IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Waikato District Plan

STATEMENT OF EVIDENCE OF GEORGINA MCPHERSON FOR BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED & Z ENERGY LIMITED (*THE OIL COMPANIES*)

(Sub 785 & FS 1089)

20 December 2019

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1. EXECUTIVE SUMMARY

1.1 This statement of evidence addresses the submissions and further submissions of BP Oil NZ Limited, Mobil Oil NZ Ltd and Z Energy Limited (*the Oil Companies*) in relation to Hearing 8A: Hazardous Substances / Contaminated Land of the Proposed Waikato District Plan (*Waikato PDP*).

1.2 It raises particular concern with the absence of robust s32 analysis and risk based evidence to support the proposed hazardous substances provisions, particularly given the changes to the RMA and the role of other legislation.

1.3 My evidence sets out that I consider district plan provisions are appropriate in some instances, for instance to manage land use compatibility issues and risk around major hazard facilities, but that provisions should only apply where there is an identified regulatory gap and should not duplicate controls covered by other legislation. This is particularly the case where mandatory compliance with other legislation means that the risk of such facilities is largely contained within site boundaries, for instance at service stations. RMA controls in such instances do not provide additional benefit in terms of risk management, as recognised in guidance from the Ministry of the Environment and in the removal of the explicit function of councils to control hazard substances under the RMA.

1.4 To address these matters, I set out proposed amendments to the definition of hazardous facility to ensure that the Waikato PDP only addresses hazardous facilities that generate significant risk or adverse effects beyond their boundary. I also set out amendments I consider are necessary to corresponding objectives, policies and rules to avoid duplication with other legislation, focus on management of risk to acceptable levels and ensure that permitted activity thresholds are appropriate.

1.5 My evidence also explains my support for the intent of the contaminated land objectives and policies, subject to minor amendments for certainty and consistency with the rules of the National Environmental Standard for Contaminated Soils.

2. INTRODUCTION

2.1 My full name is Georgina Beth McPherson. I hold a Bachelor of Resource and Environmental Planning degree from Massey University and have practiced resource management for over 16 years. I am a full member of the New Zealand Planning Institute.

2.2 I am a Principal Planning and Policy Consultant at 4Sight Consulting (*4Sight*) (which

now incorporates Burton Planning Consultants Limited (*Burtons*)) in Auckland. I was employed at Burtons from August 2011 and was subsequently employed by 4Sight when it acquired Burtons in September 2018. From here on in, when I refer to 4Sight, it will include with reference to my role at Burtons. I previously worked in local government and consultancy roles in both New Zealand and the United Kingdom. This includes three years with the London based planning consultancy, Planning Potential Ltd, and five years as a planning consultant with CPG NZ Ltd (formerly Duffill Watts Ltd) in both its Auckland and Christchurch offices.

2.3 My principal role at 4Sight has been to provide planning and resource management consenting and policy advice to a range of clients in relation to various projects and planning documents. This has included preparation of applications for resource consent, policy analysis, provision of strategic policy advice and preparation of submissions and evidence on behalf of the Oil Companies. I have been involved in the preparation of submissions, hearing statements and/or presentation of evidence relating to the hazardous substances provisions in a number of district planning documents around the country including the Auckland Unitary Plan, Hamilton District Plan, Thames Coromandel District Plan, Hastings District Plan, Rotorua District Plan, Palmerston North District Plan, South Taranaki District Plan, New Plymouth District Plan, Horowhenua District Plan and Dunedin 2GP. I have also assisted the Oil Companies, as well as Wiri Oil Services Limited and New Zealand Oil Services Limited with a range of planning policy and consenting issues associated with their bulk fuel storage terminals at various ports around the country, including in relation to land use compatibility and risk issues associated with bulk storage of hazardous substances.

3. CODE OF CONDUCT FOR EXPERT WITNESSES

3.1 I have read the Environment Court's Practice Note 2014 as it relates to expert witnesses. My brief of evidence was prepared in compliance with the Code of Conduct and I agree to comply with it in giving my oral evidence. I am not, and will not behave as, an advocate for my client. I am engaged by the Oil Companies as an independent expert and 4Sight provides planning services to the Oil Companies along with a range of other corporate, public agency and private sector clients. I have no other interest in the outcome of the proceedings. I confirm that my evidence is within my area of expertise and that I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions

3.2 In preparing this evidence I have had regard to a number of documents, including:

(a) The Council's Section 42a Reports and supporting specialist reports and legal advice on hazardous substances;

(b) The Proposed Waikato District Plan (Waikato PDP) and supporting section 32 report;

(c) The submissions and further submissions of the Oil Companies and other relevant submitters;

(d) The hazardous substances provisions in the Operative Waikato District Plan;

(e) The Waikato Regional Policy Statement;

(f) The Resource Management Act 1991 (RMA);

(g) The Hazardous Substances and New Organisms Act 1996 (the HSNO Act) and associated regulations and codes of practice including:

(i) Below ground stationary container systems for petroleum – design and installation (HSNOCOP 44);

(ii) Below Ground Stationary Container Systems for Petroleum – Operation (HSNOCOP 45);

(iii) Secondary Containment Systems (HSNOCOP 47);

(h) Health and Safety at Work Act 2015, including the Health and Safety at Work (Hazardous Substances) Regulations 2017 (*HSWA*);

(i) Ministry for the Environment, Land Use Planning Guide for Hazardous Facilities, 2002;

(j) The Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand, MfE (December 1998);

(k) Ministry for the Environment guidance on Hazardous Substances Under the RMA, revised in 2019 to include changes to the RMA as a result of the Resource Legislation Amendment Act 2017 (*RLAA17*).

4. SCOPE OF EVIDENCE

4.1 This statement of evidence relates to the Oil Companies' submissions and further submissions allocated to the hazardous substances and contaminated land hearing topic on the Waikato PDP.

4.2 In particular, it addresses the following matters raised in the Oil Companies submissions:

a. Legislative context and the need for district plan controls on hazardous substances;

b. Definition of ‘hazardous facility’;

c. Objective 10.1.1 and Policies 10.1.1; 10.1.2; 10.1.3 and 10.1.4 relating to hazardous substances;

d. The rule framework applying to hazardous substances;

e. Objective 10.2.1 and Policy 10.2.2 applying to contaminated land.

