

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Waikato District Plan

**MEMORANDUM FOR PORTS OF AUCKLAND LIMITED IN RELATION TO
HEARING 8A – HAZARDOUS SUBSTANCES & CONTAMINATED LAND**

19 MAY 2020

1. INTRODUCTION

1.1 This memorandum has been prepared in response to the Directions of the Hearings Commissioners¹ in respect of Hearing 8A (Hazardous Substances):

6. In order to conclude this matter efficiently, and in a way that will be of assistance to us, we direct as follows:

...

e) In the event that no consensus is reached:

i. Submitters and further submitters are invited to prepare memoranda setting out the details of the proposed plan provisions they consider to be appropriate, including reasons, and to provide these to the Hearings Administrator, no later than 5pm on Tuesday 19 May 2020.

...

f) For the avoidance of doubt regarding e) above, no further statements of evidence are to be provided and one memorandum per submitter is to be provided (should they wish to do so) ...

2. DETAILS OF PROPOSED PLAN PROVISIONS CONSIDERED APPROPRIATE

2.1 The details of the proposed plan provisions that are considered appropriate by POAL are appended to this memorandum as **Attachment 1** and are summarised as follows.

3. DEFINITION OF “HAZARDOUS FACILITY”

3.1 In its primary submission (578.48), POAL sought to exclude fuel in mobile plant, motor vehicles, boats and small engines, and the temporary storage, handling and distribution of national or international cargo from the definition of a “hazardous facility”:

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:

- fuel in mobile plant, motor vehicles, boats and small engines; and
- the temporary storage, handling and distribution of national or international cargo.

Reasons

- 3.2 As outlined in evidence, 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 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 Health and Safety at Work (Hazardous Substances) Regulations 2017 (“**Regulations**”).
- 3.3 The transient and variable nature of these substances, combined with the requirements of the Regulations, is such that it is not appropriate to impose further regulation under the Resource Management Act (“**RMA**”). Without the exclusions, the Proposed Waikato District Plan (“**Proposed Plan**”) will end up duplicating the management measures that are already required to be put in place under the Regulations.
- 3.4 The further information that was provided for the technical gap analysis (**Attachment 2**) identifies that POAL’s inland freight hub is a “transit depot” under the Regulations, which impose² the following operational requirements:
- (a) WorkSafe is required to be notified at least 30 days prior to the commissioning of the transit depot.
 - (b) Persons handling certain hazardous substances within the transit depot are required to be trained.
 - (c) Certain hazardous substances must be secured to prevent access by persons who are not permitted to access the substance.

² At Regulations 2.7, 10.37, 12.20, 12.46, and 13.28.

- (d) There are clear segregation requirements for hazardous substances, including segregation distances between vehicles and unloaded substances.
 - (e) There is a requirement to ensure that electrical wiring is designed and installed to prevent moisture, combustion or ignition sources to the hazardous substances.
 - (f) There are bunding requirements for containment, pending disposal of any leaked or spilled material or damaged packages. This also brings in requirements to hold an Emergency Response Plan and a Spill Management Plan.
 - (g) There are limits on the storage of certain types of hazardous substances.
- 3.5 The Regulations also require hazardous substances held in containers to remain unopened during the time that they are present at the “transit depot” for a period not exceeding 3 days.³
- 3.6 If POAL wants to hold hazardous substances in unopened containers for a period greater than 3 days, the Regulations require a specific Location Compliance Certificate to be obtained from an independent certifier to confirm that the location where the substances are stored is safely managed, according to the rules.
- 3.7 The Regulations adequately “cover the field” in respect of the handling of hazardous substances within “transit depots”, addressing human health effects, safety effects, and discharge effects.

4. APPLICATION OF HAZAROUS SUBSTANCES RULES

- 4.1 POAL sought (578.3) to ensure that the rules pertaining to the use, storage or disposal of hazardous substances are specific to a “hazardous facility”, thereby ensuring that the corresponding objectives and policies of the Proposed Plan are implemented.
- 4.2 The following changes are proposed to address this matter:

³ 3(1) Interpretation; Health and Safety at Work (Hazardous Substances) Regulations 2017.

P1	(a) The use, storage or disposal of any hazardous substance <u>within a hazardous facility</u> where: <ul style="list-style-type: none"> (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).
...	...

Reasons

- 4.3 As set out in evidence, 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 management of “hazardous facilities” (as opposed to being specific to “hazardous substances” as currently proposed).
- 4.4 The Resource Legislation Amendment Act 2017 (“**RLAA**”) removed the explicit function of territorial authorities under section 31 of the RMA to control the adverse effects of the storage, use, disposal and transportation of hazardous substances to ensure that duplication between the RMA, HSNO Act and HSW Act is avoided.
- 4.5 In other words, the Proposed Plan should only be concerned with the management of hazardous facilities as a land use activity, and not the management of the hazardous substances (which is addressed under separate legislation such as the HSNO Act and the HSW Act).
- 4.6 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.
- 4.7 Without the relief sought by POAL, the exemptions to the definition of “hazardous facilities” would have no application (the rule would still control the use storage or disposal of hazardous substances despite an activity being excluded from the definition of “hazardous facilities”) and would result in an inefficient process with increased costs to applicants.

5. ACTIVITY STATUS FOR NON-COMPLIANCE WITH STANDARDS

5.1 In its primary submission (578.4), 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. The following changes are proposed in this regard:

RD1 The use, storage or disposal of any hazardous substances that does not comply with Rule 20.2.6 P1, P2 or C1.

Council's discretion shall be restricted to the following matters:

(i) the proposed operation and site layout;

(ii) the separation distances from the receiving environment and other land uses;

(iii) the degree and acceptability of residual risk;

(iv) consideration of potential health and environmental hazards and exposure pathways arising from the proposed facility;

(v) minimising potential cumulative risks including in conjunction with other nearby hazardous facilities; and

(v) measures to minimise or mitigate potential adverse effects from natural hazards.

Reasons

5.2 The 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. The recommended matters of discretion have been tailored accordingly and are comprehensive and “cover the field”.

