

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Hearing Submissions and Further Submissions on the Proposed Waikato District
Plan (Stage 1)

**MEMORANDUM BY COUNCIL TO HEARING COMMISSIONERS RELATING TO
HEARING 8A HAZARDOUS SUBSTANCES AND CONTAMINATED LAND
21 April 2020**

May it please the Hearing Commissioners:

1. I refer to the memorandum sent to the Panel by Council on 28 February 2020, which outlined the work undertaken by Council to date (“February Memorandum”). The February Memorandum also outlined the further information Council would seek from submitters regarding the extent of the technical gap analysis that submitters considered was necessary to address the concerns of their specific industries. Submitters were also asked to outline the key reasons why Council should include the additional instruments/documents in the technical gap analysis.
2. It is noted that the further instruments/documents sought from submitters are in addition to the Health and Safety at Work (Hazardous Substances) Regulations 2017 and Hazardous Substances (Hazardous Property Controls) Notice 2017, which Council has already engaged its technical expert, Mr Schaffoener from Resources Consulting, to undertake. Council has now received from submitters the list of additional documents sought to be included in the gap analysis.
3. In light of the extent of additional documents sought to be included, Council now seeks the Panel’s direction in respect of the following three matters:
 - A. The extent of Council’s technical gap analysis based on the information provided in the table below;
 - B. The process which Council intends to follow in terms of the section 32AA evaluation, including consultation with submitters prior to reporting back to the Panel; and
 - C. Revised timeframes for the additional information to be reviewed by Council’s technical expert, the section 32AA evaluation to be undertaken by Council, and consultation with submitters.
4. To inform the Panel’s directions, the following information is provided:

A. The extent of Council’s technical gap analysis

5. As mentioned in the February Memorandum provided to the Panel, the Council’s existing gap analysis considers the Health and Safety at Work (Hazardous Substances) Regulations 2017 and Hazardous Substances (Hazardous Property Controls) Notice 2017 to be the two most directly relevant legislative instruments to the Hazardous Substances hearing topic, given that these were the two key instruments discussed in the hearing.
6. However, the submitter feedback to Council after the hearing was that the technical gap analysis needed to be more extensive than those two legislative instruments. In response, Council provided an opportunity for submitters to advise Council of any additional instruments or documentation, along with their reasons, to be included in the gap analysis. Initially Council requested a response by Friday 6 March. However, following a telephone conference with representatives of The Oil Companies on 9 March, Council extended the timeframes for all submitters until Friday 20 March.

7. The table below sets out the additional instruments/provisions that submitters wish to include in the technical gap analysis, which is being undertaken by Council's technical expert (Mr Schaffoener from Resources Consulting). The table also provides a brief summary of why the submitter considered the instrument relevant to the technical gap analysis; comments from Council as to whether the instruments put forward by the submitter should be included in the technical gap analysis; and a recommendation by Council to the Panel.
8. In respect to Council's comments in the table, it is important to highlight that while timeframes and costs are relevant, we have given careful consideration to the value and relevance of assessing additional documents.
9. As a practical way forward, whilst striking a fair balance between Council's resources and the submitters' concerns, it is suggested that where submitters disagree with Council's recommendation for certain instruments not to be included in the technical gap analysis, that submitters be invited to provide their own technical review of these instruments, provided it is undertaken by a suitably qualified expert and within the required timeframes.

