SECTION 42A REPORT

Hearing Introduction

Hearing 8A: Hazardous Substances & Contaminated Land

Prepared by: Katherine Overwater

Date: 28 January 2020

Waikato DISTRICT COUNCIL

Te Kaunihera aa Takiwaa o Waikato

1. Good morning Chair and Commissioners. My name is Katherine Overwater and I am the s42A reporting officer for the Hazardous Substances and Contaminated Land. I am also the author of the rebuttal evidence relating to those same provisions. My qualifications and experience are set out in the s42A report at page 11. I also confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and have complied with it when preparing this report.

2. With permission from the Chair, I wish to introduce my technical expert Mr Schaffoener and then address some procedural matters before I provide my executive summary and overview of the hazardous substances and contaminated land topic.

3. Mr Schaffoener from Resources Consulting is a technical expert on the topic of hazardous substances who has been involved in Council's District Plan review since 2017 and is here today to respond to any technical questions the Panel may have. The Panel may also find it helpful for Mr Schaffoener to go through the technical aspects of Table 5.1 of Appendix 5 at the conclusion of my executive summary.

4. In regards to procedural matters, I wish to draw the Panel's attention to some further work that has occurred since I prepared my rebuttal evidence on 20th January 2020. Prior to this hearing and having read the evidence from submitters and the legal submissions, I have changed my position on both scope and the rules relating to the retail sale of fuel. As a result, I circulated draft amendments to submitters on Thursday evening (23rd January) relating to Rule 10.3.1 in proposed Chapter 10 which affects all of the rules for the retail sale of fuel in the various zones across the District. I intend to cover this off in further detail in my executive summary, but wanted to draw the Panel's attention to this upfront.

5. While there are many submitters who have supported the proposed provisions for hazardous substances and contaminated land, the focus of my executive summary will be on the key matters which remain points of contention relating to hazardous substances and contaminated land, including:

   (i) The role of Council and the interplay with the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996 and the Health and Safety at Work Act 2015;
   (ii) The objective, policy and rule framework proposed to manage hazardous substances and contaminated land, particularly Appendix 5 and the rules relating to the storage of fuel for retail sale;
   (iii) Scope to make recommended changes.

6. For succinctness, I do not intend to go into the detail of my recommendations or repeat information included in my S42A report or rebuttal.

Council's role in respect to the control and management of hazardous substances under the RMA

7. The critical points of contention for this hearing relate to two key matters upon which the Panel needs to make a determination. Firstly, does the Council have a role to play in respect to the control and management of hazardous substances under the RMA in light of the removal of section 31 from the RMA? Secondly, if the Panel agrees that Council does

have a role to play, what 'additional' provisions are required for the Waikato District, bearing in mind the role that other legislation (HSNO or HSWA) and regulations has to play in the management of hazardous substances?

8. To assist the Panel with this first question, I consider that Council does have a role to play in the management of hazardous substances to specifically ensure that the adverse environmental effects of hazardous substances on landuse are managed and in particular, the consideration of cumulative effects which other legislation does not address.

9. It is my professional opinion that in order to effectively undertake this role, a framework of objectives, policies and rules is required by Council to ensure adverse effects are given due consideration, particularly where the adverse effects are potentially significant.

Provisions

Proposed Rule Framework (General Comments)

10. In order to address the second question, it is important to note that there are a number of submitters who are still opposed to the rule framework, including Federated Farmers of New Zealand [sub 680], Tuakau Proteins Limited [sub 402], Genesis Energy Limited [sub 924], the Oil Companies [sub 785], Synlait [sub 581], the LPG Association [sub 573], Fire and Emergency New Zealand [sub 378] and Horticulture New Zealand [sub 419].

11. The rule framework that has been proposed in the notified Proposed District Plan is one of the main points of contention to be discussed at this hearing today. In this regard, I have not changed my overall view of the framework proposed, as I do not consider that the rules duplicate other legislation or regulations because they are specifically focused on ensuring that activities involving large quantities of hazardous substances trigger resource consent, and therefore appropriately require assessment. The provisions are also specifically focused towards ensuring the protection of the Waikato District's more sensitive zones. Mr Schaffoener is available should the Panel wish for him to provide an overview of how Table 5.1 of Appendix 5 works.