5.3 A discretionary activity will require an applicant to undertake a full assessment of effects when considering an infringement to the hazardous substances rules, and will require matters that are unrelated to the storage, use or disposal of hazardous substances to be assessed (such as traffic generation, parking, landscaping and building design). Such an approach is unduly onerous, disproportionate to the scale and significance of an infringement to the rules, and is not justified in the context of the RLAA and the guidance that has been prepared by the Ministry for the Environment.

5.4 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.

6. PROPOSED AMENDMENTS BY THE OIL COMPANIES, HORTICULTURE NEW ZEALAND, FEDERATED FARMERS, LPG ASSOCIATION

6.1 For completeness, POAL has no objection to the amendments that have been recommended by the Oil Companies, Horticultural New Zealand, Federated Farmers and the LPG Association.

Mark Nicholas Arbuthnot

19 May 2020

Attachment 1

Proposed Plan provisions that are
considered appropriate by POAL

Recommended amendments from s42A report are shown in ~~strikethrough~~ and underline
Recommended amendments from s42A officer rebuttal evidence shown in ~~strikethrough~~ and underline
Recommended amendments by POAL shown in ~~strikethrough~~ and underline

Attachment 2

Recommended amendments to Chapter 10 in response to submissions and
evidence 20 January 2020

Chapter 10: Hazardous Substances and Contaminated Land

Proposed Waikato District Plan
Stage 1
(Notified version)



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Key to use of colour

Black text – retained as notified

~~Red struckthrough~~ or underline – Recommended amendments from s42A report

~~Blue struckthrough~~ or underline – Recommended amendments from s42A officer rebuttal evidence

~~Green struckthrough~~ or underline – Recommended amendments by POAL to address submission points

Chapter 10: Hazardous Substances and Contaminated Land

10.1 Hazardous Substances

10.1.1 Introduction

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

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

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

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

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

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

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

Risks are influenced by the location of an activity and the surrounding environment. For example, hazardous facilities located in areas subject to natural hazards may be exposed to greater risks of damage or failure resulting in an event involving a hazardous substance.

Facilities located in proximity to land uses that are sensitive to the potential effects of a hazardous substance may also result in a greater risk.

These provisions are a land use planning tool under the Resource Management Act and are designed to apply in addition to requirements of other legislation. Such requirements assist in the

management of hazardous substances and they are recognised in the design of the provisions in this chapter.¹

10.1.2 Objective 10.1.1

(a) ~~Residual~~² Risks² associated with the storage, use, transport³ or disposal of hazardous substances is managed are minimised⁴ to ensure that the effects on people, property and the environment are acceptable, while recognising the benefits of facilities storing⁵ using or disposing of⁶ hazardous substances.

10.1.3 Policy 10.1.2

10.1.2 Policy – ~~Location of new h~~⁷ Hazardous facilities

(a) ~~New h~~⁸ Hazardous facilities must⁹ minimise the risk to the environment (including people and property) ~~to acceptable levels~~¹⁰ by:

(i) Siting new hazardous facilities in appropriate locations that are separated from incompatible activities, such as sensitive land use and infrastructure¹¹, and sensitive environments¹²;

~~(ii) Avoid locating near to sensitive land use activities and infrastructure~~¹³

(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.¹⁴

10.1.4 Policy 10.1.3

10.1.3 Policy – Residual Assessment of¹⁵ risks of hazardous substances

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.

¹ Submission 697.569 from Waikato District Council

² Submission [697.570] Waikato District Council

³ Submission [697.570] Waikato District Council

⁴ Submission [697.570] Waikato District Council

⁵ Submission [785.41] Z Energy Ltd, BP Oil NZ Limited

⁶ Submission [785.41] Z Energy Ltd, BP Oil NZ Limited

⁷ Submission [697.571] Waikato District Council

⁸ Submission [697.572] Waikato District Council

⁹ Submission [697.572] Waikato District Council

¹⁰ Submission [419.78] Horticulture New Zealand

¹¹ Submission [680.121] Federated Farmers

¹² Submission [680.121] Federated Farmers

¹³ Submission [697.572] Waikato District Council

¹⁴ Submission [697.572] Waikato District Council

¹⁵ Submission [697.573] Waikato District Council

10.1.5 Policy 10.1.4

10.1.4 Policy – Reverse sensitivity effects

- (a) ~~Separate~~¹⁶ Ensure as far as practicable¹⁷ reverse sensitivity effects are avoided between¹⁸ sensitive land use activities and from¹⁹ 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.~~²⁰

10.2 Contaminated Land

10.2.1 Objective 10.2.1 – Contaminated land

- (a) The subdivision, use and development of contaminated land is sustainably²¹ managed to protect human health and safety²² and the environment from unacceptable risk²³.

10.2.2 Policy 10.2.2 – Managing the use of contaminated land

- (a) Contaminated land is managed (which may include remediation) ~~or remediated~~²⁴ 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 contaminated land management approaches associated with²⁵ the use, subdivision and development ~~of contaminated land management approaches of~~ actually or potentially contaminated land²⁶ includes where appropriate²⁷:
- (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,

¹⁶ Submission [785.44] from the Oil Companies

¹⁷ Submission [697.574] from Waikato District Council

¹⁸ Submission [785.44] from the Oil Companies

¹⁹ Submission [785.44] from the Oil Companies

²⁰ Submissions [680.123] from Federated Farmers of New Zealand, [697.574] from Waikato District Council, [785.44] from the Oil Companies

²¹ Submission [81.230] from Waikato Regional Council

²² Submission [923.134] from Waikato District Health Board

²³ Submission [680.124] from Federated Farmers of New Zealand

²⁴ Submission [785.10] from the Oil Companies

²⁵ Submission [81.233] from Waikato Regional Council

²⁶ Submission [81.233] from Waikato Regional Council

²⁷ Submission [800.2] from Environmental Management Solutions Limited and Submission [463.2] from Environmental Management Solutions Limited

(iv) site management plans as appropriate for identifying, monitoring and managing contaminated land.