5. LEGISLATIVE CONTEXT AND THE NEED FOR DISTRICT PLAN CONTROLS ON HAZARDOUS SUBSTANCES

5.1 In their submissions, the Oil Companies repeatedly raise concerns around the basis upon which the council justifies its management of hazardous substances through district plan rules and in the absence of robust s32 analysis and risk based evidence to support the specific approach proposed, in particular in relation to the management of hazardous substances at service stations and other refuelling facilities.

5.2 The Council’s s32 and s42A reports and supporting documents provide extensive analysis of the legislative context around the management of hazardous substances and the role of district plans in managing hazardous substances in light of the RLAA17. This includes discussion of the roles of and relationship between HSNO, HSWA and the RMA and concludes that there continues to be an ability and role for councils to manage hazardous substances in district plans.

5.3 In part I support that conclusion (especially in relation to the management of major hazardous facilities), however the argument is not just one related to whether Council has the ability to do so but rather the extent to which it needs to. There is still a need in any particular circumstance to justify the basis of any intervention given that there is no explicit function for hazardous substances.

5.4 I do not, however, support the specific suite of provisions proposed for the management of hazardous substances in the Waikato PDP and share the concerns raised by the Oil Companies in their submissions around the absence of robust s32 analysis and risk based evidence to support the specific approach proposed.

5.5 The council recognises (at para 41 of the s42A report) that RLAA17 has removed the s30 and 31 functions of councils to control the storage, use,

disposal or transportation of hazardous substances, and that the intent of those changes was to remove the perception that councils must always place controls on hazardous substances under the RMA and to ensure that councils only place additional controls on hazardous substances if they are necessary to control effects under the RMA that are not covered by the HSNO or HSW Acts.

5.6 There is, however, a substantial disconnect between this and the regulatory provisions proposed. As detailed in the Ministry for the Environment (*MfE*) guidance on the management of hazardous substances under the RMA (available on the Quality Planning website[1]), which was revised in 2019 to include changes to the RMA as a result of the RLAA17, the RLAA17 sent a clear message that councils should re-evaluate their current hazardous substances provisions to determine if they are necessary to deal with any potential environmental effects not covered by other legislation. Further, the guidance is clear that provisions that cannot be justified should be removed (refer to Attachment 1 for a copy of the MfE guidance with relevant excerpts highlighted (pg 3)).

5.7 The provisions in the Waikato PDP essentially roll-over the existing permitted activity thresholds contained in Table HT1 of the Operative Plan to the Waikato PDP, but apply a significantly higher level of regulation to service stations (i.e. a change from permitted to non-complying activity status (in certain zones)) and a requirement for a much more detailed level of assessment and bespoke information in relation to all hazardous facilities than the Operative Plan, which was drafted at a time the council did have a specific hazardous substances management function. This, in my opinion, is contrary to the intent of RLAA17 and is not supported by empirical risk-based evidence and will impose an additional layer of costs. It also appears to be an attempt to address amenity concerns rather than those related to risk.

5.8 As detailed in section 8 of my evidence, addressing the hazardous substances rules framework, long standing exemptions have been applied to the storage of petrol, diesel and LPG at service stations in a large number of district plans around the country on the basis of MfE's Hazardous Facility Screening Procedure (*HFSP*) guidance. This includes the Operative Waikato District Plan where storage of up to 100,000 litres of petrol and 50,000 litres of diesel in underground tanks as well as up to 6 tonnes of LPG is specifically identified as

[1] https://www.qualityplanning.org.nz/sites/default/files/2019-07/managing-hazardous-substances.pdf

a permitted activity in all zones (Rule H1 of the Operative Waikato District Plan). No risk-based evidence is provided to demonstrate why a significantly higher level of regulation (non-complying activity status in 'sensitive' zones) is now proposed for these activities in the Waikato PDP. This change is contrary to the MfE guidance[2] that specifies that RMA controls on tanks that are subject to HSNO regulations are generally not necessary.

5.9 I accept there is a role for councils in managing risk associated with hazardous substances use and storage at major hazard facilities. However, I do not agree that there is a need to manage all risk associated with hazardous substances storage through RMA land-use controls, particularly where compliance with HSNO and HSWA requirements means that risk is largely contained within the boundary of a site. Consistent with the MfE advice[3], I consider that for petroleum products that level sits with major hazard facilities (as set out in the MHF Regulations), where there is significant risk beyond the boundary of the site, not at the level of service stations, where, as demonstrated by the historic HFSP exemptions, and numerous examples around the country of existing service stations in residential environments, risk is adequately managed by way of compliance with HSNO and HSW requirements.

5.10 Further, the council has failed to demonstrate what value will be added through the consent processes required by the Waikato PDP hazardous substances provisions and what type of consent conditions they expect to impose. In my experience, and that of my colleagues at 4Sight, conditions of consent applied to service station and truck stop facilities in relation to hazardous substances management has simply required compliance with HSNO regulations and provide no additional benefit in terms of risk management.

6. HAZARDOUS FACILITY DEFINITION

6.1 The Oil Companies (FS1089.3) supported submission (463.5) by Environmental Management Solutions Limited, which seeks to delete the definition of hazardous facilities in its entirety.

6.2 The recommendation in the s42A Report is to reject the submission, and to retain the definition, subject to a number of amendments recommended in

[2] Refer MfE Guidance in Attachment 1 with relevant text highlighted in yellow on page 6.
[3] Refer MfE Guidance in Attachment 1 with relevant text highlighted in yellow on pages 7 & 8

response to the submissions of other parties, as follows (additions underlined; deletions in strikethrough):

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 stored in mobile plants, motor vheicles* [sic]*, boats and small engines;*
- *the incidential* [sic] *use and storage of hazardous substances in domestic scale quantities;*
- *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.*

6.3 I support the intent of the changes to limit the scope of activities covered by the definition of hazardous facility but consider the changes do not go far enough.

6.4 I consider the definition of 'hazardous facility' is so broad that it will apply to activities that it is either unnecessary or impractical to control through the district plan. As a minimum, the definition should be amended to exclude activities such as gas and oil pipelines and electricity transformer oil in volumes less than 1,000 litres. However, as outlined in section 5 above, I consider the overall approach to managing hazardous substances in the Waikato PDP is largely unnecessary as it seeks to manage risks that are already adequately managed and/or contained within the site boundaries by way of compliance with HSNO and HSWA. I agree there is a role in district plans to manage risk and land use compatibility issues associated with major hazard facilities, where hazardous substances are stored at much greater thresholds (e.g. the levels managed by Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016). For these types of facilities a land use response that controls both encroachment of sensitive activities and establishment / expansion of major hazard facilities would be required.

