	Submitter seeks to amend Policy 10.1.2 Location of new hazardous facilities as follows: (a) New hazardous facilities <u>must</u> minimise the risk to the environment (including people and property) to acceptable levels by: (i) Siting new hazardous facilities in appropriate locations that are separated from incompatible activities, <u>including infrastructure, and sensitive environments;</u> (ii) Avoid locating near to sensitive land use activities and infrastructure (iii) Designing, constructing and operating hazardous facilities in a manner that ensures the adverse effects of the operation or an accidental event involving hazardous substances can be contained within the site; and (iv) Disposing hazardous wastes to authorised disposal or treatment facilities that have appropriate management systems in place <u>and avoiding the storage, processing or disposal of hazardous wastes in sensitive environments.</u>
FS1387.617	Mercury Energy Limited	Oppose
FS1345.74	Genesis Energy Limited	Oppose

6.3 Analysis

142. The submissions from Fonterra New Zealand [797.18] and the Oil Companies [785.42] seek to delete Policy 10.1.2. Both submissions question Council's function in the absence of s31, and submission 785.42 considers that hazardous substances are largely a matter for HSNO and HSWA. Specifically, the submission also states that the policy fails to focus on what additional controls on hazardous substance use (if any) are needed in the proposed district plan to address specific or potential environmental effects that are not covered by other legislation.

143. The Oil Companies [785.42] express the view that the Council's s32 analysis was deficient in addressing or recognising the issue of encroachment of sensitive activities or recognising that not all hazardous activities can or need to be located away from sensitive activities, especially where the facility is part of a wider distribution network servicing the public, where the potential risks or the hazardous activity can be appropriately managed.
144. Further submission [FS1387.1264] from Mercury Energy Limited opposes [797.18], while [FS1168.164] from Horticulture New Zealand supports it. Horticulture New Zealand [FS1168.168] supports submission [785.42].
145. I disagree with the submissions from Fonterra New Zealand [797.18] and the Oil Companies [785.42], as despite the removal of Council's explicit functions from s31, there is still a role for Council to ensure that adverse effects of land use activities are managed to ensure that the purpose of the RMA is met. I have relied on the technical expert and the legal opinion from Tompkins Wake, attached as Appendix 6 to this report and therefore conclude that there is still a role for Council to play in respect to the management of hazardous substances. I consider that the proposed rules need to address the land use effects of hazardous facilities on the environment and the health and safety of communities.
146. The submissions from Fire and Emergency New Zealand [378.9], Ports of Auckland [578.111], WEL Networks Limited [692.59], New Zealand Steel Holdings [827.23] and Waikato District Health Board [923.132] seek to retain Policy 10.1.2 Effects of hazardous substances as notified.
147. The further submission from Pareoranga Te Kata [FS1035.114] supports submission point [378.9], while Mercury Energy Limited [FS1388.21, FS1388.882, FS1387.368, FS1387.1536] opposes submission points [378.9], [578.111], [692.59] and [923.132] respectively.
148. I agree with the submitters who seek to retain the policy, as I consider that there is a need for the District Plan to manage the location and use of hazardous substances as far as it relates to land use in the Waikato District. Policy 10.1.2 is the key policy in respect to the location of hazardous facilities, and high value will be placed on this policy where activities are locating near to sensitive land use activities and infrastructure, given the strong policy direction using the word "avoid". It also emphasises that the design, construction and operation needs to ensure that substances are contained with the site and that hazardous wastes are disposed of appropriately.
149. The submissions from Horticulture New Zealand [419.78], Federated Farmers [680.121] and Waikato District Council [697.571 and 697.572], seek to amend Policy 10.1.2 and are discussed as follows.
150. The Waikato District Council submission [697.571] proposes to amend the heading of the policy from "10.1.2 Policy – Location of new hazardous facilities" to "10.1.2 Policy – Hazardous facilities". The submission seeks to apply a wider scope to all hazardous facilities, as opposed to only new facilities.
151. Additionally the Waikato District Council submission [697.572] also proposes to change the wording of policy 10.1.2 to ensure that the policy has wider scope than just "new hazardous facilities" and also states that the facilities must minimise risk to the environment (including people and property) to acceptable levels by meeting the criterion as set out in (i) – (iv) which follow. I agree that this is an appropriate approach, as only providing for new hazardous facilities narrows the scope for the policy. It is appropriate that the policy applies to expanded or changed activities, for instance where the volumes of hazardous substances, or the hazardous substance being used, stored or disposed of, have changed. Additionally, I

agree with the insertion of the word “must” into the policy. This provides a mandatory direction that hazardous facilities must minimise the risk to the environment (including people and property) to acceptable levels, which is important from a consenting perspective if circumstances should arise where it is not clear if the hazardous facility will minimise the risk to the environment. This proposed direction is clear, therefore I recommend accepting Council’s submission point.

152. Horticulture New Zealand [419.78] seeks to change the wording of Policy 10.1.2 (a) to focus on storage of hazardous substances and delete references to the risk to people and property to acceptable levels.
153. The proposed changes recommended by Horticulture New Zealand would only apply to new hazardous facilities which store hazardous substances. Additionally, the submission proposes to delete the words “(including people and property) to acceptable levels” from the policy.
154. The proposed deletion of these words is concerning to me, as it would leave the policy vague and open to interpretation as to how the policy should be implemented and practically applied. The policy needs to be clear and provide direction to all hazardous facility operators that any risk to the environment (which the policy clarifies includes people and property) to acceptable levels by meeting the criterion (i) – (iv).
155. I do agree with one aspect of the deletion, and that is that there may be issues with interpreting what constitutes “to acceptable levels”. My recommendation would be to take this wording out of the policy, as this leaves the policy less open to interpretation.
156. The submission from Federated Farmers [680.121] proposes changes to criteria (i), (ii) and (iii) of Policy 10.1.2. The changes include amending (a)(i) by inserting the words “such as sensitive land use and infrastructure” and deleting the words “and environment”, deleting criterion (a)(ii) and including the wording “avoided, remedied or mitigated”, and deleting “a contained within the site”.
157. This is fairly consistent with the Council’s submission [697.572] seeking amendments to clauses (i) and (ii) also. While both amendments from the submissions are of assistance to strengthen the policy, I do not consider that the suggested change to policy (iii) from Federated Farmers provides clear direction that the effects can be contained within the site. I consider that containment within the site is an important aspect of the policy to ensure that prevention and mitigation are the key focus of the policy which gives effect to the WRPS. This policy would ensure that containment of hazardous substances on site is taken into account at the time of design and construction, and during operation. I therefore recommend accepting amendments to criterion (a)(i) by inserting the words “such as sensitive land use and infrastructure”; deleting the wording “to acceptable levels”; and deleting the criterion (a)(ii), but rejecting the deletion of the wording “and environment”; including the wording “avoided, remedied or mitigated”; and deleting the wording “a contained within the site”.

6.4 Recommendations

158. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** submissions from Fonterra Limited [797.18] and the Oil Companies [785.42].

- (b) Therefore **accept** further submission from Mercury Energy Limited [FS1387.1264] and **reject** further submission from Horticulture New Zealand [FS1168.164 and FS1168.168].
- (c) **Accept in part** submissions from Horticulture New Zealand [419.78], Fire and Emergency New Zealand [378.9], Ports of Auckland Limited [578.111], WEL Networks Limited [692.59], New Zealand Steel Holdings Ltd [827.23], Waikato District Health Board [923.132], to the extent that I have recommended amendments to the policy in response to other submissions.
- (d) Therefore **accept in part** further submissions from Pareoranga Te Kata [FS1035.114] and from Horticulture New Zealand [FS1168.166] and Mercury Energy Limited [FS1388.213], [FS1388.21] and [FS1388.882], [FS1387.368] and [FS1387.1536].
- (e) **Accept** the submissions from Waikato District Council [697.571] and [697.572].
- (f) Therefore **reject** the further submissions from Mercury Energy Limited [FS1387.616] and [FS1387.617], Horticulture New Zealand [FS1168.167] and Genesis Energy [FS1345.73 and FS1345.74].
- (g) **Accept in part** the submission from Federated Farmers [680.121].
- (h) Therefore **accept in part** the further submission from Horticulture New Zealand [FS1168.166] and **accept in part** the further submission from Mercury Energy Limited [FS1387.185].

159. The following amendments are recommended:

10.1.2 Policy – ~~Location of new h~~¹⁰Hazardous facilities

- (a) ~~New h~~¹¹Hazardous facilities must¹² minimise the risk to the environment (including people and property) ~~to acceptable levels~~¹³ by:
 - (i) Siting new hazardous facilities in appropriate locations that are separated from incompatible activities, such as sensitive land use and infrastructure¹⁴, and sensitive environments¹⁵;
 - ~~(ii) Avoid locating near to sensitive land use activities and infrastructure~~¹⁶
 - (iii) Designing, constructing and operating hazardous facilities in a manner that ensures the adverse effects of the operation or an accidental event involving hazardous substances can be contained within the site; and
 - (iv) Disposing hazardous wastes to authorised disposal or treatment facilities that have appropriate management systems in place and avoiding the storage, processing or disposal of hazardous wastes in sensitive environments.¹⁷

6.5 Section 32AA evaluation

160. The proposed changes in regard to Policy 10.1.2 provide clarification to the policy, and in my opinion do not significantly change the intention of the policy direction as notified. The

¹⁰ Submission [697.571] Waikato District Council

¹¹ Submission [697.572] Waikato District Council

¹² Submission [697.572] Waikato District Council

¹³ Submission [419.78] Horticulture New Zealand

¹⁴ Submission [680.121] Federated Farmers

¹⁵ Submission [680.121] Federated Farmers

¹⁶ Submission [697.572] Waikato District Council

¹⁷ Submission [697.572] Waikato District Council

policy still focuses on hazardous facilities and ensuring that the risk to the environment is minimised to acceptable levels.

161. The sought changes proposed by the Waikato District Council and Federated Farmers provide focus to the policy specifically to sensitive land use and infrastructure and sensitive environments and remove the strong policy direction to “avoid locating near sensitive land use activities and infrastructure”, which is a hard policy threshold based on recent case law.
162. The change to Policy 10.1.2(a)(iv) provides a stronger policy direction to ensure that hazardous wastes are not stored, processed or disposed of in sensitive environments. This policy aligns well with a non-complying activity status in the sensitive zones.
163. I consider that the policy remains as efficient and as effective as originally assessed in the section 32 report and does not alter the costs and benefits associated with Policy 10.1.2 because they remain the same, with the exception of the focus of the policy being broader than just “new” hazardous facilities. I do consider that this policy remains the most appropriate way of achieving Objective 10.1.1 which directs hazardous facilities away from sensitive environments and therefore meeting Policy 4.2.9 of the Waikato Regional Policy Statement.

7 Topic 4: Policy 10.1.3 – Residual risks of hazardous substances

7.1 Introduction

164. Policy 10.1.3 ensures that facilities that use hazardous substances identify and assess potential effects. The policy is proposed as follows in the notified version of the District Plan:

10.1.3 Policy – Residual risks of hazardous substances

- (a) Facilities for the use, storage or disposal of hazardous substances shall identify and assess potential adverse effects (including cumulative risks and potential effects of identified natural hazards) to prevent unacceptable levels of risk to human health, safety, property and the natural environment.

165. The policy ensures that assessment includes cumulative risks and potential effects of natural hazards to prevent risk to human health, safety, property and the natural environment.

7.2 Submissions

166. 10 submission points were received on Policy 10.1.3. Two submissions seek to delete Policy 10.1.3, six submissions seek to retain Policy 10.1.3 and two submissions propose to amend Policy 10.1.3.
167. The following submissions seek to delete Policy 10.1.3:

Submission point	Submitter	Summary of submission
785.43	Z Energy Limited, BP	Submitter seeks to delete Policy 10.1.3 Residual risks of

	Oil NZ Limited- Oil Companies	hazardous substances. AND Any consequential amendments or further relief to give effect to the submission.
<i>FS1168.171</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
466.64	Balle Bros Group Limited	No specific decision has been sought by the submitter. However the submission opposes Policy 10.1.3 and considers the Plan should avoid duplication and effort with existing legislation/regulation in managing residual risks from hazardous substances.
<i>FS1388.431</i>	<i>Mercury Energy Limited</i>	<i>Oppose</i>
<i>FS1302.16</i>	<i>Mercer Airport</i>	<i>Support</i>

168. The following submissions seek to retain Policy 10.1.3:

Submission point	Submitter	Summary of submission
378.10	Fire and Emergency New Zealand	Submitter seeks to retain Policy 10.1.3 Residual risks of hazardous substances.
<i>FS1035.115</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
578.112	Ports of Auckland Limited	Submitter seeks to retain Policy 10.1.3 as notified.
<i>FS1388.883</i>	<i>Mercury Energy Limited</i>	<i>Oppose</i>
680.122	Federated Farmers of New Zealand	Submitter seeks to retain Policy 10.1.3 as notified subject to the definition of Hazardous facility being amended as per amendments sought in a separate submission point: OR Amend Policy 10.1.3 Residual risks of hazardous substances as follows: <i>(a) Facilities for the use, storage, or disposal of hazardous substances shall identify and assess potential adverse effects (including cumulative risks and potential effects of identified natural hazards) to prevent unacceptable levels of risk to human health, safety, property and the natural environment. <u>Promote better understanding of the potential adverse effects of the use, storage or disposal of hazardous substances, and the methods and controls for avoiding remedying or mitigating such effects.</u></i> <i>(b) Establish thresholds of acceptable risks from the use, storage, transportation and disposal of hazardous substances on the health and safety of people, and the environment.</i> <i>(c) To provide for the manufacture, storage, use, disposal and transportation of hazardous substances in accordance with</i>

		<u>industry protocols and regulations established under the Hazardous Substances and New Organisms Act 1996.</u> AND Any consequential changes needed to give effect to this relief.
FS1387.186	Mercury Energy Limited	Oppose
FS1089.12	Z Energy Limited BP Oil NZ Limited and Mobil Oil NZ Limited	Support
FS1168.169	Horticulture New Zealand	Support
692.60	WEL Networks Limited	Submitter seeks to retain Policy 10.1.3 Residual risks of hazardous substances.
827.24	New Zealand Steel Holdings Ltd	Submitter seeks to retain Policy 10.1.3 Residual risks of hazardous substances as notified.
923.133	Waikato District Health Board	Submitter seeks to retain Policy 10.1.3 Residual risk of hazardous substances as notified.
FS1387.1537	Mercury Energy Limited	Oppose

169. The following submissions seek to amend Policy 10.1.3(a):

Submission point	Submitter	Summary of submission
419.79	Horticulture New Zealand	Submitter seeks to amend Policy 10.1.3(a) Residual risks of hazardous substances, as follows: (a) Facilities for the The use, storage or disposal of hazardous substances shall identify and assess potential adverse effects (including cumulative risks and potential effects of identified natural hazards) to prevent unacceptable levels of risk to human health, safety, property and the natural environment. AND Any consequential or additional amendments as a result of changes sought in the submission.
FS1388.214	Mercury Energy Limited	Oppose
697.573	Waikato District Council	Submitter seeks to amend to heading of Policy 10.1.3 Residual risks of hazardous substances as follows: <i>Policy – Residual Assessment of risks of hazardous substances.</i>
FS1387.618	Mercury Energy Limited	Oppose
FS1168.170	Horticulture New Zealand	Oppose
FS1345.75	Genesis Energy Limited	Oppose

7.3 Analysis

170. The submission from the Oil Companies [785.43] seeks to delete Policy 10.1.3 on the basis that the policy generically requires that any facility for the storage or disposal of hazardous substances identifies and assesses adverse effect and risk. It also raises the issue of Council's function in respect to the control of hazardous substances through the RMA, unless there is an identified regulatory gap to be addressed. This submission is supported by Horticulture New Zealand [FS1168.171].
171. The submission from Balle Bros Group Limited [466.64] does not specify that they want to delete the Policy, but opposes it for similar reasons as the Oil Companies. This submission is supported by Mercer Airport [FS1302.16] and opposed by Mercury Energy Limited [FS1388.431].
172. As previously discussed in this report, I disagree with these reasons. My position is supported by Mr Schaffoener and the legal opinion from Tompkins Wake attached as Appendix 6 to this report. Therefore I recommend rejecting the submission points from the Oil Companies and the Balle Bros Group.
173. The submissions from Fire and Emergency New Zealand [378.10], Ports of Auckland [578.112], WEL Networks Limited [692.60], New Zealand Steel Holdings Ltd [827.24], and Waikato District Health Board [923.133] all seek to retain Policy 10.1.3. The submission from Federated Farmers [680.122] seeks to retain Policy 10.1.3 subject to a change to the definition of hazardous facility in submission [680.139] covered in section 10.10 of this report. I consider policy 10.1.3 is an important policy to ensure an appropriate assessment of hazardous facilities is undertaken through a resource consent process. Without this policy direction there is no guidance with respect to managing the adverse effects of hazardous substances which is needed to ensure the protection of communities. Therefore I recommend that these submissions are accepted.
174. The submission from Waikato District Council [697.573] seeks an amendment to the heading for the policy, removing the word "residual" and replacing it with "assessment of". I note that 3 further submissions were received from Mercury Energy, Horticulture New Zealand and Genesis Energy Limited which oppose this change. The further submissions from Horticulture New Zealand and Genesis Energy Limited indicate that the assessment of risk is undertaken under HSNO legislation by the Environmental Protection Agency.
175. While I agree with the further submission points, I do not agree that the policy is trying to duplicate this function. The policy is about Council assessing the risks of hazardous substances to ensure that the risk is acceptable from a land use perspective. It is my view that removing the word "residual" in the heading and replacing it with the words "assessment of" provides clarification to the intent of the policy. This change also reflects other changes sought by the Council submission. I therefore recommend accepting the submission.
176. The submission from Horticulture New Zealand [419.79] indicates that the policy sets out considerations that are required for use, storage or disposal of hazardous substances that are required under other regulations. Their view is that the policy should not be limited to "facilities". I do not agree with this approach, as the policy should be focused on facilities and not take a general approach. The reference to facilities clarifies the land use context, as controls are not applied to substances. Therefore I recommend rejecting the submission point from Horticulture New Zealand.

177. The submission from Federated Farmers New Zealand [680.122] seeks to either retain the policy, subject to changes to the definition of hazardous facility, or amend Policy 10.1.3 to redraft clause (a) and additional clauses (b) and (c) into the policy.
178. I consider that the proposed changes to clause (a) significantly weaken the policy direction in Policy 10.1.3, from the requirement of a risk assessment at the time of a resource consent application to only promote better understanding of the potential adverse effects. I question the insertion of clause (b) because it could be very broadly applied. Council are proposing to use the Activity Status Table in Appendix 5 to determine the thresholds for hazardous substances that would pose a risk to people, property or the environment. That risk is then assessed at the time of individual applications being made to Council.
179. In regard to the changes sought to clause (c), I do not agree that the District Plan needs to reference the HSNO Act. The focus of provisions in the plan is on the land use activities covered under the RMA. Therefore I recommend rejecting the submission from Federated Farmers of New Zealand.

7.4 Recommendations

180. I recommend, for the reasons give above that the Hearings Panel:
- (a) **Reject** submissions from the Oil Companies [785.43] and from Balle Bros Group Limited [466.64] seeking to delete Policy 10.1.3.
 - (b) Therefore **accept** the further submission from Mercury Energy Limited [FS1388.431] and **reject** further submissions from Horticulture New Zealand [FS1168.171] and from Mercer Airport [FS1302.16].
 - (c) **Accept** submissions from Fire and Emergency New Zealand [378.10], Ports of Auckland [578.112], WEL Networks Limited [692.60], New Zealand Steel Holdings Ltd [827.24], and Waikato District Health Board [923.133] seeking to retain Policy 10.1.3.
 - (d) Therefore **accept** further submissions from Pareoranga Te Kata [FS1035.115] and **reject** further submissions from Mercury Energy Limited [FS1388.883] and [FS1387.1537].
 - (e) **Reject** submission [419.79] from Horticulture New Zealand seeking amendments to Policy 10.1.3. Therefore **accept** further submission [FS1388.214] from Mercury Energy Limited.
 - (f) **Accept** submission [697.573] from Waikato District Council seeking amendments to Policy 10.1.3.
 - (g) Therefore **reject** further submissions from Mercury Energy Limited [FS1387.618], Horticulture New Zealand [FS1168.170] and Genesis Energy Limited [FS1345.75].
 - (h) **Reject** submission [680.122] from Federated Farmers seeking to retain Policy 10.1.3 subject to the definition of 'hazardous facility' being amended in submission [680.139]. Given that I am recommending to accept in part submission [680.139] relating to the definition of 'hazardous facility', I do not consider the proposed changes to Policy 10.1.3 to be appropriate.
 - (i) Therefore **accept** the further submission from Mercury Energy Limited [FS1387.186] and **reject** further submissions from the Oil Companies [FS1089.12] and from Horticulture New Zealand [FS1387.169].

7.5 Recommended amendments

181. The following amendments are recommended:

10.1.3 Policy – **Residual Assessment of¹⁸ risks of hazardous substances**

- (a) Facilities for the use, storage or disposal of hazardous substances shall identify and assess potential adverse effects (including cumulative risks and potential effects of identified natural hazards) to prevent unacceptable levels of risk to human health, safety, property and the natural environment.

7.6 Section 32AA evaluation

182. The proposed changes in regard to Policy 10.1.3 provide clarification to the policy heading, and in my opinion do not change the intention of the policy itself. The policy still focuses on the risks of hazardous substances. It just makes it clear that the policy is about the “assessment of” risks of hazardous substances.

183. I consider that the policy remains as efficient and as effective as originally assessed in the section 32 report and does not alter the costs and benefits associated with the policy. I do consider that this policy remains the most appropriate way of achieving Objective 10.1.1, as it directs hazardous facilities to assess the risks associated with their proposed operations to ensure prevention of risk that is unacceptable to human health, safety, property and the natural environment, therefore meeting Policy 4.2.9 of the Waikato Regional Policy Statement.

8 Topic 5: Policy 10.1.4 – Reverse sensitivity effects

8.1 Introduction

184. Policy 10.1.4 ensures that reverse sensitive effects are managed in respect to hazardous substances and hazardous facilities. The policy is proposed as follows in the notified version of the District Plan:

10.1.4 Policy – Reverse sensitivity effects

- (a) Separate sensitive land use activities from lawfully-established hazardous facilities;
 (b) Separate new hazardous facilities from existing sensitive land use activities; and
 (c) Avoid the storage, processing or disposal of hazardous waste in sensitive environments.

185. The policy provides clear direction to separate sensitive land use activities and hazardous facilities, and management of hazardous waste in sensitive environments.

8.2 Submissions

186. Eight submission points were received on Policy 10.1.4. One submission seeks to delete Policy 10.1.4, three submissions seek to retain Policy 10.1.4 and four submissions seek to amend Policy 10.1.4.

¹⁸ Submission [697.573] Waikato District Council

187. The following submission seeks to delete Policy 10.1.4:

Submission point	Submitter	Summary of submission
680.123	Federated Farmers of New Zealand	Submitter seeks to delete Policy 10.1.4(b) and (c) Reverse sensitivity effects.
<i>FS1387.187</i>	<i>Mercury Energy Limited</i>	<i>Oppose</i>

188. The following submissions seek to retain Policy 10.1.4:

Submission point	Submitter	Summary of submission
578.113	Ports of Auckland Limited	Submitter seeks to retain Policy 10.1.4 Reverse sensitivity effects as notified.
<i>FS1388.884</i>	<i>Mercury Energy Limited</i>	<i>Oppose</i>
692.61	WEL Networks Limited	Submitter seeks to retain Policy 10.1.4 Reverse sensitivity effects.
<i>FS1387.369</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
827.25	New Zealand Steel Holdings	Submitter seeks to retain Policy 10.1.4 Reverse sensitivity effects as notified.

189. The following submissions seek to amend Policy 10.1.4:

Submission point	Submitter	Summary of submission
419.80	Horticulture New Zealand	Submitter seeks to amend Policy 10.1.4(a) as follows: <i>(a) Separate sensitive land use activities from <u>areas where use and storage of hazardous substances is lawfully established hazardous facilities</u>;</i> AND Any consequential or additional amendments as a result of changes sought in the submission.
466.2	Balle Bros Group Limited	Submitter seeks to amend Policy 10.1.4 Reverse sensitivity effects to separate sensitive land use activities from areas where use and storage of hazardous substances is lawfully established.
<i>FS1388.399</i>	<i>Mercury Energy Limited</i>	<i>Oppose</i>
697.574	Waikato District Council	Submitter seeks to amend Policy 10.1.4 Reverse sensitivity effects, as follows: <i>(a) Separate <u>as far as practicable</u> sensitive land use activities from lawfully-established hazardous facilities;</i>

		(b) Separate new hazardous facilities from existing sensitive land use activities; and (c) Avoid the storage, processing or disposal of hazardous waste in sensitive environments.
FSI387.619	Mercury Energy Limited	Oppose
FSI168.172	Horticulture New Zealand	Oppose
785.44	Z Energy Limited, BP Oil NZ Limited – The Oil Companies	Submitter seeks to amend Policy 10.1.4 Reverse sensitivity effects as follows: <ul style="list-style-type: none"> a. Separate<u>Ensure that the expansion and value of existing and future investment by hazardous facilities is recognized by avoiding reverse sensitivity effects between sensitive land use activities and lawfully established hazardous facilities;</u> b. Separate new hazardous facilities from existing sensitive land use activities; and c. Avoid the storage, processing or disposal of hazardous waste in sensitive environments. <p>AND</p> <p>Any consequential amendments or further relief to give effect to the submission.</p>
FSI345.62	Genesis Energy Limited	Support

8.3 Analysis

190. The submission from Federated Farmers of New Zealand [680.123] seeks to delete Policy 10.1.4(b) and (c). A further submission from Mercury Energy Limited [FSI387.187] was received in opposition. The submissions from Ports of Auckland Limited [578.113], WEL Networks [692.61] and New Zealand Steel [827.25] seek to retain Policy 10.1.4. A further submission was received to submission point [578.113] from Mercury Energy Limited [FSI388.884].
191. While I agree that Policy 10.1.4 should be retained to ensure that reverse sensitivity effects are considered in respect to hazardous substances, I also agree with the above submission from Federated Farmers of New Zealand, which seeks to delete clauses (b) and (c), as I consider these clauses can be managed through clause (a) with some amendments. However, the submission from Federated Farmers does not recommend any suggested amendments to clause (a) of Policy 10.1.4.
192. The submission from Horticulture New Zealand [419.80] seeks to amend Policy 10.1.4(a) to include the additional words “areas where use and storage of hazardous substances is” and delete the words “hazardous facilities”.
193. Horticulture New Zealand supports the policy, to the extent that sensitive land use activities be separated from areas where hazardous substances are used. However, the policy is contingent on the definition of ‘hazardous facilities’, which the submitter considers to be inappropriate. The submission from Balle Bros Group Limited [466.2] shares a similar view and seeks to amend Policy 10.1.4 to separate sensitive land use activities from areas where use and storage of hazardous substances is lawfully established. The submitter supports locating hazardous substances remotely from sensitive land use activities. However Balle

Bros Group do not support the current definition of hazardous facilities. A further submission from Mercury Energy Limited [FS1388.399] was received opposing this submission.

194. While these submissions are dependent on the outcome of Horticulture New Zealand's submission on 'hazardous facilities' (submission [419.123] assessed in section 10.10 of this report), the use of the wording "areas where use and storage of hazardous substances" confuses the policy. Reference to hazardous facilities is intentional, as the term clarifies that activities which use, store, dispose of or transport hazardous substances are considered to be hazardous facilities. Therefore I recommend rejecting both submissions.
195. Submission [697.574] from Waikato District Council seeks to amend Policy 10.1.4 by including the words "as far as practicable" in clause (a) and deleting clause (b) and (c). Two further submissions were received from Mercury Energy Limited [FS1387.619] and Horticulture New Zealand [FS1168.172], both opposing this submission.
196. I consider that the insertion of the wording "as far as practicable" applies some flexibility to the policy, as not all proposals for a hazardous facility may be able to be separate from sensitive land use activities. I take on board the further submission from Horticulture New Zealand which states that there should be clear separation of sensitive activities from lawfully-established operations using hazardous substances to ensure that reverse sensitivity effects are avoided. Therefore I recommend accepting in part the submission from Waikato District Council [697.574].
197. The submission from the Oil Companies [785.44] seeks to amend Policy 10.1.4 by amending clause (a) and similar to the Waikato District Council submission, deleting clauses (b) and (c).
198. The submission highlights that reverse sensitivity is not provided for in HSNO or HSWA legislation. The Oil Companies consider it appropriate for Council to recognise and manage the potential reverse sensitivity effects that may be associated with the storage, use or disposal of hazardous substances. They also indicate that separation is one means of managing reverse sensitivity effects, but it may not be the only means of managing reverse sensitivity effects. A further submission from Genesis Energy Limited [FS1345.62] supports this submission point, which reiterates that reverse sensitivity is not provided for in HSNO or HSWA.
199. I agree that submission [785.44] provides a more specific policy that is directed at avoiding reverse sensitivity effects between land use activities and lawfully established hazardous facilities. However, I am not certain that the proposed wording of clause (a) captures the intent of the direction from the policy. I consider that the key focus needs to be on ensuring that reverse sensitivity effects between sensitive land use activities and lawfully-established hazardous facilities is managed, and agree that removing clauses (b) and (c) is appropriate, given that the changes are captured in clause (a). I therefore recommend accepting in part the submission from the Oil Companies.

8.4 Recommendations

200. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Accept** the submission from Federated Farmers of New Zealand [680.123] seeking to delete clauses (b) and (c). Therefore **reject** the further submission from Mercury Energy Limited [FS1387.187].

- (b) **Accept in part** the submissions from Ports of Auckland Limited [578.113], WEL Networks [692.61] and New Zealand Steel [827.25], insofar as I have recommended amendments in response to other submissions.
- (c) Therefore **accept in part** the further submissions from Mercury Energy Limited [FS1388.884] and [FS1387.369].
- (d) **Reject** submissions from Horticulture New Zealand [419.80] and from Balle Bros Limited [466.2] seeking to delete the term 'hazardous facilities' from the policy.
- (e) Therefore **accept** the further submission from Mercury Energy Limited [FS1388.399].
- (f) **Accept in part** the submission from Waikato District Council [697.574] seeking to amend the wording of Policy 10.1.4.
- (g) Therefore **accept in part** the further submissions from Mercury Energy Limited [FS1387.619] and from Horticulture New Zealand [FS1168.172].
- (h) **Accept in part** submission [785.44] from the Oil Companies seeking to amend the wording of Policy 10.1.4.
- (i) Therefore **accept in part** further submission [FS1345.62] from Genesis Energy Limited.

8.5 Recommended amendments

201. The following amendments are recommended:

10.1.4 Policy – Reverse sensitivity effects

- (a) ~~Separate~~¹⁹ Ensure as far as practicable²⁰ reverse sensitivity effects are avoided between²¹ sensitive land use activities and from²² lawfully-established hazardous facilities;
- ~~(b) Separate new hazardous facilities from existing sensitive land use activities; and~~
- ~~(c) Avoid the storage, processing or disposal of hazardous waste in sensitive environments.~~²³

8.6 Section 32AA evaluation

- 202. The recommended changes to Policy 10.1.4 assist to make the policy direction clear. Having the three separate points on reverse sensitivity, while helpful, really only needed to focus on ensuring that reverse sensitivity effects are avoided between sensitive land use activities and lawfully-established hazardous facilities.
- 203. My view is that the evaluation that went into Policy 10.1.4 in the section 32 report still stands and that the amended wording streamlines the policy to focus on the issue that it is addressing. I consider that Policy 10.1.4 is the best approach to achieve Objective 10.1.1 because reverse sensitivity effects from hazardous substances need to be managed, and as

¹⁹ Submission [785.44] from the Oil Companies

²⁰ Submission [697.574] from Waikato District Council

²¹ Submission [785.44] from the Oil Companies

²² Submission [785.44] from the Oil Companies

²³ Submissions [680.123] from Federated Farmers of New Zealand, [697.574] from Waikato District Council, [785.44] from the Oil Companies

the Oil Companies point out in their submission, neither HSNO nor HSW manages the land use effects of reverse sensitivity.

8.6.1 Other reasonably practicable options

204. Most submissions accept that reverse sensitivity is an issue that needs to be covered by the District Plan and are relatively supportive of the policy. In the case of Policy 10.1.4, the “do nothing” approach (i.e. not changing the notified policy) is not a practicable option, as the policy needs to be refined to reflect reverse sensitive effects between sensitive land use activities and lawfully-established hazardous facilities.
205. The policy notified in the district plan, while better than having nothing in the District Plan, is not as focused as it could be.
206. The submissions received address the need to make the policy clearer in respect to reverse sensitivity by recommending the deletion of Policy 10.1.4 (b) and (c) and ensuring clarity of the issue regarding reverse sensitivity in clause (a).