(v) Preliminary site investigations.²⁸

(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.²⁹

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.³⁰

10.3 Rules for Hazardous Substances

Rule 10.3.1 - Hazardous Substances in All Zones

<u>P1₃₁</u>	(a) <u>The use, storage or disposal of any hazardous substance within a hazardous facility must meet the following conditions:</u> (i) <u>the aggregate quantity of any hazardous substance of any hazard classification on a site is less than the quantity specified for the applicable zone in Table 5.1 Appendix 5 (Hazardous Substances).</u>
<u>P2₃₂</u>	(a) <u>The storage or use of radioactive material is:</u> (i) <u>an approved equipment for medical and diagnostic purposes; or</u> (ii) <u>specified as an exempt activity or article in the Radiation Safety Act and Regulations 2016.</u>
<u>C1₃₃</u>	(a) <u>The storage of the following maximum volumes of fuel for retail sale within a service station in the Rural Zone, the Business Town Centre, Business Zone, Industrial Zone or Heavy Industrial Zone, the Motorsport and Recreation Zone</u> (i) <u>100,000 litres of petrol in underground storage tanks;</u> (ii) <u>50,000 litres of diesel in underground storage tanks; and</u> (iii) <u>6 tonnes of LPG (single vessel storage).</u> (b) <u>Council's control is reserved over the following matters:</u> (i) <u>The proposed site design and layout in relation to:</u> A. <u>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;</u> B. <u>interaction with natural hazards (flooding, instability), as applicable and proposed emergency management planning (spills, fire and other relevant hazards);</u> (ii) <u>Procedures for monitoring and reporting of incidents.</u>

²⁸ Submission [81.233] from Waikato Regional Council

²⁹ Submission [81.234] from Waikato Regional Council

³⁰ Submission [680.125] from Federated Farmers of New Zealand

³¹ Refer to submissions from Waikato District Council [697.113], [697.870], [697.960], [697.777], [697.1031], [697.265], [697.708], Ports of Auckland Limited [578.3] and Horticulture New Zealand [419.14].

<u>C2</u>	<p>(a) <u>Fuel storage and refuelling infrastructure, including self-automated dispensing facilities in PRECINCTS A AND B at Te Kowhai Airpark Zone must not exceed:</u></p> <p>(i) <u>An aggregate of 100,000 litres of petrol or aviation fuel in underground storage tanks; and</u></p> <p>(ii) <u>An aggregate of 50,000 litres of diesel in underground storage tanks; and</u></p> <p>(iii) <u>An aggregate of 6 tonnes of LPG (single vessel storage).</u></p> <p>(b) <u>Council reserves its control over the following matters:</u></p> <p>(i) <u>The proposed site design and layout in relation to:</u></p> <p>A. <u>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;</u></p> <p>B. <u>Interaction with natural hazards such as flooding, instability;</u></p> <p>C. <u>Proposed emergency management planning (spills, fire and other relevant hazards);</u></p> <p>D. <u>Procedures for monitoring and reporting of incidents.</u></p>
<u>RD1³⁴</u>	<p><u>The use, storage or disposal of any hazardous substances that does not comply with Rule 10.3.1 P1, P2 or C1.</u></p> <p><u>Council's discretion shall be restricted to the following matters:</u></p> <p>(i) <u>the proposed operation and site layout;</u></p> <p>(ii) <u>the separation distances from the receiving environment and other land uses;</u></p> <p>(iii) <u>the degree and acceptability of residual risk;</u></p> <p>(iv) <u>consideration of potential health and environmental hazards and exposure pathways arising from the proposed facility;</u></p> <p>(v) <u>minimising potential cumulative risks including in conjunction with other nearby hazardous facilities; and</u></p> <p>(vi) <u>measures to minimise or mitigate potential adverse effects that may result from natural hazards.</u></p>
<u>D2</u>	<p><u>A service station that does not comply with Rule 10.3.1 C1 in the Business Zone, Business Town Centre, Industrial Zone or Heavy Industrial Zone.</u></p>
<u>NC1³⁵</u>	<p><u>The use, storage of fuel for retail sale within a service station in the Residential, Country Living, Village, Rangitahi Peninsula zones, in the Tamahere Business Zone or Agricultural Research Centre and in the Reserve Zone.</u></p>
<u>NC2³⁶</u>	<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> <p><u>Note: This rule also relates to rule 14.4.4 NC8 in Chapter 14 (Infrastructure).</u></p>

10.4 Rules recommended to be replaced in the District Plan

As a result of the changes recommended through the National Planning Standards, the following rules are proposed to be replaced in the various zone chapters as follows:

Chapter 16 – Residential Zone

16.2.5 Hazardous substances

Recommended amendments from s42A report are shown in ~~strikethrough~~ and underline
Recommended amendments from s42A officer rebuttal evidence shown in ~~strikethrough~~ and underline
Recommended amendments by POAL shown in ~~strikethrough~~ and underline

P1	<p>(a) The use, storage or disposal of any hazardous substance where:</p> <p>(ii) 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):</p>
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³⁴ Refer to submissions from Waikato District Council [697.871] and [697.1031] and Ports of Auckland Limited [578.4].

³⁵ Refer to submissions from Waikato District Council [697.114], [697.872], [697.961], [697.1032] and [697.589].

³⁶ Refer to submissions from Waikato District Council [697.629], [697.703], [697.115], [697.873], [697.962] [697.778] and [697.1033].

Recommended amendments from s42A report are shown in ~~strikethrough~~ and underline
 Recommended amendments from s42A officer rebuttal evidence shown in ~~strikethrough~~ and underline
 Recommended amendments by POAL shown in ~~strikethrough~~ and underline

P2	(a) 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.
D1	The use, storage or disposal of any hazardous substances that does not comply with Rule 16.2.5 P1 or P2.

Chapter 17 – Business Zone 17.2.5.4

Hazardous substances

P1	(a) The use, storage or disposal of any hazardous substances must meet the following conditions: (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.
C1	(a) Service station with a maximum storage for retail sale of: (c) 100,000 litres of petrol in underground storage tanks; (d) 50,000 litres of diesel in underground storage tanks; and (e) 6 tonnes of LPG (single vessel storage). (b) Council's control is limited to 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; and B. interaction with natural hazards (flooding, instability), as applicable; C. proposed emergency management planning (spills, fire and other relevant hazards); (ii) proposed procedures for the monitoring and reporting of incidents.
D1	The use, storage or disposal of any hazardous substances that does not comply with Rule 17.2.5.4 P1.
D1	A service station that does not comply with Rule 17.2.4.5 C1.

