

**BEFORE THE HEARING COMMISSIONERS
IN WAIKATO DISTRICT**

IN THE MATTER of the Resource Management Act 1991 ("**the Act**")

AND

IN THE MATTER of the Proposed Waikato District Plan (Stage 1) Hearing 8A
Hazardous substances and contaminated land

**SUMMARY STATEMENT OF EVIDENCE BY LYNETTE PEARL WHARFE
FOR HORTICULTURE NEW ZEALAND**

24 January 2020

1. My EIC addressed the submissions and further submissions made by Horticulture NZ (HortNZ), assessed the s42A Report recommendations and either supported the recommendations or sought alternative changes.
2. My EIC addressed the following:
 - a. Management of hazardous substances
 - b. Relationship between HSNO and RMA
 - c. Section 32
 - d. Waikato RPS
 - e. Other Plans
 - f. Activity Status Table (AST)
 - g. Definitions
 - h. Objective
 - i. Policies
 - j. Rules and Appendix.
3. My Rebuttal Statement (RS) supported parts of the evidence of Ms McPherson for the Oil Companies and Ms Walker for Federated Farmers.
4. The Rebuttal statement by Ms Overwater for Council comments on my EIC and RS and I respond to some of those comments below.
5. The matters I wish to address in this summary statement are:
 - a. The need for the proposed hazardous substance planning framework in the Plan
 - b. Hazardous facilities
 - c. How AST is implemented in other plans
 - d. Evidence of duplication
 - e. Council Rebuttal evidence
6. The need for the proposed hazardous substance planning framework in the Plan
As set out in my EIC I do not support the regulatory framework proposed in the Plan because of:
 - The lack of justification in the s32 Report
 - The complexity of the provisions
 - Duplication with HSNO and HSW
 - Not necessary to give effect to the RPS
 - Increase compliance costs
 - Lack of certainty
 - Focus should be on hazardous substances not hazardous facilities
 - Lack of consideration of EPA Hazardous Substances (Hazardous Property Controls) Notice 2017
 - Lack of analysis of specific resource management issues for hazardous substances
 - No assessment of the ineffectiveness of the provisions for hazardous substances in the Operative Franklin District Plan.

The Operative District Plan has two sections – Waikato and Franklin. The Franklin section does not have a regulatory regime for managing hazardous substances but the Waikato section does. The s32 Report seeks that the two sections are aligned – and that is appropriate. However the assumption is that the Franklin section is absorbed into the Waikato style regulatory approach.

I have found no assessment as to what are the resource management issues and adverse effects that have arisen from the Franklin approach that necessitates the need for greater regulatory control. Nor have I found any assessment as to why it is not appropriate for the Waikato section to align with Franklin. These matters were not addressed in the s32A Report.

So I am left with questions as to what has occurred as a result of hazardous substance management in Franklin over the last decade or so that necessitates the change in approach. In the absence of substantiated reasons I can see no justification for the change in approach.

7. Hazardous facilities

My evidence relating to hazardous facilities is not accepted by Ms Overwater (Para 70). I disagree with her comments that in most instances the rules would not trigger consent requirements due to exemptions in Rule 1 of Appendix 5. My advice from growers is that there are many substances that would fall outside the exempted classes so the statement is not correct.

In addition I note that Ms Overwater states at Para 44: "Further we do not agree that the plan should focus on specific activities or hazardous facilities, but rather should focus on managing the effects of hazardous substances across the district."

My EIC has sought such a focus on hazardous substances, yet it is rejected by Ms Overwater. Given the identified issue that the policies refer to hazardous facilities and the rules and Appendix 5 refer to hazardous substances there is a need to remove the inconsistency. My opinion is that the focus should be on hazardous substances.

8. How AST is implemented in other plans

The s42A Report and Rebuttal refer to other plans that have used AST. I have undertaken a review of such plans and find that there are a range of exemptions applied which mean that those plans are quite different to the regime being proposed for Waikato. For instance the Auckland Unitary Plan definition of hazardous facility has an exemption for vehicles applying agrichemicals and fertilisers for their intended purpose so they are not hazardous facility. The s42A Report rejects that exemption in Waikato.

Western Bay of Plenty has exemptions where there is compliance with NZS8409:2004 Management of Agrichemicals and HSNO regulations but those are also rejected in the s42A Report for Waikato.

So if comparisons are to be drawn between other plans then there needs to be surety that the comparisons are to the same provisions.

9. Evidence of duplication

To assist in demonstrating duplication I include details of what growers are required to do under current regulations.

Growers are already complying with a range of regulations, including HSW and EPA Notices. In addition the horticulture industry has Good Agricultural Practice (NZGAP and GLOBALG.A.P.), an assurance programme to which growers need to be certified to be able to supply product to supermarkets and for export. GAP certification also provides growers with a pathway to demonstrate compliance with regulatory requirements (e.g. Food Act, Farm Environment Plans, HSNO). To be certified a grower needs to pass regular audits by an independent auditor. The audit includes questions and assessment of compliance with relevant regulations for hazardous substances. For instance, the audit requirement is that there is an inventory of hazardous substance and that the substances are stored in accordance with NZS8409:2004 Management of Agrichemicals. The inventory must also be held in a place away from the store – so it is accessible in the event of an emergency.