12. With respect to the proposed rule 10.3.1 included in Chapter 10, while I have made some amendments as a result of rebuttal evidence and legal submissions, I maintain my position that the rules included are appropriate and therefore I have concerns with the submission points seeking to delete the provisions altogether. I note that no alternative rule framework has been provided by any of the submitters, with the exception of a permitted activity rule, which relies on compliance with HSNO.

13. I do accept some of the statements made in Mr Enright's legal submissions that further analysis could have been undertaken throughout this process to provide clarification of the relevant regulations from HSNO and HSWA. However this task is not a simple one (possibly which is why none of the submitter's have provided this information with their submissions) that would need to be undertaken by a technical expert in this field, not a planner. Further, as Mr Schaffoener has pointed out in his report, the Ministry For the Environment would be best placed to undertake this work, as it would inform all Councils in their plan making and save Council the cost for each plan review process, and avoid repetitious and costly litigation by submitters.

14. I re-iterate that my position certainly remains unchanged in respect to the need for rules in the district plan and I maintain that they do not duplicate HSNO or HSWA or associated regulations.

Compliance with HSNO in order to be a permitted activity

15. I have questioned whether a permitted activity rule solely relying on HSNO would be an issue for Council from a compliance perspective and have therefore sought legal advice on whether a rule simply relying on compliance with HSNO would be vires.

16. The legal advice from Ms Bridget Parham (Council's legal counsel at Tompkins Wake) is that a rule in a district plan must be clear and certain in order to be enforceable. Including a condition to a permitted activity that HSNO must be complied with is arguably uncertain as it is unlikely a member of the public reading the provision would know whether their activity complied with HSNO without seeking third party advice. Similarly Council would likely need to seek advice regarding compliance with HSNO when administering that provision of the plan (i.e. Council building review officers are not qualified to assess a proposal against the HSNO provisions).

17. In order for the rule to be sufficiently clear and certain it should specify the provisions under the HSNO Act that must be complied with in order to be classified as a permitted activity. However, regardless of this approach, the Courts have highlighted the difficulty with conditions that refer to external documents as those documents may change over time or be revoked; the rule therefore becoming invalid.

Amendments to rules relating to the storage of fuel for retail sale

18. As previously discussed, I have changed my position in respect to the rules relating to the storage of fuel for retail sale as discussed in paragraphs 108 and 109 of my rebuttal evidence and have since determined that I do in fact have scope to make amendments to the proposed rules.

19. I will discuss these changes in further detail in response to the points of disagreement between myself and the submitters. The point that I wish to make here is that while I have changed my position, I still consider rules are necessary to control the effects of fuel for retail sale. My understanding from the evidence received from the Oil Companies is that it is agreed that a resource consent is appropriate for the storage of fuel for retail sale where petrol and diesel tanks are located above-ground (because the potential risks associated with the storage of fuel above-ground is higher).

20. However the point that remains in contention is that the storage of fuel for retail sale using underground storage tanks <u>in all zones</u> should be a permitted activity. I disagree with this approach; although as I will discuss later in respect to the proposed amendments I have made since preparing my rebuttal evidence, in some zones a controlled activity resource consent is an appropriate level of consenting for these types of activities to ensure the Waikato District's sensitive receiver zones are considered, particularly where the site of the proposal is either within or adjoins a more sensitive zone (i.e. residential, village, country living).

21. No evidence to date through submissions or rebuttal evidence has demonstrated that operators will be constrained by the proposed rules. However, from my desktop analysis of facilities storing fuel for retail sale across the Waikato District (noting that I may not have covered every single facility) of 27 sites, 13 of them appear to be located within either the Business or Business Town Centre Zone; 9 in the Rural Zone; 4 in the Industrial Zones and the Te Kowhai Airfield. Of particular note is that only 8 of them adjoin a sensitive zone (Residential, Village, Country Living, Reserve Zones). Therefore, my analysis is that operators do not tend to target sensitive zones to locate these facilities anyway.

22. It is also important to note that the Proposed District Plan proposes to enable residential accommodation as a permitted activity above the first floor in the Business and Business Town Centres, which is to be discussed in upcoming Hearing 9. I will elaborate on this point further when I go through the proposed rules later in my summary, but there is the potential for these zones to also be considered a more sensitive receiving environment due to the likelihood of residential land uses establishing within this zone.

23. One final point to make on the rules generally is that I have not changed my position on the Non-Complying activity status relating to the storage and handling of hazardous substances with explosive or flammable intrinsic properties within 12m of the National Grid Transmission Line and no submitter's appeared to be opposed to the activity status of the rule, but rather the content and placement of the rule in the plan.