Chapter 18 – Business Town Centre

18.2.5 Hazardous substances

P1	(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).
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.
C1	(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

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 Recommended amendments from s42A officer rebuttal evidence shown in ~~strikethrough~~ and underline
 Recommended amendments by POAL shown in ~~strikethrough~~ and underline

	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 P1, P2 or C1.

Chapter 19 – Business Zone Tamahere

19.2.5 Hazardous Substances

P1	(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 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.
D1	Any activity that does not comply with Rule 19.2.5 P1

Chapter 20 – Industrial Zone

20.2.6 Hazardous Substances

P1	(b) The use, storage or disposal of any hazardous substance where: (iii) 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	(b) The storage or use of radioactive materials is: (v) an approved equipment for medical and diagnostic purposes; or (vi) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
C1	(f) 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). (g) Council shall reserve its control over the following matters: (ii) 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); (iii) Procedures for monitoring and reporting of incidents.
D1	The use, storage or disposal of any hazardous substances that does not comply with Rule 20.2.6 P1, P2 or C1.

Chapter 21 – Industrial Zone Heavy

21.2.6 Hazardous substances

P1	(c) The use, storage or disposal of any hazardous substance where: (iv) 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).
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P2	(c) The storage or use of radioactive materials is: (vii) an approved equipment for medical and diagnostic purposes; or (viii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
C1	(h) The storage of the following maximum volumes of fuel for retail sale within a service station: (vii) 100,000 litres of petrol in underground storage tanks; (viii) 50,000 litres of diesel in underground storage tanks; and (ix) 6 tonnes of LPG (single vessel storage). (ii) Council reserves its control over the following matters: (iv) The proposed site design and layout in relation to: E. 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; F. interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards); (v) Procedures for the monitoring and reporting of incidents.
D1	The use, storage or disposal of any hazardous substance that does not comply with Rules 21.2.6 P1, P2 or C1.

Chapter 22 – Rural Zone 22.2.4

Hazardous substances

P1	(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	(d) The storage or use of radioactive materials if it is: (ix) an approved equipment for medical and diagnostic purposes; or (x) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
C1	(j) The storage of the following maximum volumes of fuel for retail sale within a service station: (x) 100,000 litres of petrol in underground storage tanks; (xi) 50,000 litres of diesel in underground storage tanks; and (xii) 6 tonnes of LPG (single vessel storage). (k) Council's control is reserved over the following matters: (vi) The proposed site design and layout in relation to: G. 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; H. interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards); (iii) 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 P1, P2 or C1.

Chapter 23 – Country Living Zone

23.2.4 Hazardous substances

P1	(b) The use, storage or disposal of any hazardous substance where: (ii) 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
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	(iii) 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	(e) The storage or use of radioactive materials if it is: (xi) an approved equipment for medical and diagnostic purposes; or (xii) specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
C1	(l) The storage of the following maximum volumes of fuel for retail sale within a service station: (xiii) 100,000 litres of petrol in underground storage tanks; (xiv) 50,000 litres of diesel in underground storage tanks; and (xv) 6 tonnes of LPG (single vessel storage). (m) Council reserves its control over the following matters: (vii) The proposed site design and layout in relation to: I. 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; J. interaction with natural hazards (flooding, instability), as applicable, proposed emergency management planning (spills, fire and other relevant hazards); (iv) Procedures for monitoring and reporting of incidents.
D1	The use, storage or disposal of hazardous substance that does not comply with Rule 23.2.4 P1, P2 or C1.

Chapter 24 – Village Zone ~~24.2.5~~

Hazardous substances

P1	(d) The use, storage or disposal of any hazardous substances where: (v) 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	(f) The storage or use of radioactive materials is: (xiii) An approved equipment for medical and diagnostic purposes; or (xiv) Specified as an exempt activity or article in the Radiation Safety Act and Regulations 2017.
D1	The use, storage or disposal of any hazardous substances that does not comply with Rule 24.2.5 P1 or P2.

Chapter 25 – Reserve Zone

25.2.5 Hazardous substances

P1	(a) The use, storage or disposal of any hazardous substance where: (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.
D1	The use, storage or disposal of any hazardous substances that does not comply with Rule 25.2.5 P1

Chapter 26 – Motorsport and Recreation Zone ~~26.2.9~~

Hazardous substances – all precincts

P1	<p>(a) The use, storage or disposal of any hazardous substances where:</p> <p>(iii) 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> <p>(iv) 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>(a) Service station with a maximum storage for retail sale of: (n) 100,000 litres of petrol in underground storage tanks; (o) 50,000 litres of diesel in underground storage tanks; (p) 6 tonnes of LPG (single vessel storage).</p> <p>(b) Council's control is reserved over the following matters: (i) The proposed site design and layout in relation to:</p> <p style="padding-left: 40px;">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;</p> <p style="padding-left: 40px;">E. Interaction with natural hazards (flooding, instability), as applicable.</p> <p>(ii) proposed emergency management planning (spills, fire and other relevant hazards); (iii) Procedures for monitoring and reporting of incidents.</p>
D1	The use, storage or disposal of any hazardous substances that do not comply with Rule 26.2.9 P1 or C1.

Chapter 27 – Te Kowhai Airpark Zone

27.2.11 Hazardous Substances

P1	<p>(a) In ALL PRECINCTS, 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 Te Kowhai Airpark 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>
C1	<p>(c) Fuel storage and refuelling infrastructure, including self-automated dispensing facilities in PRECINCTS A AND B must not exceed:</p> <p>(iv) An aggregate of 100,000 litres of petrol or aviation fuel in underground storage tanks; and</p> <p>(v) An aggregate of 50,000 litres of diesel in underground storage tanks; and</p> <p>(vi) An aggregate of 6 tonnes of LPG (single vessel storage). (d) Council reserves its control over the following matters:</p> <p>(ii) The proposed site design and layout in relation to:</p> <p>(iii) 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;</p> <p>(iv) Interaction with natural hazards such as flooding, instability;</p> <p>(v) Proposed emergency management planning (spills, fire and other relevant hazards); (vi) Procedures for monitoring and reporting of incidents.</p>
D1	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.P1 or C1.