Submitter	Instrument	Reasons provided by the submitter	Council comments as to whether to include instrument/document in the technical gap analysis	Recommendation to Hearings Panel
<p>Horticulture New Zealand</p>	<p>NZS8409:2004 Management of Agrichemicals</p>	<p>The Horticulture New Zealand submission sought that activities that complied with NZS8409:2004 Management of Agrichemicals be excluded from the DP requirements.</p> <p>HortNZ is providing an analysis of NZS8409:2004 Management of Agrichemicals.</p> <p>The analysis sets out all the mandatory requirements for compliance with NZS8409 and where these are related to DP land use matters.</p> <p>This will assist in determining the extent to which an exemption based on compliance with NZS8409 may be appropriate in the Plan.</p> <p>HortNZ supports the use of codes or practice and standards as a tool to ensure that hazardous substances are appropriately managed. One such standard is NZS8409:2004 Management of Agrichemicals.</p> <p>The standard is an approved Code of Practice under HSNO and sets out best practice for use and storage of agrichemicals that meets HSNO requirements – refer https://www.epa.govt.nz/industry-areas/hazardous-substances/rules-for-hazardous-substances/codes-of-practice-for-hazardous-substances/</p> <p>The Waikato Regional Plan for example also refers to NZS8409:2004 for the</p>	<p>Given the number of standards referenced in the Health and Safety at Work (Hazardous Substances) Regulations 2017 and Hazardous Substances (Hazardous Property Controls) Notice 2017, Council needs to be selective as to which standards to include in the technical review from a time and cost perspective.</p> <p>This standard was discussed with Council's technical expert, Mr Schaffoener, in respect to the compliance hierarchy of the standard. Given that only some parts of the standard are mandatory requirements while the other parts are operator information or guidance, the HSNO regulation has a much higher priority in terms of compliance and the standard is not the tool used for enforcement if issues arise.</p> <p>Council also considered that it does not have access to this standard and would therefore need to purchase the standard if it were to include it in the technical review.</p>	<p>That NZS8409:2004 Management of agrichemicals is not included in the Council's technical gap analysis.</p> <p>As a suggested approach to the Panel, if Horticulture New Zealand disagrees with Council's recommendation for NZS8409:2004 management of Agrichemicals to not be included in the technical gap analysis, they are invited to provide their own review, provided it is undertaken by a technical expert and within the required timeframes.</p>