6.5 In this regard, I consider the approach taken in the South Taranaki District Plan and the Proposed New Plymouth District Plan (both of which are drawn to the attention of the council in the Tompkins Wake legal advice), provides

a useful example. That is, both the South Taranaki District Plan and the Proposed New Plymouth District Plan place controls on *significant* hazardous facilities only, where the definition of significant hazardous facilities focuses on specific land uses (and excludes storage of petrol or diesel at service stations).

6.6 As such, I consider further risk based analysis and amendment to the hazardous substances provisions, including the definition of hazardous facility, is necessary to focus on managing risks associated with hazardous substances storage at much greater thresholds (e.g. the levels managed by Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016). One way of achieving this could be to adopt a definition of hazardous facility that applies only to facilities that generate significant risk or adverse effects beyond the boundary of the site. As an example, this could be along the lines of the definition of significant hazardous facility used in the South Taranaki District Plan and Proposed New Plymouth District Plan, but noting this would likely need to be reviewed to reflect relevant activities within the Waikato District, and that any definition should appropriately recognise that risk associated with petrol storage is higher from a flammability perspective than diesel, and that this should be reflected in the thresholds. Such a definition could be worded along the following lines:

Significant Hazardous Facility
means the use of land and/or buildings (or any part of) for one or more of the following activities:

1. *Manufacturing and associated storage of hazardous substances (including manufacture of agrichemicals, fertilisers, acids/alkalis or paints).*
2. *Petroleum exploration and petroleum production.*
3. *The above ground storage/use of more than 50,000L of petrol.*
4. *The above ground storage/use of more than 100,000L of diesel.*
5. *The storage/use of more than 6 tonnes of LPG.*
6. *Galvanising plants.*
7. *Electroplating and metal treatment.*
8. *Tanneries.*
9. *Timber treatment.*
10. *Freezing works and rendering plants.*
11. *Wastewater treatment plants.*
12. *Metal smelting and refining (including battery refining or recycling).*
13. *Milk processing plants (except where milk processing plant is specifically designed to contain and store milk so that any reasonably potential spillage of milk is contained within the site of the plant until it can be disposed of to an approved wastewater system).*
14. *Fibreglass manufacturing.*
15. *Polymer foam manufacturing.*

This definition does not apply to the underground storage of petrol or diesel at service stations undertaken in accordance with HSNOCOP 44 Below Ground Stationary Container Systems for Petroleum – Design and Installation and HSNOCOP 45 Below Ground Stationary Containers Systems for Petroleum – Operation or the distribution or transmission by pipeline of petroleum products.

7. HAZARDOUS SUBSTANCES OBJECTIVES AND POLICIES

Objective 10.1.1 – Effects of hazardous substances

7.1 The Oil Companies' submission (785.41) supports Objective 10.1.1, subject to amendments to recognise the benefits of the storage and disposal, as well as the use of, hazardous substances.

7.2 The recommendation in the s42A report is to accept the Oil Companies submission in part and to make a number of changes to the objective in response to the submissions of the Oil Companies and other submitters, as follows (additions underlined; deletions in strikethrough):

Objective 10.1.1
*~~Residual r~~ Risk*s *associated with the storage, use, transport or disposal of hazardous substances ~~is managed~~ are minimised to ensure that the effects on people, property and the environment are acceptable, while recognising the benefits of facilities storing, using or disposing of hazardous substances.*

7.3 The changes sought in the Oil Companies submission have been accepted and that is supported. I also support deletion of the word 'residual' as 'residual risk' is what is left after measures have been taken to avoid, remedy or mitigate risk and it is inappropriate to require further management of residual risk.

7.4 I do not, however, support introduction of the reference to 'transport' of hazardous substances. The transport of hazardous substances is tightly controlled by the HSNO Act and the Land Transport Act and there is no need for further regulation under the Waikato PDP. It is unclear how the Council would intend to give effect to such an objective and what activities it would manage, particularly in the context of subsequent policy requirements, such as the requirement in Policy 10.1.2(iii) that all adverse effects associated with the operation or an accidental event at a hazardous facility are contained within the site.

7.5 I consider any intent to control the transport of hazardous substances as part of a land use activity (e.g. for a facility using or storing hazardous substances) by way of consent conditions would be inappropriate. Such conditions are likely to be ultra vires as they would relate to activities undertaken off site and frequently, undertaken by a third party. The Oil Companies, for example, usually employ independent haulage companies to transport hazardous substances to a site (e.g. a service station or truck stop site) and will have little control over the route taken by the delivery companies, particularly if they are making a subsequent delivery to another site. Further, while in many cases a preferred route is followed, there has to be an ability to change that route if circumstances require, for example, in the case of accidents and unsuitable road conditions. In this regard, I consider any intent by the Council to control transport routes to and from sites using hazardous substances to be problematic.

7.6 I also do not support the recommendation to replace the word 'managed' with 'minimised'. While I support the concept of minimising risk and managing environmental effects to ***acceptable*** levels, I consider the wording of the objective, as recommended, could be interpreted as suggesting that the only way to ensure that effects on people, property and the environment are acceptable is to minimise risk, per se. In my opinion, a requirement to minimise risk, per se, is inappropriate, as it suggests that all risk must be reduced to the smallest possible amount or degree, irrespective of the environment in which the hazardous substances were being used or the acceptability of the risk in relation to the receiving environment. While there are no New Zealand standards relating to the assessment of risk from hazardous facilities, I am familiar with the risk assessment guidance used in the New South Wales Department of Planning: Hazardous Industry Planning Advisory Papers (*HIPAP*), which has been applied and accepted in a number of jurisdictions around NZ, including in relation to bulk hazardous substances facilities at Wiri, Christchurch (Woolston and Lyttelton Port), Mt Maunganui and Dunedin. Under the HIPAP guidance, risk acceptability criteria vary significantly between residential and industrial environments, with an individual fatality criteria of 1 in a million being applied to residential environments compared with 1 in 50 million in industrial environments,

highlighting that a requirement to minimise risk to the smallest possible amount in all circumstances is inappropriate.