Chapter 28 – Rangitahi Peninsula Zone

28.2.5 Hazardous substances

P1	<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 Rangitahi Peninsula Zone in Table 5.1 contained within Appendix 5</p>
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	(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.
C1	(a) Service station with a maximum storage for retail sale of: (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). (b) Council's control is reserved over the following matters: (iv) The proposed site design and layout in relation to: F. 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 G. Interaction with natural hazards (flooding, instability), as applicable. proposed emergency management planning (spills, fire and other relevant hazards); (v) Proposed procedures for monitoring and reporting of incidents.
D1	The use, storage or disposal of hazardous substances that do not comply with Rule 28.2.5 P1 or C1.

10.5 Definitions

The following changes are recommended to be made to Chapter 13 of the District Plan:

Contaminated land³⁷	<u>Has the same meaning as in section 2 of the RMA.</u> <u>means land that has a hazardous substance in or on it that— a.</u> <u>has significant adverse effects on the environment; or</u> <u>b. is reasonably likely to have significant adverse effects on the environment.</u>
Hazardous Substance³⁸	<u>Has the same meaning as in section 2 of the RMA:</u> <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> <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> <u>a. with 1 or more of the following intrinsic properties: i.</u> <u>explosiveness:</u> <u>ii. flammability:</u>

37 Adopted from the National Planning Standards

38 Adopted from the National Planning Standards

	<p><u>iii. a capacity to oxidise:</u></p> <p><u>iv. corrosiveness:</u></p> <p><u>v. toxicity (including chronic toxicity):</u></p> <p><u>vi. ecotoxicity, with or without bioaccumulation; or</u></p> <p><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></p>
Radioactive material³⁹	<u>Means any material that spontaneously emits ionising radiation, including any naturally occurring radioactive material or any nuclear material.</u>
Hazardous Facility⁴⁰	<p><u>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:</u></p> <ul style="list-style-type: none"> • <u>fuel stored in mobile plants, motor vehicles, boats and small engines;</u> • <u>the temporary storage, handling and distribution of national or international cargo;</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.</u>
Hazard⁴¹	<u>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.</u>
Cumulative Risk⁴²	<u>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 hazardous facilities in the vicinity where risks of one facility can influence the risk of the other.</u>
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.

³⁹ Consequential amendment resulting from adoption of National Planning Standards

⁴⁰ Submissions [578.48]Ports of Auckland, [680.139] Federated Farmers of New Zealand

⁴¹ Submission [749.49] Housing New Zealand Corporation

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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10.6 Appendix 5: Hazardous Substances

The following changes are recommended to be made to Appendix 5 (Chapter 29 of the District Plan):

Table 5.1 Activity Status Table - Permitted Activity Thresholds

HSNO Class and Sub-Class (aggregate quantities)	Zone	Zone	Zone
	17. Business 18. Business Town Centre 19. Business Tamahere 20. Industrial 21. Heavy Industrial 26. Hampton Downs Motor Sport and Recreation 27. Te Kowhai Airpark 22. Specific Area - Agricultural Research Centre Campus	22. Rural 25. Reserve	16. Residential 23. Country Living 24. Village 28. Rangitahi Peninsula
Explosive Class 1	Maximum quantity (measured in tonnes or m³)		
Sub-class 1.1	0.05	0.02	0

Sub-class 1.2	0.5	0.2	0
Sub-class 1.3	1.5	0.5	0
Sub-class 1.2 and 1.3 when stored with sub-class 1.1	0.05	0.02	0
Flammable gas/aerosol Class 2 Maximum quantity (measured in tonnes or m³)			
Sub-class 2.1 (all)	1 (2,000m ³)	0.5 (1,000m ³)	0.2 (40m ³)
Sub-class 2.1 within 50m of a more sensitive zone	0.2 (400m ³)	0.1 (200m ³)	n/a
LPG	3	1.5	0.1
LPG within 50m of a more sensitive zone	1	0.5	n/a
Non-hazardous gases Maximum quantity (measured in tonnes or m³)			
All non-hazardous gases, compressed or liquefied	5 (10,000m ³)	2 (4,000m ³)	0.1 (200m ³)
Flammable liquids Class 3 Maximum quantity (measured in tonnes or m³)			
Sub-class 3.1A and 3.1B	6	2	0.1
Sub-class 3.1A and 3.1B within 50m of a more sensitive zone	2	0.6	n/a
Sub-class 3.1C	20	6	0.3
Sub-class 3.1D	60	20	1

Sub-class 3.2 (all)	3	1	0.05
Flammable solids Class 4			
Maximum quantity (measured in tonnes or m³)			
Sub-class 5.1.1 (all)	3	1.5	0.05
Sub-class 4.2 (all)	1	0.4	0.02
Sub-class 4.3 (all)	1	0.4	0.02
Oxidising capacity Class 5			
Maximum quantity (measured in tonnes or m³)			
Sub-class 5.1.1 (all)	3	1.5	0.05
Sub-class 5.1.2 Gases	1,000m ³	400m ³	40m ³
Sub-class 5.2 (all)	1	0.5	0.02
Toxic Class 6			
Maximum quantity (measured in tonnes or m³)			
Sub-class 6.1 Gases	300m ³	100m ³	0
Sub-class 6.1A	0.5	0.2	0
Sub-class 6.1A within 50m of a more sensitive zone	0.2	0.1	n/a
Subclass 6.1B	6	2	0.05
Sub-class 6.1B within 50m of a more sensitive zone	2	1	n/a
Sub-class 6.1C and 6.6-6.9	20	6	0.3