8.6.2 Effectiveness and efficiency

207. As indicated above, I do not consider that the amended policy changes the effectiveness and efficiency of the policy that has previously been evaluated in the section 32 report.

8.6.3 Costs and benefits

208. There are no additional costs and benefits to those assessed in the section 32 report. As raised in some of the submissions, reverse sensitivity effects are not managed by the HSNO or HSWA legislation, and therefore need to be considered in the District Plan.

8.6.4 Risk of acting or not acting

209. There are no additional risks in not acting. However, a clearer policy makes it easier for the plan user to understand what the policy direction is. If no change is made to the proposed policy, this may result in confusion regarding the issue of reverse sensitivity.

8.6.5 Decision about most appropriate option

210. The amendment gives effect to the WRPS. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of Policy 10.1.4.

4 Topic 6: Objective 10.2.1 – Contaminated Land

8.7 Introduction

211. Objective 10.2.1 ensures that subdivision, use and development of contaminated land is managed to protect human health and the environment. The policy is proposed as follows in the notified version of the District Plan:

10.2.1 Objective – Contaminated land

- (a) The subdivision, use and development of contaminated land is managed to protect human health and the environment.

8.8 Submissions

212. Nine submission points were received on Objective 10.2.1. Five submissions seek to retain Objective 10.2.1 and four submissions seek to amend Objective 10.2.1.

213. The following submissions were made seeking to retain Objective 10.2.1.

Submission point	Submitter	Summary of submission
367.16	Mercer Residents and Ratepayers	Submitter seeks to retain Section 10.2 Contaminated Land
463.1	Environmental Management Solutions Limited	Submitter seeks to retain Objective 10.2.1 as notified.
692.40	WEL Networks Limited	Submitter seeks to retain Objective 10.2.1 Contaminated Land.
785.9	Z Energy Limited, BP Oil NZ Limited – The Oil Companies	Submitter seeks to retain Objective 10.2.1 – Contaminated Land as notified.
800.1	Environmental Management Solutions Limited	Submitter seeks to retain Objective 10.2.1 Contaminated Land as notified.

214. The following submissions seek amendments to Objective 10.2.1:

Submission point	Submitter	Summary of submission
680.124	Federated Farmers of New Zealand	Submitter seeks to amend Objective 10.2.1(a) Contaminated Land as follows: <i>(a) The subdivision, use and development of contaminated land is managed to protect human health and the environment <u>from unacceptable risk.</u></i> AND Any consequential changes needed to give effect to this relief.
FS1089.4	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited for 'Oil Companies'	Support
FS1168.173	Horticulture New Zealand	Support
81.230	Waikato Regional Council	Submitter seeks to amend objective 10.2.1(a) Contaminated land as follows: <i>(a) ...contaminated land is <u>sustainably</u> managed to</i>

		<i>protect...</i>
923.134	Waikato District Health Board	Submitter seeks to amend Objective 10.2.1 Contaminated Land as follows: <i>The subdivision, use and development of contaminated land is managed to protect human health <u>and safety</u> and the environment.</i>
942.68	Tainui	Submitter seeks to retain the objectives and policies in Chapter 10 Hazardous Substances and Contaminated Land. AND Add a requirement for a bond to cover liability to be charged as part of the approval during resource consent process to ensure contaminated land is remediated following use.

8.9 Analysis

215. Submissions from Mercer Residents and Ratepayers [367.16], Environmental Management Solutions Limited [463.1], WEL Networks Limited [692.40], WEL Networks Limited [785.9], the Oil Companies [785.9] and Environmental Management Solutions Limited [800.1] seek to retain Objective 10.2.1. I consider that these submissions support Objective 10.2.1, which is the key objective in regard to the management of contaminated land and links to the NESCS.
216. Federated Farmers of New Zealand [680.124] seek to amend Objective 10.2.1(a) to include the words “from unacceptable risk”.
217. The reasons provided for this submission are that it is important for the Objective to be clear about the issue which is trying to be addressed and what the plan seeks to achieve. This objective is about protecting human health and the environment from unacceptable risk of harm caused by the subdivision, use and development of contaminated land. Two further submissions have been received on this point from the Oil Companies [FS1089.4] and [FS1168.173] in support of the submission point.
218. I agree with this proposed amendment and support the additional words “from unacceptable risk” being included in Objective 10.2.1(a) to ensure that the policy direction is clear about the issue being addressed. Therefore I recommend that the submission from Federated Farmers of New Zealand is accepted.
219. The submission from Waikato Regional Council [81.230] seeks to amend Objective 10.2.1(a) to include the word “sustainably” in the objective. I agree with this proposed amendment, as I understand that Waikato Regional Council’s reasons are to enable a broader range of considerations when addressing contaminated site remediation, and amending the wording of the policy provides flexibility.
220. My only reservation about accepting this change would be the interpretation of what constitutes “sustainably”. However, the submission details that the word provides for sustainable remediation techniques and/or in-situ management. This moves away from a “dig and dump” approach, where contaminated land is simply taken to landfill (which is becoming increasingly cost prohibitive). I anticipate that any remediation plans and monitoring programs for a site would ensure a tailored approach for the specifics of individual sites and

the levels of contamination that exist at the site. This is also addressed through Policy 10.2.2. Therefore I recommend accepting the submission from the Waikato Regional Council.

221. Waikato District Health Board [923.134] seeks to amend Objective 10.2.1 to include the words “and safety” in the objective. I agree with the inclusion of the words “and safety” into Objective 10.2.1. This makes sense to include in the Policy and reflects the purpose of the RMA and the intent of what the objective is seeking. Therefore I recommend that the submission from the Waikato District Health Board is accepted.
222. Tainui [942.68] seeks to retain Objective 10.2.1, however also seeks that a requirement for a bond to cover liability be charged as part of the approval during the resource consent process to ensure contaminated land is remediated following use.
223. While I agree that there needs to be assurances that when hazardous substances lead to the contamination of land, there needs to be accountability. Chapter 12 of the PDP does include provision for bonds to be used in resource consent applications. There are also other provisions, such as section 128 of the RMA, which enables conditions of consent to be reviewed at some time in the future.
224. Imposing a bond at the time of resource consent application is a complex issue, as firstly without knowing what the impact or “worst case” scenario is likely to be and the scale of the impact on the environment, it is difficult to determine what an appropriate bond amount would be. Secondly, Council are not resourced to manage or administer bonds. To require a bond from operators would certainly have a number of factors that would need to be considered, as well as the legality of whether Council can in fact take a bond. I have not sought specific advice on this, as my view is that insurance would be the best option for operators who are responsible for managing hazardous substances and the insurers would be best placed to cover the costs of remediating (e.g. for a chemical spill).

8.10 Recommendations

225. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Accept** the submissions from Mercer Residents and Ratepayers [367.16], Environmental Management Solutions Limited [463.1], WEL Networks Limited [692.40], the Oil Companies [785.9] and Environmental Management Solutions Limited [800.1].
 - (b) **Accept** the submission from Federated Farmers of New Zealand [680.124] that seeks to include the additional words “from unacceptable risk” to Policy 10.2.1(a).
 - (c) Therefore **accept** further submissions from the Oil Companies [FS1089.4] and from Horticulture New Zealand [FS1168.173].
 - (d) **Accept** the submission from the Waikato Regional Council [81.230] that seeks to include the word “sustainably” to Policy 10.2.1(a).
 - (e) **Accept** the submission from the Waikato District Health Board [923.134] that seeks to include the words “and safety” to Policy 10.2.1(a).
 - (f) **Accept in part** the submission [942.68] from Tainui in regards to retaining Policy 10.2.1.

8.11 Recommended amendments

226. The following amendments are recommended:

10.2.1 Objective – Contaminated land

- (a) The subdivision, use and development of contaminated land is sustainably²⁴ managed to protect human health and safety²⁵ and the environment from unacceptable risk²⁶.

8.12 Section 32AA evaluation

227. I do not consider the proposed amendments to Objective 10.2.1 to be significant changes that would justify an extensive further evaluation pursuant to section 32AA.
228. The addition of the words “sustainably”, “and safety” and “from unacceptable risk” provide clarity and strength to the policy direction and assist in addressing the issues regarding contaminated land.

8.12.1 Other reasonably practicable options

229. The only other practicable option would be to leave the objective as notified (the “do nothing” approach), which does not give consideration to the submissions received.
230. I consider that the submissions have enhanced the wording of the objective and provide clarity and strength to the policy direction.

8.12.2 Effectiveness and efficiency

231. The recommended amendments to Objective 10.2.1 are aligned to the NES for managing contamination in soil and provide an effective and efficient policy framework that supports the provisions contained within the NES.

8.12.3 Costs and benefits

232. There are no additional costs or benefits to the proposed amendments to Objective 10.2.1 to those already assessed in the section 32 report. However, I think that it is worth noting that the addition of the words “from unacceptable risk” from the Federated Farmers submission [680.124], while it provides greater policy strength, in that the policy is now clearer that communities and the environment are to be protected “from unacceptable risk”.
233. Interpretation of what constitutes “unacceptable risk” would come down to the level of contamination involved and the site-specific details and the sensitivity of the receiving environment (i.e. proximity to neighbours etc). However, I consider that there needs to be a measure that can be used when determining applications that fail the NES (i.e. discretionary activities), where the risk is assessed.

8.12.4 Risk of acting or not acting

234. I do not consider that there are any risks of acting or not acting in the case of Objective 10.2.1. However, as previously highlighted above, the policy is strengthened by the additional words, and not including them may result in less certainty or measure for “unacceptable risk”.

8.12.5 Decision about most appropriate option

235. The amendment gives effect to the WRPS. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of objective 10.2.1.

²⁴ Submission [81.230] from Waikato Regional Council

²⁵ Submission [923.134] from Waikato District Health Board

²⁶ Submission [680.124] from Federated Farmers of New Zealand

9 Topic 7: Policy 10.2.2 – Managing the use of contaminated land

9.1 Introduction

236. Policy 10.2.2 is the key policy for managing the use of contaminated land in the District Plan. As the rules in relation to contaminated land are provided in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, there are no rules specifically included in the notified proposed District Plan.

237. The proposed policy as notified is set out as follows:

10.2.2 Policy – Managing the use of contaminated land

- (a) Contaminated land is managed or remediated to ensure that contaminants are at a level acceptable for the proposed land use.
- (b) Disposal of contaminated soil must be carried out in a manner that avoids further adverse effects on human health or on the environment.
- (c) Use or development of contaminated land must not damage or destroy any contaminant containment works, unless comparable or better containment is provided, or monitoring demonstrates that the containment is no longer required.
- (d) Ensure that the use, subdivision and development of contaminated land management approaches include:
 - (i) undertaking a site investigation of any land identified as actually or potentially contaminated, prior to any new subdivision or change of use of land, that could result in an increase in any adverse effects from the contamination of a piece of land;
 - (ii) remedial action plans;
 - (iii) site validation reports,
 - (iv) site management plans as appropriate for identifying, monitoring and managing contaminated land.

9.2 Submissions

238. 10 submission points were received on Policy 10.2.2. Two submissions seek to retain Policy 10.2.2 and ten submissions seek to amend Policy 10.2.2.

239. The following submissions seek to retain Policy 10.2.2:

Submission point	Submitter	Summary of submission
692.62	WEL Networks Limited	Submitter seeks to retain Policy 10.2.2 Managing the use of contaminated land.
81.231	Waikato Regional Council	Submitter seeks to retain Policy 10.2.2(b) Managing the use of contaminated land.

240. The following submissions seek to amend or add to Policy 10.2.2:

Submission point	Submitter	Summary of submission
785.10	Z Energy Limited BP Oil NZ Limited and Mobil Oil NZ Limited – Oil Companies	<p>Submitter seeks to retain Policy 10.2.2 – Managing the use of Contaminated Land, except for the amendments sought below:</p> <p>AND</p> <p>Amend Policy 10.2.2 Managing the use contaminated land as follows:</p> <ul style="list-style-type: none"> a. <i>Contaminated land is managed, <u>which may include remediation</u>, or remediated to ensure that contaminants are at a level acceptable for the proposed land use.</i> ... d. <i>Ensure that the use, subdivision and development of contaminated land management approaches include:</i> <ul style="list-style-type: none"> i. <i>Undertaking a site investigation of any land identified as actually or potential contaminated, prior to any new subdivision or change of use of land, that could result in an increase in any adverse effects from the contamination of a piece of land;</i> ii. Remedial action plans; iii. <i>Site validation reports;</i> iv. <i>Site management plans as appropriate for identifying, monitoring and managing contaminated land.</i> <p>AND</p> <p>Any consequential amendments or additional relief to give effect to the submission.</p>
FS1168.177	Horticulture New Zealand	Support
800.2	Environmental Management Solutions Limited	<p>Submitter seeks to retain Policy 10.2.2 Managing the use of contaminated land, except for the amendments sought below:</p> <p><i>Ensure that the use, subdivision and development of contaminated land management approaches include <u>where appropriate</u>:</i></p> <p>...</p>
463.2	Environmental Management Solutions Limited	<p>Submitter seeks to retain Policy 10.2.2 – Managing the sue of contaminated land, except for the amendments sought as follows:</p> <p><i>Ensure that the use, subdivision and development of contaminated land management approaches include</i></p>

		<i>where appropriate:</i> ...
680.125	Federated Farmers of New Zealand	Submitter seeks to add to Policy 10.2.2 Managing the use of contaminated land an advice note as follows: <i>Advice Note:</i> <u>The status of some activities will be determined by the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011. Reference should be made to the Ministry of Environment website for a copy of these regulations, a user's guide, and documents incorporated by reference in these regulations.</u> AND Any consequential changes needed to give effect to this relief.
<i>FS1168.176</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
<i>FS1168.177</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
81.232	Waikato Regional Council	Submitter seeks to amend Policy 10.2.2(d) Managing the use of contaminated land as follows: <i>(a) Amend Policy 10.2.2(d) Managing the use of contaminated land as follows: (d)Ensure that the use, subdivision and development of contaminated land management approaches contaminated land management approaches associated with the use, subdivision and development of actually or potentially contaminated land include:...</i>
<i>FS1168.175</i>	<i>Horticulture New Zealand</i>	<i>Oppose</i>
81.233	Waikato Regional Council	Submitter seeks to add to Policy 10.2.2(d) Managing the use of contaminated land reference to 'preliminary site investigations'.
<i>FS1089.9</i>	<i>Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited for 'Oil Companies'</i>	<i>Support</i>
81.234	Waikato Regional Council	Submitter seeks to add to Policy 10.2.2(d) Managing the use of contaminated land an additional sub-point the requirement that any preliminary or detailed site investigation reports, remedial action plans, site validation reports and ongoing site management plans are prepared in accordance with the Ministry for the Environment's Contaminated Land Management Guidelines #1 and #5, and are provided to both Waikato District Council and the submitter

		for their records.
942.68	Tainui	Retain the objectives and policies in Chapter 10 Hazardous Substances and Contaminated Land. AND Add a requirement for a bond to cover liability to be charged as part of the approval during resource consent process to ensure contaminated land is remediated following use.
923.135	Waikato District Health Board	Submitter seeks to amend Policy 10.2.2(b) as follows: <i>Disposal of contaminated soil must be carried out in a manner that avoids further adverse effects on human health <u>and safety</u>, or on the environment.</i>

9.3 Analysis

241. WEL Networks Limited [692.62] submission seeks to retain Policy 10.2.2, and Waikato Regional Council [81.231] seeks to retain Policy 10.2.2(b). I consider that Policy 10.2.2 supports Objective 10.2.1 and provides the detail of what is required in respect to contaminated land.
242. Submission [785.10] from the Oil Companies seeks to retain Policy 10.2.2 and include the additional words “which may include remediation” in clause (a). In addition, they seek to delete criterion (e)(ii) in regard to remedial action plans. One further submission was received from Horticulture New Zealand [FS1/68.177] supporting the submission.
243. The submitter understands that remediation is a form of management, and therefore seeks amendment to clause (a) of Policy 10.2.2. I agree with this amendment and the reasons provided. However, I suggest that this change be included in brackets to imply that there may be other options as directed by the NES.
244. The submitter also seeks the deletion of remedial action plans, as they note that a remedial action plan will only be required if necessary, i.e. no remediation may actually be required/necessary for works on contaminated land. The submitter’s view is that remedial action plans can be considered through clause (d)(iv), hence they are seeking deletion of clause (d)(ii). I do not agree that remedial action plans should be deleted from clause (d)(ii), as this is different from clause (iv) for site management plans, and sets out how the contamination is to be remediated. I therefore recommend that the submission from the Oil Companies is accepted in part.
245. Environmental Management Solutions Limited [800.2] seeks to amend Policy 10.2.2(d) to include the wording “where appropriate” in clause (d). The submission from Environmental Management Solutions Limited [463.2] is a duplicate of submission [800.2]. However I note that Council could not simply delete one of the points, as there have been different further submissions received on each submission point.
246. I agree with the changes sought in the submissions from Environmental Management Solutions Limited [800.2] and [463.2] to provide some flexibility to the policy and therefore recommend accepting both submission points.

247. Federated Farmers of New Zealand [680.125] seeks to add an advice note that directs plan users to the NECSC. Two further submissions from Horticulture New Zealand were received supporting the further submissions [FS1168.176] and [FS1168.177]. I agree that the advice note provides assistance to the plan user to direct them to the Ministry for the Environment website. This is perhaps the best option, as the other option is to include it in an Appendix (which is the approach often taken by other Councils). I therefore recommend accepting the submission point.
248. The submission from Waikato Regional Council [81.232] seeks to amend Policy 10.2.2(d) by deleting the wording “subdivision and development of contaminated land management approaches” and inserting the wording “contaminated land management approaches associated with the use, subdivision and development of actually or potentially contaminated land”.
249. The reasons for this submission are that the NES provides a framework for the management of contaminated sites, and implementation method 14.4.1 of the WRPS requires that the District Plan shall include provisions that support the implementation of the National Environmental Standard for Contaminated Soil. The submission seeks that the wording be rewritten for clarity. I agree with this proposed wording, although note that the further submission from Horticulture New Zealand [FS1168.175] opposes this submission point and states that the inclusion of “potentially contaminated land” is inconsistent with the NES.
250. I disagree with [FS1168.175] about the proposed wording of submission [81.232] and think that the inclusion of “actually or potentially contaminated land” does reference the NES. Therefore I recommend accepting this submission point from Waikato Regional Council.
251. The submission also from Waikato Regional Council [81.233] seeks to add to Policy 10.2.2(d) the reference to ‘preliminary site investigations’. A further submission from the Oil Companies [FS1089.9] supports this submission point. I agree with this inclusion, as preliminary site investigations are often necessary and therefore recommend accepting this submission point.
252. The submission from the Waikato Regional Council [81.234] seeks to add to Policy 10.2.2(d) by adding an additional sub-point stating the requirement that any preliminary or detailed site investigation reports, remedial action plans, site validation reports and ongoing site management plans are prepared in accordance with the Ministry for the Environment’s Contaminated Land Management Guidelines #1 and #5, and are provided to both Waikato District Council and the submitter for their records.
253. I agree that it is good practice for records to be kept of sites where contamination has been investigated, remediated or is being managed. Both the Waikato District Council and the Waikato Regional Council have this responsibility. Therefore I recommend accepting this submission point.
254. Submission [942.68] from Tainui seeks to retain objectives and policies in Chapter 10 and add a requirement for a bond to cover liability to be charged as part of the approval during resource consent processes to ensure contaminated land is remediated following use.
255. While I agree that there need to be assurances that when hazardous substances lead to the contamination of land, there needs to be accountability. As previously mentioned in this report, Chapter 12 of the PDP refers to bonds at the time of resource consent applications. However, imposing a bond at the time of resource consent is a complex issue, as firstly without knowing what the impact or “worst case” scenario is likely to be and the scale of the impact on the environment, it is difficult to determine what a bond amount would be. Secondly, Council are not resourced to manage or administer bonds. To require a bond

from operators would certainly have a number of factors that would need to be considered, as well as the legality of whether Council can in fact take a bond. I have not sought advice on this as my view is that insurances would be the best option for operators who are responsible for managing hazardous substances, and the insurance option would be best placed to cover the costs of remediating. For the above reasons I accept this submission in part given that it does seek to retain the policy.

256. Submission [923.135] from the Waikato District Health Board seeks to include “safety”. I agree with the inclusion of this word, as it goes hand-in-hand with “health” and reflects section 5 of the RMA. Therefore I recommend that this submission is accepted.

9.4 Recommendations

257. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Accept in part** the submissions from WEL Networks Limited [692.62] and the submission from Waikato Regional Council [81.231].
- (b) **Accept in part** submission [785.10] from the Oil Companies in regard to the inclusion of the additional wording in clause (a).
- (c) Therefore **accept in part** the further submission from Horticulture New Zealand [FS1168.177].
- (d) **Accept** both submission points from Environmental Management Solutions Limited [800.2] and [463.2].
- (e) **Accept** the submission from Federated Farmers of New Zealand [680.125].
- (f) Therefore **accept** the further submission from Horticulture New Zealand [FS1168.176] and [FS1168.177].
- (g) **Reject** the submission from Waikato Regional Council [81.232].
- (h) Therefore **accept** the further submission from Horticulture New Zealand [FS1168.175].
- (i) **Accept** the submission from Waikato Regional Council [81.233].
- (j) Therefore **accept** the further submission from the Oil Companies [FS1089.9].
- (k) **Accept** the submission from Waikato Regional Council [81.234].
- (l) **Accept in part** the submission from Tainui [942.68] in regards to retaining the Objectives and policies in Chapter 10.
- (m) **Accept** the submission from Waikato District Health Board [923.135].

9.5 Recommended amendments

258. The following amendments are recommended:

10.2.2 Policy – Managing the use of contaminated land

- (a) Contaminated land is managed (~~which may include remediation~~) ~~or remediated~~²⁷ to ensure that contaminants are at a level acceptable for the proposed land use.
- (b) Disposal of contaminated soil must be carried out in a manner that avoids further adverse effects on human health or on the environment.

²⁷ Submission [785.10] from the Oil Companies

- (c) Use or development of contaminated land must not damage or destroy any contaminant containment works, unless comparable or better containment is provided, or monitoring demonstrates that the containment is no longer required.
- (d) Ensure that contaminated land management approaches associated with²⁸ the use, subdivision and development of contaminated land management approaches of actually or potentially contaminated land includes where appropriate²⁹:
- (i) undertaking a site investigation of any land identified as actually or potentially contaminated, prior to any new subdivision or change of use of land, that could result in an increase in any adverse effects from the contamination of a piece of land;
 - (ii) remedial action plans;
 - (iii) site validation reports,
 - (iv) site management plans as appropriate for identifying, monitoring and managing contaminated land.
 - (v) Preliminary site investigations.³⁰
- (e) Any preliminary or detailed site investigation reports, remedial action plans, site validation reports and ongoing site management plans are prepared in accordance with the Ministry for the Environment's Contaminated Land Management Guidelines #1 and #5, and are provided to both Waikato District Council and the Waikato Regional Council for their records.³¹

Advice Note:

The status of some activities will be determined by the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011. Reference should be made to the Ministry of Environment website for a copy of these regulations, a user's guide, and documents incorporated by reference in these regulations.³²

9.6 Section 32AA evaluation

259. I do not consider the proposed amendments to Policy 10.2.2 to be significant changes that would justify extensive further evaluation pursuant to section 32AA.
260. The amendments recommended to the policy address the issues regarding the practical management aspects of contaminated land and the reports undertaken in respect to assessing contaminated land under the NES for assessing and managing contaminants in soil to protect human health.

9.6.1 Other reasonably practicable options

261. The only other option (not adopting the recommendations) would be to leave the policy as notified (the "do nothing" approach), which does not give consideration to the submissions received or provide for the additional practical matters to be included in the policy directive.
262. I consider that the submissions have enhanced the wording of the policy and set out the requirement for preliminary investigation reports and ensure that information is captured by both the district and regional councils.

9.6.2 Effectiveness and efficiency

263. The recommended amendments to Policy 10.2.1 are aligned to the NES for managing contamination in soil and provide an effective and efficient policy framework that supports the provisions contained within the NES.

²⁸ Submission [81.233] from Waikato Regional Council

²⁹ Submission [800.2] from Environmental Management Solutions Limited and Submission [463.2] from Environmental Management Solutions Limited

³⁰ Submission [81.233] from Waikato Regional Council

³¹ Submission [81.234] from Waikato Regional Council

³² Submission [680.125] from Federated Farmers of New Zealand

9.6.3 Costs and benefits

264. There are no additional costs or benefits to the proposed amendments to Policy 10.2.2 to those already assessed in the section 32 report.

9.6.4 Risk of acting or not acting

265. I do not consider that there are any risks of acting or not acting in the case of Policy 10.2.2.

9.6.5 Decision about most appropriate option

266. The amendment gives effect to the WRPS. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of Policy 10.2.2.

10 Topic 8: Definitions

10.1 Definitions

267. This section of the report addresses submissions that were received on definitions specific to the hazardous substances and contaminated land topic. For all other definitions, these are addressed in the s42A report for Hearing 4 – Definitions.

10.2 Submissions

268. 15 submission points were received on the following definitions:

- Hazardous Substance
- Non-hazardous gas
- Hazardous facility
- Hazard
- Cumulative risk
- Storage
- Use

10.3 National Planning Standard Definitions

269. The National Planning Standards include definitions for ‘contaminated land’, ‘contaminant’ and ‘hazardous substances’. It is my intention to adopt the NPS definitions relevant to hazardous substances and contaminated land. I note that no submissions have been received on the definitions relating to ‘contaminated land’ or ‘contaminant’. However, there are submissions relating to ‘hazardous substances’, and I will address these definitions in conjunction with other submissions received on these definitions.

270. The National Planning Standards include the following definitions relating to hazardous substances and contaminated land:

Contaminant

has the same meaning as in section 2 of the RMA.

includes any substance (including gases, odorous compounds, liquids, solids, and microorganisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat—

a. when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or

b. when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged.

Contaminated land

has the same meaning as in section 2 of the RMA. (same as proposed – check definitions report) means land that has a hazardous substance in or on it that—

- a. has significant adverse effects on the environment; or
- b. is reasonably likely to have significant adverse effects on the environment.

Hazardous substances

has the same meaning as in section 2 of the RMA:

includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance.

The Hazardous Substances and New Organisms Act 1996 defines hazardous substances as meaning, unless expressly provided otherwise by regulations or an EPA notice, any substance—

a. with 1 or more of the following intrinsic properties:

i. explosiveness:

ii. flammability:

iii. a capacity to oxidise:

iv. corrosiveness:

v. toxicity (including chronic toxicity):

vi. ecotoxicity, with or without bioaccumulation; or

b. which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any 1 or more of the properties specified in paragraph (a).

10.4 Definition of Hazardous substance

271. The notified definition for hazardous substances is set out as follows:

Means any substance with hazardous properties, including radioactivity, high BOD (Biological Oxygen Demand) and those properties defined as hazardous for the purpose of the Hazardous Substances and New Organisms Act 1996.

272. The following submission was made on the definition for 'hazardous substance':

Submission point	Submitter	Summary of submission
680.140	Federated Farmers of New Zealand	Amend the definition of "Hazardous substance" in Chapter 13 Definitions, as follows: <i>Means any substance with hazardous properties, including radioactivity, high BOD (Biological Oxygen Demand) and those properties defined as hazardous for the purpose of the Hazardous Substances and New Organisms Act 1996.</i> AND

		Any consequential changes needed to give effect to this relief.
FS1168.119	Horticulture New Zealand	Support

10.5 Analysis

273. The submission received from Federated Farmers of New Zealand [680.140] proposes to remove reference to “hazardous properties including radioactivity, high BOD (Biological Oxygen Demand)” from the definition of ‘hazardous substance’. Consequently, the definition would be limited to hazardous substances, as defined under HSNO – which is contrary to the RMA definition, which states that it is not limited to those matters.
274. Upon comparing the proposed changes included in the submission from Federated Farmers [680.140] with the National Planning Standard definition for ‘hazardous substances’, I do not consider that the changes proposed by submission [680.140] align with the National Planning Standards definition for ‘hazardous substance’. The National Planning Standards direct that section 2 of the RMA be used, which provides the wording “includes, but is not limited to”. The submission from Federated Farmers would limit substances considered to be a “hazardous substance”, which would include radioactive materials and substances with high Biological Oxygen Demand (BOD).
275. I note that substances with high BOD are included in the Waikato Regional Plan in Chapter 3.5.12 in relation to discharges for high risk facilities. Although it is not a function of the Waikato District Council to manage discharges, it is important that Council has scope through the definition of ‘hazardous substance’ to consider new facilities at the time of establishing.
276. For these reasons, I consider that the submission from Federated Farmers [680.140] should be rejected, and that the Commissioners should adopt the definition of ‘hazardous substance’ from the National Planning Standards (given that there are a number of submissions which provide appropriate scope, as discussed in section 4.4 of this report).
277. However, by using the NPS definition in the plan, this leaves hazardous substances with radioactive properties out of the definition, along with substances with high Biological Oxygen Demand (BOD).
278. To further discuss this matter, the definition of hazardous substances from the NPS (refer above) adopts the meaning in section 2 of the RMA which “includes, but is not limited to, any substance defined in section 2 of the HSNO Act as a hazardous substance” [emphasis added].
279. Given that the definition in HSNO does not specifically cover substances with radioactive properties or substances with high Biological Oxygen Demand (BOD) (refer to list above), this is problematic, as the definition may only be changed by the legislature as set out in the mandatory direction included in the NPS definition standard which reads: “Where the definitions list incorporates a definition from legislation, the definition applied is the version included in the legislation on the date of gazettal of this standard.”
280. As neither the RMA or HSNO definition includes specific reference to substances with radioactive properties or substances with high Biological Oxygen Demand (BOD), the options would be to either rely on the wording “includes, but is not limited to” or create new sub-definitions and make consequential changes to the rules.

281. To assist with the consideration of these options, a sub-definition for ‘radioactive material’ may provide for substances with radioactive properties. A definition is included in the Radiation Safety Act 2016 (in section 5) as follows:

“any material that spontaneously emits ionising radiation, including any naturally occurring radioactive material or any nuclear material.”

282. This definition would mean that all rules which already refer to radioactive material could be defined. I note that there would need to be a consequential change to the rule to ensure that the definition makes sense (as currently the rules refer to the ‘radioactive materials’).

283. In regard to BOD, rather than providing a sub-definition for the term, it may be easier to rely on the wording “includes, but is not limited to” as a sub-definition. This would mean modifying the rules to ensure that BOD is referred to. As Table 5.1 of Appendix 5 refers to BOD, it is clearly identified there as a hazardous substance.

284. Therefore, I recommend adopting the NPS definition of “hazardous substance” and creating a sub-definition for “radioactive materials”.

10.6 Recommendations

285. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Reject** the submission from Federated Farmers of New Zealand [680.140], therefore **reject** the further submission from Horticulture New Zealand [FS1168.119].
- (b) **Accept** that a new definition be included in the District Plan for ‘radioactive materials’ to accommodate the changes required by the National Planning Standards for the definition of ‘hazardous substances’, and that the reference to the Radiation Safety Act 2016 be correctly referred to in the relevant rules (as a consequential amendment).

10.7 Definition of ‘Non-hazardous gas’

286. There is currently no definition for non-hazardous gas included in the notified proposed district plan. One submission has been received requesting that a new definition be added to the plan as follows:

Submission point	Submitter	Summary of submission
378.14	Fire and Emergency New Zealand	Add a new definition for "non-hazardous gas", to provide clarity with regard to thresholds specified in Appendix 5. AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
FS1035.120	Pareoranga Te Kata	Support
FS1388.25	Mercury NZ Limited	Oppose

10.8 Analysis

287. I have relied on technical comments from Mr Schaffoener to determine whether a definition for “non-hazardous gas” is required to provide clarity to thresholds specified in Appendix 5. Mr Schaffoener has indicated that the HSNO Act does not define “non-hazardous gas”. Further, he points out that the conditions applicable to determine quantity are clearly set

out in Rule (2) of Table 5.1 in Appendix 5, and suggests that it might assist with clarity if the entry under non-hazardous gases is amended to 'All non-hazardous gases, compressed or liquified', as overpressure is the hazard to be controlled.