Objective 10.1.1 – Effects of Hazardous Substances

24. In respect to Objective 10.1.1 – Effects of Hazardous Substances, Ms McPherson on behalf of the Oil Companies [sub 785] does not support the inclusion of the word 'transport' into Objective 10.1.1, as recommended in my s42A recommendation (resulting from submission 697.570) from the Waikato District Council).

25. At paragraph 18 of my rebuttal I have detailed that I do consider the term 'transport' should be included in Objective 10.1.1 and that there may be instances where a resource consent requires conditions of consent that relate to the transportation of hazardous substances, noting that the conditions would not relate to the transport vessel itself. I also note that Policy 4.2.9 from the Regional Policy Statement refers to 'transport'.

26. Ms McPherson on behalf of the Oil Companies, supported by Ms Wharf from Horticulture New Zealand does not support the replacement of the word 'managed' with 'minimised' as requested in Council's submission. In paragraph 23 of my rebuttal evidence, I have pointed out that the reason the term 'minimised' was included in the Council submission was because the term had been replaced with 'managed' during the final editing of the notified version, which was not what was originally intended by Council and the term 'managed' had not been included the draft versions. While this may have been the case, my view is that the term 'minimised' is a more appropriate term in the context of risk and I consider it to provide a clearer expectation of the policy direction.

27. Ms Wharf on behalf of Horticulture New Zealand [419] seeks to delete the word 'facilities' as requested by the submission from Federated Farmers of New Zealand [680.120] to align with Horticulture New Zealand's other submission points. My position has not changed in respect to this point and re-iterate that without the inclusion of the word 'facilities' in this objective, it broadens the objective to include all hazardous substances, which is not the

intention. With the term 'facilities' included, it makes it clear that the objective applies to the hazardous facilities storing hazardous substances.

Policy 10.1.2 – Location of New Hazardous Facilities

28. In respect to Policy 10.1.2 – Location of New Hazardous Facilities there are still some points of contention. The first point relates to the wording 'containment within the site' as notified in the Proposed District Plan. The second point relates to the term "sensitive environment".

29. Ms Walker on behalf of Federated Farmers of New Zealand [sub 680.121] seeks that the policy wording be changed to refer to "avoided, remedied or mitigated" to align with the wording "prevention and mitigation" referred to in the WRPS Policy. In paragraph 29 of my rebuttal evidence, I disagree with this approach and consider that Policy 10.1.2 needs to set an expectation that the adverse effects of hazardous substances are to be "prevented" first and foremost, bearing in mind that the resource consent process provides a pathway to where adverse effects may not be able to be contained within the site.

30. Through evidence and rebuttal, clarification or definition of the term "sensitive environment" has been raised by several submitters. Specifically, Mr Sharman from Fire and Emergency New Zealand [sub 378] has raised it in his evidence. As discussed at paragraph 35 of my rebuttal evidence, my view is that I agree that it would be helpful to provide clarification in the plan of what is meant (I have used reference to wetlands, waterways, Significant Natural Areas (SNAs)). Other examples might include Maaori Sites or Areas of Significance.

31. However I would like to raise the issue of scope with the Panel, as Hearing 5 (definitions) only looked at "sensitive land use" and the term 'sensitive environment' has not been specifically sought in original submissions for this hearing topic. Should the Panel be persuaded that there is scope to address this matter, I would be willing to explore options to clarify what is meant by 'sensitive environment' and develop a definition collaboratively with submitters. Further I note that I have included some guidance on this matter in the amendments to the introduction to Chapter 10, which may assist plan users.

32. Ms McPherson on behalf of the Oil Companies is still in favour of deleting the Policy in its entirety or amending it to focus on land use compatibility issues associated with the interface between hazardous facilities and their receiving environments. In paragraph 36 of my rebuttal evidence, I have discussed these amendments referencing 'major hazardous facilities', which is supported by Ms Wharf on behalf of Federated Farmers through her rebuttal evidence. At paragraphs 37 and 38 of my rebuttal, I have discussed the scope issue in respect to the introduction of the terminology "major hazardous facilities", which would not have been anticipated by submitters. Further even if the Panel are persuaded that there is scope to accept these changes, I would still disagree with the amendment as I consider the wording significantly weakens the policy.