Sub-class 6.1C and 6.6-6.9 within 50m of a more sensitive zone	6	2	n/a
Corrosive Class 8			
Maximum quantity (measured in tonnes or m³)			
Sub-class 8.1, 8.2A and 8.3	6	2	0.05
Sub-class 8.2B and 8.2C	20	10	0.3
Eco-toxic Class 9			
Maximum quantity (measured in tonnes or m³)			
Sub-class 9.1A, 9.2A and 9.4A	0.5	0.5	0.5
Sub-class 9.1A, 9.2A and 9.4A within > or < = 30m of a watercourse	0.1	0.1	0.1
Sub-class 9.1B, 9.2B and 9.4B	10	10	10
Sub-class 9.1B, 9.2B, and 9.4B within > or < = 30m of a watercourse	3	3	3
Sub-class 9.1C, 9.2C, and 9.4C	30	30	30
Sub-class 9.1C, 9.2C and 9.4C within > or < = 30m of a watercourse	10	10	10
High Biological Oxygen Demand (BOD₅)(>10,000 mg/l)			
<u>High Biological Oxygen Demand (BOD₅)(>10,000 mg/l) <30m of a watercourse</u>	100	40	20

<p><u>High Biological Oxygen Demand (BOD₅)(>10,000 mg/l) >30m of a watercourse</u></p>	40	20	20
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Rule 1:

For the purpose of the table, a hazardous substance shall have the class and sub-class given by the Environmental Protection Authority when approving the importation and manufacture of that substance under the Hazardous Substances and New Organisms Act 1996. Use, storage and disposal of hazardous substance sub-classes 1.4, 1.5, 1.6, 6.1D, 6.1E, 6.3, 6.4, 6.5, 9.1D, 9.2D, and 9.3 are exempt from this table.

Rule 2:

Quantities are given in t (tonnes), except all permanent or compressed gases, which are measured in m³ (cubic metres) at standard temperature and pressure (20°C and 101.3 kPa).

Rule 3:

The tables specify the total quantities of hazardous substances for each hazard classification (aggregates). That is 0.5 tonnes of one Class 5.1 substance + 0.25 tonnes of another Class 5.1 substance = 0.75 tonnes of Class 5.1 This 0.75 tonnes is the amount to use to assess whether consent is required.

Rule 4:

Many substances have more than one hazardous property. The activity status must be determined for each hazard classification and the most onerous activity status shall apply. For example, petrol is classified as a highly flammable liquid (3.1A), toxic (6.1E – not included in this table), mildly irritating to skin (6.3B – not included in this table), a suspected human carcinogen (6.7B) and eco-toxic to the aquatic environment (9.1B). The flammability determines the activity status in this case.

Rule 5:

'n/a' means: not applicable; 'all' means all categories in each hazard sub-class.

Assessment Criteria⁴³

When assessing discretionary applications, the assessment shall include (but is not limited to):

- a. How the hazardous facility is located on the site, taking into account separation from boundaries and other more sensitive land uses;
- b. How the design and proposed management contributes to the minimisation of adverse effects on the environment;

⁴³ Submission [697.320] Waikato District Council

- c. The individual risks of the hazardous facility and cumulative risks with other hazardous facilities in the vicinity, as relevant;
- 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;
- e. Consideration of the risks posed by the occurrence of identified natural hazard events in the area to the hazardous facility;
- f. The degree of social, cultural or economic benefits the facility and its associated storage, use or disposal of hazardous substances will have locally;
- 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:
 - (i) the sensitivity of the receiving environment to any risks;
 - (ii) risk identification (inherent risk) and assessment, and risk management response (residual risk);
 - (iii) practicable alternative method of management that would present less risk;
 - (iv) how the proposal minimises or mitigates cumulative adverse effects with respect to other hazardous facilities in the area;
 - (v) proposed emergency management equipment and plans and the adequacy of overall emergency response capability.

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.

Attachment 2

Information provided for technical
gap analysis

From: [Mark Arbuthnot](#)
To: [Katherine Overwater](#)
Cc: [Bridget Parham](#); [Sandra Kelly](#); [Will Gauntlett](#); "[Alistair Kirk \(KirkA@poal.co.nz\)](#)"
Subject: RE: Hearing 8A - Hazardous Substances (post hearing work) - Further information for technical gapanalysis
Date: Thursday, March 5, 2020 5:23:04 PM
Attachments: [image006.png](#)

Thanks Katherine,

From Ports of Auckland Limited's perspective, it is the provisions relating to transit depots that are most relevant. The HSW (Hazardous Substances) Regulations define a transit depot as:

transit depot means a permanent place (except a means of transport or any place where hazardous substances are held for sale or supply) used as a transport depot that is intended to hold hazardous substances in containers that remain unopened during the time that they are present at the depot for periods—

- (a) that are more than—
 - (i) 24 hours, for a substance that is not subject to the tracking provisions in Part 19;
 - (ii) 2 hours, for a substance subject to the tracking provisions in Part 19; but
- (b) that in no case exceeds 3 days

The specific provisions of the HSW (Hazardous Substances) Regulations set out the requirements for the operation of transit depots. Of relevance:

- a. WorkSafe is required to be notified at least 30 days prior to the commissioning of a transit depot.
- b. Persons handling certain hazardous substances within the transit depot are required to be trained.
- c. Certain hazardous substances must be secured to prevent access by persons who are not permitted to access the substance.
- d. There are clear segregation requirements for hazardous substances, including segregation distances between vehicles and unloaded substances.
- e. There is a requirement to ensure that electrical wiring is designed and installed to prevent moisture, combustion or ignition sources to the hazardous substances.
- f. There are bunding requirements for containment, pending disposal of any leaked or spilled material or damaged packages. This also brings in requirements to hold an Emergency Response Plan and Spill Management Plan.
- g. There are limits on the storage of certain types of hazardous substances.

These are the main risk management controls that are relevant to the Proposed District Plan. If POAL wants to hold the untouched cargo longer, a specific Location Compliance Certificate is required under the Regulations by an independent certifier.

These measures are considered to be sufficient to 'cover the field' in respect of the handling of hazardous substances within transit depots. They address human health effects, hazard effects (separation, electrical wiring, and storage) and discharge effects on the environment (containment and spill management).

The transient and variable nature of these substances combined with the regulations they are under is such that it is not appropriate to impose further regulation under the RMA. My opinion is that the

district plan will end up duplicating much of the management measures that are required to be put in place under the Regulations.