288. In response to the BA tanks example included in submission [378.14], Mr Schaffoener points out that even for the most sensitive zones (with the lowest threshold of 200m³), over 70 BA units can be stored as a permitted activity, which would include what is stored on up to 10 HAZMAT and other response vehicles.
289. Based on the above advice from Mr Schaffoener, I consider that a definition for non-hazardous gas is not necessary, as the quantity threshold table included in Appendix 5 adequately covers non-hazardous gas, and in the case of fire stations and associated fire operations, the amounts required would likely be permitted.
290. I note that all existing fire stations would have existing use rights; therefore any concerns regarding compliance with the District Plan requirement would occur with respect to future fire stations or additional activities to those currently undertaken at existing sites. While recognising the need for Fire and Emergency to have flexibility with their operations, on balance, I would also have concerns about providing exemptions for fire stations to have significant volumes of hazardous substances stored within sensitive zones, and would suggest that there may be more appropriate zones in order to prevent risk in those cases.

10.9 Recommendations

291. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** the submission from Fire and Emergency New Zealand [378.14], therefore **accept** the further submission from Mercury NZ Limited [FS1388.25] and **reject** the further submission points from Pareoranga Te Kata [FS1035.120].

10.10 Definition of 'Hazardous facility'

292. The notified definition of hazardous facility is as follows:

Hazardous facility

Means activities involving hazardous substances and premises at which these substances are used, stored or disposed of. Storage includes vehicles for their transport located at a facility for more than short periods of time.

293. Seven submissions have been received on this definition. Four are proposing to delete the definition, while three are proposing to amend the definition. The submissions are as follows:

Submission point	Submitter	Summary of submission
419.123	Horticulture New Zealand	Delete the definition of "Hazardous facility" from Chapter 13 Definitions. AND Any consequential or additional amendments as a result of changes sought in the submission.
FS1342.94	Federated farmers	Support

FS1388.229	Mercury NZ Limited	Oppose
463.5	Environmental Management Solutions Limited	Delete the definition for "Hazardous Facility" from Chapter 13 Definitions.
FS1089.3	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited for 'Oil Companies'	Support
FS1388.373	Mercury NZ Limited	Oppose
FS1168.100	Horticulture New Zealand	Support
466.1	Brendan Balle for Balle Bros Group Limited	Delete the definition for "Hazardous Facility" from Chapter 13 Definitions.
FS1186.100	Horticulture NZ	Support
1345.1105	Genesis Energy Limited	Support
1388.398	Mercury NZ Limited	Oppose
800.5	Environmental Management Solutions Limited	Delete the definition of "hazardous facility" from Chapter 13 Definitions.
FS1387.1294	Mercury NZ Limited	Oppose
FS1168.102	Horticulture New Zealand	Support
419.143	Horticulture New Zealand	<p>Amend the definition of "hazardous facilities" in Chapter 13: Definitions, as follows:</p> <p><i>Means activities involving hazardous substances and premises at which these substances are used, stored or disposed of.</i></p> <p><i>Storage includes vehicles for their transport locality at a facility for more than short periods of time.</i> <i>Storage and use does not include vehicles transporting hazardous substances for their intended use, such as agricultural spraying or application of fertiliser.</i></p> <p>AND</p> <p>Any consequential or additional amendments as a result of changes sought in the submission.</p>
FS1388.235	Mercury NZ Limited	Oppose
578.48	Ports of Auckland Limited	<p>Add exceptions to the definition of "Hazardous facility" in Chapter 13 Definitions as follows:</p> <p><i>Hazardous facility Means activities involving hazardous substances and premises at which these substances are used, stored or disposed of. Storage includes vehicles for their transport located at a facility for more than short periods of time, and excludes:</i></p> <ul style="list-style-type: none"> <i>fuel in mobile plant, motor vehicles, boats and small engines; and</i>

		<ul style="list-style-type: none"> <u>the temporary storage, handling and distribution of national or international cargo.</u> <p>AND</p> <p>Amend the Proposed District Plan to make alternative or consequential amendments as necessary to address the matters raised in the submission.</p>
FS1388.852	Mercury NZ Limited	Oppose
680.139	Federated Farmers of New Zealand	<p>Amend the definition of "Hazardous facility" in Chapter 13 Definition as follows:</p> <p><i>Means activities involving hazardous substances and premises at which these substances are used, stored or disposed of. Storage includes vehicles for their transport located at a facility for more than short periods of time.</i></p> <p><u>A Hazardous facility does not include:</u></p> <p><u>(a) The incidental use and storage of Hazardous substances in domestic quantities; and</u></p> <p><u>(b) Fuel contained in tanks of motor vehicles, agricultural and forestry equipment, boats and small engines; and</u></p> <p><u>(c) On farm milk and farm effluent storage and disposal; and</u></p> <p><u>(d) Storage of superphosphate or lime or similar fertiliser in the Rural Zone; and</u></p> <p><u>(e) Use and storage of agrichemicals covered by, and in accordance with New Zealand Standard 8409:2004 Management of Agrichemicals.</u></p> <p>AND</p> <p>Any consequential amendments needed to give effect to this relief.</p>
FS1387.191	Mercury NZ Limited	Oppose

10.11 Analysis

294. Submissions from Horticulture New Zealand [419.123], Environmental Management Solutions Limited [463.5 and 800.5] and Balle Bros Group Limited [466.1] seek to delete the definition of hazardous facility for a variety of reasons.
295. Several further submissions were received supporting these submission points from Federated Farmers [FS1342.94], Horticulture NZ [FS1186.100] and Genesis Energy Limited [FS1345.1105].
296. Submissions from Horticulture New Zealand [419.143], Ports of Auckland [578.48] and Federated Farmers of New Zealand [680.139] are relatively aligned, as they all request exemptions to the definition to better cater for the needs of their operations.
297. As Rule 1 of Appendix 5 does exempt a number of hazardous substances, including subclasses 1.4, 1.5, 1.6, 6.1D, 6.1E, 6.3, 6.4, 6.5, 9.1D, 9.2D and 9.3, a number of the exemptions requested through submissions are in fact already exempt.
298. However, I have relied on my technical expert and it is considered that there are some practical and common sense exemptions that can be included in the definition to provide the

plan user with more clarity. I note that the Auckland Unitary Plan takes a similar approach. Common sense exemptions would be as follows:

- a. fuel in mobile plant, motor vehicles, boats and small engines;
- b. gas and oil pipelines, including associated equipment, that are part of a network utility service;
- c. hazardous activities not involving hazardous substances;
- d. retail outlets selling household products containing hazardous substances in packaging containing domestic scale quantities, such as supermarkets, department stores, hardware shops, pharmacies, garden centres;
- e. the incidental use and storage of household products containing hazardous substances in domestic scale quantities;
- f. activities involving hazardous substances 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.

299. Unfortunately, the submissions received do not go far enough in providing scope for a similar list of exemptions. However, the submissions provide scope to consider the following exemptions: fuel stored in mobile plants, motor vehicles, boats and small engines.

300. Horticulture New Zealand [419.143] are seeking to delete the wording “Storage includes vehicles for their transport locality at a facility for more than short periods of time” and adding “Storage and use does not include vehicles transporting hazardous substances for their intended use, such as agricultural spraying or application of fertiliser.” The reasons provided for this change are that it is uncertain what a “short period of time” is, and would make a whole farm or rural property a hazardous facility, as a vehicle may be used to transport agrichemicals or fertiliser for application.

301. I do not agree with this submission, as I think that the terminology used is certain. Mr Schaffoener has made technical comments on this submission to the effect that “the reference to ‘short periods of time’ specifically relates to storage. The ‘transport for application’ is clearly not included in this definition. He explained that “short period of time” generally means “short term”, which is somewhat variable, but common sense and convention would exclude medium and long term. I agree with Mr Schaffoener’s comment and agree that the definition does aim to cover a variety of facilities, where a practical approach needs to be taken, rather than applying a prescriptive time period to the definition.

302. Further, I disagree with Horticulture New Zealand’s reason that the proposed definition for ‘hazardous facilities’ would make a whole farm or rural property a hazardous facility, given that a vehicle may be used to transport agrichemicals or fertiliser for application. In most instances, farming 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.

303. Ports of Auckland [578.48] are seeking exemptions for the following: fuel in mobile plant, motor vehicles, boats and small engines and the temporary storage, handling and distribution of national or international cargo. The reasons provided are to ensure that inland port operations are recognised in the definition by ensuring that plants and machinery on site are exempt. The submission also details that hazardous substances also travel through the freight hub regularly as part of cargo, break bulk and bulk cargo, and maximum dwell times are less than one week.

304. With respect to the operational aspects of the Ports of Auckland submission, I consider that Rule 1 of Appendix 5 already exempts hazardous substances (such as fuel) within plant and

machinery. However, similar to the approach taken with the Horticulture New Zealand submission [419.143], I agree that taking a common sense approach to the definition of 'hazardous facility' could exempt fuel in mobile plant, motor vehicles, boats and small engines.

305. In regard to the temporary storage, handling and distribution of national or international cargo, the submission does not provide any examples of the quantities of cargo that would contain hazardous substances and if so, what types of substances. Without such details I cannot determine whether the types of substances and respective quantities that would apply to the cargo are exempt or would require resource consent. However, irrespective of this information, I do not consider that the definition should focus on any particular industry or operation (e.g. Ports of Auckland).
306. The submission from Federated Farmers of New Zealand [680.139] provides a list of exemptions including:
- (a) The incidental use and storage of Hazardous substances in domestic quantities; and
 - (b) Fuel contained in tanks of motor vehicles, agricultural and forestry equipment, boats and small engines; and,
 - (c) On farm milk and farm effluent storage and disposal; and
 - (d) Storage of superphosphate or lime or similar fertiliser in the Rural Zone; and
 - (e) Use and storage of agrichemicals covered by, and in accordance with New Zealand Standard 8409:2004 Management of Agrichemicals.
307. The reason provided in the submission is that the definition, as currently worded, has the potential to capture a range of activities inappropriately. I disagree with this reason, as Rule 1 of Appendix 5 would exempt activities involving hazardous substances 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. Further, most of the substances listed in the proposed exemption would meet the permitted activity thresholds, and if this is not the case, no information has been provided with the submission to illustrate the point.
308. I agree that provision could be made to include the incidental use and storage of hazardous substances in domestic quantities and fuel in tanks of motor vehicles, boats and small engines. I do not agree that the definition should focus on agricultural and forestry equipment specifically, as the definition must provide for a range of equipment suiting a number of operations.
309. I do not agree that specific provision should be made for farm milk or farm effluent; the storage of superphosphate or lime or agrichemicals generally. The definition needs to apply to the whole district and provide for a wide range of activities and industries. For instance, if the definition were to focus on farm effluent only as an exemption, it is arguable why the definition should not also apply to wastewater treatment plants, for instance.
310. To re-iterate my earlier point, if Federated Farmers of New Zealand were able to demonstrate that the quantities of any particular hazardous substance mean that they are not exempted by Rule 1 of Appendix 5, then I could address this in the list of exemptions. However, as I also reiterate, the definition does need to provide for a wide range of industries and operations, therefore I do not support focusing on specific industries.

10.12 Recommendations

311. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Reject** submissions [419.123] from Horticulture New Zealand, from Environmental Management Solutions Limited [463.5 and 800.5], and [466.1] Balle Bros Group Limited seeking to delete the definition of ‘hazardous facility’.
- (b) Therefore **accept** the further submission from Mercury NZ Limited [FS1388.229] and **reject** the further submissions [FS1342.94] from Federated Farmers, [FS1388.229], [FS1388.373], [FS1388.398], [FS1387.1294], the Oil Companies, [FS1168.100], [FS1186.100], [FS1168.102], Horticulture New Zealand, and Genesis Energy Limited [FS1345.1105].
- (c) **Reject** the submission from Horticulture New Zealand [419.143] proposing to amend the definition of ‘hazardous facility’.
- (d) Therefore **accept** the further submission from Mercury NZ Limited [FS1388.235].
- (e) **Accept in part** submission [578.48] from Ports of Auckland some of the proposed exemptions to the definition of ‘hazardous facility’. Therefore **accept in part** the further submission from Mercury NZ Limited [FS1388.852].
- (f) **Accept in part** the submission from Federated Farmers New Zealand [680.139] in respect to some of the proposed exemptions to the definition of ‘hazardous facility’. Therefore **accept in part** the further submission from Mercury NZ Limited [FS1387.191].

10.13 Definition of ‘Hazard’

312. The proposed definition of ‘hazard’ is set out as follows:

Hazard

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.

313. The proposed definition of ‘hazard’ is referred to in the definition of “hazardous waste”.

314. The following submission has been received on the definition of ‘hazard’:

Submission point	Submitter	Summary of submission
749.49	Housing New Zealand Corporation	Submitter seeks to delete the term and the definition of "Hazard" in Chapter 13 definitions. AND Amend the Proposed District Plan as consequential or additional relief as necessary to address the matters raised in the submission as necessary.
FS1387.1012	Mercury NZ Limited	<i>Oppose</i>

10.14 Analysis

315. One submission has been received from Housing New Zealand Corporation [749.49] on the definition of hazard. The reasons for the submission relate to why the term ‘hazard’ is included for a definition, as it can apply to a range of matters that are not included in the proposed definition, such as natural hazards or hazards related to health and safety. The

submission also states that there are definitions already provided for “hazardous facility”, “hazardous substance” and “hazardous waste”.

316. I consider that the submission from Housing New Zealand Corporation [749.49] raises a valid point, that there are definitions for “hazardous facility”, “hazardous substance” and “hazardous waste” in the district plan and therefore does not need to include a definition for “hazard” also.
317. I disagree that the definition of “hazard” conflicts with hazards in the context of natural hazards, as the definition is clear that it means in the context of hazardous substances.
318. Based on the above discussion I consider that the definition, while clear that it relates to hazards in the context of hazardous substances, could be deleted from the plan without significant consequences, given that it is only referred to in another definition.

10.15 Recommendations

319. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Accept** the submission from Housing New Zealand Corporation [749.49].
Therefore **reject** the further submission from Mercury NZ Limited [FS1387.1012].

10.16 Definition of ‘Cumulative risk’

320. The notified definition of ‘cumulative risk’ is set out as follows:

Cumulative Risk

Means in the context of hazardous substances, the risk posed by a hazardous facility added to or multiplied, or otherwise accumulated by risk from other facilities.

321. The definition is referred to in Policy 10.1.3 in regard to the residual risks of hazardous substances.
322. The following submissions have been received on the definition of ‘cumulative risk’:

Submission point	Submitter	Summary of submission
695.62	Sharp Planning Solutions Ltd	Submitter seeks to amend the definition for "Cumulative risk" in Chapter 13 Definitions to objectively state if it means other facilities on or off the site.
FS1387.317	Mercury NZ Limited	<i>Oppose</i>
785.35	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited for 'Oil Companies'	Submitter seeks to delete the definition for "cumulative risk" from Chapter 13: Definitions. AND Any consequential amendments or further relief to give effect to the submission.

10.17 Analysis

323. The submission from Sharp Planning Solutions Ltd seeks amendments to objectively state whether the definition means other facilities on or off the site. I have relied on technical comments from Mr Schaffoener, who has indicated that it may assist to add ‘hazardous’

between 'other' and 'facilities' for clarification. Additionally, he suggests that it may also be of benefit to add 'in the vicinity where risks of one facility can influence risks of the other' or words to that effect, to the end of the definition. I concur with Mr Schaffoener.

324. The submission from the Oil Companies [785.35] proposes to delete the definition of 'cumulative risk', given that submission point [785.43] proposes to delete Policy 10.1.3. As I am not recommending deleting Policy 10.1.3, this definition still stands.

10.18 Recommendations

325. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Accept in part** submission [695.62] from Sharp Planning Solutions. Therefore **accept in part** the further submission from Mercury NZ Limited [FS1387.317].
 - (b) **Reject** the submission from Oil Companies [785.35].

10.19 Definition of 'Storage'

326. The proposed definition of 'storage' is set out as follows:

Storage

Means in the context of hazardous substances or hazardous waste, the containment of a hazardous substance or hazardous waste, either above ground or underground, in enclosed packages, containers or tanks. It includes vehicles used to transport any hazardous substance that are stationary within a hazardous facility for more than short periods of time.

327. The following submission has been received on the definition of 'storage':

Submission point	Submitter	Summary of submission
419.138	Horticulture New Zealand	Submitter seeks to amend the definition of "Storage" in Chapter 13 Definitions, as follows: <i>Means in the context of a hazardous substance or hazardous waste, the containment of a hazardous substance or hazardous waste, either above ground or underground, in enclosed packages, containers or tanks. It includes vehicles used to transport any hazardous substance that are stationary within a hazardous facility for more than short periods of time.</i> AND Any consequential or additional amendments as a result of changes sought in the submission.
FS1342.103	Federated farmers	Support
FS1388.234	Mercury NZ Limited	Oppose

10.20 Analysis

328. The submission from Horticulture New Zealand [419.138] proposes changes to the definition of storage by removing the last sentence.

329. Two further submissions were received from Federated farmers [FS1342.103] in support and Mercury NZ Limited [FS1388.234] who opposed.
330. To address this submission, I have relied on technical comments from Mr Schaffoener. He points out that a sensible definition of the term ‘storage’ with regard to hazardous substances is essential to the District Plan, because otherwise provisions would be open to inappropriate interpretation.
331. Most importantly, he notes that the term is not defined in either the RMA or the HSNO Act. His advice is that to include mobile tanks and containers within a hazardous facility, including on wheels, is accepted and good planning practice. He does provide advice that the current definition of the term does not change that storage of most hazardous substances in small containers in spray tanks is permitted, without any controls or standards applying. I concur with this advice, as smaller quantities of spray would be generally excluded by Rule 1 in Appendix 5. I therefore recommend that the definition of “storage” remain as notified in the PDP.

10.21 Recommendations

332. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** submission [419.138] from Horticulture New Zealand. Therefore **accept** the further submission from Mercury NZ Limited [FS1388.234] and **reject** the further submission from Federated Farmers [FS1342.103]. .

10.22 Definition of ‘Use’

333. The proposed definition of ‘use’ is set out as follows:

Use

Means in the context of a hazardous substance, the manufacturing, processing or handling of a hazardous substance for a particular activity without necessarily changing the physical state or chemical structure of the hazardous substance involved. This includes mixing, blending and packaging operations, or the use of a hazardous substance as a cooling or heating medium. It does not include the filling or drawing of a hazardous substance from bulk storage tanks unless the processing is permanently connected to the bulk storage, and does not include loading out and dispensing of petroleum products.

334. The following three submissions were received on the definition of use:

Submission point	Submitter	Summary of submission
581.18	Synlait	Submitter seeks to retain the definition of “use” in Chapter 13 Definitions as notified.
FS1341.35	Hynds Pipe Systems Limited	Support
419.139	Horticulture New Zealand	Submitter seeks to amend the definition of "Use" in Chapter 13 Definitions, so that the application of agrichemicals and fertiliser is excluded. AND Any consequential or additional amendments as a result

		of changes sought in the submission.
<i>FS1342.104</i>	<i>Federated farmers</i>	<i>Support</i>
749.63	Housing New Zealand Corporation	Submitter seeks to amend the heading of the definition of "Use" in Chapter 13 Definitions to refer to "Hazardous use". AND Amend the Proposed District Plan as consequential or additional relief as necessary to address the matters raised in the submission as necessary.

10.23 Analysis

335. Submission [581.18] from Synlait seeks to retain the definition of “use” in Chapter 13 Definitions.
336. Horticulture New Zealand [419.139] and Housing New Zealand Corporation [749.63] propose to amend the definition of “use”. Horticulture New Zealand seeks to exclude agrichemicals and fertiliser, while Housing New Zealand Corporation seeks to amend the heading to “hazardous use”.
337. A further submission was received from Federated Farmers [FS1342.104] in support of a submission point from Horticulture New Zealand.
338. To address submission [419.139] I have relied on technical expert comments from Mr Schaffoener. He points out that a sensible definition of the term ‘use’ in regard to hazardous substances is essential in the District Plan, otherwise provisions would be open to inappropriate interpretation. It is also not a defined term in either the RMA or HSNO.
339. He considers that the proposed definition reflects accepted and good planning practice and is applicable to risks from unintended consequences to land use, not for permitted or consented discharges (intended uses). The term refers to ‘manufacturing, processing or handling’, not ‘discharging or applying’. There are no discharge requirements included in the proposed provisions (as Council do not need to duplicate Regional Council requirements).
340. Use/application of most hazardous substances would be permitted, without any controls or standards applying (noting that substances cannot be used/applied in larger quantities than they are stored in the first place). Most fertilisers have a primary hazards classification of 6.3 or 6.4, which have no threshold applied to them in any case (refer to Rule 1 in Table 5.1 of Appendix 5.1).
341. In regard to submission [749.63] from Housing New Zealand Corporation to amend the heading “use” to “use of hazardous substances”. The reasons provided for this submission are that the definition should include the word “hazardous” as it relates more to “hazardous use” than in a general application of use.
342. In my opinion, the definition is clear when you read it that it relates to the “use” of hazardous substances. At the beginning of the definition it reads “In the context of hazardous substances”. When describing the context of the term in practice, it can be said that it is not the “use” itself which is hazardous, but more about the hazardous substances used.

10.24 Recommendations

343. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Accept** the submission from Synlait [581.18]. Therefore **accept** the further submission from Hynds Pipe Systems Limited [FS1341.35].
- (b) **Reject** the submission from Horticulture New Zealand [419.139]. Therefore **reject** the further submission from Federated farmers [FS1342.104].
- (c) **Reject** the submission from Housing New Zealand Corporation [749.63].

10.25 Recommended amendments

344. So that the Hearings Panel can see the suite of definitions, I have set out all of my recommended amendments on various definitions below:

Contaminated land	<p><u>Has the same meaning as in section 2 of the RMA.</u></p> <p><u>means land that has a hazardous substance in or on it that—</u></p> <ul style="list-style-type: none"> <u>a. has significant adverse effects on the environment; or</u> <u>b. is reasonably likely to have significant adverse effects on the environment.</u>
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345.

Hazardous Substance	<p><u>Has the same meaning as in section 2 of the RMA:</u></p> <p><u>includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance.</u></p> <p><u>The Hazardous Substances and New Organisms Act 1996 defines hazardous substances as meaning, unless expressly provided otherwise by regulations or an EPA notice, any substance—</u></p> <ul style="list-style-type: none"> <u>a. with 1 or more of the following intrinsic properties:</u> <ul style="list-style-type: none"> <u>i. explosiveness:</u> <u>ii. flammability:</u> <u>iii. a capacity to oxidise:</u> <u>iv. corrosiveness:</u> <u>v. toxicity (including chronic toxicity):</u> <u>vi. ecotoxicity, with or without bioaccumulation; or</u> <u>b. which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any 1 or more of the properties specified in paragraph (a).</u>
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346.

Radioactive material	<p><u>Means any material that spontaneously emits ionising radiation, including any naturally occurring radioactive material or any nuclear material.</u></p>
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347.

Hazardous	<p>Means activities involving hazardous substances and premises at which these</p>
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Facility	<p>substances are used, stored or disposed of. Storage includes vehicles for their transport located at a facility for more than short periods of time and excludes:</p> <ul style="list-style-type: none"> • <u>fuel stored in mobile plants, motor vehicles, boats and small engines;</u> • <u>the incidental use and storage of hazardous substances in domestic scale quantities;</u> • <u>activities involving sub-classes 1.4, 1.5, 1.6, 6.1D, 6.1E, 6.3, 6.4, 6.5, 9.1D, 9.2D and 9.3.³³</u>
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348.

Hazard	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.³⁴
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349.

Cumulative Risk	Means in the context of hazardous substances, the risk posed by a hazardous facility added to or multiplied, or otherwise accumulated by risk from other <u>hazardous³⁵ facilities in the vicinity where risks of one facility can influence the risk of the other³⁶.</u>
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350.

Storage	<p>Storage</p> <p>Means in the context of hazardous substances or hazardous waste, the containment of a hazardous substance or hazardous waste, either above ground or underground, in enclosed packages, containers or tanks. It includes vehicles used to transport any hazardous substance that are stationary within a hazardous facility for more than short periods of time.</p>
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351.

Use	Means in the context of a hazardous substance, the manufacturing, processing or handling of a hazardous substance for a particular activity without necessarily changing the physical state or chemical structure of the hazardous substance involved. This includes mixing, blending and packaging operations, or the use of a hazardous substance as a cooling or heating medium. It does not include the filling or drawing of a hazardous substance from bulk storage tanks unless the processing is permanently connected to the bulk storage, and does not include loading out and dispensing of petroleum products.
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³³ Submissions [578.48] from Ports of Auckland and [680.139] Federated Farmers of New Zealand

³⁴ Submission [749.49] from Housing Corporation New Zealand

³⁵ Submission [695.62] from Sharp Planning Solutions Limited

³⁶ Submission [695.62] from Sharp Planning Solutions Limited

10.26 Section 32AA evaluation

352. The definitions of ‘contaminated land’ and ‘hazardous substance’ from the National Planning Standards are recommended to be adopted through this hearing topic. As the National Planning Standards are directed from the Ministry for the Environment, a section 32AA evaluation is not required to determine scale and significance of the environmental, economic, social and cultural effects.
353. The amendments proposed for the remaining definitions of ‘hazardous facility’, ‘hazard’, ‘cumulative risk’, ‘use’ and ‘storage’ are relatively minor in terms of scale and significance. If anything, the changes are to provide clarity to the plan user and will not change the context in which they were proposed and still align with objectives, policies and rules.

11 Topic 9: Appendix 5: Hazardous Substances

11.1 Appendix 5

354. Appendix 5 contains the Activity Status Table which determines the quantity threshold volumes. I have not included the notified version of Appendix 5, due to the size of the table.

11.2 Submissions

355. 10 submission points were received on Appendix 5. Five submission points seek to delete Appendix 5 and five seek to either retain or amend Appendix 5.
356. The following submissions were made proposing to delete Appendix 5:

Submission point	Submitter	Summary of submission
419.14	Horticulture New Zealand	Submitter seeks to delete Appendix 5 Hazardous Substances and Table 5.1 Activity Status Table - Permitted activity thresholds. AND Delete references to Appendix 6 and Table 6.1 Activity Status Table in Rule 22.2.4 Hazardous Substances. AND Any consequential or additional amendments as a result of changes sought in the submission.
465.10	Buckland Marine Limited	No specific decision sought, but submission opposes Rule 20.2.6 PI Hazardous substances AND Delete Table 5.1 Activity Status Table – Permitted Activity Thresholds, from Appendix 5 Hazardous Substances.
<i>FS1353.6</i>	<i>Tuakau Proteins Limited</i>	<i>Support</i>
<i>FS1353.32</i>	<i>Tuakau Proteins Limited</i>	<i>Support</i>

466.17	Balle Bros Group Limited	Submitter seeks to delete Table 5.1 Activity Status Table – Permitted Activity Thresholds from Appendix 5 Hazardous Substances, in the context of opposing Rule 22.2.4 PI Hazardous Substances.
797.38	Fonterra Limited	Submitter seeks to delete Appendix 5 Hazardous Substances. AND Any consequential amendments or further relief to give effect to the concerns raised in the submission.
<i>FSI198.51</i>	<i>Bathurst Resources Limited and BT Mining Limited</i>	<i>Support</i>
<i>FSI168.211</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
<i>FSI387.1276</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
419.141	Horticulture New Zealand	No specific decision sought, however the submitter opposes the use of Activity Status Tables or quantity trigger limits for the management of hazardous substances.

357. The following submissions were made proposing to either retain or amend Appendix 5:

Submission point	Submitter	Summary of submission
543.7	Fellrock Developments Limited and TTT Products Limited	Submitter seeks to retain Rule 20.2.6 Hazardous Substances; AND Retain Appendix 5 Hazardous Substances.
<i>FSI388.753</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
378.81	Fire and Emergency New Zealand	Submitter seeks to amend the thresholds within Appendix 5 Hazardous Substances, as follows: <ul style="list-style-type: none"> • More permissive levels for 8.3; • More permissive levels for 8.3A; • To better recognise that fire retardants come in different forms, including as solids rather than liquids, powders and foams, and this alters the applicable thresholds, • To provide for the temporary storage of chemicals necessary for providing an emergency response. AND/OR Amend Appendix 5 Hazardous Substances in recognition that the provisions of the Hazardous Substances and New Organisms Act (HSNO) and Health and Safety at Work Act are adequate to manage risks in this regard, without an overlapping district plan framework. OR

		Delete Appendix 5 Hazardous Substances in recognition that the provisions of the Hazardous Substances and New Organisms Act (HSNO) and Health and Safety at Work Act are adequate to manage risks in this regard without an overlapping District Plan framework. AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
FS1035.188	Pareoranga Te Kata	Support
FS1168.209	Horticulture New Zealand	Support
FS1353.31	Tuakau Proteins Limited	Support
FS1388.57	Mercury NZ Limited	Oppose
637.9	Livestock Improvement Corporation	Submitter seeks to add “Agricultural Research Centre Campus” in Table 5.1 of Appendix 5 Hazardous Substances Activity Status Table – Permitted Activity Thresholds in the column for the Business, Business Town Centre, Business Tamahere, Industrial, Heavy Industrial, Hampton Downs Motor Sport and Recreation and Te Kowhai Airpark Zones. AND Any consequential amendments and/or additional relief required to address the matters raised in the submission.
FS1387.58	Mercury NZ Limited	Oppose
639.9	Dairy NZ Incorporated	Submitter seeks to add “Agricultural Research Centre Campus” in Table 5.1 of Appendix 5 Hazardous Substances Activity Status Table – Permitted Activity Thresholds in the column for the Business, Business Town Centre, Business Tamahere, Industrial, Heavy Industrial, Hampton Downs Motor Sport and Recreation and Te Kowhai Airpark Zones.
FS1387.63	Mercury NZ Limited	Oppose
697.319	Waikato District Council	Submitter seeks to amend Appendix 5 Ecotoxic Class 9 - High Biological Oxygen Demand (>10,000mg/l) as follows: <i>Line one - <u>High Biological Oxygen Demand (BODs)(>10,000 mg/l) <30m of a watercourse</u></i> <i>Line two - <u>High Biological Oxygen Demand (BODs)(>10,000 mg/l) >30m of a watercourse</u></i>
FS1168.210	Horticulture New Zealand	Oppose
FS1387.526	Mercury NZ Limited	Oppose
697.320	Waikato District Council	Submitter seeks to amend Appendix 5 Hazardous substances to include Assessment Criteria for

		<p>Discretionary Activities as follows:</p> <p><u>Assessment Criteria</u> When assessing discretionary applications, the assessment shall include (but is not limited to):</p> <p><u>a. How the hazardous facility is located on the site, taking into account separation from boundaries and other more sensitive land uses;</u></p> <p><u>b. How the design and proposed management contributes to the minimisation of adverse effects on the environment;</u></p> <p><u>c. The individual risks of the hazardous facility and cumulative risks with other hazardous facilities in the vicinity, as relevant;</u></p> <p><u>d. The actual and potential adverse effects associated with the transport of a hazardous substance on road infrastructure or on sensitive land uses along transport routes, if this is a significant aspect of the facility;</u></p> <p><u>e. Consideration of the risks posed by the occurrence of identified natural hazard events in the area to the hazardous facility;</u></p> <p><u>f. The degree of social, cultural or economic benefits the facility and its associated storage, use or disposal of hazardous substances will have locally;</u></p> <p><u>g. Whether an assessment of the risks has been provided which contains a level of detail which corresponds to the scale and nature of the facility proposed and the hazardous substances involved. An assessment may need to include the following considerations:</u></p> <ul style="list-style-type: none"> <u>i. the sensitivity of the receiving environment to any risks;</u> <u>ii. risk identification (inherent risk) and assessment, and risk management response (residual risk);</u> <u>iii. practicable alternative method of management that would present less risk;</u> <u>iv. how the proposal minimises or mitigates cumulative adverse effects with respect to other hazardous facilities in the area;</u> <u>v. proposed emergency management equipment and plans and the adequacy of overall emergency response capability.</u> <p><u>Note: a risk assessment should correspond to the scale and significance of the activity and its risks. A quantitative risk assessment may be required for major hazardous facilities where the risk contributors may be significant or complex. A risk assessment should be undertaken by a suitably qualified and experienced professional.</u></p>
FS1264.9	Bootleg Brewery	Oppose
FS1345.69	Genesis Energy	Oppose

11.3 Analysis

358. Submissions received from Horticulture New Zealand [419.14], Balle Bros Group Limited [466.17], Fonterra [797.38] and Buckland Marine Limited [465.10] seek to delete Appendix 5. The submission received from Horticulture New Zealand [419.141] does not provide a specific decision sought, however opposes the use of the Activity Status tables or quantity trigger limits for the management of hazardous substances.
359. These submissions do not agree with the use of the Activity Thresholds Table for the reasons that existing legislation (HSNO and HSWA) manages hazardous substances and that there is no need to duplicate. Submission [419.141] also states that the Activity Status Table approach is unworkable for horticulture growers, that it does not implement best practice for management of hazardous substances, and is no longer required as a result of the RMA Amendments in 2017.
360. I disagree with these submissions and consider that the Activity Thresholds Table is the easiest way for plan users to determine compliance with the rules in the proposed plan across the various zones. A recent example of where another Council has used an Activity Thresholds Table is Invercargill District Council, with their plan rules being declared operative in August 2019.
361. The submission from Fellrock Developments Limited and TTT Products Limited [543.7] seeks to retain Appendix 5. They support the proposed volumes and weights of hazardous substances specified in Appendix 5 and state that they should not be reduced. I consider that this submission provides an industry perspective on the quantity thresholds for their operations, therefore recommend accepting this submission.
362. The submission from Fire and Emergency New Zealand [378.81] seeks a variety of options regarding Appendix 5. The submission firstly seeks to amend Appendix 5, allowing for more permissive levels for 8.3 to better recognise that fire retardants come in different forms, including solids rather than liquids, and powders and foams, which alter the applicable thresholds. The submission also seeks to either/or amend Appendix 5 in recognition that the provisions for the HSNO and HSWA are considered adequate to manage risks in this regard, without an overlapping district plan framework. This option could include deleting Appendix 5.
363. I requested further information from FENZ regarding the quantities of hazardous substances stored at fire stations and on HAZMAT vehicles (refer to Appendix 5). The response from FENZ indicated that citric acid (classes 6.1E, 6.3B, 8.3A) and sodium carbonate (classes 6.1D, 6.3, 6.4A) are stored at fire stations and approximately 120kg of neutralising agents are stored on HAZMAT vehicles. FENZ also detailed that there are a number of other class 8.3A products on site such as laundry detergents, bleach, sanitisers, household cleaning products, specialist cleaning product for equipment and domestic workshop products such as CRC, methylated spirits etc. The information also sets out circumstances where large quantities of fire retardant and foam may be used. The example given is that of the Nelson fires in 2019 where 5600kg of product was being used per day, and the temporary storage of up to 15 – 30,000kg or L of product is needed to be stored on site. There is no information provided about whether any of the foams or fire retardants are classified as hazardous.
364. Mr Schaffoener has provided some comments regarding the above information and has indicated that the only product that is likely to trigger resource consent is the class 8.3 substances (mainly citric acid). However, depending on which zones the stations are located in, this may or may not be an issue. With respect to sodium carbonate, Mr Schaffoener has stated that this substance is permitted by the AST in any quantity.

