

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
28 February 2020**

May it please the Hearing Commissioners:

1. At the adjournment of Hearing 8A (Hazardous Substances and Contaminated Land) on 28th January 2020, the Hearings Panel suggested Council staff identify the gaps in the legislation and regulations relating to hazardous substances, and to respond to any gaps identified in light of the proposed provisions by undertaking a further section 32AA evaluation.
2. Council understands the need for transparency with this work and the importance of including submitters in this process. Further, Council undertook to provide a monthly report of progress of this work back to the Hearings Panel. The purpose of this memorandum to the Panel is to fulfil that undertaking.
3. To demonstrate the progress made to date by Council, I refer to the memorandum sent to submitters on Wednesday 5th February 2020 outlining the scope of the work and timetable proposed (attached). Council requested feedback from submitters on the memorandum by Friday 14th of February 2020.
4. Council has received feedback from the following five submitters or their representatives as follows: Rob Enright on behalf of the Oil Companies; Ms Walker on behalf of Federated Farmers of New Zealand; Mr Landers on behalf of Horticulture New Zealand; Mr Johnson on behalf of Fonterra Limited and Ms Steel on behalf of New Zealand Steel.
5. NZ Steel did not raise any concerns with the proposed approach or timetable. However the other four submitters raised concerns primarily in respect to the extent of the technical gap analysis, requesting that Council should review additional standards, codes of practice and non-statutory documents. Council was not intending to review standards, codes of practice or non-statutory documents as there are a very large number, some of which are not necessarily relevant. For instance the Health and Safety at Work (Hazardous Substances) Regulations 2017 identifies at least 89 different standards 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).
6. To provide further explanation of Council's decision on the extent of the legislative instruments for the gap analysis, Council considered the Health and Safety at Work (Hazardous Substances) Regulations 2017 and Hazardous Substances (Hazardous Property Controls) Notice 2017 to be the two key relevant legislative instruments
7. Further, the submitters have raised concerns in respect to the process that was set out in Council's memorandum. The submitters requested that Council re-issues the memorandum to include additional consultation and more clearly outline the two stage approach, with stage 1 being the technical gap analysis and stage 2 being the planner assessment of the gaps and review of the provisions required to address these gaps in the District Plan.

8. Council has approached the Ministry for the Environment for assistance regarding any analysis done at the time of the Resource Legislation Amendment Act 2017. Unfortunately they are unable to assist Council with any detailed analysis.
9. Council are concerned that if there are a number of documents, standards or codes of practice that submitters want included in the gap analysis, that this will require significant further cost to access the standards (as Council has to pay to access them) and to then review them. Council has contracted Mr Schaffoener to review the two regulations and is awaiting his draft analysis, which is due in the next week.
10. As part of the communication with the submitters, assistance by submitters was requested due to the limited time available for the legislative analysis. To date no further information or assistance has been forthcoming.
11. In order to move forward on the matters raised above, Council intends to go back to submitters next week to understand specifically which documents submitters consider of relevance to the gap analysis and the reasons why they are relevant to their respective industries.
12. Following this communication with submitters, Council will then seek directions from the Panel regarding the extent of the technical gap analysis preferred, along with the process and timeframes required to evaluate the gap analysis. Council expects to provide a further update on this matter to the Panel by Friday 6th March 2020.

Dated at Ngaruawahia this 28th day of February 2020



pp **Will Gauntlett**
Resource Management Policy Team Leader