33. Ms Wharf on behalf of Horticulture New Zealand [sub 419] maintains the deletion of clause (iii) of Policy 10.1.2, which I still disagree with for the reasons set out in my S42A report, where at paragraph 154 I discuss that the deletion of clause (iii) leaves the policy open to interpretation.

Policy 10.1.3 – Residual Risks of Hazardous Substances

34. In respect to Policy 10.1.3 there is still a point of contention between the Oil Companies and myself. Ms McPherson considers the policy should focus on managing risks associated with hazardous substances storage at much higher thresholds and could support the policy if they applied to "major hazardous facilities" only. Ms Wharf on behalf of Federated Farmers also supports this point.

35. I wish to re-emphasise my point at paragraph 44 of my rebuttal evidence that Mr Schaffoener and I both disagree with using this terminology, as the proposed provisions do not solely focus on hazardous facilities that would be considered to be 'major' or 'significant' landuse activities. The definitions and Activity Status Table included in Appendix 5 target the effects from large-scale hazardous facilities and provides scrutiny and a more rigorous process where the landuse effects may be more significant.

36. Again I raise the issue of scope in relation to this point and even if the Panel is persuaded that there is sufficient scope, I would still not support introducing this terminology.

37. Ms McPherson on behalf of Oil Companies does not agree with the inclusion of the term 'safety' in Policy 10.1.3. I maintain my position on this point as set out in section 47 of my rebuttal evidence because I consider it is entirely appropriate for the policy to consider the adverse effects on the public's health and safety, particularly given the express inclusion of this word in the purpose of the RMA. Scope is also an issue in respect to this point, as none of the original submissions sought to remove the word "safety".

Policy 10.1.3 – Reverse Sensitivity Effects

38. In relation to Policy 10.1.4, the key issue in contention is the qualifier "as far as practicable" which Ms McPherson from the Oil Companies considers may result in unintended consequences. I still maintain my position that the policy needs to provide some flexibility and without the qualifier, the policy would become very directive setting an unreasonably high hurdle. Ms Wharf on behalf of Horticulture New Zealand does not agree that the wording makes it clear that sensitive land use should not locate in areas where hazardous substances are stored and used and has provided some revised wording. Again, I consider this wording places too high a hurdle on sensitive land use activities.

Definitions

<u>Hazardous Facility</u>

39. The key definition in contention is 'hazardous facility'. Federated Farmers of New Zealand [sub 680], Ports of Auckland Limited [sub 578], the Oil Companies [sub 785], Fire and Emergency New Zealand [sub 378] and Horticulture New Zealand [419] all have points of difference. I will break down these points in further detail:

Federated Farmers

40. I am unclear whether Federated Farmers continue to oppose the definition.

Ports of Auckland

41. Mr Arbuthnot on behalf of Ports of Auckland Limited is still seeking an exclusion for cargo to avoid the need for resource consent every time a container containing hazardous substances is received by the Waikato Inland Freight Hub that exceeds permitted thresholds.

42. At paragraph 59 of my rebuttal evidence I have agreed in part with Mr Arbuthnot in respect to avoiding unnecessary duplication of regulation and this extends to the costs of consenting. However am not yet persuaded that an exclusion is required to the proposed definition. However I am open to the opportunity at this hearing to hear any new information, which may persuade me otherwise. I therefore request from the Panel an opportunity to respond to this point at the end of the hearing.

Oil Companies

43. The Oil Companies supports the amendment of the definition to refer to "significant hazardous facility". For the reasons I outlined previously, I do not share this position and further do not consider that there is scope to make this change as set out in Ms McPherson's evidence.

Fire and Emergency New Zealand

44. Fire and Emergency New Zealand raises valid questions seeking clarity in respect to whether the hazardous substances used and stored at fire stations and associated fire emergency operations would be considered a "hazardous facility" or excluded from the definition. Fire and Emergency New Zealand's primary concern is that resource consent is not unnecessarily triggered.

Horticulture New Zealand

45. Ms Wharf on behalf of Horticulture New Zealand has raised issues in respect to the exclusions which apply to this definition in Rule 1 of Appendix 5. Ms Wharf's evidence is primarily concerned that the substances used by growers are not exempt classes and would trigger resource consent.

46. In my rebuttal evidence, having considered all of the evidence, I did not change my position on the definition of 'hazardous facility' from my s42A report. However there were some clear linkages from this definition to those exclusions in Rule 1 of Appendix 5, which I will discuss further on, as I have recommended some amendments.