365. With respect to emergency circumstances, there may be other legislative provisions which would override the requirements of the District Plan. However, again depending on which zones the hazardous substances are being stored or used in, they may comply with the district plan.
366. In conjunction with other submissions assessed later in this report, I do not consider that exemptions need to be made for activities undertaken by FENZ, as in most cases current fire stations would have existing use rights for their activities, therefore it is only where new activities occur where resource consent may be required. Additionally, my concern is that if exemption is applied to FENZ operations in sensitive zones, this could have adverse consequences if not assessed by way of resource consent to determine if the location is appropriate for the activity. In my consideration, I am also bearing in mind that the rules need to apply to all industries/operations across the district, not just those of FENZ.
367. Submissions from Livestock Improvement Corporation [637.9] and Dairy NZ Incorporated [639.9] seek to add the Agricultural Research Centre Campus in Table 5.1 of Appendix 5 to the permitted activity thresholds in the column for the Business, Business Town Centre, Business Tamahere, Industrial, Heavy Industrial, Hampton Downs Motor Sport and Recreation and Te Kowhai Airpark Zones. The Agricultural Research Centre Campus and Waikato Innovation Park had previously been included in Appendix H of the Operative Waikato District Plan, and I suspect were omitted by mistake from the notified District Plan. I therefore recommend accepting these submissions.
368. The submission from Waikato District Council [697.319] seeks to amend Appendix 5 in relation to Ecotoxic Class 9 – High Biological Oxygen Demand (>10,000mg/l) to clarify the thresholds both less than and greater than 30m of a watercourse, which makes the threshold clearer to the plan user. I agree that this change would be beneficial.
369. The submission from Waikato District Council [697.320] seeks to add additional assessment criteria in relation to discretionary activities.
370. Further submissions from Bootleg Brewery [FS1264.9] and Genesis Energy [FS1345.69] oppose this submission point and both seek that this point be rejected. However, Bootleg Brewery do offer an alternative option, and that is that the Matangi site be excluded/exempt from these rules, on the basis that effects from the operation of the site on the local community are addressed through a bespoke precinct zone, commercial agreement or effects are negligible and there is no need to apply a restriction.
371. Genesis Energy oppose the submission on the basis that the rules do not recognise or provide for industrial activities established prior to the other more sensitive zones. Should the industrial activity be developed secondary to other sensitive uses (residential etc.), then it should be required to manage amenity-related effects. However if, a new residential or other sensitive activity develops beside the industrial activity, that industrial activity should not be required to address the potential reverse sensitivity effects.
372. Genesis has indicated that if a rule of this nature is proposed, then it needs to be drafted to ensure that it only captures new industrial activities. They have also indicated that they have concern in respect to the requirement for an 8m-wide landscape planting strip. This aspect of the further submission is not related to hazardous substances and has been addressed in relation to Hearing 7 for the Industrial Zone and Heavy Industrial Zones.
373. My view is that while the further submissions from Bootleg Brewery [FS1264.9] and Genesis Energy [FS1345.69] raise points in respect to their own operations, the submission from Waikato District Council [697.320] would only apply to new or expanded hazardous facilities that require resource consent. Therefore, any existing developments would have

existing use rights. The additional assessment criteria will provide additional direction to plan users of the matters they need to address in resource consent applications. Ideally, this information should have been included in Appendix 5 at the time of notification, however was omitted by mistake.

11.4 Recommendations

374. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Reject** the submissions from Horticulture New Zealand [419.141] and [419.14], Balle Bros Group Limited [466.17], Fonterra [797.38], and Buckland Marine Limited [465.10] seeking to delete Appendix 5.
- (b) Therefore **accept** the further submission from Mercury NZ Limited [FS1168.211] and **reject** the further submissions from Tuakau Proteins Limited [FS1353.6], [FS1353.32], Bathurst Resources Limited and BT Mining Limited [FS1198.51] and Horticulture New Zealand [FS1387.1276].
- (c) **Accept** the submission from Fellrock Developments Limited and TTT Products Limited [543.7]. Therefore **reject** the further submission from Mercury NZ Limited [FS1388.753].
- (d) **Reject** submission from Fire and Emergency New Zealand [378.81]. Therefore **accept** the further submission from Mercury NZ Limited [FS1388.57] and **reject** the further submission from Pareoranga Te Kata [FS1035.188], Horticulture New Zealand [FS1168.209] and from Tuakau Proteins Limited [FS1353.31].
- (e) **Accept** the submissions from Livestock Improvement Corporation [637.9] and from Dairy NZ Incorporated [639.9]. Therefore **reject** the further submission from Mercury NZ Limited [FS1387.58] and [FS1387.63].
- (f) **Accept** the submission from Waikato District Council [697.319]. Therefore **reject** the further submissions from Horticulture New Zealand [FS1168.210] and from Mercury NZ Limited [FS1387.526].
- (g) **Accept** submission from Waikato District Council [697.320]. Therefore **reject** the further submissions from Bootleg Brewery [FS1264.9] and from Genesis Energy [FS1345.69].

11.5 Recommended amendments

375. The recommended changes are included in Appendix 2.

11.6 Section 32AA evaluation

376. The proposed changes to Appendix 5 provide clarity to the Activity Status Table. I do not consider the changes to require any additional s32AA evaluation.

12 Topic 10: Infrastructure (Chapter 14)

12.1 Introduction

377. Chapter 14 contains the proposed rules for district-wide infrastructure. There is a rule contained within Chapter 14 that specifically relates to the National Grid and any new hazardous facility within proximity to the National Grid Transmission Line. Rule 14.4 addresses the activities within the National Grid.

12.2 Submissions

378. One submission point was received on Rule 14.4.4 in Chapter 14 for the district-wide Infrastructure rule relating to the National Grid as follows:

Submission point	Submitter	Summary of submission
419.105	Horticulture New Zealand	<p>Submitter seeks to amend Rule 14.4.4(a)NC8 Non-Complying Activities as follows:</p> <p>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.</p> <p><u>The storage and handling of hazardous substances HSNO Classes 2-4 with explosive or intrinsic flammable properties in the National Grid Yard.</u></p> <p>AND</p> <p>Any consequential or additional amendments as a result of changes sought in the submission.</p>
FS1342.110	Federated farmers	Support
FS1350.88	Transpower Limited	Support

12.3 Analysis

379. The submission from Horticulture New Zealand [419.105] seeks to amend Rule 14.4.4 contained within Chapter 14, which aims to ensure that the storage and handling of hazardous substances within 12m of the National Grid Transmission Line are assessed as a Non-Complying activity.
380. The amendments sought by the submission are to reword the rule removing references to “any new hazardous facility”. It also provides specific reference to HSNO classes 2-4.
381. This submission is supported by two further submissions [FS1342.110] from Federated Farmers and [FS1350.88] from Transpower.
382. I disagree with this submission for a number of reasons. Firstly in respect to the submission removing the reference to “hazardous facility” this also removes the exemptions that may apply to the definition of hazardous facility as proposed (discussed previously in this report). Secondly, technical advice from Mr Schaffoener indicates that hazardous substances with explosive properties are included in class 1, not classes 2-4. Thirdly, in conjunction with the amendments sought in this submission, each zone chapter has submissions from the Waikato District Council for a new non-complying activity rule drafted the same as the notified rule for 14.4.4(a) NC8. For the above reasons, I do not consider that the submission from Horticulture New Zealand [419.105] provides appropriate alternative wording to Rule 14.4.4. Therefore I recommend that the submission from Horticulture New Zealand [419.105] be rejected.
383. With respect to the optimal location of the rule, as discussed at the start of this report, the National Planning Standards are directing a stand-alone chapter for hazardous substances. In the case of this rule (relating to the National Grid Transmission Line), it could go in either

Chapter 10 or Chapter 14. However, my preference is that it goes into Chapter 10 (Hazardous Substances) and that a link is provided to Chapter 14 (Infrastructure), as from a plan users perspective those generally looking for rules relating to hazardous substances would go to Chapter 10, while infrastructure providers (e.g. Transpower), would go to Chapter 14. Hence, I think there needs to be a linkage.

12.4 Recommendations

384. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Reject** the submission from Horticulture New Zealand [419.105]. Therefore **reject** the further submissions from Federated farmers [FS/342.110] and from Transpower Limited [FS/350.88].

12.5 Recommended amendments

385. No amendments are recommended to Rule 14.4.4(a) NC8 of Chapter 14. However, I recommend that a stand-alone chapter on hazardous substances which addresses objectives, policies and rules, replaces the individual rules in the zone chapters and includes the proposed Rule 14.4.4(a) NC8 (and cross references to Chapter 14 - Infrastructure).

13 Topic 11: Residential Zone (Chapter 16)

13.1.1 Introduction

386. Chapter 16 contains rules for the Residential Zone. The use, storage and disposal of any hazardous substances and location of any new hazardous facilities are typically more restricted in this zone due to the sensitivity of residential activities.

387. Rule 16.2.5 is the rule that controls hazardous substances in the Residential Zone. The proposed rule, as notified in the Proposed District Plan, is set out as follows:

Chapter 16 – Residential Zone

16.2.5 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substance where: <ul style="list-style-type: none"> (i) the aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified in the Residential zone in Table 5.1 contained within Appendix 5 (Hazardous Substances).
P2	(a) The storage or use of radioactive materials is: <ul style="list-style-type: none"> (i) an approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
DI	The use, storage or disposal of any hazardous substances that does not comply with Rule 16.2.5 PI or P2.

13.1.2 Submissions

388. Five submission points were received on Rule 16.2.5 in Chapter 16 for the Residential Zone. One submission proposes to delete Rule 16.2.5 and four submissions propose to amend Rule 16.2.5.

389. The following submission proposes to delete Rule 16.2.5 as follows:

Submission point	Submitter	Summary of submission
785.45	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited for 'Oil Companies'	Submitter seeks to delete Rule 16.2.5 - Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.
<i>FS1134.69</i>	<i>Counties Power Limited</i>	<i>Support</i>

390. The following submissions propose to amend Rule 16.2.5 as follows:

Submission point	Submitter	Summary of submission
378.24	Fire and Emergency New Zealand	Submitter seeks to add a clause to Rule 16.2.5 Hazardous substances, as follows: 16.2.5 Hazardous substances (a) The use, storage or disposal of any hazardous substance where: (i) the aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified in the Residential zone in Table 5.1 contained within Appendix 5 (Hazardous Substances). <u>(ii) 16.2.5(a)(i) excludes the fire stations and associated fire service operations.</u> AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
<i>FS1035.130</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
<i>FS1388.29</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
697.113	Waikato District Council	Submitter seeks to amend Rule 16.2.5 PI(a)(i) Hazardous substances to read as follows: (a) The use, storage or disposal of any hazardous substance <u>must meet the following conditions where:</u> (i) the aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified in the Residential zone in Table 5.1 contained within Appendix 5 (Hazardous Substances).
<i>FS1387.444</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
697.114	Waikato District Council	Submitter seeks to add Rule 16.2.5 NCI Hazardous substances as follows: <u>NCI</u>

		<u>The use, storage of fuel for retail sale within a service station in the Residential zone.</u>
FS1387.445	Mercury NZ Limited	Oppose
697.115	Waikato District Council	Submitter seeks to add Rule 16.2.5 NC2 Hazardous substances as follows: <u>NC2</u> <u>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.</u>
FS1350.131	Transpower Limited	Oppose
FS1387.446	Mercury NZ Limited	Oppose

13.2 Analysis

391. One submission was received from the Oil Companies [785.45] proposing to delete Rule 16.2.5, along with all rules pertaining to control of hazardous substances.
392. Similar to previous discussion in this report, I am not of the view that rules relating to the management of hazardous substances need to be deleted from the proposed District Plan. The reason for this view relates to the Council's role in ensuring that the use, storage and disposal of hazardous substances is appropriate for land use activities, particularly within sensitive zones, which would in the case of this rule include the Residential Zone.
393. The submission from Fire and Emergency New Zealand (FENZ) [378.24] proposes to include an additional rule to exclude fire stations and any associated fire service operations.
394. In further information received pre-hearing from FENZ, it would appear that there are no fire stations currently located within the Residential zone. Based on the Activity Status Table (AST) included in Appendix 5, there is the potential for new fire stations to require resource consent, given the volumes of hazardous substances stored currently at fire stations. However my view (similar that that discussed in the village and country living zones) is that these areas are sensitive environments and assessment at the time of resource consent provides an opportunity to assess location and the risk to sensitive activities. Therefore I do not agree that a new rule should exempt fire stations and associated fire service operations in the Residential Zone.
395. Three submissions received from Waikato District Council [697.113], [697.114] and [697.115] recommend changes which address separate matters. The first submission point [697.113] proposes an amendment to provide clarity to the rule and to align with other zone chapters. I agree that the proposed sentence structure and words "contained within" assist to provide clarity to the reader.
396. The second submission point from Waikato District Council [697.114] proposes an additional non-complying activity rule (NC1) which would ensure that service station activities would undergo rigorous assessment through the resource consent process within sensitive zones, including the residential zone. I would agree that this is a practical approach,

given that there is no specific rule regarding service stations. Therefore the activity status would be a non-complying activity under Rule 16.2.5.

397. In addition, I consider that the amendment to Rule 16.2.5 imposes a realistic activity status to discourage applicants from seeking resource consent for service stations, while also providing some flexibility for unforeseen circumstances where a service station within the zone may be appropriate and reasonable (and acceptable risk) to consent. A prohibited activity would not provide such flexibility.
398. I do consider that the proposed rule does change the approach taken in Rule 16.2.5, which as notified relies on using Appendix 5 to determine compliance for an activity (which would include service stations). However, I consider including service stations specifically in the rule has merit, because it makes it clear what the activity status is for this type of activity in the Residential Zone, which is more likely to be proposed in this zone than other activities involving hazardous substances. I therefore recommend that the submission from Waikato District Council be accepted.
399. The third submission point from Waikato District Council [697.115] proposes an additional non-complying rule (NC2) for any new hazardous facility with explosive or flammable intrinsic properties within 12m of the centre line of a National Grid Transmission Line. The reasons for this submission are to replicate the rules from Chapter 14 into Chapter 16 for increased clarity and usability of the Plan.
400. I note that two further submissions have been received on this point. The first from Transpower Limited [FS1350.131], which opposes the submission point because it prefers a standalone set of provisions, which is also consistent with the National Planning Standards, although the NPS acknowledges that rules can potentially be located in more than one chapter. This is a case in point where it could potentially be located in the Infrastructure chapter where the National Grid rules are located, or hazardous substances chapter (which is the most appropriate). The second further submission is from Mercury NZ Limited [FS1387.446] relating to natural hazard flood provisions (as addressed previously in this report).
401. As I indicated earlier in this report, there is scope through the 'All of Plan' submissions to incorporate the National Planning Standards and to remove the zone-specific rules for hazardous substances into a single district-wide chapter. I support this approach. However, a decision still needs to be made as to whether rules for the National Grid are duplicated in a stand-alone chapter for hazardous substances (i.e. Chapter 10) as well as a stand-alone chapter for Infrastructure (Chapter 14). I recommend 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.

13.3 Recommendations

402. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** the submission from Oil Companies [785.45] to delete Rule 16.2.5. Therefore **reject** the further submission from Counties Power Limited [FS1134.69].

- (b) **Reject** the submission from Fire and Emergency New Zealand [378.24]. Therefore **accept** the further submission from Mercury NZ Limited [FS1388.29] and **reject** the further submission from Pareoranga Te Kata [FS1035.130].
- (c) **Accept** the submissions received from the Waikato District Council [697.113], [697.114]. Therefore **reject** the further submissions from Mercury NZ Limited [FS1387.444], [FS1387.445].
- (d) **Accept in part** the submission from Waikato District Council [697.115]. Therefore **accept in part** further submissions from Transpower Limited [FS1350.131] and Mercury NZ Limited [FS1387.446].

13.4 Recommended amendments

403. The following amendments are recommended:

16.2.5 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substance must meet the following conditions where ³⁷ : (i) the aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified in the Residential zone in Table 5.1 contained within ³⁸ Appendix 5 (Hazardous Substances).
P2	(a) The storage or use of radioactive materials is: (i) an approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
DI	The use, storage or disposal of any hazardous substances that does not comply with Rule 16.2.5-PI or P2.
NC1	<u>The use, storage of fuel for retail sale within a service station in the Residential zone.</u> ³⁹
NC2	<u>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.</u> ⁴⁰

404. I note that while the above changes are recommended for Rule 16.2.5, I am also recommending that they be incorporated into a single rule for all zones. These changes will be collated and shown in Appendix 2.

13.5 Section 32AA evaluation

405. The S32 report dated July 2018 does evaluate the efficiency and effectiveness of using the Activity Status Table, and indicates that it is the most efficient way to enable individual hazardous substances according to class rather than individual substance.

406. The proposed changes to Rule 16.2.5 include NC1, which will add a new non-complying activity for service stations. The rule does change the approach taken by Rule 16.2.5, given that the notified rule relies on the quantity threshold tables included in Appendix 5.

³⁷ Submission [697.113] Waikato District Council

³⁸ Submission [697.113] Waikato District Council

³⁹ Submission [697.114] Waikato District Council

⁴⁰ Submission [697.115] Waikato District Council

407. I do not consider singling out service stations from other activities to be an issue, as other activities involving hazardous substances are more likely to locate in other zones (e.g. the industrial and business zones). However, the submissions from Waikato District Council to add new rules NCI relating to service stations are changes that broaden the scope of the rules.
408. By specifying the use and storage of fuel for retail sale within a service station as a non-complying activity, the intention is to restrict such activities establishing in residential areas, being sensitive environments. As discussed in the analysis above, the activity status does not prohibit the activity, but does impose a higher threshold under the Resource Management Act for the activity, and would be subject to the full scrutiny of the objective and policy framework. I consider that this proposed amendment aligns well with objective 10.1.1, which is about managing the effects (such as risk) with the storage, use or disposal of hazardous substances to ensure the effects are acceptable. It also aligns well with Policies 10.1.2, 10.1.3 and 10.1.4.
409. In my opinion, there would need to be a very good reason for establishing such an activity within a sensitive environment such as the residential zone, and Council, through the resource consent process, would need to be certain that any risks on the surrounding environment are considered to be acceptable. I would anticipate that an application of this nature would most likely generate a publicly-notified application.
410. Without getting into the detail of an individual application, it is also difficult to evaluate the costs and benefits of this provision. However broadly, without the proposed provision being included in the plan, there is a risk that service station activities may establish within sensitive zones. The benefit of having such a provision is that it offers protection and reassurance to the community that Council will control the activity and ensure that it is appropriately located.
411. With respect to proposed NC2, this rule effectively replicates a rule already included in Chapter 14, therefore the intent of the rule has not changed, just the location (being Chapter 10), which I consider to be a more efficient and effective location in the District Plan.
412. NC2 will streamline the rules to align with the National Planning Standards for the sensitive zones, which makes sense from an efficiency and effectiveness perspective, because the plan user would only need to refer to one chapter (Chapter 10), as opposed to multiple chapters.
413. In terms of proposed NC2, regarding the placement of the rule for efficiency and effectiveness, I consider that including the rule in the hazardous substances chapter is most appropriate option, as all plan users will use Chapter 10 to inform any activities involving the use, storage or disposal of hazardous substances.
414. The further submission from Transpower [FS/350.131] raises the concern in respect to Chapter 14 being the key chapter for Infrastructure providers. I consider that including the rule in the hazardous substances chapter is the most appropriate option, as all plan users will use Chapter 10 to inform any activities involving the use, storage or disposal of hazardous substances.

13.5.1 Other reasonably practicable options

415. Given the scope of submissions and further submissions, my recommendations in respect to NCI and NC2 are relatively narrow and do not have many alternative options. I will discuss these separately as follows:

NCI

416. The “do nothing” approach is an alternative option for NCI, which would then rely on Rule 16.2.5 PI to determine whether consent is required or not for a service station. However, if the activity does not meet the quantity thresholds for the residential zone (it is highly likely that a service station would not meet these thresholds, given that they are very restrictive for this zone), it would only trigger a discretionary activity resource consent.
417. Given that the residential zone is a sensitive environment, it would make sense that the district plan should protect this zone to a higher degree than other zones. I have no concern about singling out service stations in particular in the residential zone, as other activities involving hazardous substances are more likely to be undertaken in the industrial and business zones. Further, I do not scope through submissions to include additional activities which may establish in the residential zone.

NC2

418. The only alternative option for NC2 would be to include it solely within Chapter 14 Infrastructure. My only concern with this approach is if other plan users were to solely rely on Chapter 10 and miss the provisions in Chapter 14. A suggested approach would be to provide reference in each set of rules to ensure that plan users do not miss the provisions.

13.5.2 Effectiveness and efficiency

419. The recommended amendments give effect to the proposed policy framework, including Objective 10.1.1 and Policies 10.1.2, 10.1.3 and 10.1.4. The amendments improve the effectiveness of the rule framework in implementing the objective and policies, and provide guidance to plan users for the assessment of activities that involve hazardous substances, specifically in regard to service stations and the national grid transmission line in sensitive environments.

13.5.3 Costs and benefits

420. Without getting to the detail of individual applications it is difficult to evaluate the costs and benefits of NCI. However broadly speaking, without the proposed provision being included in the plan, there is a risk that service station activities may establish within sensitive zones. The benefit of having such a provision is that it offers protection and reassurance to the community that Council will control the activity and ensure that it is appropriately located.
421. In terms of the costs and benefits of NC2, as there is no material change to the rule framework or approach, there are no additional costs or benefits beyond what was notified.
422. In terms of both NCI and NC2 there are benefits for the environment and communities (social) with the additional recommended rules, as they provide clearer direction in respect to service stations locating in sensitive zones and activities involving explosive or flammable intrinsic properties within the national grid transmission line.
423. There is certainly a wider benefit to the local and regional community and to nationally-significant infrastructure, as NC2 ensures that the National Grid is protected and the rules are easily found. However, it is worth noting that the risks of not having protections in place could result in unacceptable consequences from an economic, cultural and social perspective

(e.g. if an explosion or fire were to occur within these locations affecting landowners and nationally-significant infrastructure).

13.5.4 Risk of acting or not acting

424. I consider that there are risks in not acting. Whilst there may not be sufficient information to assess the costs and benefits to the environment and communities, this is an aspect of individual proposals which would be considered at the time of individual applications for resource consent. Proposed Policy 10.1.2 Location of new hazardous facilities supports proposed NC1, while proposed Policy 10.1.4 Reverse sensitivity effects supports NC2.
425. If the panel does act, this provides protection and assurances to the communities where proposals occur in sensitive locations. The recommended approach provides an opportunity to evaluate individual proposals and the risks associated with those proposals.
426. The costs of not acting could have potential unintended consequences which would not be acceptable to Council or the community. This approach would also not align with the Policy framework which is being provided for hazardous substances. It is for this reason that I consider that the changes are appropriately justified.

13.5.5 Decision about most appropriate option

427. The amendment to the rule for sensitive zones gives effect to the proposed policy framework for hazardous substances. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of Rule 16.2.5.

14 Topic 12: Business Zone (Chapter 17)

14.1 Introduction

428. Rule 17.2.5.4 is the rule that controls hazardous substances in the Business Zone. The proposed rule, as notified in the Proposed District Plan, is set out as follows:

Chapter 17 – Business Zone

17.2.5.4 Hazardous substances

PI	<p>(a) The use, storage or disposal of any hazardous substances must meet the following conditions:</p> <ul style="list-style-type: none"> (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Business Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances) (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	<p>(a) Service station with a maximum storage for retail sale of:</p> <ul style="list-style-type: none"> (a) 100,000 litres of petrol in underground storage tanks; (b) 50,000 litres of diesel in underground storage tanks; and (c) 6 tonnes of LPG (single vessel storage). <p>(b) Council's control is limited to the following matters:</p> <ul style="list-style-type: none"> (i) the proposed site design and layout in relation to: <ul style="list-style-type: none"> A. the sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; and

	<p>B. interaction with natural hazards (flooding, instability), as applicable;</p> <p>C. proposed emergency management planning (spills, fire and other relevant hazards);</p> <p>(ii) proposed procedures for the monitoring and reporting of incidents.</p>
DI	The use, storage or disposal of any hazardous substances that does not comply with Rule 17.2.5.4 P1.
DI	A service station that does not comply with Rule 17.2.4.5 C1.

14.2 Submissions

429. Five submission points were received on Rule 17.2.5.4 in Chapter 17 for the Business Zone. One submission proposes to delete Rule 17.2.5.4 and four submissions propose to amend Rule 17.2.5.4.

430. The following submission has been received seeking to delete Rule 17.2.5.4:

Submission point	Submitter	Summary of submission
785.46	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited – Oil Companies	<p>Submitter seeks to delete Rule 17.2.5.4 – Hazardous Substances.</p> <p>AND</p> <p>Any consequential amendments or further relief to give effect to the submission.</p>

431. The following submissions have been received seeking to amend Rule 17.2.5.4:

Submission point	Submitter	Summary of submission
697.184	Waikato District Council	<p>Submitter seeks to delete Rule 17.2.5.4 P1 (a)(ii);</p> <p>AND</p> <p>Add new Permitted Activities Rule 17.2.5.4(P2), as follows:</p> <p><i><u>P2 (a) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.</u></i></p> <p>AND</p> <p>Amend Rule 17.2.5.4(D1) Hazardous substances as follows:</p> <p>The use, storage or disposal of any hazardous substances that does not comply with Rule 17.2.5.4 P1 <u>or P2.</u></p>
FS1387.474	Mercury NZ Limited	Oppose
378.84	Fire and Emergency New Zealand	<p>Submitter seeks to amend Rule 17.2.5.4 P1 Hazardous Substances, as follows:</p> <p>17.2.5.4 P1 Hazardous Substances</p>

		<p>(a) The use, storage or disposal of any hazardous substances must meet the following conditions:</p> <p>(i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Business Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances).</p> <p>(ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purpose, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.</p> <p><u>(iii) Rule 17.2.5.4 (a) (i) excludes fire stations and associated fire service operations.</u></p> <p>AND</p> <p>Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.</p>
FS1035.191	Pareoranga Te Kata	Support
FS1388.59	Mercury NZ Limited	Oppose
697.185	Waikato District Council	<p>Submitter seeks to add new Non-Complying Rule 17.2.5.4 NCI, as follows:</p> <p><u>NCI 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.</u></p>
FS1350.132	Transpower Limited	Oppose
FS1387.475	Mercury NZ Limited	Oppose
697.186	Waikato District Council	<p>Submitter seeks to amend Rule 17.2.5.4 D1 Hazardous substances, as follows:</p> <p><u>D1 service station that does not comply with Rule 17.2.4.5.4 C1.</u></p>
FS1387.476	Mercury NZ Limited	Oppose

14.3 Analysis

432. One submission was received from the Oil Companies Limited [785.46] seeking to delete Rule 17.2.5.4. The submitter opposes the rule and seeks the deletion of all proposed hazardous substance controls relating to storage, use, disposal or transportation of hazardous substances at service station sites or refuelling sites.
433. The submitter also supports the deletion of all rules pertaining to the control of hazardous substances where such controls are inappropriate, unnecessary, ineffective and unable to be justified via a section 32 analysis. The submitter indicates that these rules are all designed to address risk associated with hazardous substances where such controls are managed via other legislation. I disagree with this submission for reasons previously discussed in this report, therefore recommend rejecting the submission point.

434. The submission from Waikato District Council [697.184] seeks to delete Rule 17.2.5.4 P1(a)(ii) and add a new permitted activity rule (P2). One further submission has been received from Mercury NZ Limited [FS/387.475].
435. This submission point corrects a drafting error in the plan (where P1(a)(ii) should have been P2) and it also provides consistency with other zone chapters.
436. The submission from Waikato District Council [697.184] also seeks to amend Rule 17.2.5.4 (D1) making consequential amendments. I agree with these consequential changes.
437. The submission from Fire and Emergency New Zealand [378.84] seeks to amend Rule 17.2.5.4 by adding an exclusion to the rule for fire stations and associated fire service operations. Two further submissions were received from Pareoranga Te Kata [FS/035.191] and Mercury NZ Limited [FS/388.59] in support and opposition respectively.
438. I requested further information from Fire and Emergency New Zealand through a pre-hearing memorandum on a without prejudice basis to clarify which zones existing fire stations were located in. Additionally, I requested the types and quantities of hazardous substances stored at each existing site and on HAZMAT vehicles that would be above the existing quantity thresholds included in Appendix 5.
439. The information provided by Fire and Emergency New Zealand is contained in Appendix 5 of this report.
440. For the business zone specifically, there are a number of existing fire stations located within the zone. However, FENZ make the point that they require the ability to not only operate existing fire stations, but also establish new fire stations in locations which will enable reasonable response times to fires and other emergencies. They also state that new fire stations may be necessary in the future to achieve emergency response time commitments where development occurs and populations change.
441. Regarding the quantities of hazardous substances, the response provided by FENZ indicates that it is possible that hazardous substances stored at fire stations would trigger consent requirements. However, I disagree that this is the case, as the quantities provided for in the Business Zone are the least restrictive in the AST in Appendix 5 and provide for very large quantities. This is supported by comments from Mr Schaffoener (technical expert on hazardous substances), who indicates that the Business Zone provides for the storage of 6 tonnes of class 8.3A substances. FENZ have indicated that they carry approximately 120kg of neutralising agents on HAZMAT vehicles and would store 200kg of spare stock on station. They also indicated that the products stored are citric acid (6.1E, 6.3B, 8.3A) and sodium carbonate (6.1D, 6.3A, 6.4A).
442. Mr Schaffoener has indicated that citric acid and other class 8.3 substances are the only ones that could potentially trigger consent, as sodium carbonate has no thresholds and is permitted. However in the Business Zone, I would think that the quantities would fall well below the threshold of 6 tonnes. Therefore there is no need to exempt hazardous substances in this zone with the current permitted thresholds contained within Appendix 5, therefore I recommend that the submission from Fire and Emergency be rejected.
443. The submission from Waikato District Council [697.185] seeks to add a new rule (NC1) to 17.2.5.4 relating to the activities involving hazardous substances within 12m of the National Grid Transmission Line corridor. Given that the National Grid Transmission Line corridor does intercept the Business Zone, I agree that this rule is required to provide consistency across the plan.