The inventory must state for each product:

- The product name
- UN number
- Maximum quantity likely
- Location of storage
- Specific segregation or storage requirements
- Safety data sheet (SDS) for each product.

The HSW Regulations (e.g. 10.34, 12.17, 13.38) require a Location Compliance Certificate (LCC) if the quantities of specific class substances are exceeded. An LCC certifies compliance with all of the requirements relating to safe storage of the hazardous product, including segregation, separation distance, construction materials, spill containment, access, and ventilation. The certificate requires a site visit by the WorkSafe registered compliance certifier.

To identify the interface between the HSW regulations and the district plan I have undertaken a brief assessment comparing some LCC thresholds to the Appendix 5 thresholds which is attached to this summary. What is evident from this comparison is that a HSW Location Compliance Certificate will be required at a much lower threshold than the district plan. Some growers have had to obtain an LCC. I see no benefit in them also having to obtain a resource consent from the Council.

10. Response to matters raised in rebuttal of Ms Overwater for WDC.

In the space available I cannot address all matters raised in response to my EIC but identify key matters.

10.1 Objective 10.1.1

Ms Overwater (Para 22) considers that there is ambiguity about what the term 'managed' actually means. In my opinion, in the objective 'managed' means that a range of methods may be used or applied and indicates that action will be taken. The policies and rules then specify the appropriate method. 'Minimise', as used on Policy 10.1.2 is one such method. I therefore consider that there is no ambiguity in the use of the term 'managed' in Objective 10.1.1.

10.2 Policy 10.1.2

A number of parties have raised concerns with the lack of a definition for 'sensitive environment'. Ms Overwater (Para 35) suggests that it could include wetlands, waterways and SNA's. Yet 'waterways' is not defined in the Plan or an RMA term. I consider that there are implications with defining a term without submissions and the ability of submitters to comment on it so do not support the approach. I note that the amendment to the Introduction seeks to add a proxy definition for sensitive environment and do not support this inclusion.

10.3 Introduction While an introduction is useful I do not support the changes based on the AST approach or the inclusion of a proxy definition for sensitive environment.

10.4 General approach to hazardous substances

Para 116 seeks to refute the reference to the Christchurch Plan process. I consider that the Christchurch decision establishes key principles that are appropriate to be applied in Waikato. While consistency with neighbouring plans is a consideration it should not be a determining factor where there are clear resource management issues that identify that an alternative approach is appropriate.

Appendix: Examples of thresholds for an LCC under HWS and Proposed Plan Appendix 5.

HSNO class	Hazard type	LCC threshold	App 5 threshold (Rural)	Example of products that growers may use
3.1A	Flammable liquids ¹	20 L	2 tonne 0.6 t within 50m of msz	
3.1B	Flammable liquids	50L in containers ≥ 5L 250 L in containers up to 5 L	2 tonne 0.6 t within 50m of msz	Pro-P fungicide
3.1C	Flammable liquids	500L in containers ≥ 5L 1500L in containers up to 5 L	6 tonne	Ripcord insecticide Tokuthion insecticide
5.1.1A.	Oxidising liquids and solids	5L/kg (use) 50L/kg in packages closed at all times	1.5 tonne	
5.1.1B	Oxidising liquids and solids	50L/kg (use) 500L/kg in packages closed at all times	As above	
5.1.1C	Oxidising liquids and solids	100L/kg (use) 1000L/kg in packages closed at all times	As above	
6.1A	Acutely toxic	50L/ kg 100kg/ L on farms not less than 4ha	0.2 tonne 0.1 t within 50m of msz*	Paraquat Counter 20G Thimet 20G
6.1B	Acutely toxic	250L/ kg 500kg/ L on farms not less than 4ha	2 t 1 t within 50m of msz*	Agpro Metamitron Nemacur Metafort
6.1C	Acutely toxic	1000L/ kg 3500kg/ L on farms not less than 4ha	6 t 2 t within 50m of msz*	Hi-Cane Karate Zeon Chlorpyrifos Reglone
8.2A	Skin corrosive	50L/kg 500kg/L on farms not less than 4ha	2 t	Some glyphosate formulations Some dairy detergents
8.2B	Skin corrosive	250L/kg 3500kg/L on farms not less than 4ha	10 t	Some glyphosate formulations

* Msz - more sensitive zone

There is a Hazardous substance Calculator which can assist in determining the thresholds and controls.

www.hazardoussubstances.govt.nz/calculator

In addition to the HSW requirements the EPA Hazardous Substances (Hazardous Property Controls) Notice 2017 for class 9 ecotoxic substances include requirements for secondary containment, signage, emergency response plans when volumes exceed the following thresholds.

HSNO class	Secondary containment/ Emergency response plan	Signage on store
9.1A	100 litres or kg	100 litres or kg
9.1B, 9.1C	1000 litres or kg	1000 litres or kg
9.1D	10,000 litres or kg	10,000 litres or kg
9.2A, 9.3A, 9.4A		100 litres or kg
9.2B, 9.2C, 9.3B, 9.4B, 9.4C		1000 litres or kg
9.2D, 9.3C		10,000 litres or kg

¹ There are exemptions for fuel – petrol and diesel