7.7 I consider the focus should remain on managing risk to ensure effects on people, property and the environment are acceptable, as per the notified version of the objective.

7.8 I note that the s42 analysis of this wording change appears to be limited to the following comment set out in para 122 of the s42a report:

> 122. Submissions from Waikato District Council [697.570] and from the Oil Companies [785.41] seek to retain Objective 10.1.1 Effects of hazardous substances, subject to amendments. Both of these submissions provide appropriate changes to the objectives which strengthen and clarify the objective. I therefore recommend that both submissions be accepted in part, given that aspects of each submission are recommended.

7.9 In my opinion, this does not provide sufficient justification for the recommendation to replace the word 'managed' with 'minimised'.

7.10 As such, I consider it would be appropriate for the Panel to reject, in part, the recommendation of the s42A Report in relation to the wording of Objective 10.1.1 and to delete the reference to 'transport' of hazardous substances and revert to the notified reference to the 'management' of risk, rather than the 'minimisation' of risk. This could be achieved by making the following changes (additional changes highlighted in red with additions underlined and deletions in strikethrough):

Objective 10.1.1
~~Residual r~~ Risks associated with the storage, use, ~~transport~~ or disposal of hazardous substances ~~is~~ are managed ~~are minimised~~ to ensure that the effects on people, property and the environment are acceptable, while recognising the benefits of facilities storing, using or disposing of hazardous substances.

10.1.2 – Policy – Location of new hazardous facilities

7.11 The Oil Companies submission (785.42) opposed Policy 10.1.2 and sought that it be deleted in its entirety.

7.12 The recommendation in the s42A report is to reject the Oil Companies submission and to amend Policy 10.1.2, as follows, in response to other submissions:

10.1.2 Policy – ~~Location of new h~~ Hazardous facilities
(a) ~~New h~~ Hazardous facilities must minimise the risk to the environment (including people and property) ~~to acceptable levels~~ by:
(i) Siting new hazardous facilities in appropriate locations that are separated from incompatible activities, such as sensitive land use and infrastructure, and sensitive environments;
~~(ii) Avoid locating near to sensitive land use activities and infrastructure~~
(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.

7.13 I share the concerns set out in the Oil Companies submission around the overall need for and specific wording of the Policy and am also opposed to a number of the wording changes recommended in the s42A report.

7.14 In my view there are a number of key concerns with the policy:

(a) The wording requires all hazardous facilities to minimise risk to the environment. As detailed in relation to Objective 10.1.1, I consider a requirement to minimise risk, per se, to be inappropriate. It suggests that all risk must be reduced to the smallest possible amount or degree, irrespective of the environment in which the hazardous substances are being used or the acceptability of the risk at a particular location. This does not recognise that the acceptability of risk will vary depending on the nature of the activity and the receiving environment.

(b) The policy applies generally to all hazardous facilities, irrespective of their size and scale. Not all hazardous facilities need to be separated from sensitive land uses (e.g. service stations are frequently located adjacent to residential development).

(c) The need for and ability to separate all hazardous facilities from 'infrastructure' is unclear. It is uncertain what type of risk this policy is intended to manage, noting that any development in urban areas will necessarily be located close to a range of infrastructure (e.g. roads and underground network utilities) and that given the very broad definition of 'hazardous facility' many hazardous facilities will themselves be classed as infrastructure (e.g. airports, ports, pipelines conveying gas, petroleum, biofuel or geothermal energy).

If the intent is to tie in with the non-complying activity rule relating to the storage and handling of hazardous substances with flammable and explosive properties in close proximity to the National Grid, then this should be specified in the policy rather than the use of generic references to infrastructure and hazardous facilities.

(d) While I agree there are issues of land use compatibility between certain facilities that use and store hazardous substances and other more sensitive land uses and receiving environments, it is uncertain what additional controls the council might seek to place on the design, construction or operation of hazardous facilities over and above what is required through compliance with HSNO and HSW that might serve to contain risk and adverse effects within the site boundaries.

(e) Not all risks and adverse effects associated with the operation of a hazardous facility can or necessarily need to be contained within the site. The wording is not tied to the use and storage of hazardous substances so essentially requires *all* adverse effects associated with a hazardous facility to be contained within the site including effects such as noise, odour, traffic and transportation of hazardous substances. This is unduly onerous in relation to effects such as noise or odour, particularly where a facility might be located in an environment, such as a heavy industrial zone, where there is generally a higher tolerance of such effects extending beyond the site boundary. For activities involving the movement of vehicles to and from a site, such as transport of fuel or goods manufactured on a site and transported for use in other locations it is unrealistic as these are, by their nature, off-site effects.

(f) Not all risks and adverse effects associated with an accidental event involving hazardous substances can or need to be contained within the boundaries of the site. Nor is any such expectation placed on other types of facilities, where emergency events, such as a building fire, can cause widespread adverse effects beyond the site boundary (e.g. the recent convention centre fire in central Auckland). Risk is associated with likelihood and consequence. The risk of certain types of accidental events involving hazardous substances occurring may be of such low probability that it is

acceptable when compared to relevant risk criteria and in the context of surrounding land uses, despite the potential for risk effects to extend beyond the boundary of the site.

(g) The term ‘sensitive environments’ is not defined and is, therefore, void for certainty. This is particularly important given the direction (in clause iv) to avoid storage of hazardous substances in sensitive environments. It is unclear, for example, if the council might consider ‘sensitive environments’ to equate to the zones identified in the final column of the Activity Status Table in Appendix 5: Hazardous Substances (i.e. the Residential, Country Living, Village and Rangitahi Peninsula Zones), where the lowest quantity thresholds apply and which appear to be considered the most sensitive zones. The potential for this interpretation is supported by comments in the s42A report including the following at para 408 *‘By specifying the use and storage of fuel for retail sale within a service station as a noncomplying activity, the intention is to restrict such activities establishing in residential areas, being sensitive environments’.* In my opinion, it would be inappropriate to apply a complete avoidance policy to hazardous substances storage in these zones as risk associated with some hazardous facilities (such as service stations) is appropriately managed by compliance with HSNO and HSW requirements to a level that is acceptable within a residential context. Further, it would be inconsistent with the Activity Status Table which provides for storage of most hazardous substances in limited quantities as a permitted activity (i.e. the rules do not require avoidance of storage in these locations). The only other rules that potentially relate to ‘sensitive environments’ are the limitations in the Activity Status Table on storage of Class 9 Ecotoxic substances within 30m of a watercourse. However, again, these rules provide for some limited hazardous substances storage in these locations and therefore do not, correlate to an avoidance policy. While I am not necessarily opposed to a requirement for a higher level of scrutiny for certain hazardous substances storage in certain sensitive environments, I do not consider there is sufficient certainty to support the current direction in Policy 10.1.2 to completely avoid all hazardous facilities in undefined sensitive environments.

