

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the Proposed Waikato District Plan

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**SUMMARY STATEMENT OF EVIDENCE OF MARK NICHOLAS  
ARBUTHNOT FOR PORTS OF AUCKLAND LIMITED IN RELATION TO  
HEARING 8A – HAZARDOUS SUBSTANCES & CONTAMINATED LAND**

**22 JANUARY 2020**

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## 1. DEFINITION OF 'HAZARDOUS FACILITY'

- 1.1 It is important to make a distinction between facilities (such as warehouses) that handle and use hazardous substances and hazardous substances that are stored untouched in closed containers in transit depots, as they are subject to different management regimes.
- 1.2 POAL is seeking to exclude hazardous substances that are stored as cargo in transit from the definition of a 'hazardous facility' as it is subject to a high level of regulation by the Health and Safety at Work (Hazardous Substances) Regulations 2017.
- 1.3 The section 42A (at paragraphs 58 to 64) does not agree with the relief sought for the following reasons:
- (a) resource consent will not be required every time a container of hazardous substances arrives at the inland freight hub, noting that no evidence has been provided in respect of the quantities, volumes and frequencies of hazardous substances being handled by the inland freight hub;
  - (b) the definition of a 'hazardous facility' requires hazardous substances to be stored "for more than short periods of time" for the definition to apply;
  - (c) the 'vanning' and 'devanning' operations would be subject to the provisions of the District Plan (and not covered by the HSW Location Compliance Certificates); and
  - (d) it is not appropriate to single out specific operators as an exclusion from a definition.
- 1.4 The nature of inland freight hub activities is such that POAL are unable to predict the quantities, volumes and frequencies of hazardous substances being handled as cargo 'in transit' at any one time. Without the exclusion, if a shipment arrives at the freight hub (or any other transit depot within the district) that contains hazardous substances in excess of the permitted quantity, a discretionary resource consent will technically be required to store that cargo, despite it being 'in transit'

and subject to the requirements of the Location Compliance Certificates under the Health and Safety at Work (Hazardous Substances) Regulations 2017.

1.5 For clarity, POAL are not seeking to exclude facilities that use, store and dispose of hazardous substances in the traditional sense (such as warehouses and 'vanning' or 'devanning' operations). POAL acknowledges and accepts that such facilities are proposed to be regulated under the Proposed Plan.

## 2. APPLICATION OF HAZAROUS SUBSTANCES RULES

2.1 POAL sought clarification that the rules pertaining to the use, storage or disposal of hazardous substances relate to a 'hazardous facility', thereby ensuring that the corresponding objectives and policies of the Proposed Plan are implemented.

2.2 The section 42A report (at paragraph 500) recommends that the relief of POAL be rejected on the basis that the storage of hazardous substances is generally a 'hazardous facility' and the change sought is not necessary.

2.3 I disagree with the conclusions of the section 42A report in respect of this matter. As the policies of the Proposed Plan relate to the manner in which 'hazardous facilities' are to be managed, the rules that implement these policies must also be specific to 'hazardous facilities'.

2.4 Put another way, it is the manner in which an activity uses, stores or disposes of hazardous facilities that is regulated by district plans, not the hazardous substances themselves. Without clarification, the exemptions to the definition of 'hazardous facilities' would have no application and would result in an inefficient process with increased costs to applicants. I therefore support the amendments set out within the submission of POAL, as follows:

P1	(a) The use, storage or disposal of any hazardous substance <u>within a hazardous facility</u> 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 5.1 contained within Appendix 5 (Hazardous Substances).
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2.5 Such an approach is consistent with the management of hazardous substances within other territorial authorities such as Auckland, Hamilton City, Tauranga City, Western Bay of Plenty District, Matamata Piako District, Hauraki District, Thames Coromandel District, and Waipa District to name but a few.

### 3. **ACTIVITY STATUS FOR NON-COMPLIANCE WITH STANDARDS**

3.1 POAL sought that the use, storage or disposal of any hazardous substances that does not comply with the permitted standards is provided for as a restricted discretionary activity, as opposed to a discretionary activity.

3.2 My evidence has set out in detail the matters over which district plans are intended to control in respect of hazardous substances with reference to the Resource Legislation Amendment Act 2017 and the Ministry for the Environment guidance, and I have tailored the matters of discretion accordingly.

3.3 The section 42A rebuttal (at paragraph 87) states that Ms Overwater:

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

3.4 I note that the rules of the Proposed Plan already contain different thresholds in recognition of the relative sensitivities of the underlying zoning. A discretionary activity status for an infringement to the rules is unnecessary in this context, noting that the matters of discretion enable the effects to be comprehensively assessed on a site by site basis.

**Mark Nicholas Arbuthnot**

**22 January 2020**