Hazard

47. The definition of "hazard" has been updated as a result of the evidence from Kainga Ora [sub 749] in the recommended amendments document (Appendix 2) to my rebuttal evidence to show the track change for the deletion from the definitions chapter.

Use

48. In relation to the definition of "use", Mr Lindenberg on behalf of Kainga Ora still does not support the retention of the term "use" and seeks to add the term "hazardous" to increase clarity of the definition. I still maintain my position on paragraph 74 of my rebuttal that the definition is clear when the plan user reads the definition.

Storage

49. In relation to the definition of 'storage', Ms Wharf on behalf of Horticulture New Zealand maintains their submission point which relates to the definition of hazardous facility. I still

disagree with this point because it relates back to the definition of 'hazardous facility' which I am also not recommending to change.

Rule Framework

Introduction

50. In regards to the Introduction to Chapter 10, Ms Wharf from Horticulture New Zealand made a point that she was generally in support of an introduction. She considered that it needed to provide more discussion in respect to the relationship between the RMA and other legislation. No specific text changes were provided in Ms Wharf's evidence. Therefore to assist the Panel with this point, I have prepared a revised version of the introduction in my rebuttal evidence at paragraph 134 although I would be willing to work with submitters to refine the wording of this, should the Panel consider it would be helpful.

Rule 20.2.6 Industrial Zone

51. In regards to the notified Rule 20.2.6 for the Industrial Zone, Mr Arbuthnot on behalf of Ports of Auckland Limited has provided evidence seeking to change the activity status of proposals that cannot meet the permitted activity rule from a discretionary activity status to a restricted discretionary activity status.

52. I am generally supportive of Mr Arbuthnot's revised proposal to amend the activity status. However in terms of fitting it into the proposed rule framework (which recommends deleting specific rules for the Industrial Zone), I consider that it is questionable whether the rule can be applied across the whole Industrial Zone or whether it should apply only to the Ports of Auckland site.

53. To elaborate on this further, it is important to understand that the re-drafting of Rule 20.2.6 into proposed Rule 10.3.1, D1 provides for all activities that do not meet P1. To be clear, I am not supportive of the rule proposed by Ports of Auckland being used generically across the entire District because I am not convinced that the rule would cover all appropriate matters that Council's discretion would be restricted to for all activities that would fail a permitted activity status across the various zones.

54. However, if the Panel are of the view that there is sufficient scope to amend the proposed rules and have a preference to provide for a Restricted Discretionary activity status rather than a Discretionary activity status (which is where P1 and P2 currently cascade to), the proposed amendments included at the end of Appendix 2 of my S42A report, includes a list of matters for the consideration of a discretionary activity consent. I also note that upon reading the legal submissions from Synlait [sub 581], at paragraph 15, Mr Chapman refers to a list of matters and at paragraph 16 he discusses the addition of a further matter (consideration of cultural elements) to the list.

55. While these matters could be transferred to a new restricted discretionary rule, I re-iterate that I am not convinced that a restricted discretionary activity status would cover all appropriate matters for all activities across the various zones.

56. Putting aside the issue of a rule for the entire district, either way, a new rule will need to be drafted for a Restricted Discretionary activity status to implement the relief Ports of Auckland Limited are seeking. Some direction from submitters in terms of their preference

regarding whether a rule should be district-wide or specific to the Industrial Zone would be most helpful and therefore I seek an opportunity to further respond to this point after hearing from Ports of Auckland Limited today.

Rule 22.2.4 Rural Zone

57. In regards to the notified Rule 22.2.4 for the Rural Zone (which also relate to Appendix 5), Ms Walker from Federated Farmers of New Zealand maintains that the rules and Table 5.1 provides a layer of complexity, uncertainty and the potential for unintended consequences. Ms Wharf from Horticulture New Zealand also does not support using the Activity Status Table as a threshold in the Plan.

58. I maintain my position, as discussed previously today, that the rule framework needs to provide a way in which Plan users can determine if they comply with the rules of the Plan or not. No submitter has provided an alternative approach as to how this can be done, except by including a permitted activity relying on compliance with HSNO or making provision only for 'major' or 'significant' hazardous facilities. In my view these approaches are subject to far more confusion and interpretational issues that what is being proposed here (which I have highlighted previously).