(h) The disposal of hazardous substances is covered by the disposal regulations under HSNO, which set controls on the disposal of substances based on the HSNO classification. Waste management facilities that accept hazardous waste are ultimately responsible for ensuring waste they accept is disposed of appropriately in accordance with relevant discharge controls. It is unclear if the proposed amendments to clause iv of the policy are intended to specifically apply to waste management facilities accepting hazardous substances. If that is the case, I could likely support an avoidance approach for such facilities in sensitive environments. However, that should be clarified and separated out from the policy approach to storage of hazardous substances in sensitive environments (noting the concerns raised in the preceding comment around the interpretation of 'sensitive environments' and that storage and disposal of hazardous substances are quite different activities). Otherwise, I do not consider there is any benefit in a policy requirement that hazardous facilities dispose of their waste, essentially, in the manner they are required to under HSNO.

7.15 In this context I could support the Oil Companies submission to delete the policy in its entirety. However, in the interests of providing some policy guidance, I have suggested some alternative wording below, which seeks to capture what I understand the general intent of the policy to be, to focus on land use compatibility issues associated with the interface between hazardous facilities and their receiving environments. This could be achieved by rewording Policy 10.1.2 along the following lines (additions underlined; deletions in strikethrough and highlighted in red):

Policy 10.1.2 – Hazardous facilities

Manage major hazardous facilities to ensure they are located, designed, constructed and operated so that off site risk is at acceptable levels for the surrounding environment

~~*10.1.2 Policy – Location of new h Hazardous facilities*~~
~~*(a) New h Hazardous facilities must minimise the risk to the environment (including people and property) to acceptable levels by:*~~
~~*(i) Siting new hazardous facilities in appropriate locations that are separated from incompatible activities, such as sensitive land use and infrastructure, and sensitive environments;*~~
~~*(ii) Avoid locating near to sensitive land use activities and infrastructure*~~

~~*(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.*~~

10.1.3 – Policy – Residual risks of hazardous substances

7.16 In their submission (785.43), the Oil Companies' opposed Policy 10.1.3 and sought that it be deleted in its entirety.

7.17 The recommendation in the s42A report is to reject the Oil Companies submission and to amend Policy 10.1.3, as follows, in response to other submissions:

10.1.3 – Policy – ~~Residual~~ Assessment of 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.

7.18 As detailed in sections 5 and 6 of my evidence, I consider the hazardous substances provisions should be amended to focus on managing risks associated with hazardous substances storage at much greater thresholds (e.g. the levels managed by Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016). I could support the risk assessment requirements of Policy 10.1.3 if they applied to major hazardous facilities only. However, in lieu of that, I support the Oil Companies submission to delete the policy in its entirety on the basis that it generically requires *any* facility using or storing hazardous substances to identify and assess adverse effects and risk and fails to recognise that in most cases (as identified in the MfE hazardous substances guidance[4]), the HSNO and HSW Acts will be adequate to ensure risks, including cumulative effects, associated with hazardous facilities are contained on a site. My view is reinforced by the Council no longer having general functions in respect of the control of hazardous substances through the RMA, unless there is an identified regulatory gap to be addressed. Such a gap has not been identified in relation to *all* facilities currently captured by the definition of hazardous facility. In effect, the policy requires a much more detailed level of assessment and bespoke information than is justified by the

[4] Refer MfE Guidance in Attachment 1 with relevant text highlighted in yellow on page 7

level of effects generated by a majority of small scale hazardous facilities and will impose an additional layer of costs, with no clear benefit in terms of improved risk management at such sites.

7.19 Further, I do not agree that the term 'safety' needs to be included in the policy or adds anything additional to what is covered by the term 'human health'. Rather, it potentially creates an expectation that Council will seek to control matters that are already appropriately controlled by Worksafe, and I consider that to be inappropriate.

7.20 As such, I consider further amendments to the hazardous substances provisions are necessary to restrict their scope to the management of hazardous facilities that generate significant risk or adverse effects beyond the boundary of the site. This could be achieved by further amendments to Policy 10.1.3 to specify that it applies to significant hazardous facilities only, along the following lines (in conjunction with an appropriate definition of that term as addressed in section 6 of this evidence) (changes highlighted in red with additions underlined and deletions in strikethrough):

10.1.3 – Policy – ~~Residual~~ Assessment of risks of significant hazardous facilities ~~substances~~
Significant hazardous ~~F~~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.

7.21 Alternatively, I consider the policy should be deleted.

10.1.4 – Policy – Reverse sensitivity effects

7.22 In their submission (785.44), the Oil Companies' supported in part Policy 10.1.4 and sought that it be amended along the following lines to recognise that 'separation' of activities may not be the only way of managing reverse sensitivity effects and that such effects should be avoided in order to recognise the value of investment in existing facilities and to provide for their future development.

10.1.4 Reverse Sensitivity Effects
(a) ~~Separate~~ Ensure that the expansion and value of existing and future investment by hazardous facilities is recognised by avoiding reverse sensitivity effects between sensitive land use activities and 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.~~

7.23 The recommendation is to accept in part the submission of the Oil Companies and to amend the policy as follows:

10.1.4 Policy – Reverse sensitivity effects
(a) ~~Separate~~ Ensure as far as practicable reverse sensitivity effects are avoided between sensitive land use activities and ~~from~~ 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.~~

7.24 I support deletion of clause b and c and the intent of the changes to clause a to focus on managing reverse sensitivity effects as a whole rather than simply requiring separation between hazardous facilities and sensitive land uses.

7.25 I do not, however, support the qualifier 'as far as practicable'. I consider that may result in unintended and inappropriate outcomes. For example, a sensitive activity seeking to locate in close proximity to a large-scale hazardous facility may argue that reverse sensitivity effects could be practicably addressed by way of a 'no complaints' covenant. Such an approach cannot address risk, as risk issues may exist irrespective of whether or not a party complains about them and may result in subsequent restrictions being placed on the operation of a hazardous facility (e.g. by HSWA) to ensure risk remains at acceptable levels.