<p>Ports of Auckland</p>	<p>The HSW (Hazardous Substances) Regulations define a transit depot as:</p> <p>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—</p> <p>(a) that are more than—</p> <p>(i) 24 hours, for a substance that is not subject to the tracking provisions in Part 19;</p> <p>(ii) 2 hours, for a substance subject to the tracking provisions in Part 19; but</p> <p>(b) that in no case exceeds 3 days</p> <p>The specific provisions of the HSW (Hazardous Substances) Regulations set out the requirements for the operation of transit depots.</p> <p>Of relevance:</p> <p>a. WorkSafe is required to be notified at least 30 days prior to the commissioning of a transit depot.</p> <p>b. Persons handling certain hazardous substances within the transit depot are required to be trained.</p> <p>c. Certain hazardous substances must be secured to prevent access by</p>	<p>management of agrichemicals.</p> <p>Mr Arbuthnot on behalf of Ports of Auckland has helpfully provided some additional information in respect to the HSW (Hazardous Substances) Regulations 2017. For brevity the information provided has been summarised in this memorandum.</p> <p>From Ports of Auckland Limited's perspective, it is the provisions relating to transit depots that are most relevant.</p> <p>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.</p> <p>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).</p> <p>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. Mr Arbuthnot's 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.</p> <p>This is different and distinct to activities that open the containers and handle hazardous</p>	<p>Council are already covering the Health and Safety at Work (Hazardous Substances) Regulations 2017 in the review although this is at a broader level.</p> <p>In discussions with Mr Schaffoener, he is able to provide some specific comments in the technical review in respect to the specific clauses that Ports of Auckland have included.</p>	<p>That the points raised by Ports of Auckland be included in the technical gap analysis.</p>
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	<p>persons who are not permitted to access the substance.</p> <p>d. There are clear segregation requirements for hazardous substances, including segregation distances between vehicles and unloaded substances.</p> <p>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.</p> <p>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.</p> <p>g. There are limits on the storage of certain types of hazardous substances.</p> <p><u>Health and Safety at Work (Hazardous Substances) Regulations 2017</u> The specific Regulations that are relevant to transit depots are set out below:</p> <ul style="list-style-type: none"> • Regulation 2.7 Signage requirements for transit depots • Regulation 10.37 Requirement for transit depot • Regulation 12.20 Duty of PCBU relating to transit depot where 	<p>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.</p> <p>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.</p>		
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	<p>class 5.1.1 or 5.1.2 substances are present</p> <ul style="list-style-type: none"> • Regulation 12.46 Requirements for transit depot • Regulation 13.28 Controls on transit depots where class 6 or 8 substances present 			
<p>Federated Farmers of New Zealand</p>	<p>Code of Practice for Nutrient Management 2007</p> <p>EPA Notices</p> <p>https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/2017-Group-Standards/65827edc1e/Fertilisers-Corrosive-Group-Standard-2017-HSR002569.pdf</p> <p>https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/2017-Group-Standards/3d06e38816/Fertilisers-Oxidising-5.1.1-Group-Standard-2017-HSR002570.pdf</p> <p>https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/2017-Group-Standards/70fa560e8c/Fertilisers-Subsidiary-Hazard-Group-Standard-2017-HSR002571.pdf</p> <p>https://epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/2017-Group-Standards/886e850ff3/Fertilisers-Toxic-6.1C-Group-Standard-2017-HSR002572.pdf</p> <p><a 318="" 321="" 548="" 901"="" href="https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/EPA-</p> </td> <td data-bbox="> <p>Ms Walker on behalf of Federated Farmers of New Zealand has helpfully provided a list of key codes of practice and Environmental Protection Agency (EPA) Notices.</p> <p>With reference to the HSW (Hazardous Substances) Regulations 2017, Ms Walker has provided some examples of the specific Regulations that are relevant to agricultural industry are provided below – but it is clear that this is not exhaustive given the wide range of classes that may be used on farm, where a wide range of these regulations may apply. It is provided to give an example of evidence to show that concerns regarding amenity and environmental risk are adequately managed under this and associated legislation and codes of practice.</p> <ul style="list-style-type: none"> • Clause 9 Separation distances not to extend beyond boundary unless agreed <ul style="list-style-type: none"> ○ A separation distance required by these regulations must not, unless the context otherwise requires, be calculated beyond the boundary of the property at which the relevant hazardous substance is present unless the owner, lessee, sub- </p>	<p>Council has reviewed the Code of Practice for Nutrient Management 2007 and the list of EPA notices provided by Ms Walker and further discussed these documents with Mr Schaffoener. Similar to the above comments regarding standards put forward by Horticulture New Zealand, the Code of Practice for Nutrient Management 2007 is a non-statutory document. Council does not see how the Code of Practice provides controls over and above the HSNO regulations and therefore consider that the regulations are still the key instruments for compliance.</p> <p>Federated Farmers have helpfully provided some examples of the specific regulations relevant to the agriculture industry and have been clear that they don't have a view on what should be included in the technical gap analysis.</p> <p>From discussions with Mr Schaffoener, the group standard EPA notices (the first 4 listed) do not add any controls over and above the regulations and, without additional evidence as to why they should be included and what role they have in relation to landuse provisions in the District Plan, it is not considered that they add any significant value given that the regulation is the primary enforcement tool.</p>	<p>That the EPA notices concerning Property control and disposal are included in the technical gap analysis.</p> <p>That the EPA notices for group standards, safety data sheets, packaging and labelling are not to be included in the review.</p> <p>The Health and Safety at Work (Hazardous Substances) Regulations 2017 referred to in the information provided by Ms Walker (i.e. clause 9, regulation 2.9 and regulation 2.11) are included in the review.</p> <p>As a suggested approach to the Panel, if Federated Farmers disagree with Council's recommendation for the Code of Practice for Nutrient Management 2007 and the EPA notices to not be included in the technical gap analysis, they are invited to provide their own review, provided it is undertaken by a technical expert and within the required timeframes.</p>	