444. As discussed in topic 11 of this report for the residential zone, the rule in Chapter 14 does provide a rule for new hazardous facilities that may establish within the corridor. However, placement of the rule will make it more visible to all plan users (as opposed to just infrastructure providers). I therefore consider taking a similar approach to the residential zone and recommend that the submission from Waikato District Council be accepted in part.
445. The submission from Waikato District Council [697.186] seeks minor changes to amend references in Rule 17.2.5.4 D1. I agree with this minor correction proposed, therefore recommend that the submission from Waikato District Council be accepted.

14.4 Recommendations

446. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** the submission from the Oil Companies Limited [785.46].
 - (b) **Accept** submission [697.184] from the Waikato District Council. Therefore **reject** further submission from Mercury NZ Limited [FS1387.474].
 - (c) **Reject** the submission from Fire and Emergency New Zealand [378.84]. Therefore **accept** the further submission from Mercury NZ Limited [FS1388.59] and **reject** the further submission from Pareoranga Te Kata [FS1035.191].
 - (d) **Accept in part** the submission from Waikato District Council [697.185]. Therefore **accept in part the** further submissions from Transpower Limited [FS1350.132] and from Mercury NZ Limited [FS1387.475].
 - (e) **Accept** the submission from Waikato District Council [697.186]. Therefore **reject** the further submission from Mercury NZ Limited [FS1387.476].

14.5 Recommended amendments

447. The following amendments are recommended:

Chapter 17 – Business Zone

17.2.5.4 Hazardous substances

P1	<p>(a) The use, storage or disposal of any hazardous substances must meet the following conditions:</p> <ol style="list-style-type: none"> (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Business Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances) (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
<u>P2</u>	<p>(a) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.</p>
C1	<p>(c) Service station with a maximum storage for retail sale of:</p> <ol style="list-style-type: none"> (d) 100,000 litres of petrol in underground storage tanks; (e) 50,000 litres of diesel in underground storage tanks; and (f) 6 tonnes of LPG (single vessel storage). <p>(d) Council's control is limited to the following matters:</p> <ol style="list-style-type: none"> (iii) the proposed site design and layout in relation to:

	<p>D. the sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; and</p> <p>E. interaction with natural hazards (flooding, instability), as applicable;</p> <p>F. proposed emergency management planning (spills, fire and other relevant hazards);</p> <p>(iv) proposed procedures for the monitoring and reporting of incidents.</p>
D1	The use, storage or disposal of any hazardous substances that does not comply with Rule 17.2.5.4 P1 <u>or P2</u> .
<u>D+2</u>	A service station that does not comply with Rule 17.2.4.5.4 C1.
<u>NC1</u>	<u>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.</u>

448. I note that, while the above changes are recommended for Rule 17.2.5, I am also recommending that they be incorporated into a single rule corresponding to all zones. These changes will be collated and shown in Appendix 2.

14.6 Section 32AA evaluation

449. The S32 report dated July 2018 does evaluate the efficiency and effectiveness of using the AST, and indicates that it is the most efficient way to enable individual hazardous substances according to class rather than individual substances.

450. The proposed changes to Rule 17.2.5.4 for the Business Zone will not materially change the rule framework for the rules as notified; only formatting changes. The addition of NC2 is not significant, as it already exists in Chapter 14. However, I am recommending that the rule be incorporated into a single chapter (Chapter 10) in order to streamline the rules to align with the National Planning Standards, which makes sense from an efficiency and effectiveness perspective, as the plan user would only need to refer to one chapter (Chapter 10), as opposed to multiple, as currently notified.

451. Additional discussion regarding the changes to the rule were provided above in Topic 11 relating to the residential zone. For efficiency I will not repeat this evaluation.

15 Topic 13: Business Town Centre Zone (Chapter 18)

15.1 Introduction

452. Rule 18.2.5 is included in Chapter 18 for the Business Town Centre Zone, which manages the land use effects of hazardous substances.

453. The notified rule is set out as follows:

Chapter 18 – Business Town Centre

18.2.5 Hazardous substances

PI	<p>(a) The use, storage or disposal of any hazardous substances where:</p> <p>(i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Business Town Centre Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances).</p>
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P2	(a) The storage or use of radioactive materials is: (i) in approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) Service station with a maximum storage for retail sale of: (i) 100,000 litres of petrol in underground storage tanks; (ii) 50,000 litres of diesel in underground storage tanks; (iii) 6 tonnes of LPG (single vessel storage). (b) The Council reserves its control over the following matters: (i) The proposed site design and layout in relation to: A. The sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. Interaction with natural hazards (flooding, instability), as applicable; C. Proposed emergency management planning (spills, fire and other relevant hazards); (ii) Proposed procedures for monitoring and reporting of incidents.
DI	The use, storage or disposal of hazardous substances that do not comply with Rules 18.2.5 PI, P2 or CI.

15.2 Submissions

454. Five submission points were received on Rule 18.2.5 of Chapter 18 for the Business Town Centre Zone. One submission proposes to delete Rule 18.2.5 and four submissions are proposing to amend Rule 18.2.5.

455. The following submission was received seeking to delete Rule 18.2.5:

Submission point	Submitter	Summary of submission
785.47	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited	Submitter seeks to delete Rule 18.2.5 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.

456. The following submissions were received seeking to amend Rule 18.2.5:

Submission point	Submitter	Summary of submission
378.92	Fire and Emergency New Zealand	Submitter seeks to amend Rule 18.2.5 Hazardous substances, as follows: (a) The use, storage or disposal of any hazardous substances where: (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Business Town Centre Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances). <i>(ii) Rule 18.2.5 (a) (i) does not apply to fire stations and</i>

		<u>associated fire service operations.</u> AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
FS1035.199	Pareoranga Te Kata	Support
FS1388.64	Mercury NZ Limited	Oppose
697.265	Waikato District Council	Submitter seeks to amend Rule 18.2.5 Hazardous substances, as follows: (a) The use, storage or disposal of any hazardous substances where <u>must meet the following conditions:</u> (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Business Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances).
FS1387.511	Mercury NZ Limited	Oppose
697.266	Waikato District Council	Submitter seeks to add to Rule 18.2.5 Hazardous substances, as follows: <u>D2 A service station that does not comply with Rule 18.2.5 C1.</u> AND Amend Rule 18.2.5 Discretionary Activities Rule D1, as follows: The use, storage or disposal of hazardous substances that do not comply with Rules 18.2.5 P1 or , P2 or C1.
FS1089.11	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited for 'Oil Companies'	Oppose
FS1387.512	Mercury NZ Limited	Oppose
697.267	Waikato District Council	Submitter seeks to add new Rule 18.2.5 NCI Hazardous substances, as follows: <u>NCI 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.</u>
FS1387.513	Mercury NZ Limited	Oppose
FS1350.133	Transpower Limited	Oppose

15.3 Analysis

457. The submission from the Oil Companies Limited [785.47] opposes rule 18.2.5 and seeks to delete the rule. I disagree with this submission for the same reasons outlined above in respect to the Business Zone, therefore recommend that this submission be rejected.

458. The submission from Fire and Emergency New Zealand [378.92] seeks an additional rule to be included in Rule 18.2.5 to exclude fire stations and associated fire service operations from the rule.
459. As discussed previously in regard to the Business Zone, additional information was sought from FENZ in regard to storage of hazardous substances. The same view applies with respect to the proposed rule, given that the quantity thresholds are the same for the Business Town Centre as they are for the Business Zone. An example of a new fire station being established within this zone is the proposed Pokeno fire station, which is yet to be constructed. However, as already discussed in this report, it is likely that compliance with the AST thresholds in Appendix 5 will be met. Therefore, I recommend that the submission from Fire and Emergency New Zealand be rejected.
460. The submission from Waikato District Council [697.265] seeks to amend Rule 18.2.5 in order to provide clarification to Rule 18.2.5. The reasons for these changes are to ensure alignment with other chapter rules. I agree with this approach and consider that the proposed wording will achieve this. Therefore I recommend that the submission from Waikato District Council be accepted.
461. The submission from Waikato District Council [697.266] seeks to add a new discretionary rule to Rule 18.2.5 to include provision for service stations. The proposed rule is requested to ensure service stations that do not comply with the controlled activity conditions included in Rule 18.2.5 CI cascade to DI, which is consistent with other zone chapter rules.
462. While I consider that DI already provides a discretionary activity status anyway for service stations that cannot achieve compliance with Rule 18.2.5 CI, I agree that consistency across the zone chapters is a good reason to include the proposed rule, therefore recommend accepting the submission.
463. The submission from Waikato District Council [697.267] seeks to add a new non-complying activity to Rule 18.2.5 for activities involving hazardous substances within 12m of the National Grid Transmission Line corridor.
464. While similar submissions have been received relating to the National Grid Transmission Line in other zones, the Business Town Centre zone does not include any areas of land within 12m of the centre line of National Grid Transmission Line. I note that a further submission from Transpower Limited [FS/350.133] was received opposing submission [697.267], as they consider that the rules should be provided in Chapter 14 - Infrastructure as a standalone chapter. Although not relevant to this zone because of the lack of Business land within 12m of the National Grid, elsewhere in my report I have addressed the concerns of Transpower. Without repeating previous discussion, overall, given that the proposed rule is not necessary for this zone, I recommend this submission is rejected.

15.4 Recommendations

465. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** the submission from the Oil Companies Limited [785.47].
 - (b) **Reject** the submission from Fire and Emergency New Zealand [378.92]. Therefore **accept** the further submission from Mercury NZ Limited [FS/388.64] and **reject** further submissions from Pareoranga Te Kata [FS/035.199].
 - (c) **Accept** the submission from the Waikato District Council [697.265]. Therefore **reject** further submission from Mercury NZ Limited [FS/387.511].

- (d) **Accept** the submission from the Waikato District Council [697.266]. Therefore **reject** further submission from Mercury NZ Limited [FS1387.512].
- (e) **Reject** the submission from Waikato District Council [697.267]. Therefore **accept** the further submissions from Mercury NZ Limited [FS1387.513] and Transpower Limited [FS1350.133].

15.5 Recommended amendments

466. The following amendments are recommended to Rule 18.2.5:

Chapter 18 – Business Town Centre

18.2.5 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substances where <u>must meet the following⁴¹ conditions:</u> (ii) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Business Town Centre Zone in Table 5.1 contained within⁴² Appendix 5 (Hazardous Substances).
P2	(a) The storage or use of radioactive materials is: (i) in approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) Service station with a maximum storage for retail sale of: (i) 100,000 litres of petrol in underground storage tanks; (ii) 50,000 litres of diesel in underground storage tanks; (iii) 6 tonnes of LPG (single vessel storage). (b) The Council reserves its control over the following matters: (i) The proposed site design and layout in relation to: A. The sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. Interaction with natural hazards (flooding, instability), as applicable; C. Proposed emergency management planning (spills, fire and other relevant hazards); (ii) Proposed procedures for monitoring and reporting of incidents.
D1	The use, storage or disposal of hazardous substances that do not comply with Rules 18.2.5 PI, or P2 or CI⁴³ .
<u>D2</u>	<u>A service station that does not comply with Rule 18.2.5 CI.⁴⁴</u>

467. I note that while the above changes are recommended for Rule 18.2.5, I am also recommending that they be incorporated into a single rule corresponding to all zones. These changes will be collated and shown in Appendix 2.

⁴¹ Submission [697.265] Waikato District Council

⁴² Submission [697.265] Waikato District Council

⁴³ Submission [697.266] Waikato District Council

⁴⁴ Submission [697.266] Waikato District Council

15.6 Section 32AA evaluation

468. The S32 report dated July 2018 evaluates the efficiency and effectiveness of using the AST, and indicates that it is the most efficient to enable individual hazardous substances according to class rather than individual substance.
469. The proposed changes to Rule 18.2.5 for the Business Town Centre Zone will not significantly modify the rules as proposed, and provides consistency with other zone chapters, and as such, no section 32AA evaluation is required.

16 Topic 14: Business Zone Tamahere (Chapter 19)

16.1 Introduction

470. Rule 19.2.5 is included in Chapter 19 for the Business Zone Tamahere, which manages the land use effects of hazardous substances.
471. The notified rule is set out as follows:

Chapter 19 – Business Zone Tamahere

19.2.5 Hazardous Substances

PI	(a) The use, storage or disposal of any hazardous substance where: <ul style="list-style-type: none"> (i) The aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified for the Business Zone Tamahere in Table 6.1 contained within Appendix 6 (Hazardous Substances); (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
DI	Any activity that does not comply with Rule 19.2.5 PI

16.2 Submissions

472. Four submission points were received on Rule 19.2.5 of Chapter 19 for the Business Zone Tamahere. One submission point proposes to delete Rule 19.2.5 and three submission points propose to amend Rule 19.2.5.
473. The following submission was received seeking to delete Rule 19.2.5:

Submission point	Submitter	Summary of submission
785.48	Z Energy Limited, BP Oil NZ Limited an Mobil Oil NZ Limited – Oil Companies	Submitter seeks to delete Rule 19.2.5 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.

474. The following submissions were received seeking to amend Rule 19.2.5:

Submission point	Submitter	Summary of submission
378.100	Fire and Emergency New Zealand	<p>Submitter seeks to amend Rule 19.2.5 Hazardous substances, as follows:</p> <p>(a) The use, storage or disposal of any hazardous substance where:</p> <p>(i) The aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified for the Business Zone Tamahere in Table 6.1 contained within Appendix 5 (Hazardous Substances);</p> <p>(ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017. <u>(iii) Rule 19.2.5(a) (i) excludes fire stations and associated fire service operations.</u></p> <p>AND</p> <p>Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.</p>
FS1035.207	Pareoranga Te Kata	Support
697.588	Waikato District Council	<p>Submitter seeks to amend Rule 19.2.5 (P1), as follows:</p> <p>(i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Business Zone in Table 6.1 <u>contained within Appendix 65</u> (Hazardous Substances)</p> <p>(b) The storage or use of radioactive materials is:</p> <p>(i) in approved equipment for medical and diagnostic purposes; or</p> <p>(ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.</p> <p>AND</p> <p>Add Rule 19.2.5 (P2), as follows:</p> <p><u>P2</u></p> <p><u>(a) The storage or use of radioactive materials is:</u></p> <p><u>(i) in approved equipment for medical and diagnostic purposes; or</u></p> <p><u>(ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.</u></p> <p>AND</p> <p>Amend Rule 19.2.5 D1, as follows:</p> <p>Any activity that does not comply with Rule 19.2.5 P1 <u>or P2.</u></p>

697.589	Waikato District Council	Submitter seeks to add a new non-complying activity in Rule 19.2.5 Hazardous Substances, as follows: <u>NCI</u> <u>The storage of fuel for retail sale within a service station.</u>
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16.3 Analysis

475. The submission from the Oil Companies Limited [785.48] opposes Rule 19.2.5 and seeks to delete the rule. I disagree with this submission for the same reasons outlined above in respect to the Business and Business Town centre zones, therefore recommend that this submission point be rejected.
476. The submission from Fire and Emergency New Zealand [378.100] seeks an additional rule to be included in Rule 18.2.5 to exclude fire stations and associated fire service operations. A further submission has been received from Pareranga Te Kata [FS1035.207] on this point. As discussed previously in regard to the Business and Business Town Centre Zones, additional information was sought from FENZ in regard to storage of hazardous substances. The same view applies with respect to the proposed rule, given that the quantity thresholds are the same for the Business Zone Tamahere, as they are for the other Business Zones.
477. The submission from Waikato District Council [697.588] seeks to amend Rule 19.2.5 to remove clause (b) relating to radioactive materials from P1, and add a new P2 to ensure consistency across the zone chapters. The reasons for these changes are to ensure alignment with other business zone chapter rules. I agree with this approach, and consider that the proposed wording will achieve this, although I note that the submission amendments refer to the Business Zone, which I consider may have been entered in error. I therefore recommend that the submission from Waikato District Council be accepted.
478. The submission from Waikato District Council [697.589] additionally seeks to add a new discretionary rule to Rule 19.2.5 relating to service stations that do not comply with the controlled activity conditions included in Rule 19.2.5 C1. This proposed change provides consistency with other zone chapter rules. Similar to the business zone, while Rule 19.2.5 provides for any non-compliance with C1 already as a discretionary activity, it provides consistency across the zone chapters. Therefore I recommend that the submission point from Waikato District Council be accepted.
479. The submission from Waikato District Council [697.589] additionally seeks to add a new non-complying activity to Rule 19.2.5 relating to service station activities. I consider this is an appropriate rule for the Tamahere Business Zone, as the area of the zone is small and surrounded by sensitive environments, including the Tamahere Village Green and Country Living Zone. I also understand that this area has largely been developed already.

16.4 Recommendations

480. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** the submission from the Oil Companies Limited [785.48].
 - (b) **Reject** the submission from Fire and Emergency New Zealand [378.100]. Therefore **reject** further submission from Pareranga Te Kata [FS1035.207].
 - (c) **Accept** the submission from Waikato District Council [697.588].
 - (d) **Accept** the submission from Waikato District Council [697.589].

16.5 Recommended amendments

481. The following amendments are recommended to Rule 19.2.5:

Chapter 19 – Business Zone Tamahere

19.2.5 Hazardous Substances

PI	(a) The use, storage or disposal of any hazardous substance where: (i) The aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified for the Business Zone Tamahere in Table 65 . I contained within Appendix 65 (Hazardous Substances); (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017. ⁴⁵
P2	The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017. ⁴⁶
D1	Any activity that does not comply with Rule 19.2.5 PI or P2 .
NCI	The storage of fuel for retail sale within a service station. ⁴⁷

482. I note that, while the above changes are recommended for Rule 19.2.5, I am also recommending that they be incorporated into a single rule corresponding to all zones. These changes will be collated and shown in Appendix 2.

16.6 Section 32AA evaluation

483. The proposed changes to Rule 19.2.5 for the Business Zone Tamahere will not significantly modify the rules as proposed and provides consistency with other zone chapters. As such, I do not consider that a section 32AA evaluation is necessary.

17 Topic 15: Industrial Zone (Chapter 20)

17.1 Industrial Zone

484. Rule 20.2.6 included within Chapter 20 for the Industrial Zone manages the land use effects of hazardous substances.

485. The notified rule is set out as follows:

Chapter 20 – Industrial Zone

20.2.6 Hazardous Substances

⁴⁵ Submission [697.588] Waikato District Council

⁴⁶ Submission [697.588] Waikato District Council

⁴⁷ Submission [697.589] from the Waikato District Council

PI	(a) The use, storage or disposal of any hazardous substance where: (i) the aggregate quantity of a hazardous substance of any hazard classification on a site is less than the quantity specified for the Industrial Zone in Table 5I contained within Appendix 5 (Hazardous Substances).
P2	(a) The storage or use of radioactive materials is: (i) an approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) The storage of the following maximum volumes of fuel for retail sale within a service station: (i) 100,000 litres of petrol in underground storage tanks; (ii) 50,000 litres of diesel in underground storage tanks; and (iii) 6 tonnes of LPG (single vessel storage). (b) Council shall reserve its control over the following matters: (i) The proposed site design and layout in relation to: A. the sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards); (ii) Procedures for monitoring and reporting of incidents.
DI	The use, storage or disposal of any hazardous substances that does not comply with Rule 20.2.6 PI, P2 or CI.

17.2 Submissions

486. Nine submission points were received on Rule 20.2.6. Three submissions oppose Rule 20.2.6 and seek to delete it, while one submission proposes to retain it and four propose to amend it.

487. The following submissions were made requesting to delete Rule 20.2.6:

Submission point	Submitter	Summary of submission
402.7	Tuakau Proteins Limited	Submitter seeks to delete Rule 20.2.6 Hazardous Substances. AND Any consequential amendments and/or additional relief to give effect to the concerns raised in the submission.
<i>FS1388.140</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
465.10	Buckland Marine Limited	No specific decision sought, but submission opposes Rule 20.2.6 PI Hazardous substances. AND Delete Table 5.I Activity Status Table – Permitted

		Activity Thresholds, from Appendix 5 Hazardous Substances.
785.49	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited – The Oil Companies	Submitter seeks to delete Rule 20.2.6 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.

488. The following submissions seek to retain or amend Rule 20.2.6:

Submission point	Submitter	Summary of submission
543.7	Fellrock Developments Limited and TTT Products Limited	Submitter seeks to retain Rule 20.2.6 Hazardous Substances; AND Retain Appendix 5 Hazardous Substances.
<i>FS1388.753</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
378.104	Fire and Emergency New Zealand	Submitter seeks to amend Rule 20.2.6 Hazardous Substances, as follows: (a) The use, storage or disposal of any hazardous substance where: (i) the aggregate quantity of a hazardous substance of any hazard classification on a site is less than the quantity specified for the Industrial Zone in Table 5I contained within Appendix 5 (Hazardous Substances). <u>(ii) Rule 20.2.6 (a) (i) excludes fire stations and associated fire service operations.</u> AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
<i>FS1035.211</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
<i>FS1388.69</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
578.3	Ports of Auckland Limited	Submitter seeks to amend Rule 20.2.6 PI Hazardous Substances, as follows: (a) The use, storage or disposal of any hazardous substances <u>within a hazardous facility</u> where: (i) the aggregate quantity of a hazardous substances of any hazard classification on a site is less than the quantity specified for the Industrial Zone in Table 5.I contained within Appendix 5 (Hazardous Substances). OR Add a new section 20.6 within Chapter 20 Industrial Zone, specifically providing for the Horotiu Industrial

		<p>Park (see Schedule 2 of the submission for specific provisions).</p> <p>AND</p> <p>Amend the Proposed District Plan to make alternative or consequential amendments as necessary to address the matters raised in the submission.</p>
FS1388.834	Mercury NZ Limited	Oppose
578.4	Ports of Auckland Limited	<p>Submitter seeks to amend Rule 20.2.6 D1 Hazardous Substances, from a discretionary activity to a restricted discretionary activity, as follows:</p> <p><u>RDI</u></p> <p>The use storage or disposal of any hazardous substances that does not comply with Rule 20.2.6 P1, P2 or C1.</p> <p><u>Council's discretion shall be restricted to the following matters:</u></p> <p><u>(i) the proposed operation and site layout;</u></p> <p><u>(ii) the separation distances from the receiving environment and other land uses;</u></p> <p><u>(iii) the degree and acceptability of residual risk;</u></p> <p><u>(iv) consideration of potential health and environmental hazards and exposure pathways arising from the proposed facility;</u></p> <p><u>(v) minimising potential cumulative risks including in conjunction with other nearby hazardous facilities;</u></p> <p><u>(vi) proposed emergency management planning;</u></p> <p><u>(vii) transport routes times and frequencies for the transport of hazardous substances on and off-site; (viii) waste management;</u></p> <p><u>(ix) compliance with relevant codes of practice and standards for specific materials/substances;</u></p> <p><u>(x) measures to minimise to mitigate potential adverse effects that may result from natural hazards; and</u></p> <p><u>(xi) the social and economic benefits of hazardous facilities.</u></p> <p>OR</p> <p>Add a new section 20.6 within Chapter 20 Industrial Zone, specifically providing for the Horotiu Industrial Park (see Schedule 2 of the submission for specific provisions).</p> <p>AND</p> <p>Amend the Proposed District Plan to make alternative or consequential amendments as necessary to address the matters raised in the submission.</p>
FS1388.835	Mercury NZ Limited	Oppose
697.628	Waikato District Council	<p>Submitter seeks to amend Rule 20.2.6 C1(b) Hazardous Substances B, as follows:</p>

		B. interaction with natural hazards (flooding, instability), as applicable <i>and</i> proposed emergency management planning (spills, fire and other relevant hazards);
FS1387.630	Mercury NZ Limited	Oppose
697.629	Waikato District Council	Submitter seeks to add a new Rule 20.2.6 NCI Hazardous Substances: <u>NCI</u> <u>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.</u>
FS1350.134	Pauline Whitney on behalf of Transpower Limited	Oppose
FS1387.631	Mercury NZ Limited	Oppose

17.3 Analysis

489. The submission from Fellrock Developments Limited and TTT [543.7] seeks to retain Rule 20.2.6 and supports the proposed volumes and weights of hazardous substances specified in Appendix 5, indicating that they should not be reduced. I consider this industry perspective useful and think that Rule 20.2.6 should be retained. However, I note that I am recommending amendments in response to matters raised in other submissions.
490. The submissions received from Tuakau Proteins Limited [402.7] and the Oil Companies [785.49] are requesting to delete Rule 20.2.6. The submission received from Buckland Marine Limited [465.10] does not specify what relief is sought in respect to Rule 20.2.6, however the submission does oppose the rule. Additionally, this submission proposes to delete Table 5.1 from Appendix 5. This point has been addressed earlier in this report in Topic I.
491. Tuakau Proteins Limited [402.7] and the Oil Companies [785.49] reasons for deleting Rule 20.2.6 relate to the removal of Council's functions under section 30 and 31 of the RMA and the changes to the HSNO and HSWA legislation. All three submitters (including Buckland Marine Limited [465.10]) consider HSNO or Worksafe controls to be adequate to address the environmental effects of hazardous substances in any particular case (including managing the risk of potential effects on the local environment).
492. As outlined previously in this report, while Council's s31 functions have been removed, there is still a role for Council to control land use activities across the Waikato District. None of the 3 submissions proposing to delete the Rule 20.2.6 has demonstrated how HSNO and Worksafe manage effects on land use in the Industrial zoning.
493. I note that existing industrial activities have existing use rights pursuant to section 10 of the RMA. Therefore Rule 20.2.6 is focused on new activities or any changes to the scale of existing activities.
494. Further, I note that many activities in the Industrial Zone would need to exceed the quantity thresholds included in Appendix 5 to trigger resource consent. Quantities in this zone have much more permissive quantity thresholds than all other zones, as the expectation is that industrial activities require storage of much larger quantities of hazardous substances than any other zone.

495. Out of the three submissions proposing to delete Rule 20.2.6, none of the submitters has demonstrated how the rule would impose restrictions on their operations, only that they consider HSNO and HSWA legislation to be sufficient to control land use activities within the industrial zone. Therefore I consider that Rule 20.2.6 should be retained, and recommend that the submissions from Tuakau Proteins, the Oil Companies and Buckland Marine be rejected.
496. Fire and New Zealand [378.104] seek to amend Rule 20.2.6 to include specific provision for fire service stations and associated fire service operations. As discussed in previous zone chapters, this is to ensure that the need for resource consent is not triggered for the storage of hazardous substances involved in their operations.
497. This submission is supported by one further submission [FS/035.211] from Pareoranga Te Kata and opposed by [FS/388.69] by Mercury NZ Limited.
498. From the further information provided by FENZ pre-hearing (discussed previously in this report), there is one fire station located within the industrial zone (in Ngaruawahia). Therefore the rules would only apply to new operations within this zone. Given that the AST provides for a significantly higher volume of hazardous substances to be stored and used in the industrial zone for operations compared with other zones, I do not consider that there is a need to include an additional rule to exempt their activities in this zone, therefore recommend rejecting the submission from Fire and Emergency New Zealand.
499. The submission from Ports of Auckland [578.3] relates to the inclusion of the wording of “within a hazardous facility” at the end of Rule PI (a), which aligns with the Ports’ submission on the definition of ‘Hazardous Facility’, as outlined in section 10 of this report relating to submission number [578.48].
500. My view, in further discussion with Mr Schaffoener, is that the storage of hazardous substances is generally a hazardous facility; hence I do not agree that the change is necessary to the rule.
501. The submission point from Ports of Auckland [578.4] seeks two options, the first being to amend Rule 20.2.6 DI from a discretionary activity status to a restricted discretionary activity status, and the second option being to add a new section 20.6 within Chapter 20 specifically providing for the Horotiu Industrial Park.
502. The reason that Ports of Auckland have requested a restricted discretionary activity status is because they do not support a discretionary activity status where an activity cannot achieve a permitted activity status under Rule 20.2.6 PI, P2 or CI.
503. In my mind, this reasoning does not provide sufficient justification to amend the activity status for activities that cannot meet the permitted activity thresholds for the Industrial Zone. Given the number of matters that are proposed to be addressed, it would make more sense for the activity status to reflect full discretion, given that resource consent has been triggered anyway.
504. I would also be concerned that Rule 20.2.6 applies to all properties with industrial zoning and could include a wide range of industrial activities where a variety of considerations need to be taken into account with respect to the storage, use and transportation of hazardous substances within sites. In my opinion, if I were to recommend a restricted discretionary activity rule with the matters as proposed by Ports of Auckland, it may not address all matters for all industrial sites.
505. I consider that a discretionary activity status is the best activity status to ensure that all adverse effects associated with hazardous substances are appropriately addressed by

resource consent, which would cover all of those matters listed in the Ports of Auckland submission. I note that submission [697.320] from Waikato District Council addressed in Topic 9 of this report proposes to include matters for consideration when assessing a resource consent application for a discretionary activity.

506. The second option sought by submission points [578.4] for Ports of Auckland seeks to add a new section 20.6 within Chapter 20 specifically providing for the Horotiu Industrial Park (not just the Ports of Auckland site).
507. From my reading of new section 20.6 included in the Ports of Auckland submission, it does not provide any rules relating to the management of hazardous substances in the Horotiu Industrial Park. For this reason, I consider that retaining Rule 20.2.6 is the most appropriate option to ensure that there are rules covering the effects of hazardous substances in the Horotiu Industrial Park. Therefore, I recommend that the submission point from Ports of Auckland be rejected.
508. The submission point from Waikato District Council [697.628] seeks minor amendments to the wording of Rule 20.2.6 C2(b) to provide clarity to the rule. I agree that the insertion of the word “and” into clause (b) does provide clarity to the rule, therefore recommend that the submission from Waikato District Council be accepted.
509. The submission point from Waikato District Council [697.629] seeks to add a new non-complying activity to Rule 20.2.6 to control hazardous substances within 12m of the National Grid Transmission Line corridor.
510. Further submissions from Transpower [FS1350.134] and Mercury NZ Limited [FS1387.631] have been received, both opposing the proposed rule. Transpower’s further submission is the same as raised previously in this report; they do not support relocation or replication of the National Grid provisions into the respective zone chapters. Transpower prefer a stand-alone set of provisions.
511. As the National Grid yard applies to sites within the Industrial zone, similar to earlier assessment, the proposed rule makes sense and could be applied in either a stand-alone chapter on hazardous substances or in Chapter 14, although I have recommended that all hazardous substances provisions be included in Chapter 10, therefore recommend that the submission from Waikato District Council be accepted in part.

17.4 Recommendations

512. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Accept** the submission from Fellrock Developments Limited and TTT [543.7]. Therefore **reject** the further submission from Mercury NZ Limited [FS1388.753].
 - (b) **Reject** the submissions from Tuakau Proteins Limited [402.7], the Oil Companies [785.49] and Buckland Marine Limited [465.10]. Therefore **accept** further submission from Mercury NZ Limited [FS1388.140].
 - (c) **Reject** submission from Fire and New Zealand [378.104]. Therefore **accept** further submission from Mercury NZ Limited [FS1388.69] and **reject** the further submission from Pareoranga Te Kata [FS1035.211].
 - (d) **Reject** the submission from Ports of Auckland [578.3] and **accept** further submission [FS1388.834] from Mercury NZ Limited.
 - (e) **Reject** the submission from Ports of Auckland [578.4]. Therefore **accept** [FS1388.835] from Mercury NZ Limited.

- (f) **Accept** the submission from Waikato District Council [697.628]. Therefore **reject** the further submission from Mercury NZ Limited [FS1387.630].
- (g) **Accept in part** the submission from Waikato District Council [697.629]. Therefore **accept in part** the further submissions from Mercury NZ Limited [FS1387.631] and Transpower Limited [FS1350.134].

17.5 Recommended amendments

513. The following amendments are recommended:

20.2.6 Hazardous Substances

PI	(a) The use, storage or disposal of any hazardous substance where: (i) the aggregate quantity of a hazardous substance of any hazard classification on a site is less than the quantity specified for the Industrial Zone in Table 51 contained within Appendix 5 (Hazardous Substances).
P2	(a) The storage or use of radioactive materials is: (i) an approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) The storage of the following maximum volumes of fuel for retail sale within a service station: (i) 100,000 litres of petrol in underground storage tanks; (ii) 50,000 litres of diesel in underground storage tanks; and (iii) 6 tonnes of LPG (single vessel storage). (b) Council shall reserve its control over the following matters: (i) The proposed site design and layout in relation to: A. the sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. interaction with natural hazards (flooding, instability), as applicable and ⁴⁸ . proposed emergency management planning (spills, fire and other relevant hazards); (ii) Procedures for monitoring and reporting of incidents.
DI	The use, storage or disposal of any hazardous substances that does not comply with Rule 20.2.6 PI, P2 or CI.
NCI	<u>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.</u> ⁴⁹

514. I note that while the above changes are recommended for Rule 20.2.6, I am also recommending that they be incorporated into a single rule corresponding to all zones. These changes will be collated and shown in Appendix 2.