7.26 Further, the recommendation in the s42A report to insert the words 'as far as practicable' appears to have been made in the context of the original proposed policy wording, which focused on separation distances rather than reverse sensitivity. Refer paragraph 196 of the s42A report, which reads as follows:

'196. I consider that the insertion of the wording "as far as practicable" applies some flexibility to the policy, as not all proposals for a hazardous facility may be able to be separate from sensitive land use activities.'

7.27 On this basis, I consider it is appropriate to accept the recommendation of the Reporting Planner to amend Policy 10.1.4 subject to the following additional amendment (changes highlighted in red with additions underlined and deletions in strikethrough):

10.1.4 Policy – Reverse sensitivity effects
(a) ~~Separate~~ Ensure ~~as far as practicable~~ reverse sensitivity effects are avoided between sensitive land use activities and ~~from~~ lawfully-established significant 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.~~

8. HAZARDOUS SUBSTANCES RULE FRAMEWORK

8.1 In their submissions (785.45; 785.46; 785.47; 785.48; 785.49; 785.1; 785.2; 785.3; 785.4; 785.5; 785.6; 785.7; and 785.8) the Oil Companies opposed the proposed hazardous substance controls in the individual zone chapters (i.e. Chapter 16 – 28) and sought that they be deleted. Particular concern was raised that no rationale / analysis is provided within the section 32 report to justify why specific volume thresholds apply to service stations or why the opportunity to consider potential adverse effects on the surrounding environment is considered reasonable if quantities are above those limits. It was further noted that the section 32 report does not provide analysis to justify why hazardous substances associated with service stations are only addressed in certain zones and in what way the Council considers HSNO to not adequately control potential adverse effects associated with hazardous substances at service stations – for example, why the Council considers site design, layout and monitoring and reporting of incidents are matters that the Council should reserve control over.

8.2 I note that the Oil Companies concerns around the proposed hazardous substances provisions focus on the potential for the provisions to generate a precedent effect around the approach taken to managing hazardous substances in district plans, particularly at service station sites, with no robust justification or evidence base. It is not based on an intention to establish large numbers of new service station sites within the district. Rather, the key Oil Company hazardous substance relate activities and concerns focus on the ability to undertake retanking works at existing service stations under the proposed hazardous substances framework. This is particularly in the context that at the time of retanking, the opportunity is typically taken to move towards the use of

larger tanks (with greater hazardous substances storage capacity), which facilitates improved efficiencies in site operation, for example, the ability to accept a full tanker load at a service station site rather than requiring frequent deliveries to top up the storage tanks. This has the added benefit of ensuring equipment is renewed with modern equivalents and ensures ongoing compliance with technical standards and best practice approaches to management of hazardous substances at service stations.

8.3 The recommendation in the s42A Report is to reject the Oil Companies submissions and to retain the rules relating to hazardous substances and consolidate them into in Chapter 10 Hazardous Substances and Contaminated Land (rather than the individual zone chapters).

8.4 In addition, a number of changes are recommended in response to the submissions of other parties. This includes a recommendation to amend the activity status of hazardous substances use and storage at service stations in the Residential, Country Living, Village, Rangitahi Peninsula, Tamahere Business, Agricultural Research Centre, and Reserve Zones from discretionary to non-complying in response to submissions from the Waikato District Council itself, noting that those changes were opposed by the Oil Companies in their further submissions.

8.5 The rules of most relevance to the Oil Companies are Rules C1, C2, D2 and NC1, which relate specifically to hazardous substances use and storage at service station and refuelling facilities, and the recommended wording of these rules is set out below. For context, the wording of Rules P1 and D1, which relate to the permitted volume thresholds in Table 5.1 Appendix 5 is included.

10.3 Rules for Hazardous Substances
Rule 10.3.1 - Hazardous Substances in All Zones

P1	*(a) The use, storage or disposal of any hazardous substance must meet the following conditions:* *(i) 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).*
C1	*(a) 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 *(i) 100,000 litres of petrol in underground storage tanks;* *(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:* *(i) The proposed site design and layout in relation to:* *B. 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;* *C. interaction with natural hazards (flooding, instability), as applicable and proposed emergency management planning (spills, fire and other relevant hazards);* *(ii) Procedures for monitoring and reporting of incidents.*
C2	*(a) Fuel storage and refuelling infrastructure, including self-automated dispensing facilities in PRECINCTS A AND B at Te Kowhai Airpark Zone must not exceed:* *(i) An aggregate of 100,000 litres of petrol or aviation fuel in underground storage tanks; and* *(ii) An aggregate of 50,000 litres of diesel in underground storage tanks; and* *(iii) An aggregate of 6 tonnes of LPG (single vessel storage).* *(b) 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 risks with other facilities;* *B. Interaction with natural hazards such as flooding, instability;* *C. Proposed emergency management planning (spills, fire and other relevant hazards);* *D. Procedures for monitoring and reporting of incidents.*
D1	*The use, storage or disposal of any hazardous substances that does not comply with Rule 10.3.1 P1, P2 or C1.*
D2	*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.*

NC1	*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.*

8.6 The reasons given in the s42A Report for rejecting the Oil Companies submission to delete rules controlling hazardous substances storage at service stations include that:

'I am not of the view that rules relating to the management of hazardous substances need to be deleted from the proposed District Plan. The reason for this view relates to the Council's role in ensuring that the use, storage and disposal of hazardous substances is appropriate for land use activities, particularly within sensitive zones…'(ref para 392)

8.7 In addition, s32AA evaluation is provided in relation to the recommendation to apply a non-complying activity status to service stations in each of the zones identified in rule NC1. For the Residential Zone, the following comments are made:

'407. I do not consider singling out service stations from other activities to be an issue, as other activities involving hazardous substances are more likely to locate in other zones (e.g. the industrial and business zones). However, the submissions from Waikato District Council to add new rules NC1 relating to service stations are changes that broaden the scope of the rules.

408. By specifying the use and storage of fuel for retail sale within a service station as a noncomplying activity, the intention is to restrict such activities establishing in residential areas, being sensitive environments. As discussed in the analysis above, the activity status does not prohibit the activity, but does impose a higher threshold under the Resource Management Act for the activity, and would be subject to the full scrutiny of the objective and policy framework. I consider that this proposed amendment aligns well with objective 10.1.1, which is about managing the effects (such as risk) with the storage, use or disposal of hazardous substances to ensure the effects are acceptable. It also aligns well with Policies 10.1.2, 10.1.3 and 10.1.4.