<p>Notices/7b7a7cbe9b/Hazardous-Substances-Hazardous-Property-Controls-Notice-2017.pdf</p> <p>https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/EPA-Notices/329544c1b9/Hazardous-Substances-Disposal-Notice-2017.pdf</p> <p>https://epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/EPA-Notices/89b79e19ad/Hazardous-Substances-Safety-Data-Sheets-Notice-2017.pdf</p> <p>https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/EPA-Notices/d5d01c8c00/Hazardous-Substances-Packaging-Notice-2017.pdf</p> <p>https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/EPA-Notices/31fb7a7c7d/Hazardous-Substances-Labelling-Notice-2017.pdf</p>		<p>lessee, occupier, or person in possession of any property beyond that boundary (the adjacent property) agrees in writing that the separation distance may be calculated to include the adjacent property.</p> <ul style="list-style-type: none"> • Regulation 2.9 Signage requirements for workplace where milking animals are milked <ul style="list-style-type: none"> ○ where a hazardous substance that is a teat-sanitising product or a dairy maintenance compound is located in a building in which milking animals are milked must ensure that specific signage to be established at the entrance to the • Regulation 2.11 Duty of PCBU to obtain and provide access to safety data sheets <ul style="list-style-type: none"> ○ A PCBU with management or control of a workplace must obtain the current safety data sheet for a hazardous substance from the manufacturer, importer, or supplier of the hazardous substance ○ The PCBU must ensure that the current safety data sheet for the hazardous substance or a condensed version of the key information from the safety data sheet (for example, a product safety card) is readily accessible 	<p>With respect to the EPA notice for Property Controls, Mr Schaffoener, as part of his initial review, has already included the EPA notice. He also considers that there is merit in reviewing the Hazardous Substances disposal notice.</p> <p>In discussions regarding the final three EPA notices it was considered that there would be limited value in reviewing the Safety Data Sheets, Packaging and Labelling notices given that Council do not get involved in these matters or procedures.</p>	
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The Oil Companies	<p>Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 Part 1 – 4</p> <p>Health and Safety at Work (Hazardous Substances) Regulations 2017</p> <p>HSNO COP 44 and 45</p> <p>Codes of Practice</p>	<p>Mr Le Marquand, Principal Planner and Policy Consultant from 4sight consulting has submitted information on behalf of the Oil Companies. For brevity the information provided has been summarised in this memorandum.</p> <p>The information has helpfully provided two key documents which they consider should be included in the review and in addition their own gap analysis, which discusses HSNO COP 44 and 45 and provides for the installation and operation of below ground stationary container systems. They also refer to codes of practice for the design, installation and operation of underground petroleum storage systems and codes of practice for the design, installation and operation of underground petroleum storage systems – supplement No. 1: Management of existing underground petroleum storage systems.</p>	<p>Council have already indicated that the review will cover the Health and Safety at Work (Hazardous Substances) Regulations 2017.</p> <p>In further discussions with Council's technical expert, Mr Schaffoener, there is merit in including Parts 1 – 4 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 in the technical gap analysis.</p> <p>However similar to the view on standards (as addressed above), Codes of Practice are non-statutory documents. Given that compliance and enforcement are part of the HSNO regulations, Council does not consider it necessary to review the codes of practice.</p> <p>However similar to the recommendation in respect to Horticulture New Zealand and Federated Farmers, if the Oil Companies wish to provide additional information on the codes of practice outlining the mandatory requirements that are relevant to landuse provisions, particularly how it relates to the District Plan, Council is welcome to receiving this information.</p>	<p>That the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 Part 1 - 4 be included in the technical gap analysis and for the information provided to be reviewed by Council's technical expert for specific comment in regards to those specific provisions of the Health and Safety at Work (Hazardous Substances) Regulations 2017.</p> <p>Further that the HSNO Code of Practices 44 and 45 are not to be included in the technical review.</p> <p>As a suggested approach to the Panel, if the Oil Companies disagree with Council's recommendation to not include the Codes of Practice in the technical gap analysis, they can provide their own review, provided it is undertaken by a technical expert and within the required timeframes.</p>

B. The process which Council intends to follow in terms of the section 32AA evaluation and consultation with submitters prior to reporting back to the Panel

10. The process that Council proposed to undertake in an initial memorandum sent to submitters on 5 February 2020, was intended to be a two- step process as follows:

- **Step One**

There are three parts to step one as follows:

- 1) Undertake a technical gap analysis of the legislative instruments relevant to the control of hazardous substances. This task is currently being undertaken by Council's technical expert, Mr Schaffoener.
- 2) Include any direction from the Panel in respect to additional documents to be included in the technical gap analysis to be undertaken by Mr Schaffoener.
- 3) Add any additional documents reviewed by the submitter's technical experts.

