

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of hearing submissions and further submissions on the Proposed Waikato District Plan

AND

IN THE MATTER of the management of Hazardous Substances – Hearing 8A

MINUTE AND DIRECTIONS FROM HEARING COMMISSIONERS

25 June 2020

Introduction

1. We have now received memoranda from submitters¹ and Waikato District Council (“**Council**”) staff² on the management of hazardous substances provisions in the proposed Waikato District Plan (“**proposed plan**”).
2. The purposes of this Minute and Directions are:
 - a) To set out the Hearing Panel’s preliminary views on the scope and possible content of provisions in the proposed plan relating to the management of hazardous substances, including our preliminary view on how the provisions might be drafted.
 - b) To provide submitters and Council staff one final opportunity to comment on drafting of the provisions, but not on the approach or scope of what we consider to be appropriate. Those matters have been well and truly canvassed in the hearing and in response to our earlier Directions.

Minute

3. Without needing to go into detail, we have formed the view that:
 - a) The provisions proposed by Council staff, as set out in their memorandum of 15 May 2020, are unduly onerous, in that they unnecessarily duplicate matters already

¹ 15 May 2020

² 29 May 2020

regulated under other statutes, and in particular, the Hazardous Substances and New Organisms Act 1996 (“HSNO”);

- b) The provisions proposed by the Oil Companies, as set out in the memorandum of 29 May 2020, are generally more appropriate than those proposed by Council staff, in that they limit duplication with HSNO and other statutes, but are not sufficiently rigorous in several respects; and
 - c) That the hazardous substances provisions of the operative Hastings District Plan are the appropriate starting point, in that they seek to avoid duplication between district plan provisions and HSNO, and do so in a way that we consider is sufficiently robust.
4. Using the Hastings District Plan provisions as a starting point, we have prepared an initial indicative draft set of hazardous substances provisions that could be incorporated in the proposed plan, as follows:

Draft Indicative Panel Version

10.1 HAZARDOUS SUBSTANCES

10.1.1 INTRODUCTION

Hazardous substances are used in a wide range of activities within the Waikato District. These activities can include industrial operations, petrol stations, emergency services facilities, workshops, agricultural and horticultural activities, and some occupations that are carried out from home. While the use, storage and disposal of hazardous substances allows people to provide for their social and economic wellbeing and their health and safety, such activities also create potential for adverse effects on human health and property and the wider environment.

The use of hazardous substances in New Zealand is primarily managed by the Hazardous Substances and New Organisms Act 1996 (HSNO), the Health and Safety at Work Act 2015 (HSW) and relevant regulations. The purpose of the HSNO and HSW legislation is to 'protect the environment, and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances and new organisms'. The HSNO Act is administered by the Ministry for the Environment and implemented by the Environmental Protection Authority. The HSNO Act provides the general framework for controlling hazardous substances during their entire life-cycle. Requirements apply from manufacturing or importing a substance, through its use, to disposal. The HSW Act is administered by WorkSafe New Zealand.

The district plan seeks to avoid duplication of other hazardous substances legislation and regulations. The provisions of this chapter are, therefore, designed to manage relevant effects of use, storage, or disposal of hazardous substances, where those effects are not appropriately controlled by existing legislation and regulations.

10.1.2 Objective 10.1.1

To protect the community and natural environment from the adverse effects associated with the manufacture, use, storage or transportation of hazardous substances.

10.1.3 Objective 10.1.2

To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations.

10.1.4 Policy 10.1.3

To ensure that activities are able to utilise hazardous substances in compliance with relevant regulation as necessary to their operation, without being compromised by 'reverse sensitivity' (that is, by residential or other sensitive activities moving closer and seeking higher amenity levels, including reduced risks from hazardous substances).

10.1.5 Policy 10.1.4

Ensure that major hazardous facilities are appropriately sited and managed in order to reduce risks to the environment and community.

10.1.6 Objective 10.1.5

To avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the District Plan.

10.1.7 Policy 10.1.6

To regulate the use, storage or transportation of hazardous substances, in the District Plan only where adequate levels of community and environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996 or other legislation and regulation.