409. In my opinion, there would need to be a very good reason for establishing such an activity within a sensitive environment such as the residential zone, and Council, through the resource consent process, would need to be certain that any risks on the surrounding environment are considered to be acceptable. I would anticipate that an application of this nature would most likely generate a publicly-notified application.

410. Without getting into the detail of an individual application, it is also difficult to evaluate the costs and benefits of this provision. However

broadly, without the proposed provision being included in the plan, there is a risk that service station activities may establish within sensitive zones. The benefit of having such a provision is that it offers protection and reassurance to the community that Council will control the activity and ensure that it is appropriately located.'

8.8 I note that while these comments are made specifically in relation to the residential zone, the sentiment is largely repeated in the analysis of the submission points in the other zones listed in Rule NC1 where a non-complying activity status applies to hazardous substances storage at service stations.

8.9 I oppose the recommended rule framework that applies to service stations and consider the analysis; demonstrates a lack of understanding of risk issues associated with hazardous substances storage at service stations and refuelling facilities and the level of regulation that applies to these activities outside the RMA; disregards the historic and continuing context in which these activities are and have been managed in district plans around the country; and disregards the intent of the RLAA17 to avoid unnecessary regulation of activities that are already adequately managed through compliance with HSNO and HSW legislation, including the direct advice of MfE[5] that RMA controls on tanks for hazardous substance storage are generally not necessary.

8.10 Of particular concern is that the s32AA analysis focuses on service stations as an activity rather than identifying the specific risks associated with hazardous substances storage at service station sites that the council considers need to be managed. The line of argument taken suggests a desire to apply a non-complying activity status to service stations for amenity reasons (e.g. noise, odour, visual, traffic). If that is the case, then the focus should be on those provisions, rather than using risk as a proxy to apply the bundling and gateway tests of s104D RMA to consideration of these types of facilities.

8.11 The storage of petrol, diesel and LPG at service stations is tightly controlled by HSNO and associated regulations, New Zealand standards and industry Codes of Practice. Compliance with these requirements is widely accepted as adequate to contain risks associated with these activities in the short and long term and guidance on this is set out in the Hazardous Facility Screening Procedure (*HFSP*) training manual, which was developed by the Ministry for the Environment in the mid-1990s to provide guidance to territorial authorities on how to meet their RMA responsibilities for managing the adverse effects of

[5] Refer MfE Guidance in Attachment 1 with relevant text highlighted in yellow on page 6

hazardous substances. Specifically, the training manual suggests the following can be appropriately exempted from the HFSP:

- the retail sale of liquid fuel, up to a storage of 100,000 litres of petrol in underground storage tanks and up to 50,000 litres of diesel, provided that the Code of Practice for the Design, Installation and Operation of Underground Petroleum Systems (Department of Labour OSH, 1992) is adhered to.
- retail LPG outlets, with storage of up to 6 tonnes (single vessel storage) of LPG, provided that the Australian/New Zealand Standard AS 1596:1997 - Storage and Handling of LP Gas is adhered to.

8.12 As a result, a large number of councils around the country, including the Waikato District Council in its Operative District Plan, have provided for these activities as permitted[6] or controlled. I am not aware of any environmental or risk based issues arising from that approach, including in relation to the numerous examples of service stations located within residential areas. I accept that there may be other reasons to place controls on service station and truck stop activities (e.g. noise, lighting, signage, bulk and location controls etc). However, these matters are addressed through relevant zone provisions for amenity issues. In terms of the risk issues that the hazardous substances provisions seek to address, it is unclear what additional benefit would be added by requiring a resource consent to be obtained for a service station or refuelling facility that is not already achieved by compliance with the HSNO Act and relevant regulations, standards and Codes of Practice. Such a consent requirement will essentially result in a duplication of the HSNO requirements at potentially significant additional cost and time delay to the applicant, with no demonstrable benefit.

8.13 In this regard, the Council has not produced any section 32 analysis to demonstrate why additional hazardous substances controls are needed on service station and refuelling facilities over and above the level of regulation achieved by HSNO or what such controls / consent conditions may look like or achieve. Indeed, I am not aware of any council, including Waikato District

[6] Rule H1 of the Operative Waikato District Plan, which applies in all zones, permits the use or storage of up to 100,000 litres of petrol and 50,000 litres of diesel in underground storage tanks and up to 6 tonnes of LPG (single vessel storage) at service stations, subject to compliance with the permitted activity conditions set out in table HT2.

Council, imposing any substantive conditions on hazardous substances storage at service station sites other than requirements that have the effect of duplicating HSNO requirements.

8.14 Nor has the council in any of its s32, s32AA or s42a reporting identified any issues with the current approach to the management of hazardous substances at service stations in the Waikato District that would justify a need to increase the level of regulation currently applied to these activities, let alone a change in the activity status of service stations from ***permitted*** to ***non-complying*** (in 'sensitive' zones) and with a suggestion (in para 409 of the s42A report) that all such applications are likely to be fully publicly notified.

8.15 This change is in direct contravention to MfE advice that seeks to ensure the use of RMA controls only where necessary and only where justified through robust s32 analysis and the intent of the RMLA17 to reduce unnecessary regulation.

8.16 Further, it does not recognise and is contrary to the approach taken in other post-RLAA17 planning documents including those specifically identified in the council's own legal advice. That is, both the South Taranaki District Plan and the Proposed New Plymouth District Plan place controls on ***significant*** hazardous facilities only, where the definition of significant hazardous facilities specifically excludes underground storage of petrol or diesel at service stations. Further, the consent order recently issued in relation to the Invercargill District Plan amends the hazardous substances provisions to specifically permit LPG storage at service stations up to 540kg in all zones except the Seaport and Smelter Zones where no limit applies; and applies no threshold to the volume of class 3.1A, 3.1B, 3.1C or 3.1D (petroleum, diesel or alcohol blend fuels) that can be stored below ground.