⁴⁸ Submission [697.628] from Waikato District Council

⁴⁹ Submission [697.629] from Waikato District Council

17.6 Section 32AA evaluation

515. The amendments have not materially changed the approach to managing hazardous substances in the Industrial Zone chapter; therefore no section 32AA evaluation is required.

18 Topic 16: Industrial Zone Heavy (Chapter 21)

18.1 Industrial Zone Heavy

516. Rule 21.2.6 included within Chapter 21 for the Industrial Zone (Heavy) manages the land use effects of hazardous substances.

517. The notified rule is set out as follows:

Chapter 21 – Industrial Zone Heavy

21.2.6 Hazardous substances

PI	(b) The use, storage or disposal of any hazardous substance where: (ii) the aggregate quantity of hazardous substance of any hazard classification on a site is less than the quantity specified for the Industrial Zone Heavy in Table 5.1 contained within Appendix 5 (Hazardous Substances).
P2	(b) The storage or use of radioactive materials is: (iii) an approved equipment for medical and diagnostic purposes; or (iv) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(c) The storage of the following maximum volumes of fuel for retail sale within a service station: (iv) 100,000 litres of petrol in underground storage tanks; (v) 50,000 litres of diesel in underground storage tanks; and (vi) 6 tonnes of LPG (single vessel storage). (d) Council reserves its control over the following matters: (iii) The proposed site design and layout in relation to: C. the sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; D. interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards); (iv) Procedures for the monitoring and reporting of incidents.
DI	The use, storage or disposal of any hazardous substance that does not comply with Rules 21.2.6 PI, P2 or CI.

18.2 Submissions

518. Six submission points were received on Rule 21.2.6 of Chapter 21 for the Heavy Industrial Zone. Two submissions seek to delete Rule 21.2.6, while four seek to amend Rule 21.2.6.

519. The following submissions were made to delete Rule 21.2.6:

Submission point	Submitter	Summary of submission
581.36	Synlait Milk Ltd	Submitter seeks to delete Rule 21.2.6 Hazardous

		substances.
FSI388.955	Mercury NZ Limited	Oppose
FSI341.53	Hynds Pipe Systems Limited	Support
FSI134.82	Counties Power Limited	Support
785.1	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited	Submitter seeks to delete Rule 21.2.6 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.
FSI134.83	Counties Power Limited	Support

520. The following submissions were made to amend Rule 21.2.6:

Submission point	Submitter	Summary of submission
378.110	Fire and Emergency New Zealand	Submitter seeks to amend Rule 21.2.6 Hazardous Substances, as follows: (a) The use, storage or disposal of any hazardous substance where: (i) the aggregate quantity of hazardous substance of any hazard classification on a site is less than the quantity specified for the Heavy Industrial Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances). <u>(ii) Rule 21.2.6 (a) (i) excludes fire stations and associated fire service operations.</u> AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
FSI035.217	Pareoranga Te Kata	Support
697.703	Waikato District Council	Submitter seeks to add new Rule 21.2.6 (NC1) Hazardous substances, as follows: <u>NC1</u> <u>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.</u>
FSI350.135	Transpower Limited	Oppose
FSI387.649	Mercury NZ Limited	Oppose
697.708	Waikato District Council	Submitter seeks to amend Rule 21.2.6 PI(a)(i) Hazardous substances, as follows:

		(i) the aggregate quantity of hazardous substance of any hazard classification on a site is less than the quantity specified for the Industrial Zone Heavy in Table 5.1 contained within Appendix 5 (Hazardous Substances).
FS1345.79	Alice Barnett on behalf of Genesis Energy	Oppose
FS1387.650	Mercury NZ Limited	Oppose
924.32	Genesis Energy Limited	<p>Submitter seeks to amend Rule 21.2.6- Hazardous Substances as follows:</p> <p><u>Hazardous substance use, storage or disposal at any site within a Heavy Industrial zone shall be managed in accordance with the Safety at Work (Hazardous Substances) Regulations, and that any activity that does not comply with the Safety at Work (Hazardous Substances) Regulation is a discretionary activity.</u></p> <p>OR</p> <p>Amend Rule 21.2.6 P1- Hazardous substances as follows:</p> <p>(a) The use, storage or disposal of any hazardous substance where:</p> <p>(i) The aggregate quantity of hazardous substance of any hazard classification on a site is less than the quantity specified for the Heavy Industrial Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances); or</p> <p><u>(ii) The activity is located in the Heavy Industrial Zone at Huntly Power Station and is located at least 20m distance from the zone boundary, except in relation to existing water intake and outfall structures (where no setback applies).</u></p>
FS1089.5	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited for 'Oil Companies'	Not Stated

18.3 Analysis

521. The submissions from Synlait Milk Limited [581.36] and the Oil Companies Limited [785.1] propose to delete Rule 21.2.6.
522. Synlait Milk Limited's reasons are that rules for hazardous substances in the Proposed District Plan duplicate legislation and offer no additional environmental protections to those already achieved through other regulations, such as in the Heavy Industrial Zone provisions where hazardous substances are anticipated.
523. Three further submissions were received on this point. [FS1134.82] from Counties Power, [FS1341.53] Hynds Pipe Systems Limited and Mercury Energy NZ [FS1388.955]. Counties Power and Hynds Pipe Systems Limited support submission point [581.36], while Mercury Energy opposes the submission.
524. The further submission from Hynds Pipe Systems Limited seeks to protect the location of Heavy Industrial Land from encroachment by sensitive activities and proposals for residential re-zoning. Hynds supports the submission as it relates to these matters because they are

also concerned that rezoning of land adjacent to the Heavy Industrial land will create reverse sensitivity effects on the existing and proposed industrial business operations.

525. The Oil Companies Limited's reasons are similar to Synlait's. The submitter is seeking the deletion of all proposed hazardous substances controls relating to storage, use, disposal or transportation of hazardous substances at service station sites (as broadly defined) or refuelling sites. Their reasons also mention that the section 32 report fails to identify why additional controls are required.
526. Without reiterating previous discussion on the points raised above, I will simply say that I disagree with these reasons and that I consider that in the Heavy Industrial Zone, while there are likely to be more hazardous substances used for operations, the AST reflects this and enables a much higher threshold than other zones in the District Plan. Therefore, I recommend that the submissions from Synlait Milk Limited and the Oil Companies Limited be rejected.
527. The submission from Fire and Emergency New Zealand [378.110] seeks an exemption to Rule 21.2.6 for fire stations and associated fire service operations. As discussed in previous zone chapters, this is to ensure that the need for resource consent is not triggered for the storage of hazardous substances involved in their operations.
528. This submission is supported by one further submission from Pareoranga Te Kata [FS1035.217].
529. From the further information provided by FENZ pre-hearing (discussed previously in this report), there are no current fire stations within the heavy industrial zone. Therefore the rules would only apply to new operations within this zone. Given that the AST provides for a significantly higher volume of hazardous substances to be stored and used for their operations compared with other zones, I do not consider that there is a need to include an additional rule to exempt their activities in this zone.
530. The submission from Waikato District Council [697.703] proposes to include an additional rule (NC1) to provide for activities involving hazardous substances within 12m of the National Grid Transmission Line corridor. There are two further submissions, from Transpower [FS1350.135] and Mercury NZ Limited [FS1387.649] opposing this submission point.
531. Similar to other zones, I consider that this proposed rule would ensure that activities within 12m of the National Grid Transmission Lines are covered by the new Chapter 10 rules (as directed by the National Planning Standards) and Chapter 14 Infrastructure, although I have recommended that all of the hazardous substances provisions be included in Chapter 10. Therefore, I recommend that the submission from Waikato District Council be accepted in part.
532. Submission [697.708] from Waikato District Council proposes to amend Rule 21.2.6 P1(a)(i) to provide clarification to the rule and consistency across the zone chapters. This submission has two further submissions in opposition from Genesis Energy [FS1345.79] and Mercury NZ Limited [FS1387.650]. For consistency of wording across the zone chapters, I consider that this proposed amendment is appropriate, therefore recommend that the submission from the Waikato District Council be accepted.
533. The submission from Genesis Energy Limited [924.32] seeks to amend Rule 21.2.6 by providing reference to the Safety at Work (Hazardous Substances) Regulations and providing an exemption for activities' location within 20m of the zone boundary of the Huntly Power Station. A further submission from the Oil Companies [FS1089.5] was

received on this point, indicating that they support this point in part, insofar as recognising the duplication of the requirements under the Health and Safety (Hazardous Substances) Regulations and the Health and Safety at Work Act, however stress the removal of Council's explicit functions under sections 30 and 31 of the RMA. The further submission also reiterates the Oil Companies' position that a robust s32 analysis is required to justify provisions to be included in the Proposed District Plan.

534. As already highlighted throughout this report, I do not agree with the submission from the Oil Companies, therefore do not agree with their further submission on the point raised by Genesis Energy. However, for similar reasons, I question why the proposed rule would specifically reference other legislation when the District Plan is about managing effects under the RMA.
535. A rule such as that proposed is quite problematic, because firstly it would not be within Council's powers or functions to manage activities that do not comply with other legislation (which Council does not administer). Secondly, the AST included in Appendix 5 is a much easier method of determining compliance, and if resource consent is triggered, this would evaluate the risks and potential adverse effects associated with the proposed activity in the Industrial Zone. However, I note that in order to trigger consent under the AST, significant quantities of hazardous substances would have to be stored or used on the site.
536. Regarding the second option proposed in the submission (the insertion of clause (ii) into Rule 21.2.6) - while I agree that an exemption could be provided for the Huntly Power Station, the site already has existing use rights, and information relating to the storage of hazardous substances for the existing operation has already been supplied to Council via an Environment Court Appeal in 2009. On this basis, I do not consider that an exemption is required for the Huntly Power Station, unless there are future plans that may trigger consent through the AST in Appendix 5 of the District Plan. I therefore recommend that the submission from Genesis Energy Limited be rejected.

18.4 Recommendations

537. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** submissions from Synlait Milk Limited [581.36] and from the Oil Companies Limited [785.1]. Therefore **accept** the further submission from Mercury NZ Limited [FS1388.955] and **reject** the further submissions from Hynds Pipe Systems Limited [FS1341.53] and Counties Power Limited [FS1134.83] and [FS1134.82].
 - (b) **Reject** the submission from Fire and Emergency New Zealand [378.110]. Therefore **reject** the further submission from Pareoranga Te Kata [FS1035.217].
 - (c) **Accept in part** the submission from Waikato District Council [697.703]. Therefore **accept in part** further submissions from Mercury NZ Limited [FS1387.649] and Transpower Limited [FS1350.135].
 - (d) **Accept** the submission from Waikato District Council [697.708]. Therefore **reject** further submissions from Genesis Energy [FS1345.79] and from Mercury NZ Limited [FS1387.650].
 - (e) **Reject** the submission from Genesis Energy Limited [924.32]. Therefore **reject** further submission from the Oil Companies [FS1089.5].

18.5 Recommended amendments

538. The following amendments are recommended:

21.2.6 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substance where: (i) the aggregate quantity of hazardous substance of any hazard classification on a site is less than the quantity specified for the Industrial Zone Heavy in Table 5.1 contained within ⁵⁰ Appendix 5 (Hazardous Substances).
P2	(a) The storage or use of radioactive materials is: (i) an approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) The storage of the following maximum volumes of fuel for retail sale within a service station: (i) 100,000 litres of petrol in underground storage tanks; (ii) 50,000 litres of diesel in underground storage tanks; and (iii) 6 tonnes of LPG (single vessel storage). (b) Council reserves its control over the following matters: (i) The proposed site design and layout in relation to: A. the sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards); (ii) Procedures for the monitoring and reporting of incidents.
DI	The use, storage or disposal of any hazardous substance that does not comply with Rules 21.2.6 PI, P2 or CI.
<u>NCI</u>	<u>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.</u> ⁵¹

539. I note that while the above changes are recommended for Rule 21.2.6, I am also recommending that they be incorporated into a single rule corresponding to the zones. These changes will be collated and shown in Appendix 2.

18.6 Section 32AA evaluation

540. The amendments have not materially changed the approach to managing hazardous substances in the Industrial Zone chapter, therefore no section 32AA evaluation is required.

19 Topic 17: Rural Zone (Chapter 22)

19.1 Introduction

541. Rule 22.2.4 included within Chapter 22 for the Rural Zone manages the land use effects of hazardous substances.

⁵⁰ Submission [697.708] from Waikato District Council

⁵¹ Submission [697.703] from Waikato District Council

542. The notified rule is set out as follows:

Chapter 22 – Rural Zone

22.2.4 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substances where: (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 6.1 contained within Appendix 6 (Hazardous Substances).
P2	(a) The storage or use of radioactive materials if it is: (i) an approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
C1	(a) The storage of the following maximum volumes of fuel for retail sale within a service station: (i) 100,000 litres of petrol in underground storage tanks; (ii) 50,000 litres of diesel in underground storage tanks; and (iii) 6 tonnes of LPG (single vessel storage). (b) Council's control is reserved over the following matters: (i) The proposed site design and layout in relation to: A. the sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards); (ii) Procedures for monitoring and reporting of incidents.
D1	The use, storage or disposal of hazardous substances that does not comply with Rule 22.2.4 PI, P2 or C1.

19.2 Submissions

543. 13 submission points were received on Rule 22.2.4 in Chapter 22 for the Rural Zone. One submission did not include any specific decision sought. Five submissions proposed to delete Rule 22.2.4 and eight submissions sought amendments to Rule 22.2.4.

544. The following submission sought no specific decision:

Submission point	Submitter	Summary of submission
330.85	Andrew and Christine Gore	No specific decision sought, however submission refers to Rule 22.2.4 Hazardous substances.
FS1386.450	Mercury NZ Limited	Oppose

545. The following submissions were made seeking to delete Rule 22.2.4:

Submission point	Submitter	Summary of submission
419.14	Horticulture New Zealand	Submitter seeks to delete Appendix 5 Hazardous Substances and Table 5.1 Activity Status Table - Permitted activity thresholds. AND Delete references to Appendix 6 and Table 6.1 Activity Status Table in Rule 22.2.4 Hazardous Substances. AND Any consequential or additional amendments as a result of changes sought in the submission.
466.17	Balle Bros Group Limited	Submitter seeks to delete Table 5.1 Activity Status Table – Permitted Activity Thresholds from Appendix 5 Hazardous Substances, in the context of opposing Rule 22.2.4 PI Hazardous Substances.
<i>FS1388.408</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
<i>FS1302.14</i>	<i>Mercer Airport</i>	<i>Support</i>
785.2	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited	Submitter seeks to delete Rule 22.2.4 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.
<i>FS1198.48</i>	<i>Bathurst Resources Limited and BT Mining Limited</i>	<i>Support</i>
<i>FS1302.17</i>	<i>Mercer Airport</i>	<i>Support</i>
<i>FS1342.215</i>	<i>Federated farmers</i>	<i>Support</i>
797.27	Fonterra Limited	Submitter seeks to delete Rule 22.2.4 Hazardous substances. AND Any consequential amendments or further relief to give effect to the concerns raised in the submission.
<i>FS1342.224</i>	<i>Federated Farmers</i>	<i>Support</i>
<i>FS1168.70</i>	<i>Horticulture New Zealand</i>	<i>Support</i>
<i>FS1387.1270</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>

546. The following submissions were made seeking to amend Rule 22.2.4:

Submission point	Submitter	Summary of submission
349.4	Kim Robinson on behalf	Submitter seeks to amend Rule 22.2.4 Hazardous

	of Lochiel Farmlands Limited	substances, to replace the reference from "Appendix 6 (Hazardous Substances)" to "Appendix 5".
<i>FS1386.496</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
378.33	Fire and Emergency New Zealand	<p>Submitter seeks to amend Rule 22.2.4 Hazardous substances, as follows: 22.2.4 Hazardous substances</p> <p>(a) The use, storage or disposal of any hazardous substances where:</p> <p>(i) The aggregate quantity of hazardous substances of any hazard classification on a site less than the quantity specified for the Rural Zone in Table 6.1 contained within Appendix 5 (Hazardous Substances). <u>(ii) Rule 22.2.4 (a) (i) excludes fire stations and associated fire service operations.</u></p> <p>AND</p> <p>Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.</p>
<i>FS1388.35</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
<i>FS1035.139</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
419.15	Horticulture New Zealand	<p>Submitter seeks to delete Rule 22.2.4 PI Hazardous Substances</p> <p>AND</p> <p>Add a replacement Rule 22.2.4 PI Hazardous Substances, as follows:</p> <p><u>The use, storage or disposal of any hazardous substance is permitted.</u></p> <p>AND</p> <p>Any consequential or additional amendments as a result of changes sought in the submission.</p>
<i>FS1342.111</i>	<i>Federated Farmers</i>	<i>Support</i>
419.16	Horticulture New Zealand	<p>Submitter seeks to amend Rule 22.2.4 DI Hazardous substances to become a restricted discretionary activity rather than a discretionary activity.</p> <p>AND</p> <p>Any consequential or additional amendments as a result of changes sought in the submission.</p>
<i>FS1388.179</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
680.209	Federated Farmers of New Zealand	<p>Submitter seeks to amend Rule 22.2.4 PI Hazardous Substances, as follows:</p> <p>(a) The use, storage or disposal of any hazardous substances where:</p> <p>(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 56.1 contained</p>

		<p>within Appendix 56 (Hazardous Substances), <u>with the exception of:</u> ...</p> <p><u>(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:</u></p> <p><u>(a) NZS8409:2004 Management of Agrichemicals;</u></p> <p><u>(b) The Hazardous Substances and New Organisms Act 1996 (HSNO) and Regulations</u></p> <p><u>(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;</u></p> <p><u>(d) The storage and use of fertiliser within the Rural Zone in accordance with the:</u></p> <ul style="list-style-type: none"> • <u>Fertiliser (Corrosive) Group Standard HSR002569, and</u> • <u>Fertiliser (Oxidising) Group Standard HSR002570, and</u> • <u>Fertiliser (Subsidiary Hazard) Group Standard HSR002571, and</u> • <u>Fertiliser (Toxic) Group Standard HSR002572, and</u> • <u>Fert Research's Code of Practice for Nutrient Management 2007.</u> <p>AND Any consequential changes needed to give effect to this relief.</p> <p>AND</p> <p>Any consequential amendments to Chapter 23: Country Living Zone to address areas of existing farmland zoned as Country Living Zone.</p>
FS1168.69	Horticulture New Zealand	Support
FS1387.212	Mercury NZ Limited	Oppose
697.777	Waikato District Council	<p>Submitter seeks to amend Rule 22.2.4 PI(a)(i) Hazardous substances, as follows:</p> <p>(a) The use, storage or disposal of any hazardous substances must meet the following conditions where:</p> <p>(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 65.1 contained within Appendix 65 (Hazardous Substances).</p>
FS1345.83	Alice Barnett on behalf of Genesis Energy	Oppose
FS1387.688	Mercury NZ Limited	Oppose
697.778	Waikato District Council	Submitter seeks to add a new non-complying activity (NCI) to Rule 22.2.4 Hazardous substances ,as follows:

		<u>NCI</u> <u>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.</u>
FS1350.136	Pauline Whitney on behalf of Transpower Limited	Oppose
FS1387.689	Mercury NZ Limited	Oppose
924.36	Genesis Energy Limited	Submitter seeks to amend Rule 22.2.4 PI Hazardous Substances as follows: (a) The use, storage or disposal of any hazardous substance where: (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 65.1 contained within Appendix 65 (Hazardous Substances), or <u>(ii) the activity is located in Specific Area 22.6.1 and is managed in accordance with the Health and Safety at work (Hazardous Substances) Regulations.</u>

19.3 Analysis

547. The submission received from Andrew and Christine Gore [330.85] does not include a specific decision sought. The submission simply refers to Rule 22.2.4 Hazardous substances. A further submission from Mercury NZ Limited [FS1386.450] opposes this submission. As I am unclear what relief is sought by the submitter, I recommend rejecting this submission.
548. The submission from Horticulture New Zealand [419.14] has been addressed previously in Topic 9 of this report with regard to deleting Appendix 5. However, the submission also seeks to delete references to Appendix 6 and Table 6.1 Activity Status Table in Rule 22.2.4. In regard to the incorrect references in Rule 22.2.4, I agree that the rule needs to refer to Appendix 5 and Table 5.1. However, as I have recommended to reject this submission in Topic 9, I will also recommend rejecting the submission in respect to Rule 22.2.4, noting that this change is considered minor and has also been submitted on by Waikato District Council.
549. Three submissions have been received proposing to delete Rule 22.2.4 - from the Oil Companies Limited [785.2], Fonterra Limited [797.27] and Balle Bros Group Limited [466.17].
550. The submission from Balle Bros Group Limited [466.17] opposes Table 5.1 of Appendix 5 in the context of Rule 22.2.4 PI. The reasons for this submission are that hazardous substances are managed through existing legislation and that this is an unnecessary additional level of regulation. I do not agree that the provisions duplicate requirements of other legislation. I have relied on technical advice from Mr Schaffoener, who advises that there is no additional level of regulation proposed, but largely maintenance of the status quo.
551. The Oil Companies Limited [785.2] proposes to delete Rule 22.2.4, and the reasons for this submission are that controls are inappropriate, unnecessary, ineffective, inefficient and unable to be justified via a section 32 analysis. The submission indicates that these rules are

designed to address risk with hazardous substances, and that risk is appropriately managed via other legislation and the section 32 report fails to identify why additional controls are required. The submission also specifies that the Resource Legislation Amendment Act 2017 removed the explicit function of district and regional councils to control adverse effects of the storage, use, disposal, or transportation of hazardous substances under sections 30 and 31 of the Resource Management Act 1991.

552. The submission from Fonterra Limited [797.27] seeks to delete Rule 22.2.4, and similar to the Oil Companies Limited submission [785.2], the reasons provided are that the Resource Legislation Amendments Act 2017 amended the RMA to remove hazardous substances as an explicit function of Council, and that the plan does not provide justification for inclusion of provisions.
553. All further submissions (with the exception of Mercury NZ Limited) from Mercer Airport [FS1302.14] and [FS1302.17], Bathurst Resources Limited and BT Mining Ltd [FS1198.48], Federated Farmers [FS1342.224] and Horticulture New Zealand [FS1168.70] were received supporting these above points.
554. I disagree with all three submissions proposing to delete Rule 22.2.4, as neither HSNO nor HSWA manage the use of land for managing hazardous substances. As discussed earlier in this report in Topic 1, while Council may not have an explicit function pursuant to sections 30 and 31, it does have a role to ensure the health and safety of people and the environment, as set out in the purpose of the RMA. This has been discussed in recent case law⁵², as set out in the legal opinion from Tompkins Wake attached as Appendix 6 to this report. Additionally, Invercargill District Council has recently declared their District Plan operative on 30 August 2019, which includes an Activity Status Table (AST). This approach has been recently tested by the Environment Court, as also highlighted in the legal opinion from Tompkins Wake.
555. In reliance on both the legal opinion from Tompkins Wake and technical advice received from Mr Schaffoener (attached as Appendix 4), I recommend that these submissions be rejected.
556. The submission from Lochiel Farmlands Limited [349.4] seeks to amend Rule 22.2.4 to replace the reference from “Appendix 6 (Hazardous Substances)” to “Appendix 5 (Hazardous Substances)”. I agree with this correction, as the rule should reference Appendix 5 and not Appendix 6, and recommend that this submission be accepted.
557. The submission from Fire and Emergency New Zealand [378.33] seeks to add an additional rule to Rule 22.2.4, excluding fire stations and associated fire service operations. A further submission from Pareoranga Te Kata [FS1035.139] supports this submission, while a further submission from Mercury NZ Limited [FS1388.35] opposes this point.
558. As previously discussed in this report in relation to other zone chapters (as the submission is repeated in all zones), the further information requested pre-hearing set out in Appendix 5 of this report, indicates that the quantity thresholds applicable in the Rural Zone are higher than what is stored at fires stations and on HAZMAT vehicles. Therefore, in reliance on the advice from Mr Schaffoener, the volumes of hazardous substances stored in fire stations and associated fire service operations are likely to be permitted by the AST. I also note that all existing rural fire stations would have existing use rights. Therefore it is only if new stations were proposed to be built within this zone. I therefore recommend that the submission from Fire and Emergency New Zealand be rejected.

⁵² *Taranaki Energy Watch v South Taranaki District Council* [2018] NZEnvC at [32] and [62]

559. A submission from Horticulture New Zealand [419.15] seeks to delete Rule 22.2.4 PI and replace the rule with a permitted activity rule for the use, storage or disposal of any hazardous substance, which is further supported by a further submission from Federated Farmers [FS1342.111].
560. I do not agree with this submission point that all rural activities should be permitted, and consider that there may be circumstances where the AST thresholds are triggered and require assessment through the resource consent process. Therefore I recommend that this submission point be rejected.
561. The submission point from Horticulture New Zealand [419.16] seeks to amend the activity status of rule 22.2.4 DI from discretionary to restricted discretionary. This submission is opposed by further submission from Mercury NZ Limited [FS1388.179].
562. As previously discussed in regard to the rules contained in the Industrial Zone, a discretionary activity status is more appropriate for this rule to ensure that the matters that need to be considered are wide ranging. Further, as this submission has not provided any matters which discretion would be restricted to, it does not assist me in understanding what matters Horticulture New Zealand would consider appropriate in the context of the Rural Zone, therefore I am inclined to leave the rule as a discretionary activity. I therefore recommend that this submission point from Horticulture New Zealand be rejected.
563. The submission from Federated Farmers of New Zealand [680.209] seeks to amend Rule 22.2.4 PI to exempt particular activities and hazardous substances from the rule. This submission is supported by a further submission from Horticulture New Zealand [FS1168.69] and opposed by a further submission from Mercury NZ Limited [FS1387.212].
564. As discussed previously in this report in relation to the definition of 'hazardous facility', I see no reason to include exceptions in Rule 22.2.4, as this rule needs to apply to a wide range of industries and operations within the Rural Zone. Further, advice from Mr Schaffoener is that Rule 1 of Appendix 5 (following the AST) exempts hazard sub-classes applicable to fertilisers, and it is likely that the quantity thresholds of fuels and other substances stored on farms would be well below the thresholds which trigger resource consent. I agree with this approach and consider that the AST included in Appendix 5 provides for these exceptions, which do not make sense to replicate in the rule. Therefore I recommend that the submission from Federated Farmers of New Zealand be rejected.
565. The submission from Waikato District Council [697.777] seeks to amend the rule to ensure consistency across zone chapters. Two further submissions from Genesis Energy [FS1345.83] and Mercury NZ Limited [FS1387.688] oppose this point. As addressed in previous sections of this report, I agree with these changes to Rule 22.2.4 PI(a)(i), as they provide clarity to the plan user and consistency across the plan chapters. However, I note that the wording "must meet the following conditions" which is proposed to be deleted does not exist in Rule 22.2.4. Therefore I recommend accepting this submission in part.
566. The submission from Waikato District Council [697.778] seeks to add a new non-complying rule to Rule 22.2.4 for activities involving hazardous substances within 12m of the National Grid Transmission Line yard. Two further submissions from Transpower Limited [FS1350.136] and Mercury NZ [FS1387.689] oppose this submission.
567. As discussed in other zone chapters, the submission is simply about placement of the rule, given that it already exists in Chapter 14. Therefore I recommend the submission from Waikato District Council be accepted.

568. The submission from Genesis Energy Limited [924.36] seeks to amend Rule 22.2.4 P1 by including an exemption for any activity within Specific Area 22.6.I which is managed in accordance with the HSWA regulations. The reasons provided with the submission indicate that a range of hazardous substances are stored and used at Huntly Power Station in compliance with the relevant Health and Safety at Work (Hazardous Substances) Regulations and the Health and Safety at Work Act. Further, the submission indicates that the rules represent a duplication of the requirements under these regulations and HSWA, and their preference is that all control of substances at Huntly Power Station site is exercised under the Regulations and HSWA.
569. I disagree with this submission for three reasons. Firstly, Council are not proposing to duplicate the HSWA legislation or HSWA regulations. The rules proposed in Rule 22.2.4 are to control and manage the effects of hazardous substances on land use activities, people and the environment within the rural zone. As discussed earlier in this report, management of hazardous substances in the context of land use is not an aspect covered by the legislation or the regulations.
570. Secondly, there is no need to include reference to other legislation or regulations in the District Plan. Council does not generally set out other relevant legislation or regulations that land use activities may need to comply with where it is not Council's function to monitor or ensure compliance (such as the HSWA and HSWA regulations, which are undertaken by WorkSafe New Zealand).
571. Thirdly, the rules need to apply district-wide and not specifically focus on any individual industries or operations. Further, I note that the Huntly Power Station would have existing use rights and resource consents that already manage hazardous substances on the site.
572. Therefore I recommend that the submission from Genesis Energy be rejected.

19.4 Recommendations

573. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** submission from Andrew and Christine Gore [330.85]. Therefore **accept** further submission Mercury NZ Limited from [FS1386.450].
 - (b) **Reject** the submission from Balle Bros Group Limited [466.17], from the Oil Companies Limited [785.2] and from Fonterra Limited [797.27]. Therefore **accept** the further submissions from Mercury NZ Limited [FS1388.408] and [FS1387.1270] and **reject** the further submissions from Mercer Airport [FS1302.14] and [FS1302.17], Bathurst Resources Limited and BT Mining Limited [FS1198.48] and Federated Farmers [FS1342.215] and [FS1342.224] and Horticulture New Zealand [FS1168.70].
 - (c) **Reject** the submission from Horticulture New Zealand [419.14] in regard to the incorrect references to Appendix 5 and Table 5.1 in Rule 22.2.4 P1.
 - (d) **Accept** the submission from Lochiel Farmland Limited [349.4]. Therefore **reject** the further submission from Mercury NZ Limited [FS1386.496].
 - (e) **Reject** the submission from Fire and Emergency New Zealand [378.33]. Therefore **accept** the further submission from Mercury NZ Limited [FS1388.35] and **reject** the further submission from Pareoranga Te Kata [FS1035.139].
 - (f) **Reject** the submission from Horticulture New Zealand [419.15]. Therefore **reject** further submission from Federated Farmers [FS1342.111].

- (g) **Reject** the submission from Horticulture New Zealand [419.16] seeking to amend the activity status from discretionary to a restricted discretionary activity. Therefore **accept** the further submission from Mercury NZ Limited [FS1388.179].
- (h) **Reject** the submission from Federated Farmers of New Zealand [680.209] seeking exemptions to Rule 22.2.4 PI. Therefore **accept** the further submission from Mercury NZ Limited [FS1387.212] and **reject** the further submission from Horticulture New Zealand [FS1168.69].
- (i) **Accept** submission from the Waikato District Council [697.777] seeking amendments to Rule 22.2.4 for consistency across the zone chapters. Therefore **reject** the further submissions from Mercury NZ Limited [FS1387.688] from Genesis Energy [FS1345.83].
- (j) **Accept in part** the submission from Waikato District Council [697.778] seeking to add a new non-complying rule for any new hazardous facilities within the National Grid Transmission Line. Therefore **accept in part** the further submissions from Transpower Limited [FS1350.136] and from Mercury NZ Limited [FS1387.689].
- (k) **Reject** the submission from Genesis Energy Limited [924.36] seeking to include a specific rule for the Huntly Power Station in Specific Area 22.6.1.

19.5 Recommended amendments

574. The following amendments are recommended, noting that this rule will be included in a stand-alone chapter for Hazardous Substances (Chapter 10) to meet the requirements of the National Planning Standards:

22.2.4 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substances where: (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 65 ⁵³ .I contained within ⁵⁴ Appendix 65 ⁵⁵ (Hazardous Substances).
P2	(a) The storage or use of radioactive materials if it is: (i) an approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) The storage of the following maximum volumes of fuel for retail sale within a service station: (i) 100,000 litres of petrol in underground storage tanks; (ii) 50,000 litres of diesel in underground storage tanks; and (iii) 6 tonnes of LPG (single vessel storage). (b) Council's control is reserved over the following matters: (i) The proposed site design and layout in relation to: A. the sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards);

⁵³ Submissions [697.777] from Waikato District Council and [419.14] from Horticulture New Zealand

⁵⁴ Submission [697.777] from Waikato District Council

⁵⁵ Submissions [697.777] from Waikato District Council [419.14] from Horticulture New Zealand and [349.4] from Lochiel Farmlands Limited

	(ii) Procedures for monitoring and reporting of incidents.
DI	The use, storage or disposal of hazardous substances that does not comply with Rule 22.2.4 PI, P2 or CI.
NCI	<u>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.⁵⁶</u>

575. I note that while the above changes are recommended for Rule 22.2.4, I am also recommending that they be incorporated into a single rule corresponding to all zones. These changes will be collated and shown in Appendix 2.

