

**BEFORE THE HEARING COMMISSIONERS
IN WAIKATO DISTRICT**

IN THE MATTER of the Resource Management Act 1991 (“**the Act**”)

AND

IN THE MATTER of the Proposed Waikato District Plan (Stage 1) Hearing 8A Hazardous Substances and Contaminated Land

**REBUTTAL STATEMENT BY LYNETTE PEARL WHARFE
FOR HORTICULTURE NEW ZEALAND
14 JANUARY 2020**

1. INTRODUCTION

- 1.1 I have filed Evidence in Chief (EIC) for Horticulture New Zealand (HortNZ) on Topic 8A Hazardous substances and contaminated land.
- 1.2 This rebuttal statement relates to the primary evidence filed by:
 - a) Georgina McPherson for The Oil Companies
 - b) Hilary Walker for Federated Farmers
- 1.3 Ms McPherson's evidence addresses both the provisions for hazardous substances and contaminated land. I support the approach set out in her evidence but seek to highlight specific aspects and relief that she is seeking.
- 1.4 Ms Walker's evidence also addresses both the provisions for hazardous substances and contaminated land.
- 1.4 As both statements address both hazardous substances and contaminated land this rebuttal statement is grouped by the topics.

2. CONTAMINATED LAND

- 2.1 HortNZ made further submissions supporting submissions by both The Oil Companies and Federated Farmers in respect of contaminated land. A further submission was also made opposing a submission by Waikato Regional Council requesting changes to Policy 10.2.2.
- 2.2 Ms Walker (Paras 18-19) supports the s42A Report recommendation to amend Objective 10.2.1 to include 'from unacceptable risk'. I support that position.
- 2.3 Both Ms Walker and Ms McPherson address recommendations to amend Policy 10.2.2 Managing the use of contaminated land.
- 2.4 Ms Walker supports the inclusion of the Advice Note at the end of Policy 10.2.2 and I support that position. It is important that the Plan draws users attention to situations where the NES for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) will affect the status of the activity. For instance: in the NES Clause 5 (8) has specific provisions relating to production land and where the regulations will, or won't apply. This is important because where land is being retained as productive land an assessment under the regulations is not required unless a threshold in Clause 5 (8) is triggered.
- 2.5 Ms McPherson in Para 9.6 sets out an alternate version of Policy 10.2.2 based on the s42A Report, but with some suggested changes.
- 2.6 I support Ms McPherson's version, particularly of clause d) as it is clearer and focuses on 'contaminated land' as defined in the Plan, the RPS, the National Planning Standards, and the RMA.

- 2.7 The s42A Report¹ recommended that clause d) included 'actually or potentially contaminated land', which is not defined. As the focus of section 14.4 of the RPS, the NES, and Section 10.2 of the Plan are on contaminated land the provisions in the district plan should also be on contaminated land as defined. Such an addition has the potential to substantially increase the scope of the provisions beyond the definition of contaminated land in the above documents.
- 2.8 Therefore I do not support the recommended addition in the s42A Report in response to Waikato District Council and support the provisions set out in para 9.6 of Ms McPherson's evidence, particularly the first part of clause d):

Ensure that contaminated land management approaches associated with the use, subdivision and development of contaminated land management approaches includes where appropriate:

3. HAZARDOUS SUBSTANCES

- 3.1 Ms McPherson generally does not support the Council's approach to management of hazardous substances and raises issues regarding the lack of a robust s32 analysis and risk based evidence. She identifies (Para 5.6) that there is a substantial disconnect between the ability for councils to place additional controls if necessary and the regulatory provisions proposed.
- 3.2 Ms McPherson also attaches and refers to the 2019 MfE Hazardous Substances under the RMA advice which assists in identifying appropriate role for Council in respect of hazardous substances in the Waikato District Plan.
- 3.3 I support the evidence of Ms McPherson particularly regarding:
- (a) Definition of hazardous facility (Section 6)
 - (b) Objective 10.1.1 (Section 7.1-7.10)
 - (c) Policy 10.1.2 (Section 7.11- 7.15)
 - (d) Policy 10.1.3 (Section 7.16 -7.20)
- 3.4 Hazardous facility definition: I have addressed the hazardous facility definition in my EIC and attached provisions in the Hastings District Plan which focus on Major Hazardous Facilities. Ms McPherson proposes a similar approach based on 'Significant Hazardous facility'. I concur with her that the approach is more focused on managing risks associated with hazardous substance storage at much greater thresholds.
- 3.5 Objective 10.1.1: Ms McPherson raises issues with the addition of transport to Objective 10.1.1 and the change of 'managed' to 'minimised'. I concur with

¹ Refer s42A Report Para 248-250

her concerns regarding both changes and support retaining the focus on managing risk, which may include 'minimising' as part of that management.

- 3.6 Policy 10.1.2 Location of new hazardous facilities: Ms McPherson raises a number of issues regarding Policy 10.1.2 including the use of 'sensitive environments' which is undefined and that adverse effects should only be related to the hazardous substance matters, not amenity issues. In my EIC I did not support Policy 10.1.2 because of its reliance on 'hazardous facilities'. The suggested change by Ms McPherson to Policy 10.1.2 is focused on major hazardous facilities, consistent with her alternative definition for hazardous facilities. As I support the focus on major hazardous facilities I support the proposed change to Policy 10.1.2.
- 3.7 Ms Walker for Federated Farmers also addresses Policy 10.1.2 and seeks that the policy be amended so that adverse effects are avoided remedied or mitigated to better align with the RPS Policy 4.2.9. If the hearing panel do not amend Policy 10.1.2 as sought by Ms McPherson I would support the change sought by Ms Walker, but note that the adverse effects to be addressed through the policy do not include amenity provisions, such as noise, which should be addressed through other policies in the plan.
- 3.8 Policy 10.1.3 Residual risks of hazardous substances: Consistent with the change sought to Policy 10.1.2 Ms McPherson seeks that Policy 10.1.3 be changed to focus on significant hazardous facilities. As I support the focus on significant (or major) hazardous facilities I support the proposed change to Policy 10.1.3 but seek that the terminology used is consistent – either significant hazardous facility or major hazardous facility.

Lynette Wharfe

14 January 2020