8.17 I accept that locational issues, such as the use or storage of large volumes or certain types of hazardous substances within sensitive environments and/or close to incompatible activities is a situation in which additional RMA controls may be justified to appropriately manage adverse effects and risks, and this is clear in the MfE guidance[7]. However, in my opinion, that does not equate to a situation in which the use or storage of all hazardous substances in all circumstances will necessarily result in a degree of risk or adverse effects that

[7] Refer MfE Guidance in Attachment 1 with relevant text highlighted in yellow on page 7/8

warrants the use of additional RMA controls – this appears to be the presumption made by the Council. In my opinion, the weight of information, advice and evidence is that if service stations are to be singled out, as sought by the Council, this should be to recognise that risks are adequately controlled by way of compliance with HSNO and HSW, including within residential and sensitive environments (in the context that 'sensitive environments' appears to be used in the Waikato PDP), and that no additional RMA regulation of hazardous substances storage is required.

8.18 On this basis, I consider the Hearings Panel should reject the recommendations of the Reporting Planner in relation to hazardous substances storage at service stations and refuelling facilities and to remove all hazardous substances controls in relation to these activities. If the decision is to retain some level of control on other hazardous facilities, this may need to be achieved by way of a clear exclusion for these types of activities from the scope of hazardous facilities subject to district plan controls (e.g. along the lines set out in section 6 of this evidence) or a permitted activity rule. Any such definition or rule should apply limits that are justified in terms of effects / risk. The potential risks of below ground storage are considered to be adequately addressed by compliance with HSNO. I would be supportive of applying a threshold to above ground storage (which is frequently used at truck stops) and consider this would need to recognise that the potential risks associated with petrol storage, from a flammability perspective, are greater than those of diesel. Further, I consider any such definition or rule should recognise that LPG storage at service stations is frequently in the form of swap a bottle type facilities, which is not recognised by a restriction to single vessel storage (Rule C1(a)(iii) and Rule C2(a)(iii)).

8.19 This could be achieved by including a definition of significant hazardous facilities (along the lines set out in section 6 of this evidence) that clearly excludes hazardous substances storage of the nature and volume typical to service stations and refuelling facilities, and restricting the scope of the hazardous substances rules to those significant hazardous facilities. Alternatively, a permitted activity rule may be required along the following lines:

Permitted Activity

Storage and use of hazardous substances at service stations and refuelling infrastructure in all zones comprising:

(i) *Underground storage of petrol or diesel undertaken in accordance with HSNOCOP 44 Below Ground Stationary Container Systems for Petroleum – Design and Installation and HSNOCOP 45 Below Ground Stationary Containers Systems for Petroleum – Operation.*

(ii) *The above ground storage/use of up to 50,000L of petrol.*

(iii) *The above ground storage/use of up to 100,000L of diesel.*

(iv) *The storage/use of up to 6 tonnes of LPG in single or multiple vessels.*

9. CONTAMINATED LAND

9.1 In their submission (785.9 and 785.10), the Oil Companies' supported the approach of relying on the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (*NESCS*) to set the status of activities involving contaminated or potentially contaminated land and the inclusion of a contaminated land policy framework, given the absence of objectives and policies within the NESCS. Specifically, the Oil Companies supported Objective 10.2.1 without further modification and sought minor amendments to Policy 10.2.2 to recognise that while remediation is one form of managing contaminated land, it may not be needed in all situations.

9.2 The recommendation in the s42A Report is to accept the Oil Companies' submission on Objective 10.2.1 and to accept in part their submission on Policy 10.2.2, and to make the following changes to the objective and policy in response to the submissions of the Oil Companies and other parties:

Objective 10.2.1 – Contaminated land
The subdivision, use and development of contaminated land is sustainably managed to protect human health and safety and the environment from unacceptable risk.

Policy 10.2.2 – Managing the use of contaminated land

(a) Contaminated land is managed (which may include remediation) ~~or remediated~~ 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 with the use, subdivision and development ~~of contaminated land management approaches~~ includes where appropriate:*
   (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;*
   (iv) *site management plans as appropriate for identifying, monitoring and managing contaminated land.*
   (v) *Preliminary site investigations*

(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.*

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.

9.3 While I support the general intent of Objective 10.2.1, I consider that some of the recommended changes lack clarity and create uncertainty around the council's expectations to achieve the objective. Specifically, it is unclear what 'sustainably managed' means in the context of contaminated land management, and nor is there any additional clarification of this term in the supporting policy. I support the concept of applying a more sustainable approach to contaminated land management for example by reusing soils or in-situ remediation where practicable. However, I would not support an interpretation of this term that restricted contaminated land management to those types of options only with no ability to remove contaminated soil from the site for appropriate off-site disposal in a secure landfill.

9.4 Further, I do not agree that the term 'safety' needs to be included in the objective or adds anything additional to what is covered by the term 'human health'. Rather, it potentially creates an expectation that Council will seek to control matters that are already appropriately controlled by Worksafe, and I consider Council addressing those matters to be inappropriate.

9.5 In relation to Policy 10.2.2, I consider the policy (at clause (a)) should more appropriately relate to the risk from contaminants not whether or not contaminants are at acceptable levels. There may be situations in which it is

acceptable for soil to exceed the contaminant levels set out in the NESCS, such as where risk is appropriately managed by containment or management of soil to ensure people are unlikely to be exposed to contamination (i.e there is no complete pathway). Unless that is done the concern remains that Council will change the focus of decision making to one of numbers rather than enabling the risk-based approach contained within the NESC framework.

9.6 As such, it is my view that the Hearings Panel should reject the recommendation of the Reporting Planner to include the words 'sustainably' and 'and safety' in Objective 10.2.1 and to accept the recommendation in relation to Policy 10.2.2 subject to a further amendment to focus on the consideration of risk associated with contaminated land rather than compliance with specified thresholds. This could be achieved by making changes along the following lines (additional changes highlighted in red with additions underlined and deletions in strikethrough):

Objective 10.2.1 – Contaminated land
The subdivision, use and development of contaminated land is ~~sustainably~~ managed to protect human health ~~and safety~~ and the environment from unacceptable risk.

Policy 10.2.2 – Managing the use of contaminated land

(a) Contaminated land is managed (which may include remediation) ~~or remediated~~ to ensure that ~~contaminants are~~ risk is 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 with the use, subdivision and development ~~of contaminated land management approaches~~ includes where appropriate:
  (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;
  (iv) site management plans as appropriate for identifying, monitoring and managing contaminated land.
  (v) Preliminary site investigations

(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.

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.