59. The Waikato District Council have been using the Activity Status Table approach in the current Operative Plan (in both Waikato and Franklin Sections), as have other adjoining Territorial Authorities. At the time of addressing issues and options and then through the drafting process, the Operative Waikato provisions were preferred to the Franklin provisions, so in effect the approach of the Proposed District Plan is not fundamentally changing the way in which Council would assess applications, with the exception of the rules regarding fuel for retail sale. I am also not aware of farmers or growers who have had issue with the Operative provisions (for either Waikato or Franklin), otherwise this would have been raised through the identification of issues and options or at the time of public consultation during the drafting phase.

60. To assist the Panel, Mr Schaffoener is here today to provide some clarification (if required) as to how the Activity Status Table excludes particular hazardous substances through Rule 1 or triggers consent in the respect to the quantity thresholds that apply to the various zones across the District.

61. However to assist with part of the contention in respect to those hazardous substances which are excluded in Rule 1, in my rebuttal, at paragraph 92 and 93 I have indicated that I would support a change to the proposed permitted activity rule P1 to refer to those hazardous substances excluded by "Rule 1" in Appendix 5. Also for clarity I have suggested that Note 1 is re-labelled to "Hazardous substances excluded from Table 5.1". Although this is a pragmatic solution, I am mindful that none of the original submissions raised these specific points, as most submissions sought the deletion of Table 5.1. If the Panel is persuaded that there is scope to make these amendments, I would be prepared to provide a revised version of the rule framework and Appendix 5.

NC2/Rule 14.4.4 NC8

62. In regards to NC2/ Rule 14.4.4, there is now agreement with Ms Whitney from Transpower New Zealand Ltd's position to retain Rule 14.4.4 NC8. I have recommended providing a link from Rule 10.3.1 NC2 to Rule 14.4.4 NC8 in the Infrastructure and Energy Chapter.

63. There is still a point of contention from Ms Wharf on behalf of Horticulture New Zealand who maintains their position that referring to Class 2 – 4 in the rule is more specific. Ms Wharf has noted that Class 1 explosives were omitted from their submission. My position, which is supported by Mr Schaffoener, is that the rule works without specifically referring to the classes.

Appendix 5

64. As I have addressed many of the key concerns to Appendix 5, I will keep my points here relatively brief.

65. Fire and Emergency New Zealand still have some concerns with respect to their operations and have raised valid concerns as to whether Fire and Emergency's fire stations and associated operations would trigger consent using Appendix 5.

66. In paragraphs 118 – 121 of my rebuttal I have considered the concerns raised by Mr Sharman and hopefully clarified some of his points in respect to those hazardous substances which are excluded from the definition of "hazardous facility".

67. I have also included a further amendment to Table 5.1 of Appendix 5 in my rebuttal amendments (Appendix 2) for specifying "All non-hazardous gases, compressed or liquefied".

68. Mr Schaffoener and I still disagree with the point in respect to removing the more restrictive thresholds in Appendix 5 for hazardous substances in proximity to waterways where the substance is in solid form as submitted by Fire and Emergency New Zealand.

69. In regards to Mr Sharman's concerns with respect to the use of Rule 1 of Appendix 5 and how this works in conjunction with Rule P1, I have addressed this previously.

70. The final point of contention is in respect to the having specific provision for the temporary use and bulk storage of hazardous substances during emergency events. I still maintain my position that this is not necessary and other district plans in the Waikato Region do not provide for this.

Fuel for Retail Sale

71. As I mentioned previously in my summary, the matter of fuel for retail sale was addressed in my circulation of amended rules to submitter's at the end of last week.

72. In regards to the rules proposed for fuel for retail sale, I have further reflected on my points discussed in paragraphs 105-109 and have made some revisions to my earlier amendments in Appendix 2 of my rebuttal evidence.

73. I need to draw the Panel's attention to one error that I have found since drafting on Thursday. That is in respect to Rule D1, which should have deleted reference to rule C1 given the cascade from P3 is now only to C1.

74. Starting at proposed P3 from my latest amendments, this new rule provides the flexibility that the Oil Companies were seeking in respect to the storage of fuel for retail sale where the fuel is stored underground and does not exceed 100,000L of petrol and 50,000L of diesel and 6 tonnes of LPG in a single vessel storage tank. I have been selective about which

zones this new permitted activity applies to and have included: the Rural, Industrial, Heavy Industrial, Hampton Downs Motorsport and Recreation or Te Kowhai Airpark zones.