This is different and distinct to activities that open the containers and handle hazardous substances (e.g. warehouses for repacking and distribution to multiple individuals). Such activities are not 'transit depots' and are therefore subject to different requirements in terms of the handling and processing of hazardous substances.

To be clear, POAL's position is not that warehouses should be exempt from the provisions; it is only hazardous substances that are "in transit" within transit depots that are sought to be exempt from the provisions of the Proposed District Plan.

Health and Safety at Work (Hazardous Substances) Regulations 2017

For completeness, the specific Regulations that are relevant to transport depots are set out below:

- Regulation 2.7 Signage requirements for transit depots:
 - requires specific signage to be established at the entrance to the depot.

- Regulation 10.37 Requirement for transit depot:
 - the requirement to notify WorkSafe at least 30 days prior to the commissioning of a depot as a place for accommodating class 2, 3, or 4 substances;
 - requirements for segregation, including segregation distances between vehicles and unloaded substances;
 - requirements to ensure that any electrical equipment at the transit depot is designed and constructed so that in the event of failure of the electrical equipment no resulting ignition source will contact either the substance or its package;
 - requirements to designate and clearly identify with signs areas for containment, pending disposal of any leaked or spilled material or damaged packages.

- Regulation 12.20 Duty of PCBU relating to transit depot where class 5.1.1 or 5.1.2 substances are present:
 - the requirement to notify WorkSafe at least 30 days prior to the commissioning of a depot as a place for accommodating class 5.1.1 or 5.1.2 substances;
 - requirements to ensure that all class 5.1.1 and 5.1.2 substances remain within their closed containers;
 - requirements to ensure that any worker at the transit depot who handles a class 5.1.1 or 5.1.2 substances has received information, instruction, and training;
 - requirements to ensure that if a class 5.1.1 or 5.1.2 substance is left unattended, it is secured from access by persons who are not permitted by the PCBU to access the substance;
 - requirements for segregation, including segregation distances between vehicles and unloaded substances;
 - requirements to ensure that any electrical wiring or equipment within the depot is designed and installed –
 - so as to prevent the ingress of moisture or combustible particulate matter or vapour or gas to any such wiring or equipment; and
 - so that in the event of failure of the electrical equipment, no resulting ignition source will

- contact either the substance, or its container or packaging; and
 - requirements to designate and clearly identify with signs areas for containment, pending disposal of any leaked or spilled material or damaged packages.
- Regulation 12.46 Requirements for transit depot:
 - the requirement to notify WorkSafe at least 30 days prior to the commissioning of a depot as a place for accommodating class 5.2 substances;
 - requirements to ensure that all class 5.2 substances remain within their closed containers;
 - requirements to ensure that any worker at the transit depot who handles a class 5.2 substances has received information, instruction, and training;
 - requirements to ensure that if a class 5.2 substance is left unattended, it is secured from access by persons who are not permitted by the PCBU to access the substance;
 - requirements for segregation, including segregation distances between vehicles and unloaded substances;
 - requirements to ensure that any electrical wiring or equipment within the depot is designed and installed –
 - so as to prevent the ingress of moisture or combustible particulate matter or vapour or gas to any such wiring or equipment; and
 - so that in the event of failure of the electrical equipment, no resulting ignition source will contact either the substance, or its container or packaging; and
 - requirements to designate and clearly identify with signs areas for containment, pending disposal of any leaked or spilled material or damaged packages.
- Regulation 13.28 Controls on transit depots where class 6 or 8 substances present:
 - the requirement to notify WorkSafe at least 30 days prior to the commissioning of a depot as a place for accommodating a class 6.1A, 6.1B, 6.1C, 8.2A, or 8.2B substance;
 - requirements to ensure that all class 6.1A, 6.1B, 6.1C, 8.2A, or 8.2B substances remain within their closed containers;
 - requirements to ensure that any worker at the transit depot who handles a class 6.1A, 6.1B, 6.1C, 8.2A, or 8.2B substances has received information, instruction, and training;
 - requirements to ensure that if a class 6.1A, 6.1B, 6.1C, 8.2A, or 8.2B substance is left unattended, it is secured from access by persons who are not permitted by the PCBU to access the substance;
 - requirements for segregation, including segregation distances between vehicles and unloaded substances;
 - requirements to designate and clearly identify with signs areas for containment, pending disposal of any leaked or spilled material or damaged packages;
 - except when stored in transportable containers, requirements to ensure that stacks of packages and intermediate bulk containers in the transit depot containing class 6.1A, 6.1B, 6.1C, 8.2A, or 8.2B substances:
 - do not exceed 25 tonnes; and
 - are accessible from all sides; and
 - are segregated from each other by at least 5m; and
 - requirements to ensure that transportable containers containing packaged or bulk class 6 or 8 substances in the transit depot are:

- not stacked more than 2 containers high and 2 containers deep; and
- where stacked 2 containers deep, arranged so as to provide access to both sides of each stack; and
- separated from containers of incompatible substances by at least 5m.

Please do not hesitate to contact me should you wish to discuss any of the matters raised further.

Regards,

Mark Arbuthnot

BENTLEY & Co
Resource Management Consultants

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PO Box 4492, Shortland Street, Auckland 1140

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From: Katherine Overwater <Katherine.Overwater@waidc.govt.nz>

Sent: Tuesday, March 3, 2020 4:10 PM

To: Lisette.balsom@waikatoregion.govt.nz; aandcgore@gmail.com; kim@lochielfarmlands.co.nz; mercer.committee123@gmail.com; Jordyn.Landers@hortnz.co.nz; bucklandmarine@xtra.co.nz; brendan.balle@ballebros.co.nz; peter@lpga.org.nz; Mark Arbuthnot <marbuthnot@bentley.co.nz>; penny.gallagher@synlait.com; HWalker@fedfarm.org.nz; karleen.broughton@wel.co.nz; sharp.k19@gmail.com; Will Gauntlett <will.gauntlett@waidc.govt.nz>; ian.johnson@mitchelldaysh.co.nz; kelly@environmentalmanagement.co.nz; Claire.Jewell@bluescopesteel.com; Richard.Wall@waikatodhb.health.nz; tainuihapu.environmental@gmail.com; pt4@students.waikato.ac.nz; johnm@4sight.co.nz; bmurdoch@align.net.nz; lynette@agribusinessgroup.co.nz; catherine.somerville-frost@chapmantripp.com; Bootlegbrewery@outlook.com; cdawson@bbo.co.nz; shutchings@greenwoodroche.com; hwalker@fedfarm.org.nz; rob@publiclaw9.com; Ewan Chapman <ewan.chapman@duncancotterill.com>; Georinam@4sight.co.nz; Davidl@4sight.co.nz