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10.3 RULES FOR HAZARDOUS SUBSTANCES**Rule 10.3.1 Hazardous Substances in All Zones**

RULE	LAND USE ACTIVITIES
P1	<i>The storage, handling or use of hazardous substances except where Rule 10.3.1 D1, or Rule 10.3.1 NC1, or 10.3.1 NC2 apply.</i>
D1	<p><i>The storage, handling or use of hazardous substances in a Major Hazard Facility.</i></p> <p><i>Council's assessment under this rule may include, but is not limited to:</i></p> <p><i>A risk assessment, that addresses:</i></p> <p><i>The probability and potential consequences of an accident leading to the release or loss of control of hazardous substances. This assessment should focus on the ability of the design and management of the site to avoid accidents, such as spill containment measures, fire safety and fire water management, emergency management, site drainage and off-site infrastructure (e.g stormwater drainage system, sewer type and capacity) and the disposal of waste containing hazardous substances.</i></p> <p><i>Potential risks and effects on people and neighbouring activities, with an emphasis on sensitive activities such as residential activities, educational facilities and community facilities.</i></p> <p><i>Potential risks and effects on natural ecosystems and the life supporting capacity of land and water, waterbodies and sources of potable water.</i></p> <p><i>Potential risks and effects on sites of significance to tangata whenua, sites of historical or archaeological significance and Outstanding Natural Features and Landscapes.</i></p> <p><i>The potential for natural hazards to impact on the operation of the hazardous facility.</i></p> <p><i>The potential for cumulative</i></p>

	<p><i>adverse effects of hazardous substances.</i></p> <p><i>The extent to which alternative sites have been considered, and the reasons for selecting the site under consideration.</i></p>
NC1	<i>Major hazard facility in the Residential, Country Living, Village or Rangitahi Peninsula Zones.</i>
NC2	<i>Any new storage or use of hazardous substances with explosive or flammable intrinsic properties within 12m of the centre line of a National Grid Transmission Line.</i>

DEFINITIONS

Definitions – relating to hazardous substances

<i>Hazardous substance</i>	<i>Has the same meaning as in section 2 of the RMA:</i>
<i>Major hazard facility</i>	<p><i>Major Hazard Facility:</i></p> <p><i>Means any facility which involves one or more following activities:</i></p> <ul style="list-style-type: none"> • <i>Manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints)</i> • <i>Oil and gas exploration and extraction facilities</i> • <i>Purpose built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale or restricted commercial supply</i> • <i>The storage/use of more than 100,000L of petrol</i> • <i>The storage/use of more than 50,000L of diesel</i> • <i>The storage/use of more than 6 tonnes of LPG</i> • <i>Galvanising plants</i> • <i>Electroplating and</i>

	<p><i>metal treatment facilities</i></p> <ul style="list-style-type: none"> • <i>Tanneries</i> • <i>Timber treatment</i> • <i>Freezing works and rendering plants</i> • <i>Wastewater treatment plants</i> • <i>Metal smelting and refining (including battery refining or recycling)</i> • <i>Milk treatment plants</i> • <i>Fibreglass manufacturing</i> • <i>Polymer foam manufacturing</i> • <i>Asphalt/bitumen manufacture or storage</i> • <i>Landfills</i> <p><i>For the avoidance of doubt, the following activities are not considered to be major hazardous facilities:</i></p> <ul style="list-style-type: none"> • <i>The incidental use and storage of hazardous substances in minimal domestic scale quantities</i> • <i>Retail outlets for hazardous substances intended for domestic usage (e.g supermarkets, hardware stores and pharmacies)</i> • <i>The incidental storage and use of agrichemicals, fertilisers and fuel for land based primary production activities.</i> • <i>Pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage</i> • <i>Fuel in motor vehicles, boats, airplanes and small engines</i>
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	<ul style="list-style-type: none"> • <i>Military training activities</i> • <i>The transport of hazardous substances (e.g in trucks or trains)</i>
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Directions

5. In order to conclude this matter efficiently, and in a way that will be of assistance to us, we direct as follows:
- a) The Hearings Administrator is to provide these Directions to the parties that filed evidence on the hazardous substances provisions of the proposed plan (i.e. for the hearing held on 28 January 2020) and to Council staff **as soon as possible** and post them on the Council's website.
 - b) Any party that filed evidence on the hazardous substances provisions of the proposed plan is to provide any recommended drafting amendments to those set out in paragraph 4 above, with reasons, to the Hearings Administrator, Ms Sandra Kelly, no later than **5pm on Friday 17 July 2020**.
 - c) Council staff are to provide any recommended drafting amendments to those provided by submitters, with reasons, to the Hearings Administrator, no later than **5pm on Friday 24 July 2020**.
 - d) Any questions regarding these Directions shall be provided to be Hearings Administrator, either by email or telephone, as follows:

Email Districtplan@waidc.govt.nz

or

Telephone 027 382 0021



P H Mitchell (Chair)

On behalf of Commissioners P Mitchell, P Cooney, J Sedgwick and W Maag

25 June 2020