



Proposed Waikato District Plan (Stage 1) Hearing topic 8a- Hazardous Substances and Contaminated Land

Highlights package

21 January 2020

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In accordance with paragraph 28 of the First Directions from Hearing Commissioners, dated 21 May 2019, the following 'highlights package' has been prepared to summarise Federated Farmers of New Zealand ("FFNZ") key concerns as they relate to this hearing topic and to demonstrate how difficult and open to interpretation the proposed consenting pathway is to apply.

#### **Key concerns**

- 1. Unnecessary overlap:** HSNO already provides a comprehensive and far reaching regulatory framework for protecting the environment and health and safety of people and communities by preventing or managing the adverse effects of hazardous substances. The Health and Safety at Work Act 2015 also provides regulatory controls that users and handlers of hazardous substances must be appropriately trained and certified. Council is proposing to add additional controls which we consider unjustified. In our view the Statement of Evidence by Ms Wharfe for Horticulture NZ, at paragraphs 8.1 to 8.16, clearly outlines the deficiencies of the s32 Report.

Users of hazardous substances already have to comply with HSNO regulations during storage, transport and use of substances. HSNO is enforced by WorkSafe and it already has comprehensive processes in place to ensure HSNO regulations are complied with in places of work, such as farming properties.

- 2. Consent pathway difficult to apply:** The proposed consent pathway relies on an activity status threshold table which is complex, uncertain and open to interpretation. This is particularly problematic given the considerable difference in requirements and costs associated with the respective permitted or discretionary activity status. An example will be given to demonstrate the interpretation issues we think exist.

The rules framework does not rely on the definition of hazardous facilities. Each and every farmer in the district uses hazardous substances, as defined by the RMA, they will be required to use Table 5.1 to make an assessment as to whether or not they are required to obtain a discretionary resource consent or not. It is for this reason that Rule 10.3.1 (P1) and Table 5.1 remain the key areas of contention for FFNZ.

## **Application of Appendix 5: Hazardous Substances, Table 5.1 Activity Status Table – Permitted Activity thresholds**

Table 5.1 provides the requirements used to determine the consent pathway for the use, storage or disposal of a hazardous substance. Under the maximum quantity results in a permitted activity status, over - discretionary resource consent is required.

There is a significant leap in requirements, expectations, and costs for resource users between permitted and discretionary status and as such it is crucial that the plan reader gets it right. This significant 'step up' adds to the importance of ensuring the consent pathway includes requirements or conditions that are clearly identified, able to be complied with and not ambiguous.

For a resource user determining, with any degree of confidence, whether they can meet the conditions of proposed Rule 10.3.1(P1) and use, store or dispose of hazardous substances as a permitted activity is difficult.

The difficulty is created by interpretation issues as to what the requirements of Table 5.1 are and how they can be met.

For instance, in order to know whether you are over or under the maximum quantity threshold you need to know what is being measured and where. That is not obvious from the table itself nor the 'rules', which look to be included as advice notes or guidance material to help with interpretation.

These criticisms are perhaps best justified by working through a practical example.

*Example – a farmer has 4 20 litre containers of various agrichemical products, all containing subclass 6.1A ingredients along with a number of other subclass substances, including 6.3, 6.6 and 6.9.*

1. First element – what is being measured, the quantity of the total product or the subclass ingredient?
  - a) Do they combine the quantity of the total product (i.e. 4 x 20 litre = 80 l) or only the total quantity of the 6.1A subclass ingredient in the products?
    - In our view it is not clear from the table or rules as to whether it is the net quantity of the entire product which you add together (80l in this example) or the quantity of the ingredient in the product i.e. only the 4x subclass 6.1A component, which is used to determine the aggregate quantity.
    - If it is the aggregate of the subclass ingredients, then we would argue that is not a reasonable drafting gate to use to determine whether it's a permitted or discretionary activity. Knowing how to find that information and whether it is even possible to make those calculations creates a level of complexity that is likely to be beyond the knowledge base and patience of most resource users.
  - b) Subclasses 6.6 and 6.9 are included in the same line on the table. Does this mean the threshold quantity applies to each subclass separately or is it a combined total?
    - Allocating quantity thresholds to specific subclasses and with reference to the guidance note purpose of Rule 3 which only refers to quantities of subclass substances not total product quantities hinders rather than helps these interpretation issues.

2. Second element – where is it being measured?

- a) The agrichemical which includes the sub-class 6.9 ingredient is subject to a different threshold limit if used, stored or disposed of within 50m of a more sensitive zone.
- The 'more sensitive zone' qualifier is not defined within the plan, table or guidance material. A plan user has no ability to determine with any certainty where these zones are and as such which threshold limit applies. The discretion which is subsequently created allows a plan user to determine whether the threshold quantity is 6 tonnes or 2 tonnes before a discretionary consent is required.

In our view the solution to these problems is to:

- defer to the HSNO Act, rather than try to regulate hazardous substances in the District Plan; or
- focus the plan more deliberately to address identified gaps where HSNO is not adequately controlling land use to protect the environment from the adverse effects of hazardous substances; and
- Include the specific exemptions FFNZ is seeking under submission point 680.209 to Rule 10.3.1 (P1).

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