19.6 Section 32AA evaluation

576. The amendments have not materially changed the approach to managing hazardous substances in the Industrial Zone chapter, therefore no section 32AA evaluation is required.

20 Topic 18: Country Living Zone (Chapter 23)

20.1 Introduction

577. Rule 23.2.4 included within Chapter 23 for the Country Living Zone manages the land use effects of hazardous substances.

578. The notified rule is set out as follows:

Chapter 23 – Country Living Zone

23.2.4 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substance where: (i) The aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified for the Country Living Zone in Table 6.1 contained within Appendix 5 (Hazardous Substances); and (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
P2	(a) The storage or use of radioactive materials if it is: (i) an approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) The storage of the following maximum volumes of fuel for retail sale within a service station: (i) 100,000 litres of petrol in underground storage tanks; (ii) 50,000 litres of diesel in underground storage tanks; and (iii) 6 tonnes of LPG (single vessel storage). (b) Council reserves its control over the following matters: (i) The proposed site design and layout in relation to: A. the sensitivity of the surrounding natural, human and physical environment;

⁵⁶ Submission [697.778] from Waikato District Council

	<p>potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities;</p> <p>B. interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards);</p> <p>(ii) Procedures for monitoring and reporting of incidents.</p>
DI	The use, storage or disposal of hazardous substance that does not comply with Rule 23.2.4 PI, P2 or CI.

20.2 Submissions

579. Seven submission points were received on the Country Living Zone. One point does not seek a specific decision, one submission proposes to delete Rule 23.2.4 and five submission points propose to amend Rule 23.2.4.

580. The following submission was made with no specific decision sought:

Submission point	Submitter	Summary of submission
330.98	Andrew and Christine Gore	No specific decision sought, however submission refers to Rule 23.2.4 Hazardous substances.
FS1386.455	Mercury NZ Limited	Oppose

581. The following submission was made seeking to delete Rule 23.2.4:

Submission point	Submitter	Summary of submission
785.3	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited	Submitter seeks to delete Rule 23.2.4 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.

582. The following submission was made seeking to amend Rule 23.2.4:

Submission point	Submitter	Summary of submission
697.871	Waikato District Council	Submitter seeks to delete Rule 23.2.4 CI Hazardous substances. AND

		Amend Rule 23.3.4 DI Hazardous substances, as follows: Rule 23.2.4 PI, or P2 or C1.
FS1387.718	Mercury NZ Limited	Oppose
378.41	Fire and Emergency New Zealand	Submitter seeks to amend Rule 23.2.4 Hazardous Substances, as follows: (a) The use, storage or disposal of any hazardous substance where: (i) The aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified for the Country Living Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances); and (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017. <u>(iii) Rule 23.2.4 (a) (i) excludes fire stations and associated fire service operations.</u> AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
FS1035.147	Pareoranga Te Kata	Support
FS1388.40	Mercury NZ Limited	Oppose
697.870	Waikato District Council	Submitter seeks to amend Rule 23.2.4 PI(a)(i) Hazardous substances, as follows: (i) The aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified for the Country Living Zone in Table 6.1 contained within Appendix 5 (Hazardous Substances); and
697.872	Waikato District Council	Submitter seeks to amend Rule 23.2.4 to insert NCI Hazardous substances, as follows: <u>NCI</u> <u>The storage of fuel for retail sale within service station in the Country Living Zone.</u>
FS1089.6	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited for 'Oil Companies'	Oppose
FS1387.719	Mercury NZ Limited	Oppose
697.873	Waikato District Council	Submitter seeks to add a new non-complying activity (NC2) to Rule 23.2.4 Hazardous substances, as follows: <u>NC2</u>

		<u>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.</u>
FS1350.137	Transpower Limited	Oppose
FS1387.720	Mercury NZ Limited	Oppose

20.3 Analysis

583. The submission from Andrew and Christine Gore [330.98] does not seek any specific decision, however refers to Rule 23.2.4. A further submission has been received from Mercury NZ Limited [FS1386.455] opposing the submission.
584. I consider this submission difficult to analyse without further context to the submission, therefore recommend rejecting it.
585. The submission from the Oil Companies Limited [785.3] seeks to delete Rule 23.2.4. Similar to the reasons provided for previous zone chapters, the submission is opposed to including the rule in the plan because they consider that other legislation appropriately manages hazardous substances. Without reiterating previous discussion, I disagree with this submission; therefore recommend rejecting the submission from the Oil Companies Limited.
586. Submission [697.872] from Waikato District Council seeks to amend Rule 23.2.4 to insert a new non-complying activity rule (NCI) for service stations. Two further submissions were received in opposition to this point from the Oil Companies [FS1089.6] and from Mercury NZ Limited [FS1387.19]. The submission point from the Oil Companies supports their general position in submission [785] - that the proposed rule framework should be deleted.
587. The reasons outlined in the Waikato District Council submission for this change to Rule 23.2.4 are that the new rule provides a more restrictive approach than current C1. Similar to previous discussion on submission [697.114] in the Residential Zone, this submission point is considered appropriate, as service stations are not anticipated in the Country Living Zone, unless there is a specific reason which would form part of an assessment of environmental effects for the non-complying activity through a resource consent process.
588. I consider that a more restrictive activity status for service stations within the Country Living Zone is appropriate, and do not have an issue singling out service stations from other activities involving hazardous substances, noting that I do not have scope through submissions to look at other facilities within this zone. Therefore I recommend that the submission from Waikato District Council be accepted.
589. The submission from Waikato District Council [697.871] proposes to delete reference to Rule 23.2.4 C1 and include reference to Rule 23.2.4 D1, which works in conjunction with submission point [697.872] to include a new non-complying activity for service stations.
590. Given that I am recommending to accept the submission from Waikato District Council [697.872], I also recommend accepting submission [697.871] from Waikato District Council.
591. Similar to previous zone chapters, the submission from Fire and Emergency New Zealand [378.41] proposes to amend Rule 23.2.4 to exclude fire stations and associated fire service operations from the rule. Two further submissions were received on this point. One from Pareoranga Te Kata [FS1035.147] in support and one from Mercury NZ Limited [FS1388.40] in opposition.

592. In further information received pre-hearing from FENZ, it would appear that there are no fire stations currently located within the Country Living zone. Based on the AST included in Appendix 5, there is the potential for new fire stations to require resource consent, given the volumes of hazardous substances stored currently at fire stations. However, my view (similar that that discussed in the residential zone) is that these areas are sensitive environments, and assessment at the time of resource consent provides an opportunity to assess location and the risk to sensitive activities. Therefore, I do not agree that a new rule should exempt fire stations and associated fire service operations in the Country Living zone. I therefore recommend rejecting the submission from Fire and Emergency New Zealand.
593. Submission [697.870] from Waikato District Council proposes to amend Rule 23.2.4 PI(a)(i) to strike through the words “contained within” to ensure consistency between zone chapter rules. I agree that this submission makes sense and recommend accepting this submission from Waikato District Council.
594. Submission [697.873] from Waikato District Council seeks to amend Rule 23.2.4 to insert a new rule (NC2) controlling activities within 12m of the National Grid Transmission Line yard.
595. Further submissions from Transpower Limited [FS1350.137] and Mercury NZ Limited [FS1387.720] were received, both opposing the submission point. Similar to previous discussion in respect to other zones, Transpower’s concerns are in respect to the location of the rule in the plan.
596. To align with the previous discussions regarding this submission point in relation to the other zones, I agree that the submission is necessary to ensure that any risks from hazardous facilities within the National Grid Transmission Line are appropriately assessed. I therefore recommend that moving the rule from Chapter 14 to a specific chapter relating to hazardous substances is appropriate, therefore recommend accepting the submission from Waikato District Council in part.

20.4 Recommendations

597. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** the submission from Andrew and Christine Gore [330.98]. Therefore **accept** the further submission from Mercury NZ Limited [FS1386.455].
 - (b) **Reject** the submission from the Oil Companies Limited [785.3].
 - (c) **Accept** the submission from the Waikato District Council [697.871]. Therefore **reject** the further submission from Mercury NZ Limited [FS1387.718].
 - (d) **Reject** the submission from Fire and Emergency New Zealand [378.41]. Therefore **accept** the further submission from Mercury NZ Limited [FS1388.40] and **reject** the further submission [FS1035.147] from Pareoranga Te Kata.
 - (e) **Accept** the submission from Waikato District Council [697.870].
 - (f) **Accept** the submission from Waikato District Council [697.872]. Therefore **reject** the further submission from the Oil Companies [FS1089.6] and Mercury NZ Limited [FS1387.719].

- (g) **Accept in part** submission [697.873] from Waikato District Council. Therefore **accept in part** the further submission from Transpower Limited [FS/350.137] and [FS/387.720] from Mercury NZ Limited.

20.5 Recommended amendments

598. The following amendments are recommended:

23.2.4 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substance where: <ul style="list-style-type: none"> (i) The aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified for the Country Living Zone in Table 6.1 contained within⁵⁷ Appendix 5 (Hazardous Substances); and (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
P2	(a) The storage or use of radioactive materials if it is: <ul style="list-style-type: none"> (i) an approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) The storage of the following maximum volumes of fuel for retail sale within a service station: <ul style="list-style-type: none"> (i) 100,000 litres of petrol in underground storage tanks; (ii) 50,000 litres of diesel in underground storage tanks; and (iii) 6 tonnes of LPG (single vessel storage). (b) Council reserves its control over the following matters: <ul style="list-style-type: none"> (i) The proposed site design and layout in relation to: <ul style="list-style-type: none"> A. the sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards); (ii) Procedures for monitoring and reporting of incidents.
DI	The use, storage or disposal of hazardous substance that does not comply with Rule 23.2.4 PI, or ⁵⁸ P2 or CI ⁵⁹ .
<u>NC1</u>	<u>The storage of fuel for retail sale within service station in the Country Living Zone.⁶⁰</u>
<u>NC2</u>	<u>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.⁶¹</u>

599. I note that, while the above changes are recommended for Rule 23.2.4, I am also recommending that they be incorporated into a single rule for all zones. These changes will be collated and shown in Appendix 2.

⁵⁷ Submission [697.870] Waikato District Council

⁵⁸ Submission [697.871] Waikato District Council

⁵⁹ Submission [697.871] Waikato District Council

⁶⁰ Submission [697.872] Waikato District Council

⁶¹ Submission [697.873] Waikato District Council

20.6 Section 32AA evaluation

600. The S32 report dated July 2018 does evaluate the efficiency and effectiveness of using the Activity Status Table, and indicates that it is the most efficient way that enables individual hazardous substances according to class, rather than individual substance.
601. The proposed changes to Rule 23.2.4 include NCI, which will add a new non-complying activity for service stations. This rule does change the approach taken by Rule 23.2.4, given that the notified rule relies on the quantity threshold tables included in Appendix 5. I do not consider singling out service stations from other activities to be an issue, as other activities involving hazardous substances are more likely to locate in other zones (e.g. the industrial and business zones). However the submissions from Waikato District Council to add new rules NCI relating to services stations and NC2 relating to the National Grid Transmission line, are changes that broaden the scope of the rules.

NCI – Service Stations in sensitive zones

602. By specifying the use and storage of fuel for retail sale within a service station as a non-complying activity, the intention is to restrict such activities establishing in sensitive environments, which includes the Country Living Zone. As discussed in previous analysis relating to other sensitive zones, the activity status does not prohibit the activity, but does impose a higher threshold under the Resource Management Act for the activity, and would be subject to the full scrutiny of the objective and policy framework. I consider that this proposed amendment aligns well with Objective 10.1.1, which is about managing the effects (such as risk) of the storage, use or disposal of hazardous substances to ensure that the effects are acceptable. It also aligns well with Policies 10.1.2, 10.1.3 and 10.1.4.
603. In my opinion, there would need to be a very good reason for establishing such an activity within a sensitive environment, and Council, through the resource consent process, would need to be certain that any risks to the surrounding environment were considered acceptable. I would anticipate an application of this nature would most likely generate a publicly-notified application.
604. Without getting into the detail of an individual application it is also difficult to evaluate the costs and benefits of this provision. However broadly, without the proposed provision being included in the plan, there is a risk that service station activities may establish within sensitive zones, such as the Country Living Zone. The benefit of having such a provision is that it offers protection and reassurance to the community that Council will control the activity and ensure that it is appropriately located.

NC2 – Activities within the National Grid Transmission Line

605. Proposed NC2 effectively replicates a rule already included in Chapter 14, therefore the intent of the rule has not changed, just the location (being Chapter 10), which I consider to be a more efficient and effective location in the District Plan.
606. NC2 will streamline the rules to align with the National Planning Standards for the sensitive zones, which makes sense from an efficiency and effectiveness perspective, because the plan user would only need to refer to one chapter (Chapter 10), as opposed to multiple chapters.
607. The further submission from Transpower [FS/350.137] raises a concern in respect to Chapter 14 being the key chapter for Infrastructure providers. However I consider that including the rule in the hazardous substances chapter is the most appropriate option, as all plan users will use Chapter 10 to inform any activities involving the use, storage or disposal of hazardous substances.

20.6.1 Other reasonably practicable options

608. Given the scope of submissions and further submissions, my recommendations in respect to NCI and NC2 are relatively narrow and do not have many alternative options. I will discuss these separately as follows:

NCI

609. The “do nothing” approach is an alternative option for NCI, which would then rely on Rule 23.2.4 CI to determine consent for a service station as a controlled activity. However, I do not agree that this is an appropriate activity status for a service station in a sensitive environment such as the Country Living Zone. It would make sense for the district plan to protect this zone to a higher degree than other zones. I also have no concern about singling out service stations in particular in this rule, as other activities involving hazardous substances are more likely to be undertaken in the industrial and business zones. Further, I do not have scope through submissions to include additional activities which may establish in the Country Living zone.

NC2

610. The only alternative option for NC2 would be to include it solely within Chapter 14 Infrastructure. My only concern with this approach would be if other plan users were to solely rely on Chapter 10 and miss the provisions in Chapter 14. A suggested approach would be to provide reference in each set of rules to ensure that plan users do not miss the provisions.

20.6.2 Effectiveness and efficiency

611. The recommended amendments give effect to the proposed policy framework including Objective 10.1.1, Policies 10.1.2, 10.1.3 and 10.1.4. The amendments improve the effectiveness of the rule framework in implementing the objective and policies, and provide guidance to plan users for the assessment of activities that involve hazardous substances, specifically in regard to service stations and the national grid transmission line in sensitive environments.

20.6.3 Costs and benefits

612. Without getting into the individual details of an application it is difficult to evaluate the costs and benefits of NCI. However, it is known that applicants would face additional cost and uncertainty with a non-complying activity, as opposed to a controlled activity. A controlled activity consent must be granted by Council, subject to the matters of control, whereas a non-complying activity consent must be evaluated against the objectives, policies and rules of the district plan. Although, this is a cost, without the proposed provision being included in the plan there is a risk that service station activities may establish within sensitive zones, which on balance I consider to be a much greater cost. The benefit being that such a provision offers protection and reassurance to the community that Council will control the activity and ensure that it is appropriately located.

613. In terms of the costs and benefits of NC2, as there is no material change to the rule framework or approach, there are no additional costs or benefits beyond what was notified.

614. In terms of both NCI and NC2 there are benefits for the environment and communities (social) with the additional recommended rules, as they provide clearer direction in respect to service stations locating in sensitive zones and activities involving explosive or flammable intrinsic properties within the national grid transmission line.

615. There is certainly a wider benefit to the local and regional community and to nationally-significant infrastructure, however this is difficult to quantify without any specific proposal details. However, it is worth noting that the risks of not having protections in place could result in unacceptable consequences from an economic, cultural and social perspective (e.g. if an explosion or fire were to occur within these locations affecting landowners and nationally-significant infrastructure).

20.6.4 Risk of acting or not acting

616. I consider that there are risks in not acting. Whilst there may not be sufficient information to assess the costs and benefits to the environment and communities, this is an aspect of individual proposals which would be considered at the time of individual applications for resource consent. Proposed Policy 10.1.2 Location of new hazardous facilities supports proposed NCI, while proposed Policy 10.1.4 Reverse sensitivity effects supports NC2.

617. If the panel does act, this provides protection and assurances to the communities where proposals occur in sensitive locations. The recommended approach provides an opportunity to evaluate individual proposals and the risks associated with those proposals.

618. The costs of not acting could have potential unintended consequences which would not be acceptable to Council or the community. This approach would also not align with the Policy framework which is being provided for hazardous substances. It is for this reason that I consider that the changes are appropriately justified.

20.6.5 Decision about most appropriate option

619. The amendment to the rule for sensitive zones gives effect to the proposed policy framework for hazardous substances. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of Rule 23.2.4.

21 Topic 19: Village Zone (Chapter 24)

21.1 Introduction

620. Rule 24.2.4 included within Chapter 23 for the Village Zone manages the land use effects of hazardous substances.

621. The notified rule is set out as follows:

Chapter 24 – Village Zone

24.2.5 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substances where: (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Residential zone in Table 5.1 contained within Appendix 5 (Hazardous Substances).
P2	(a) The storage or use of radioactive materials is: (i) An approved equipment for medical and diagnostic purposes; or (ii) Specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
DI	The use, storage or disposal of any hazardous substances that does not comply with Rule 24.2.5 PI or P2.

21.2 Submissions

622. Five submission points were received on Rule 24.2.5 in Chapter 24 for the Village Zone. One submission point proposes to delete Rule 24.2.5 and four submission points propose to amend Rule 24.2.5.

623. The following submissions were made seeking to delete Rule 24.2.5:

Submission point	Submitter	Summary of submission
785.4	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited	Submitter seeks to delete Rule 24.2.5 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.

624. The following submissions were made seeking to amend Rule 24.2.5:

Submission point	Submitter	Summary of submission
378.48	Fire and Emergency New Zealand	Submitter seeks to amend Rule 24.2.5 Hazardous Substances, as follows: (a) The use, storage or disposal of any hazardous substances where: (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Residential Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances) <u>(ii) Rule 24.2.5 (a) (i) excludes fire stations and associated fire service operations.</u> AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
FS1035.154	Pareoranga Te Kata	Support
FS1388.44	Mercury NZ Limited	Oppose
697.960	Waikato District Council	Submitter seeks to amend Rule 24.2.5 PI(a) Hazardous Substances, as follows: (b) The use, storage or disposal of any hazardous substances <u>must meet the following conditions where:</u> (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Residential <u>Village</u> zone in Table 5.1 contained within Appendix 5 (Hazardous Substances).

697.961	Waikato District Council	Submitter seeks to add Rule 24.2.5 Hazardous substances, as follows: <u>NC1</u> <u>The storage of fuel for retail sale within service station in the Village Zone.</u>
FS1089.7	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited - 'Oil Companies'	Oppose
FS1387.751	Mercury NZ Limited	Oppose
697.962	Waikato District Council	Submitter seeks to add new Rule 24.2.5 NC2 Hazardous substances, as follows: <u>NC2</u> <u>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.</u>
FS1350.138	Transpower Limited	Oppose
FS1387.752	Mercury NZ Limited	Oppose

21.3 Analysis

625. The submission from the Oil Companies Limited [785.4] proposes to delete Rule 24.2.5. For similar reasons as those addressed in other zone chapters, the Oil Companies' view is that such controls are inappropriate, unnecessary, ineffective, inefficient and unable to be justified via a section 32 analysis. Their reasons also discuss the other legislation that manages hazardous substances; and that Council no longer has a function under sections 30 and 31 of the RMA.
626. Without replicating previous discussion from other zone rules, I disagree with this submission, and am supported in this by Mr Schaffoener and the legal opinion from Tompkins Wake, provided as Appendix 6 to this report. Therefore, I recommend rejecting the submission from the Oil Companies Limited.
627. The submission from Fire and Emergency New Zealand [378.48] proposes to amend Rule 24.2.5 to exclude fire stations and associated fire service operations from the rule. Two further submissions were received on this submission point from Pareoranga Te Kata [FS1035.154] which supports the submission, and Mercury NZ Limited [FS1388.44], which opposes the point.
628. In further information received pre-hearing from FENZ, it would appear that there are several fire stations currently located within the Village zone. Based on the AST included in Appendix 5, there is the potential for new fire stations to require resource consent, given the volumes of hazardous substances stored currently at fire stations. However, my view (similar that that discussed in the Residential and Country Living zones) is that these areas are sensitive environments, and assessment at the time of resource consent provides an opportunity to assess location and the risk to sensitive activities. Therefore, I do not agree that a new rule should exempt fire stations and associated fire service operations in the Village Zone.

629. The submission from Waikato District Council [697.960] proposes to amend Rule 24.2.5 PI(a) to provide consistency with the wording across the zone chapters. Similar to other zone chapters, I agree with the changes suggested in this submission point, therefore recommend accepting the submission from Waikato District Council.
630. The submission from Waikato District Council [697.961] proposes to add a new rule (NC1) for service stations to Rule 24.2.5. Two further submissions were received on this point from the Oil Companies [FS1089.7] and Mercury NZ Limited [FS1387.751], both opposing this submission point. The Oil Companies' reasons in their further submission align with their approach to delete Rule 24.2.5 in submission point [785.4].
631. Despite the further submissions on this point, I consider that consistency across the zone chapters (for sensitive zones) is appropriate. This additional rule in the village zone will provide an additional assessment for service stations in the Village Zone. Similar to other zone chapter rules, the current rules would use the AST to determine activity status, which would likely be a discretionary activity status. Having a non-complying activity rule provides a higher threshold for applications, which I consider appropriate, in order to ensure that any risks from service stations are assessed at the time of resource consent application.
632. I do not consider singling out service stations from other activities that may establish in the Village Zone to be an issue, as most activities involving hazardous substances would likely establish in the Industrial or Business zones. Further, I do not have scope through the submissions to review other activities. Therefore, I recommend accepting the submission from Waikato District Council.
633. The submission from Waikato District Council [697.962] proposes to add a new rule (NC2) to Rule 24.2.5 for controlling activities within 12m of the National Grid Transmission Line yard. Two further submissions from Transpower Limited [FS1350.138] and from Mercury NZ Limited [FS1387.752] both oppose this submission point for the same reasons as previously discussed in this report.
634. Similar to other zone chapters, I consider that this rule is appropriate to ensure that hazardous facilities are managed within the National Grid Transmission Line yard. I also consider that the placement of the rule in Chapter 10 as a stand-alone chapter for hazardous substances is the most appropriate location for the rule. Therefore, I recommend accepting in part the submission from Waikato District Council, given that I am not going to include the rule in the Village zone chapter.

21.4 Recommendations

635. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** the submission from the Oil Companies [785.4].
 - (b) **Reject** the submission from Fire and Emergency New Zealand [378.48]. Therefore **accept** the further submission from Mercury NZ Limited [FS1388.44] and **reject** the further submission from Pareoranga Te Kata [FS1035.154].
 - (c) **Accept** the submission from Waikato District Council [697.960].
 - (d) **Accept** the submission from Waikato District Council [697.961]. Therefore **reject** the further submissions from the Oil Companies [FS1089.7] and from Mercury NZ Limited [FS1387.751].

- (e) **Accept in part** the submission from Waikato District Council [697.962]. Therefore **accept in part** the further submissions from Transpower Limited [FS/350.138] and Mercury NZ Limited [FS/387.752].

21.5 Recommended amendments

636. The following amendments are recommended:

24.2.5 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substances <u>must meet the following conditions where⁶²:</u> (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the <u>Residential Village⁶³</u> zone in Table 5.1 <u>contained within⁶⁴</u> Appendix 5 (Hazardous Substances).
P2	(a) The storage or use of radioactive materials is: (i) An approved equipment for medical and diagnostic purposes; or (ii) Specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
DI	The use, storage or disposal of any hazardous substances that does not comply with Rule 24.2.5 PI or P2.
<u>NC1</u>	<u>The storage of fuel for retail sale within a service station in the Village Zone.⁶⁵</u>
<u>NC2</u>	<u>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.⁶⁶</u>

637. I note that while the above changes are recommended for Rule 24.2.5, I am also recommending that they be incorporated into a single rule. These changes will be collated and shown in Appendix 2.

21.6 Section 32AA evaluation

638. The s32 report dated July 2018 does evaluate the efficiency and effectiveness of using the Activity Status Table (AST) and indicates that it is the most efficient way that enables individual hazardous substances according to class rather than individual substance.

639. The proposed changes to Rule 24.2.5 include NC1, which will add a new non-complying activity for service stations. This rule does change the approach taken by Rule 24.2.5, given that the notified rule relies on the quantity threshold tables included in Appendix 5.

640. I do not consider singling out service stations from other activities to be an issue in respect to the village zone, as other activities involving hazardous substances are more likely to locate in other zones (e.g. the industrial and business zones). However, the submissions from Waikato District Council to add new rules NC1 relating to service stations are changes that broaden the scope of the rules.

641. By specifying the use and storage of fuel for retail sale within a service station as a non-complying activity, the intention is to restrict such activities establishing in sensitive

⁶² Submission [697.960] Waikato District Council

⁶³ Submission [697.960] Waikato District Council

⁶⁴ Submission [697.960] Waikato District Council

⁶⁵ Submission [697.961] Waikato District Council

⁶⁶ Submission [697.962] Waikato District Council

environments, which includes the village zone. As discussed in previous analysis relating to the sensitive zones, the activity status does not prohibit the activity, but does impose a higher threshold under the Resource Management Act for the activity, and would be subject to the full scrutiny of the objective and policy framework. I consider that this proposed amendment aligns well with Objective 10.1.1, which is about managing the effects (such as risk) of the storage, use or disposal of hazardous substances to ensure that the effects are acceptable. It also aligns well with Policies 10.1.2, 10.1.3 and 10.1.4.

642. In my opinion, there would need to be a very good reason for establishing such an activity within a sensitive environment, such as the village zone, and Council through the resource consent process, would need to be certain that any risks to the surrounding environment are considered to be acceptable. I would anticipate an application of this nature would most likely generate a publicly-notified application.
643. Without getting into the detail of an individual application it is also difficult to evaluate the costs and benefits of this provision. However, broadly, without the proposed provision being included in the plan, there is a risk that service station activities may establish within sensitive zones. The benefit of having such a provision is that it offers protection and reassurance to the community that Council will control the activity and ensure that it is appropriately located.
644. With respect to proposed NC2, this rule effectively replicates a rule already included in Chapter 14, therefore the intent of the rule has not changed, just the location (being Chapter 10), which I consider to be a more efficient and effective location in the District Plan.
645. NC2 will streamline the rules to align with the National Planning Standards for the sensitive zones, which makes sense from an efficiency and effectiveness perspective, because the plan user would only need to refer to one chapter (Chapter 10), as opposed to multiple chapters.
646. The further submission from Transpower [FS/350.138] raises the concern in respect to Chapter 14 being the key chapter for Infrastructure providers. I consider that including the rule in the hazardous substances chapter is the most appropriate option, as all plan users will use Chapter 10 to inform any activities involving the use, storage or disposal of hazardous substances.

21.6.1 Other reasonably practicable options

647. Given the scope of submissions and further submissions, my recommendations in respect to NCI and NC2 are relatively narrow and do not have many alternative options. I will discuss these separately as follows:

NCI

648. The “do nothing” approach is an alternative option for NCI, which would then rely on Rule 24.2.5 PI to determine consent for a service station, which would be considered as a discretionary activity if it could not meet the volume thresholds contained in Appendix 5.
649. I do not agree that a discretionary activity status is an appropriate activity status for a service station in a sensitive environment such as the village zone. It would make sense that the district plan should protect this zone to a higher degree than other zones. I also have no concern about singling out service stations specifically in the rule, as other activities involving hazardous substances are more likely to be undertaken in the Industrial and Business Zones. Further, I do not have scope through submissions to include additional activities which may establish in the Village Zone.

NC2

650. The only alternative option for NC2 would be to include it solely within Chapter 14 Infrastructure. My only concern with this approach would be if other plan users were to solely rely on Chapter 10 and miss the provisions in Chapter 14. A suggested approach would be to provide reference in each set of rules to ensure that plan users do not miss the provisions.

21.6.2 Effectiveness and efficiency

651. The recommended amendments give effect to the proposed policy framework, including Objective 10.1.1, Policies 10.1.2, 10.1.3 and 10.1.4. The amendments improve the effectiveness of the rule framework in implementing the objective and policies, and provide guidance to plan users for the assessment of activities that involve hazardous substances, specifically in regard to service stations and the national grid transmission line in sensitive environments.

21.6.3 Costs and benefits

652. Without getting to the individual details of an application, it is difficult to evaluate the costs and benefits of NCI, although changing the activity status from a discretionary activity to a non-complying activity will mean additional cost and uncertainty around a successful outcome. However, without the proposed provision being included in the plan, there is a risk that service station activities may establish within sensitive zones, such as the Village Zone, which I consider on balance to be a much greater cost. The benefit being that such a provision offers protection and reassurance to the community that Council will control the activity and ensure that it is appropriately located.
653. In terms of the costs and benefits of NC2, as there is no material change to the rule framework or approach, there are no additional costs or benefits beyond what was notified.
654. In terms of both NCI and NC2 there are benefits to the environment and communities (social) with the additional recommended rules, as they provide clearer direction in respect to service stations locating in sensitive zones and activities involving explosive or flammable intrinsic properties within the National Grid Transmission Line yard.
655. There is certainly a wider benefit to the local and regional community and to nationally-significant infrastructure, however this is difficult to quantify without any specific proposal details. However, it is worth noting that that the risks of not having protections in place could result in unacceptable consequences from an economic, cultural and social perspective (e.g. if an explosion or fire were to occur within these locations, affecting landowners and nationally-significant infrastructure).

21.6.4 Risk of acting or not acting

656. I consider that there are risks in not acting. Whilst there may not be sufficient information to assess the costs and benefits to the environment and communities, this is an aspect of individual proposals which would be considered at the time of individual applications for resource consent. Proposed Policy 10.1.2 Location of new hazardous facilities supports proposed NCI, while proposed Policy 10.1.4 Reverse sensitivity effects supports NC2.
657. If the panel does act, this provides protection and assurances to the communities where proposals occur in sensitive locations. The recommended approach provides an opportunity to evaluate individual proposals and the risks associated with those proposals.
658. The costs of not acting could have potential unintended consequences which would not be acceptable to Council or the community. This approach would also not align with the Policy

framework which is being provided for hazardous substances. It is for this reason that I consider that the changes are appropriately justified.

21.6.5 Decision about most appropriate option

659. The amendment to the rule for sensitive zones gives effect to the proposed policy framework for hazardous substances. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of Rule 24.2.5.

22 Topic 20: Reserve Zone (Chapter 25)

22.1 Introduction

660. Rule 25.2.5 included in Chapter 25 for the Reserve Zone manages the land use effects of hazardous substances.

661. The notified rule is set out as follows:

Chapter 25 – Reserve Zone

25.2.5 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substance where: <ul style="list-style-type: none"> (i) The aggregate quantity of any hazardous substances of any hazard classification on a site is less than the quantity specified for the Reserve Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances); (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
DI	The use, storage or disposal of any hazardous substances that does not comply with Rule 25.2.5 PI

22.2 Submissions

662. Four submission points were received on Rule 25.2.5 for the Reserve Zone. One submission seeks to delete Rule 25.2.5, while three seek to amend the rule.

663. The following submission seeks to delete Rule 25.2.5:

Submission point	Submitter	Summary of submission
785.5	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited – ‘Oil Companies’	Submitter seeks to delete Rule 25.2.5 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.