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Subject: Hearing 8A - Hazardous Substances (post hearing work) - Further information for technical gap analysis

Good Afternoon submitters

Thank you to those who provided feedback on the memorandum I sent out on Wednesday 5th February 2020. I have taken on board the comments received and in order to address the concerns raised firstly I wish to provide submitters a further opportunity to advise Council of the standards,

codes of practice etc that your respective industries consider relevant to the Council's technical gap analysis and the reasons why you consider these instruments to be relevant.

Secondly, rather than issuing a revised memorandum to submitters, I wish to seek further directions from the Panel regarding the extent of the technical gap analysis (based on the list provided by submitters), the process to be undertaken (both technical and planning), consultation with submitters and revised timeframes. This direction will hopefully provide clarity to all parties moving forward.

For those interested, I have provided the first monthly update to the Panel of the work undertaken to date and indicated that a further memorandum to be provided to the Panel on Friday 6th March 2020 (this week). The update to the Panel can be found at the following link to Council's website:

<https://www.waikatodistrict.govt.nz/your-council/plans-policies-and-bylaws/plans/waikato-district-plan/district-plan-review/stage-1/hearings>

The two key documents selected by Council for review (the Health and Safety at Work (Hazardous Substances) Regulations 2017 and Hazardous Substances (Hazardous Property Controls) Notice 2017) were the two key legislative instruments discussed at the hearing. The technical gap analysis directed by the Panel needed to have some limitations in order to meet the timeframes set by the Panel. Further, there is a cost to Council to undertake the technical review of these legislative instruments.

Council did not intend to review standards, codes of practice or non-statutory documents given the large number of documents which apply, some of which are not necessarily relevant. For example the Health and Safety at Work (Hazardous Substances) Regulations 2017 identifies at least 89 different standards (not including those standards referred to in schedules) which come from a number of different jurisdictions (including New Zealand, Australia, Britain and the US) and organisations (e.g. American Society of Mechanical Engineers).

Some common examples are provided below:

- Clause 17.6 of the Health and Safety at Work (Hazardous Substances) Regulations 2017 requires compliance with any of the 14 listed standards that are relevant to a particular matter:

17.6 Design, construction, and installation of above ground stationary tanks for hazardous liquids

(1) A relevant PCBU must ensure that an above ground stationary tank that is used to store hazardous liquids is designed and constructed in accordance with any of the following:

- (aa) API STD 650:
 - a. NZS/API 650:1998:
 - b. BS EN 14015:2004:
 - c. API 620:2013 (12th Edition):
 - d. SwRI 95-03:

- e. SwRI 93-01:
- f. UL 2085:1997 (2nd Edition):
- g. AS 1692—2006 (4th Edition):
- h. UL 142:2006 (9th Edition):
- i. BS 799-5:2010:
- (j) if the tank is used to store corrosive or toxic liquids that do not have a flammable classification,—
 - (i) AS 2634—1983 (1st Edition); or
 - (ii) BS EN 13121-3:2016; or
 - (iii) ASTM D3299-10; or
 - (iv) ASME RTP-1:2015:
- (k) requirements in a relevant safe work instrument.

- Clauses 17.9 and 17.16 requires compliance with specific sections of a standard:

17.9 Lighting protection for above ground stationary tank for flammable liquids

(2) A relevant PCBU must ensure that an above ground stationary tank is designed, constructed, installed, and operated in accordance with—

- (a) sections 1 to 5 and 7 and 8 of NZS/AS 1768:2007; or
- (b) requirements in a relevant safe work instrument.

17.16 Emergency pressure management for above ground stationary tank for gases

(2) An above ground stationary tank used to store a class 2.1.1 low-pressure liquefied gas is managed in accordance with subclause (1) if it complies with—

- (a) sections 5.4 and 5.5 of AS/NZS 1596:2014; or
- (b) requirements in a relevant safe work instrument.

- Clause 17.10 requires full compliance with a single standard (no specific part/section/appendix specified):

17.10 Earthing and bonding for above ground stationary tank for flammable liquids

(2) A relevant PCBU must ensure that static electricity is controlled in accordance with—

- (a) AS/NZS 1020:1995; or
- (b) requirements in a relevant safe work instrument.

- Clause 15.8 requires compliance with an applicable standard in a Schedule to the Regulations. The Schedule then lists 47 different standards:

15.8 Design standards for cylinders

(1) A PCBU who designs, manufactures, imports, or supplies a cylinder, other than a fire extinguisher, must ensure that the design for the cylinder complies with—

- (a) an applicable standard that is listed in Schedule 21; or
- (b) a relevant safe work instrument that specifies design standards for cylinders.

Given the above examples it would be helpful for Council to understand which of the standards referred to in the Health and Safety at Work (Hazardous Substances) Regulations 2017 and

Hazardous Substances (Hazardous Property Controls) Notice 2017 or any additional instruments such as codes of practice, non-statutory documents that apply to your respective industries. It would also be helpful to understand why you consider Council should review these instruments as part of the technical gap analysis. This information will assist Council to understand how extensive the gap analysis may need to be.

Based on the timeframes indicated to the Panel in the recent update, it would be helpful to have a list of standards, codes of practice or non-statutory documents emailed to me directly by **10am on Friday 6th March 2020** so that I can provide this list to the Panel for further direction.

Should you have any questions or concerns regarding the above, please do not hesitate to contact me directly on (07) 824 8633 ext 5607 or email Katherine.Overwater@waidc.govt.nz

Kind Regards

Katherine Overwater

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