75. Further, since I circulated the proposed amendments, I have only had feedback from Mercer Airfield, who seek similar provisions to Te Kowhai Airpark for their operations. This will be discussed in the later rezone hearings (however I note that the revised rule would provide for their rural site as permitted activity).

76. I note that I have not included the Business Zones in this rule, given that the Proposed District Plan is seeking to include residential development above ground level as a permitted activity. I will elaborate on this point further shortly.

77. One of the key criterion for P3 is that where the site adjoins a Residential, Village or Country Living Zone or Rangitahi Peninsula Zone, consent may be triggered as a controlled activity, which I have provided for in revised C1. This provision would also include applications where the proposal is for above ground storage tanks.

Proposed C2 and D1

78. Proposed C2 will provide for all other zones (including Business and Business Town Centre) where the storage of fuel for retail sale is underground and the quantities are below 100,000L for petrol and 50,000L for diesel and 6 tonnes for LPG.

79. I need to draw the panel's attention to the reference to "aviation fuel" in this rule. This has been included in error and does not need to be included, as it is in reference to Te Kowhai Airfield, which has been provided for in P3 and C1.

80. The key reason for including the Business and Business Town Centre in C2 is because the Proposed District Plan anticipates (and enables) residential development in these zones, and similar to the other zones I maintain that Council does need to assess whether a site is appropriate or not for the storage of fuel. A controlled activity, while not permitted, is still a consent which cannot be declined by Council and in this respect provides certainty for the applicant. A controlled activity would enable any site specific matters where there may be a risk to the receiver environment, to be addressed through conditions of consent.

81. I understand that this is a significant change in approach from the previous Non-Complying activity status previously proposed through the Council's submission. However I consider this change can be supported through a s32AA evaluation and I consider would still align with the proposed objective and policy framework.

82. As scope was one of the reasons I considered I could not make the change, I have since reflected that although the Council's submission was for a Non-Complying activity status, there was scope to determine a more appropriate activity status. Through the reasoning provided in evidence in respect to underground storage tanks being much safer than above ground, I am comfortable that this change could be supported through a revised s32AA evaluation.

83. In addition to this, I have reflected that a discretionary activity status still remains an appropriate activity cascade for activities that do not meet C2. I accept that this position does still not align with the Oil Companies submissions. However, given the discussion in respect to the discretionary activity rule (referred to earlier), the Panel may be minded to

revert to a restricted discretionary activity status default. In any case, at this stage, a discretionary activity status is a more lenient approach than the previous Non-Complying activity approach.

Contaminated Land

Contaminated Land Objective 10.2.1 and Policy 10.2.2

84. In respect to Objective 10.2.1 – Contaminated Land, there is still contention from Ms McPherson on behalf of the Oil Companies [sub 785] in respect to the wording 'sustainably managed' and the word 'safety' being included into Objective 10.2.1 from the notified version (which came from submission 923.134 from Waikato District Health Board). For the reasons set out in paragraphs 138 and 139 of my rebuttal evidence, I have not changed my position on these points.

85. In respect to Policy 10.2.2 – Managing the Use of Contaminated Land, there is also still contention from Ms McPherson on behalf of the Oil Companies [sub 785] in respect to the wording, which Ms McPherson considers should more appropriately relate to the 'risk from contaminants'; not whether or not contaminants are at acceptable levels. I note that Ms Wharf from Horticulture New Zealand [sub 419] also supports this approach. At paragraph 144 of my rebuttal, I have considered that the change suggested by Ms McPherson is outside of scope. If the Panel does consider that it is within scope of the original submissions, then my position is that I still disagree as in my opinion the policy needs to focus on the contaminants, rather than the risk.

Scope

86. The Panel may have noted that throughout my rebuttal evidence I have often agreed or disagreed with a point, but in many cases did not consider that I have scope to make an amendment to the provision.

87. I have in most cases outlined my position should the Panel be persuaded that there is sufficient scope. However in respect to some points where I have not stated my position and the Panel are persuaded that there is sufficient scope, I would like an opportunity through today's hearing to consider any new information which may inform a change.

Summary

88. This concludes my executive summary of the hazardous substances and contaminated land topic. I look forward to hearing evidence presented by submitters over the course of the day and welcome any questions that the Panel may have.