664. The following submissions seek to amend Rule 25.2.5:

Submission point	Submitter	Summary of submission
697.1031	Waikato District Council	<p>Submitter seeks to amend Rule 25.2.5 Hazardous substances, as follows:</p> <p><u>P1</u></p> <p>(a) The use, storage or disposal of any hazardous substance where must meet the following condition:</p> <p>(i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Business Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances) (b) The storage or use of radioactive materials is: (i) in approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.</p> <p><u>P2</u></p> <p><u>(a) The storage or use of radioactive materials is: (i) in approved equipment for medical and diagnostic purposes; or (ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.</u></p> <p>D1 Any activity that does not comply with Rule 25.2.5 P1 <u>or P2</u></p>
<i>FS1387.777</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
697.1032	Waikato District Council	<p>Submitter seeks to add new Rule 25.2.5 NCI Hazardous substances, as follows:</p> <p><u>NC1</u></p> <p><u>The storage of fuel for retail sale within a service station.</u></p>
<i>FS1089.8</i>	<i>Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited for 'Oil Companies'</i>	<i>Support</i>
<i>FS1387.778</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>
697.1033	Waikato District Council	<p>Submitter seeks to add new Rule 25.2.5 NC2 Hazardous substances, as follows:</p> <p><u>NC2</u></p> <p><u>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.</u></p>
<i>FS1387.779</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>

22.3 Analysis

665. The submission from the Oil Companies Limited [785.5] proposes to delete Rule 25.2.5. For similar reasons to those addressed in other zone chapters, the Oil Companies' view is that such controls are inappropriate, unnecessary, ineffective, inefficient and unable to be justified via a section 32 analysis. The reasons also discuss other legislation (i.e. HSNO and HSWA) that manages hazardous substances and that Council no longer has a function under sections 30 and 31 of the RMA.
666. Without replicating previous discussion from other zone rules, I disagree with this submission. My position is also supported by Mr Schaffoener and the legal opinion from Tompkins Wake, attached as Appendix 6 to this report.
667. The submission from Waikato District Council [697.1031] proposes to amend Rule 25.2.5 to provide a separate rule for the storage and use of radioactive materials, similar to other zone chapters. One further submission from Mercury NZ Limited [FS1387.77] was received in opposition to this point.
668. I agree with the changes suggested in the submission from Waikato District Council, given that it does not materially change the content of the rule, more the placement of the rule, and for consistency across the zone chapters I recommend that the submission from Waikato District Council be accepted.
669. The submission from Waikato District Council [697.1032] proposes to add a new non-complying activity rule (NCI) to Rule 25.2.5 to control the storage of fuel for retail sale as a non-complying activity. Two further submissions were received on this point from the Oil Companies [FS1089.8] and Mercury NZ Limited [FS1387.778], both in opposition to this submission. The Oil Companies' reasons for their further submission support their position regarding the deletion of Rule 25.2.5 in submission point [785.5].
670. I do not agree with the further submissions on this point, and consider that consistency across the zone chapters (for sensitive zones) is appropriate. Similar to previous discussions, this additional rule in the reserves zone will provide an additional assessment for service stations in the Reserve Zone, where they are not anticipated. The notified rule provides for services stations as a discretionary activity status where the activity cannot meet the permitted volume thresholds included in the AST for hazardous substances in Appendix 5. The proposed rule will provide a more rigorous assessment against the objective, policies and rules.
671. In terms of other activities involving hazardous substances, the rule does not currently include any other activities involving hazardous substances, as the permitted activity rule (PI) relies on the AST in Appendix 5, and where a proposal cannot meet this, it becomes a discretionary activity under D1. I have no concerns about singling out service stations in the village zone, given that other activities would generally locate in the Industrial and Business zones. However, I note that the scope of submissions did not provide an opportunity to review other activities in this zone. Therefore, I recommend that the submission from Waikato District Council be accepted.
672. The submission from Waikato District Council [697.1033] proposes to add a new rule (NC2) to control activities involving hazardous substances within 12m of the National Grid Transmission Line to Rule 25.2.5. One further submission from Mercury NZ Limited [FS1387.779] opposes this submission point for the same reasons as previously discussed in this report.
673. Similar to other zone chapters, I consider that this rule is appropriate to ensure that hazardous facilities are managed within the National Grid Transmission Line. I also consider

that the placement of the rule in Chapter 10 as a stand-alone chapter for hazardous substances is the most appropriate location for the rule. I therefore recommend accepting in part the submission from Waikato District Council, given that I am not specifically amending the zone chapter rule.

22.4 Recommendations

674. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Reject** the submission from the Oil Companies [785.5].
- (b) **Accept** the submission from Waikato District Council [697.1031]. Therefore **reject** the further submissions from Mercury NZ Limited [FS1387.777].
- (c) **Accept** the submission from Waikato District Council [697.1032]. Therefore **reject** the further submission from the Oil Companies [FS1089.8] and from Mercury NZ Limited [FS1387.778].
- (d) **Accept in part** the submission from Waikato District Council [697.1033]. Therefore **accept in part** the further submission from Mercury NZ Limited [FS1387.779].

22.5 Recommended amendments

675. The following amendments are recommended:

Chapter 25 Reserve Zone

25.2.5 Hazardous substances

PI	(a) The use, storage or disposal of any hazardous substance where <u>must meet the following condition</u> ⁶⁷ : <ul style="list-style-type: none"> (i) The aggregate quantity of any hazardous substances of any hazard classification on a site is less than the quantity specified for the Reserve Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances); (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.⁶⁸
P2	(a) <u>The storage or use of radioactive materials is:</u> <ul style="list-style-type: none"> <u>(i) in approved equipment for medical and diagnostic purposes; or</u> <u>(ii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.</u>⁶⁹
DI	The use, storage or disposal of any hazardous substances that does not comply with Rule 25.2.5 PI
<u>NC1</u>	<u>The storage of fuel for retail sale within a service station.</u> ⁷⁰
<u>NC2</u>	<u>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.</u> ⁷¹

⁶⁷ Submission [697.1031] Waikato District Council

⁶⁸ Submission [697.1031] Waikato District Council

⁶⁹ Submission [697.1031] Waikato District Council

⁷⁰ Submission [697.1032] Waikato District Council

⁷¹ Submission [697.1033] Waikato District Council

676. I note that while the above changes are recommended for Rule 25.2.5, I am also recommending that they be incorporated into a single rule corresponding to the zones. These changes will be collated and shown in Appendix 2.

22.6 Section 32AA evaluation

677. The S32 report dated July 2018 does evaluate the efficiency and effectiveness of using the Activity Status Table and indicates that it is the most efficient way to enable individual hazardous substances according to class rather than individual substance.
678. The proposed changes to Rule 25.2.5 include NCI, which will add a new non-complying activity for service stations. This rule does change the approach taken by Rule 25.2.5, given that the notified rule relies on the quantity threshold tables included in Appendix 5.
679. I do not consider singling out service stations from other activities to be an issue in the reserve zone, as other activities involving hazardous substances are more likely to locate in other zones (e.g. the industrial and business zones). However, the submissions from Waikato District Council to add new rules NCI relating to services stations are changes that broaden the scope of the rules.
680. By specifying the use and storage of fuel for retail sale within a service station as a non-complying activity, the intention is to restrict such activities from establishing in sensitive environments, which includes the reserve zone. As discussed in previous analysis relating to the sensitive zones, the activity status does not prohibit the activity, but does impose a higher threshold under the Resource Management Act for the activity, and would be subject to the full scrutiny of the objective and policy framework. I consider that this proposed amendment aligns well with Objective 10.1.1, which is about managing the effects (such as risk) on the storage, use or disposal of hazardous substances to ensure that the effects are acceptable. It also aligns well with Policies 10.1.2, 10.1.3 and 10.1.4.
681. In my opinion, there would need to be a very good reason for establishing such an activity within a sensitive environment, such as the Reserve Zone, and Council, through the resource consent process, would need to be certain that any risks to the surrounding environment are considered to be acceptable. I would anticipate that an application of this nature would most likely generate a publicly-notified application.
682. Without getting into the detail of an individual application it is difficult to evaluate the costs and benefits of this provision. However broadly, without the proposed provision being included in the plan, there is a risk that service station activities may establish within sensitive zones. The benefit of having such a provision is that it offers protection and reassurance to the community that Council will control the activity and ensure that it is appropriately located.
683. With respect to proposed NC2, this rule effectively replicates a rule already included in Chapter 14, therefore the intent of the rule has not changed, just the location (being Chapter 10), which I consider to be a more efficient and effective location in the District Plan.
684. NC2 will streamline the rules to align with the National Planning Standards for the sensitive zones, which makes sense from an efficiency and effectiveness perspective, because the plan user would only need to refer to one chapter (Chapter 10), as opposed to multiple chapters.
685. In terms of proposed NC2, regarding the placement of the rule for efficiency and effectiveness, I consider that including the rule in the hazardous substances chapter is most

appropriate option, as all plan users will use Chapter 10 to inform any activities involving the use, storage or disposal of hazardous substances.

22.6.1 Other reasonably practicable options

686. Given the scope of submissions and further submissions, my recommendations in respect to NCI and NC2 are relatively narrow and do not have many alternative options. I will discuss these separately as follows:

NCI

687. The “do nothing” approach is an alternative option for NCI, which would then rely on Rule 25.2.5 PI to determine consent for a service station, which would be considered as a discretionary activity if it could not meet the volume thresholds contained in Appendix 5.

688. I do not agree that a discretionary activity status is an appropriate activity status for a service station in a sensitive environment such as the reserve zone. It would make sense that the district plan should protect this zone to a higher degree than other zones. I also have no concern about singling out service stations specifically in the rule, as other activities involving hazardous substances are more likely to be undertaken in the Industrial and Business Zones. Further, I do not have scope through submissions to include additional activities which may establish in the reserve zone.

NC2

689. The only alternative option for NC2 would be to include it solely within Chapter 14 Infrastructure. My only concern with this approach is if other plan users were to solely rely on Chapter 10 and miss the provisions in Chapter 14. A suggested approach would be to provide reference in each set of rules to ensure that plan users do not miss the provisions.

22.6.2 Effectiveness and efficiency

690. The recommended amendments give effect to the proposed policy framework including Objective 10.1.1, Policies 10.1.2, 10.1.3 and 10.1.4. The amendments improve the effectiveness of the rule framework in implementing the objective and policies, and provide guidance to plan users for the assessment of activities that involve hazardous substances, specifically in regard to service stations and the national grid transmission line in sensitive environments.

22.6.3 Costs and benefits

691. Without getting to the individual details of an application it is difficult to evaluate the costs and benefits of NCI, although changing the activity status from a discretionary activity to a non-complying activity will mean additional cost and uncertainty of a successful outcome for applicants. However, without the proposed provision being included in the plan, there is a risk that service station activities may establish within sensitive zones, such as the Reserve Zone, which I consider on balance to be a much greater cost. The benefit being that such a provision offers protection and reassurance to the community that Council will control the activity and ensure that it is appropriately located.

692. In terms of the costs and benefits of NC2, as there is no material change to the rule framework or approach, there are no additional costs or benefits beyond what was notified.

693. In terms of both NCI and NC2, there are benefits to the environment and communities (social) with the additional recommended rules, as they provide clearer direction in respect to service stations locating in sensitive zones and activities involving explosive or flammable intrinsic properties within the National Grid Transmission Line yard.

694. There is certainly a wider benefit to the local and regional community and to nationally-significant infrastructure, however this is difficult to quantify without any specific proposal details. However, it is worth noting that the risks of not having protections in place could result in unacceptable consequences from an economic, cultural and social perspective (e.g. if an explosion or fire were to occur within these locations affecting landowners and nationally-significant infrastructure).

22.6.4 Risk of acting or not acting

695. I consider that there are risks in not acting. Whilst there may not be sufficient information to assess the costs and benefits to the environment and communities, this is an aspect of individual proposals which would be considered at the time of individual applications for resource consent. Proposed Policy 10.1.2 Location of new hazardous facilities supports proposed NCI, while proposed Policy 10.1.4 Reverse sensitivity effects supports NC2.

696. If the panel does act, this provides protection and assurances to the communities where proposals occur in sensitive locations. The recommended approach provides an opportunity to evaluate individual proposals and the risks associated with those proposals.

697. The costs of not acting could have potential unintended consequences which would not be acceptable to Council or the community. This approach would also not align with the Policy framework which is being provided for hazardous substances. It is for this reason that I consider that the changes are appropriately justified.

22.6.5 Decision about most appropriate option

698. The amendment to the rule for sensitive zones gives effect to the proposed policy framework for hazardous substances. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of Rule 25.2.5.

23 Topic 21: Hampton Downs Motor Sport and Recreation Zone (Chapter 26)

23.1 Introduction

699. Rule 26.2.9 included within Chapter 25 for the Motor Sport and Recreation Zone manages the land use effects of hazardous substances at the Hampton Downs Motorsport complex.

700. I note that although the rule is the same rule as provided for in the Business and Industrial zones, this site operates under a land use consent which provides for the motor sport activities. A specific hearing for Hampton Downs Motorsport is scheduled for 2020 which will address all of the rules related to this zone.

701. The notified rule is set out as follows:

Chapter 26 – Motor Sport and Recreation Zone

26.2.9 Hazardous substances - all precincts

PI	<p>(a) The use, storage or disposal of any hazardous substances where:</p> <p>(i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Motorsport and Recreation Zone in Table 6.1 contained within Appendix 6 (Hazardous Substances);</p>
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	(ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) Service station with a maximum storage for retail sale of: (a) 100,000 litres of petrol in underground storage tanks; (b) 50,000 litres of diesel in underground storage tanks; (c) 6 tonnes of LPG (single vessel storage). (b) Council's control is reserved over the following matters: (i) The proposed site design and layout in relation to: A. The sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. Interaction with natural hazards (flooding, instability), as applicable. (ii) proposed emergency management planning (spills, fire and other relevant hazards); (iii) Procedures for monitoring and reporting of incidents.
DI	The use, storage or disposal of any hazardous substances that do not comply with Rule 26.2.9 PI or CI.

23.2 Submissions

702. Three submission points were received on Rule 26.2.9 of Chapter 26 for the Hampton Downs Motorsport Park. One submission proposed to delete Rule 26.2.9, while two submissions proposed to amend Rule 26.2.9.

703. The following submission seeks to delete Rule 26.2.9:

Submission point	Submitter	Summary of submission
785.6	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited	Submitter seeks to delete Rule 26.2.9 – Hazardous Substances- All Precincts. AND Any consequential amendments or further relief to give effect to the submission.

704. The following submissions seek to amend Rule 26.2.9:

Submission point	Submitter	Summary of submission
783.1	Reid Investment Trust	Submitter seeks to amend Rule 26.2.9 PI (a) (i) Hazardous Substances - All Precincts as follows: (a) The use, storage or disposal of hazardous substances where: (i) The aggregate quantity of hazardous substances of any hazardous substances of any hazard classification on a site is less than the quantity specified for the Motorsport and Recreation Zone in Table 56.1 contained within Appendix 56 (Hazardous Substances). AND Any consequential amendments or further relief to give

		effect to the matters raised in the submission.
<i>FS1194.1</i>	<i>HD Land Limited and Hampton Downs (NZ) Limited</i>	<i>Oppose</i>
378.54	Fire and Emergency NZ	<p>Submitter seeks to amend Rule 26.2.9 Hazardous substances - All precincts, as follows:</p> <p>(a) The use, storage or disposal of any hazardous substances where:</p> <p>(i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Motorsport and Recreation Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances);</p> <p>(ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.</p> <p><u>(iii) Rule 26.2.9 (a)(i) excludes fire service operations.</u></p> <p>AND</p> <p>Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.</p>
<i>FS1035.161</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>

23.3 Analysis

705. The submission received from the Oil Companies Limited [785.6] seeks to delete Rule 26.2.9 for the same reasons as provided previously in this report. I disagree with this submission for the reasons that I have previously outlined earlier in the report. Therefore, I recommend that the submission be rejected.
706. The submission from Reid Investment Trust [783.1] seeks to amend Rule 26.2.9 to correct the reference from “6.1” to “5.1” and “Appendix 6” to “Appendix 5”. One further submission from HD Land Limited and Hampton Downs (NZ) Limited [*FS1194.1*] (which opposes submission 783 in its entirety) opposes this submission point.
707. I agree with these minor changes and consider they are appropriate, given that they incorrectly reference Appendix 6 instead of Appendix 5 in error. Therefore, I recommend accepting the submission from Reid Investment Trust.
708. The submission from Fire and Emergency New Zealand [378.54] seeks to amend Rule 26.2.9 to exclude fire service operations from the rule. One further submission from Pareoranga Te Kata [*FS1035.161*] supports the submission point. Similar to previous discussions in respect to the Business and Industrial zones, given that the AST contained in Appendix 5 provides for a significantly higher permitted volumes of hazardous substances to be stored and used for FENZ operations within the Hampton Downs Motor Sport and Recreation compared with other zones in the district, I do not consider there is a need to include an additional rule to exempt the FENZ activities in this zone. This view is also supported by Mr

Schaffoener. Therefore, I consider that the submission from Fire and Emergency New Zealand should be rejected.

23.4 Recommendations

709. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Reject** the submission from the Oil Companies Limited [785.6].
- (b) **Accept** the submission from Reid Investment Trust [783.1]. Therefore **reject** the further submission from HD Land Limited [FS1194.1] and Hampton Downs (NZ) Limited [FS1194.1].
- (c) **Reject** the submission from Fire and Emergency New Zealand [378.54]. Therefore **reject** the further submission from Pareoranga Te Kata [FS1035.161].

23.5 Recommended amendments

710. The following amendments are recommended:

26.2.9 Hazardous substances - all precincts

PI	<ul style="list-style-type: none"> (a) The use, storage or disposal of any hazardous substances where: <ul style="list-style-type: none"> (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Motorsport and Recreation Zone in Table 6572.1 contained within Appendix 6573 (Hazardous Substances); (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	<ul style="list-style-type: none"> (a) Service station with a maximum storage for retail sale of: <ul style="list-style-type: none"> (a) 100,000 litres of petrol in underground storage tanks; (b) 50,000 litres of diesel in underground storage tanks; (c) 6 tonnes of LPG (single vessel storage). (b) Council's control is reserved over the following matters: <ul style="list-style-type: none"> (i) The proposed site design and layout in relation to: <ul style="list-style-type: none"> A. The sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. Interaction with natural hazards (flooding, instability), as applicable. (ii) proposed emergency management planning (spills, fire and other relevant hazards); (iii) Procedures for monitoring and reporting of incidents.
DI	The use, storage or disposal of any hazardous substances that do not comply with Rule 26.2.9 PI or CI.

711. I note that while the above changes are recommended for Rule 26.2.9, I am also recommending that they be incorporated into a single rule. These changes will be collated and shown in Appendix 2.

23.6 Section 32AA evaluation

712. Given the minor nature of the changes proposed to Rule 26.2.9 (correcting references), I do not consider that a section 32AA evaluation is necessary.

⁷² Submission [783.1] from Reid Investment Trust

⁷³ Submission [783.1] from Reid Investment Trust

24 Topic 22: Te Kowhai Airpark Zone (Chapter 27)

24.1 Introduction

713. Rule 27.2.11 included within Chapter 27 for the Te Kowhai Airpark Zone manages the land use effects of hazardous substances within the airpark and adopts a different approach to the other rules and accommodates the multiple precincts within the airpark, with fuel being provided for aircrafts in Precincts A and B.

714. The notified rule is set out as follows:

Chapter 27 – Te Kowhai Airpark Zone

27.2.11 Hazardous Substances

PI	(a) In ALL PRECINCTS, the use, storage or disposal of any hazardous substance where: <ul style="list-style-type: none"> (i) The aggregate quantity of hazardous substance of any hazard classification on a site is less than the quantity specified for Te Kowhai Airpark Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances); (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	(a) Fuel storage and refuelling infrastructure, including self-automated dispensing facilities in PRECINCTS A AND B must not exceed: <ul style="list-style-type: none"> (i) An aggregate of 100,000 litres of petrol or aviation fuel in underground storage tanks; and (ii) An aggregate of 50,000 litres of diesel in underground storage tanks; and (iii) An aggregate of 6 tonnes of LPG (single vessel storage). (b) Council reserves its control over the following matters: <ul style="list-style-type: none"> (i) The proposed site design and layout in relation to: <ul style="list-style-type: none"> A. The sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; B. Interaction with natural hazards such as flooding, instability; C. Proposed emergency management planning (spills, fire and other relevant hazards); D. Procedures for monitoring and reporting of incidents.
DI	The use, storage or disposal of any hazardous substance that does not comply with one or more of the conditions in Rule 27.2.11.PI or CI.

24.2 Submissions

715. A specific hearing for Te Kowhai Airfield is scheduled for 2020 which will address all of the rules related to this zone. However, as all rules for hazardous substances are directed by the National Planning Standards to be included in a stand-alone chapter, the submissions relating to hazardous substances have been included in this hearing topic and are proposed to be included in Chapter 10. I note that it could be of assistance to the plan user if a link were added to Chapter 27 to direct users to Chapter 10.

716. Two submission points were received on Rule 27.2.11 of Chapter 27 for the Te Kowhai Airpark.

717. The following submission seeking to delete Rule 27.2.11 was made:

Submission point	Submitter	Summary of submission
785.7	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited	Submitter seeks to delete Rule 27.2.11 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.
<i>FS1339.198</i>	<i>NZTE Operations</i>	<i>Not stated</i>

718. The following submission seeking to amend Rule 27.2.11 was made:

Submission point	Submitter	Summary of submission
378.75	Fire and Emergency New Zealand	Submitter seeks to amend Rule 27.2.11 Hazardous Substances, as follows: (a) In ALL PRECINCTS, the use, storage or disposal of any hazardous substance where: (i) The aggregate quantity of hazardous substance of any hazard classification on a site is less than the quantity specified for Te Kowhai Airpark Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances); (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017. <u>(iii) Rule 27.2.11 (a) (i) excludes fire service operations.</u> AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
<i>FS1035.182</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
<i>FS1339.174</i>	<i>NZTE Operations Limited</i>	<i>Support</i>

24.3 Analysis

719. The submission received from the Oil Companies Limited [785.7] seeks to delete Rule 27.2.11 for the same reasons as provided previously in this report. One further neutral submission was received from NZTE Operations [FS1339.198].
720. For the reasons that I have previously outlined earlier in the report, I disagree with this submission. Therefore, I recommend that the submission from the Oil Companies Limited be rejected.
721. The submission from Fire and Emergency New Zealand [378.75] seeks to amend Rule 27.2.11 to exclude fire service operations. Two further submissions from Pareoranga Te Kata [FS1035.182] and NZTE Operations Limited [FS1339.174] both support this point.

The further submission from NZTE Operations notes that their support is on the grounds that water supply for firefighting purposes is appropriate at an airpark development.

722. Similar to previous discussions in respect to the Business and Industrial zones, given that the Activity Status Table contained in Appendix 5 provides for significantly higher permitted volumes of hazardous substances to be stored and used for FENZ operations within the Te Kowhai Airpark compared with other zones in the district, I do not consider there is a need to include an additional rule to exempt their activities in this zone. Therefore, I recommend that the submission from Fire and Emergency New Zealand be rejected.

24.4 Recommendations

723. I recommend, for the reasons given above, that the Hearings Panel:

- (a) **Reject** the submission from the Oil Companies Limited [785.7]. Therefore **reject** the further submission from NZTE Operations [FS/339.198].
- (b) **Reject** the submission from Fire and Emergency New Zealand [378.75]. Therefore **reject** the further submissions [FS/035.182] from Pareoranga Te Kata and [FS/339.174] from NZTE Operations Limited.

24.5 Recommended amendments

724. No amendments are recommended to be made to Rule 27.2.11. The rule should remain as notified.

24.6 Section 32AA evaluation

725. Given that no changes are proposed to Rule 27.2.11, no section 32AA evaluation is required.

25 Topic 23: Rangitahi Peninsula (Chapter 28)

25.1 Introduction

726. Rule 28.2.5 included within Chapter 28 for the Rangitahi Peninsula manages the land use effects of hazardous substances.

727. The notified rule is set out as follows:

Chapter 28 – Rangitahi Peninsula Zone

28.2.5 Hazardous substances

PI	<p>(a) The use, storage or disposal of any hazardous substances where:</p> <ol style="list-style-type: none"> (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Rangitahi Peninsula Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances); and (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
CI	<p>(a) Service station with a maximum storage for retail sale of:</p> <ol style="list-style-type: none"> (i) 100,000 litres of petrol in underground storage tanks; and (ii) 50,000 litres of diesel in underground storage tanks; and (iii) 6 tonnes of LPG (single vessel storage). <p>(b) Council's control is reserved over the following matters:</p>

	<p>(i) The proposed site design and layout in relation to:</p> <p>A. The sensitivity of the surrounding natural, human and physical environment; potential hazards and exposure pathways arising from the proposed facility, including cumulative risks with other facilities; and</p> <p>B. Interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards);</p> <p>(ii) Proposed procedures for monitoring and reporting of incidents.</p>
DI	The use, storage or disposal of hazardous substances that do not comply with Rule 28.2.5 PI or CI.

25.2 Submissions

728. A specific hearing for Rangitahi Peninsula is scheduled for 2020 which will address all of the rules related to this chapter. However, as all rules for hazardous substances are directed by the National Planning Standards to be included in a stand-alone chapter, the submissions relating to hazardous substances have been included in this hearing topic and are proposed to be included in Chapter 10. I note that it could be of assistance to the plan user if a link is added to Chapter 27 to direct users to Chapter 10.

729. Two submission points were received on Rule 28.2.5 of Chapter 28 for the Rangitahi Peninsula. One seeks to delete Rule 28.2.5, while one seeks to amend Rule 28.2.5.

730. The following submission was made seeking to delete Rule 28.2.5:

Submission point	Submitter	Summary of submission
785.8	Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited	Submitter seeks to delete Rule 28.2.5 – Hazardous Substances. AND Any consequential amendments or further relief to give effect to the submission.

731. The following submission was made seeking to delete Rule 28.2.5:

Submission point	Submitter	Summary of submission
378.78	Fire and Emergency New Zealand	Submitter seeks to amend Rule 28.2.5 Hazardous substances, as follows: (a) The use, storage or disposal of any hazardous substances where: (i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Rangitahi Peninsula Zone in Table 5.1 contained within Appendix 5 (Hazardous Substances); and (ii) The storage or use of radioactive materials is in approved equipment for medical and diagnostic purposes, or specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.

		<u>(iii) Rule 28.2.5 (a) (i) excludes fire service operations.</u> AND Amend the Proposed District Plan to make further or consequential amendments as necessary to address the matters raised in the submission.
FS1035.185	Pareoranga Te Kata	Support

25.3 Analysis

732. The submission received from the Oil Companies Limited [785.8] seeks to delete Rule 28.2.5 for the same reasons as provided previously in this report. I disagree with this submission for the reasons that I have previously outlined in this report. Therefore, I recommend that the submission from the Oil Companies Limited be rejected.
733. The submission from Fire and Emergency New Zealand [378.78] seeks to amend Rule 28.2.5 to exclude fire service operations from the rule. One further submission from Pareoranga Te Kata [FS1035.185] supports this point.
734. Similar to previous discussions in respect to the sensitive zones such as the Residential, Country Living and Village zones, in further information received pre-hearing from FENZ, based on the Activity Status Table included in Appendix 5, there is the potential to require resource consent given the volumes of hazardous substances permitted in this zone. However my view (similar that that discussed in the residential, village and country living zones) is that these areas are sensitive environments, and assessment at the time of resource consent provides an opportunity to assess the location and the risk of operations to sensitive activities. Therefore, I do not agree that a new rule should exclude fire service operations for the Rangitahi Peninsula. Therefore, I recommend that the submission from Fire and Emergency New Zealand be rejected.

25.4 Recommendations

735. I recommend, for the reasons given above, that the Hearings Panel:
- (a) **Reject** the submission from the Oil Companies Limited [785.8].
 - (b) **Reject** the submission from Fire and Emergency New Zealand [378.78]. Therefore **reject** the further submission from Pareoranga Te Kata [FS1035.185].

25.5 Recommended amendments

736. No amendments are recommended to be made to Rule 28.2.5. The rule will remain as notified. However, I note that I am also recommending that Rule 28.2.5 be incorporated into a single rule for all zones. These changes will be collated and shown in Appendix 2.

25.6 Section 32AA evaluation

737. Given that no changes are proposed to Rule 28.2.5, no section 32AA evaluation is required.

26 Conclusion

26.1 Contaminated Land

738. In regard to contaminated land, no key issues were raised in respect to the objectives and policies which correspond to the National Environmental Standard for Managing

Contamination in Soil. From the submissions received on this matter I consider that the NES provides adequate direction to plan users on this matter.

26.2 Hazardous Substances

739. In terms of hazardous substances, the key issue of contention that has been highlighted throughout this section 42A report is the interplay between the RMA, HSNO and HSWA legislation in relation to hazardous substances.
740. With respect to hazardous substances, some submitters have questioned Council's role in managing the storage, use, transport and disposal of hazardous substances since the removal of section 30 and 31 functions in 2017. Additionally, these same submitters have requested removal of rules throughout the district plan, as they consider that the district plan rules duplicate the requirements of HSNO and HSWA.
741. I have not agreed with this position, and neither has Council's technical expert Mr Schaffoener or legal advisors from Tompkins Wake. This is because we consider that the RMA does have a role to play in managing the effects of hazardous substances in respect to land use activities, particularly from a public health and safety perspective and in sensitive environments. We also do not consider that using the Activity Status Table in Appendix 5 duplicates the functions of other legislative requirements. As set out in the section 32 report prepared by Council, using the AST is the preferred approach to determine whether resource consent is triggered for the storage, use, transport or disposal of any particular hazardous substances.
742. The Invercargill District Plan, which was recently declared operative in August 2019, also uses a similar method, and it is clear and simple for plan users to work out whether the quantity of hazardous substances being proposed for storage, use or disposal triggers the threshold for resource consent.
743. I have not found other recently-notified plans particularly easy to determine whether a proposal requires resource consent or not without having an AST. I note also that, as these plans have not yet been through the RMA Schedule 1 process, and have not been tested by the Courts, I am reluctant to use them as a comparison to my recommended approach.
744. The proposed objective and policies relating to hazardous substances have been recommended changes, although for the most part the intention and policy direction remains with additions made to provide stronger policy direction.
745. There were several industry and operations perspectives (e.g. Horticulture New Zealand, Fire and Emergency New Zealand, Federated Farmers, Genesis Energy, Ports of Auckland) that are seeking exemptions for their specific activities. These have been considered with the view that the rules need to apply district-wide to a number of industries and operations.
746. The proposed definitions affecting the hazardous substances topic have presented some challenges with respect to adopting the National Planning Standards, given that the definition for 'hazardous substance' reflects the definitions included in legislation, which are slightly at odds with the definition as notified. However, this has been overcome with a new sub-definition for 'radioactive material'.
747. The definition of 'hazardous facility' attracted some submissions which sought refinements to exclude particular substances (e.g. fuel stored in equipment, small engines etc.). Some submitters wanted specific exclusions for their particular industries and operations, which are always a challenge to ensure that a balanced approach is taken. I recommended that several submissions be accepted in part, as many did want similar items exempted.

Unfortunately there were other items that would have made practical sense to exclude (similar to the Auckland Unitary Plan), however I did not have scope.

748. Regarding Appendix 5 of the Proposed District Plan, which contains the Activity Status Table (AST), one submission was received from Fire and Emergency New Zealand proposing to change the specific quantities of Class 8.3 substances set out in the table. However, based on the information provided pre-hearing, Mr Schaffoener and I are not of the view to amend Appendix 5.
749. Dairy NZ and Livestock Improvement Corporation requested that the Agriculture Research Centre at Ruakura be added back to the table after being omitted from the notified version compared to the Operative Waikato District Plan. Additionally, there were some minor changes to provide additional clarification (e.g. Discretionary Activity assessment criteria, changes to the BOD measurements), therefore I have recommended to accept these changes.
750. I have not recommended significant changes to the rules and have not departed significantly from those notified (with some minor corrections and amendments) and still largely rely on the AST to establish the activity status of a hazardous facility for each zone.
751. There are other specific activities such as service stations and activities within the National Grid Transmission Line corridor which provide additional protection to sensitive zones or nationally-significant infrastructure, noting that the rule already existed in Chapter 14. I have simply picked up the suggested changes and replicated them in each zone to ensure that they are not overlooked (given that the rule is currently placed in Chapter 14, which is focused on infrastructure and energy).
752. In this regard, my thinking has evolved with respect to this rule, and I am recommending a single chapter to manage hazardous substances and contaminated land which combines objectives, policies and rules in the same chapter, in accordance with the National Planning Standards. Therefore, this rule regarding hazardous substances within 12m of the National Grid is recommended to be located in this chapter.
753. The largest change will be streamlining the proposed rules into a new stand-alone chapter to meet the National Planning Standards. I have recommended that Chapter 10 be used, given that it already includes objectives and policies for hazardous substances.
754. I have recommended a single rule for all zones, which is included in Appendix 2. Initially, my thinking was to create five new rules from the individual zone chapter rules which would reflect the categories included in the Activity Status Table in Appendix 5, where the different thresholds for hazardous substances apply. However after undertaking an exercise to compare what the five rules would look like if combined into one single rule, I considered that having one rule is a more efficient option and less confusing for plan users. To assist the panel, I have included the comparison table of the initial five rules, which I used to arrive at a single rule, which is included in Appendix 2.