- **Step Two**

Prepare a revised s32AA planning evaluation in light of the technical gap analysis and any additional documents provided by submitters. It is intended that Council' reporting officer will start the assessment of the gap analysis with a clean slate and is not attempting to backfill the gap analysis to support Council's recommendations in the s42A report.

If there are gaps found in the technical analysis, the planning evaluation must determine whether the District Plan is the most appropriate way to address the "gap". If this is the case, the S32AA report will make a revised recommendation to the Panel.

11. Following the above two-step process, Council will then provide both the technical gap analysis (including additional information provided by submitters) and the revised S32AA to submitters for review and to provide feedback to Council. It was agreed at the hearing with submitters that a period of at least 4 weeks would be an appropriate timeframe for submitters to review the reports and provide feedback.

12. Following feedback received, Council will then review and make further amendments (if necessary). At this point, depending on the feedback received, Council may also meet with submitters to discuss the feedback further. Following this, Council anticipates finalising the analysis and evaluation and reporting back to the Panel for further direction.

13. During this process, Council also intends to provide a monthly update to the Panel.

C. Revised timeframes for the work to be undertaken by both Council and submitters

14. Given the recommendation in respect to the additional coverage of the technical gap analysis required, Council considers that an additional four weeks is required to undertake the technical analysis. This also provides submitters a further four weeks to provide any additional information that can be used in the technical gap analysis. The implication of this additional work is that the proposed timetable would now be as follows:

	Task	Who	Indicative Completion Date
1.	Council's Technical Expert to undertake an analysis of HSNO and HSWA regulations and additional documents as directed by the Panel.	Council Technical Expert	Friday 22 nd May 2020 (4 weeks)
2.	Any additional information or documents from submitters to be provided to Council to be included in the technical review.	All submitters	Friday 22 nd May 2020 (4 weeks)
3.	Council planner to draft S32AA report (incorporating any additional information received from submitters).	Council Reporting Planner	Monday 9 th June 2020 (2 weeks, including Queen's birthday)
4.	Council to send draft analysis and section 32 evaluation to all submitters	Council S42 Reporting Planner	Tuesday 9 th June 2020
5.	Submitters to provide feedback on draft analysis and section 32 evaluation report	All submitters	Monday 6 th July 2020 (4 weeks)
6.	Council reviews feedback received from submitters and makes further amendments to the analysis and evaluation (if necessary)	Council S42 Reporting Planner & Council Technical Expert	Monday 6 th July – Friday 17 th July 2020 (2 weeks)
7.	Council meets with submitters (if required)	Council and submitters (who wish to participate)	Week of 20 th July – 24 th July 2020
8.	Report back to the Panel	Council S42 Reporting Planner	Friday 29 th May 2020 Friday 26 th June 2020
9.	Submit final analysis and evaluation to the Panel	Council S42 Reporting Planner	Monday 27th July 2020

15. Council therefore seeks directions and guidance from the Hearings Panel in respect to the following three matters set out as follows:

- A. The extent of Council's technical gap analysis based on the information and recommendations provided in the table above. If the Panel agrees with Council's recommendations in the table above, the additional documents and parts of those documents to be included in the technical review are:

- Health and Safety at Work (Hazardous Substances) Regulations 2017 that relate to transit depots as follows: definition of transit depot, regulations 2.7, 10.37, 12.20, 12.46 and 13.28;
- Environmental Protection Agency notices concerning property control and disposal;
- The Health and Safety at Work (Hazardous Substances) Regulations 2017 referred to in the information provided by Ms Walker on behalf of Federated Farmers of New Zealand (i.e. clause 9, regulation 2.9 and regulation 2.11);

- Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 Parts 1 – 4; and
 - The Health and Safety at Work (Hazardous Substances) Regulations 2017 referred to in the information provided by Mr Le Marquand on behalf of Oil Companies.
- B. Guidance on the process which Council intends to follow in terms of the section 32AA evaluation, including consultation with submitters prior to reporting back to the Panel; and
- C. Acceptance of the revised timeframes for the additional information to be reviewed by Councils technical expert as well as any additional information to be received by Council from submitters, the section 32AA evaluation to be undertaken by Council and consultation with submitters.

Dated at Ngaruawahia this 21st day of April 2020



Carolyn Wratt
Principal Policy Planner