

RESOURCE MANAGEMENT ACT 1991

PROPOSED HOROWHENUA DISTRICT PLAN

HEARING OF SUBMISSIONS

DECISION OF HEARING PANEL

TOPIC: Report on District Plan
Hazardous Substances & Contaminated Land

HEARING PANEL: Robert Van Voorthuysen (Chair)
Cr Tony Rush
Cr Leigh McMeeken

HEARING DATE: 30th April & 28th May 2013

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1. INTRODUCTION

1.1 We were appointed by the Horowhenua District Council to consider submissions on the Proposed District Plan relating to the Hazardous Substances and Contaminated Land chapters. A hearing was held on 30 April 2013 and 28 May 2013 and it was closed on 13 September 2013.

1.2 In preparing this decision we have used the following abbreviations:

HDC	Horowhenua District Council
Proposed Plan	Proposed Horowhenua District Plan
RMA	Resource Management Act 1991

2. OFFICER'S REPORT

2.1 We received a comprehensive Section 42A Report¹ (officer's report) prepared by Sheena McGuire, a Policy Planner at HDC. The officer's report evaluated each submission point and made a recommendation on it, clearly stating the reasons for each recommendation.

2.2 Ms McGuire also helpfully provided a written statement dated 21 May 2013 containing answers to our questions and some of the matters raised in the evidence presented at the hearing (including material tabled by submitters who did not attend in person). That statement is attached to this Decision as Appendix C.

3. SUBMITTER APPEARANCES

3.1 On 30 April 2013 we heard in person from:

- Rhea Dasent and Geoff Kane on behalf of Federated Farmers of New Zealand (submitter 96 and further submitter 516);
- Penelope Tucker on behalf of Horizons Regional Council (submitter 27 and further submitter 528);
- Lynette Wharf on behalf of Horticulture New Zealand (submitter 98 and further submitter 517).

3.2 On 28 May 2013 we heard from Philip Taueki (submitter 11). Mr Taueki was supported by his partner, Anne Hunt, and he had two witnesses speak as part of his presentation, firstly his sister Vivienne Taueki and secondly Professor Whatarangi Winiata.

3.3 We received verbal and written evidence from the submitters listed above. The written material presented by those submitters is held on file at the HDC. We took our own notes of the verbal presentations and any answers to our questions.

3.4 We also received tabled written material from:

- Georgina McPherson on behalf of the Oil Companies (submitter 93 and further submitter 504);
- Georgina McPherson on behalf of Powerco Limited (submitter 41 and further submitter 505);

3.5 For the sake of brevity we do not repeat the above material in this Decision but we refer to the matters raised by the submitters as appropriate.

¹ Section 42A Report to the District Plan Review Hearing Panel, Proposed Horowhenua District Plan, Hazardous Substances and Contaminated Land, April 2013.

4. EVALUATION

4.1 The relevant statutory requirements were identified and described in Section 3 of the officer's report. We accept and adopt that description and have had regard to or taken into account the identified matters as appropriate.

Issue 9.1 Hazardous Substances

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.00	The Oil Companies	Retain intent of Issue 9.1	

4.2 The Oil Companies' support for Issue 9.1 is noted and their submission is accepted.

Issue Discussion for Issue 9.1

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.12	The Oil Companies	Retain intent of Issue 9.1 Discussion.	

4.3 The Oil Companies' support for the Issue Discussion for Issue 9.1 is noted and their submission is accepted.

Objective 9.1.1 Hazardous Substances

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.01	The Oil Companies	Retain intent of Objective 9.1.1	
27.10	Horizons Regional Council	Delete the word disposal from Objective 9.1.1 To ensure that adequate measures are taken to avoid or mitigate the adverse environmental effects of the use, storage, <u>and</u> transport and disposal of hazardous substances.	517.17 Horticulture NZ – In-Part

4.4 The submissions were evaluated by the reporting officer in section 4.3.2 of the officer's report. The Oil Companies, Horizons Regional Council and Horticulture NZ all supported that evaluation. We have reviewed the officer's evaluation and we agree with it and adopt it as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. The officer also recommended an amendment to Objective 9.1.1 of the Proposed Plan. We have reviewed that recommended amendment and consider it to be appropriate. We therefore adopt that recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

4.5 We note that as a consequence of the above amendment the second paragraph of the Issue Discussion for Issue 9.1 needs to be amended to refer to the Regional Council's role in relation to the disposal of hazardous substances.

Policy 9.1.2

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.02	The Oil Companies	Retain intent of Policy 9.1.2	

4.6 The Oil Companies' support for Policy 9.1.2 is noted and their submission is accepted.

Policy 9.1.3

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.03	The Oil Companies	Retain intent of Policy 9.1.3	
98.31	Horticulture NZ	Retain Policy 9.1.3.	

4.7 The Oil Companies' and Horticulture NZ's support for Policy 9.1.3 is noted and their submissions are accepted.

Policy 9.1.4

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.04	The Oil Companies	Retain intent of Policy 9.1.4	

4.8 The Oil Companies' support for Policy 9.1.4 is noted and their submission is accepted.

Policy 9.1.5

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
27.11	Horizons Regional Council	Delete the word disposal from Policy 9.1.5: Limit the use, <u>and</u> storage and disposal of hazardous substances near any of the following areas...	517.18 Horticulture NZ – In-Part
93.05	The Oil Companies	Retain intent of Policy 9.1.5	

4.9 The submissions were evaluated by the reporting officer in section 4.7.2 of the officer's report. The Oil Companies, Horizons Regional Council and Horticulture NZ all supported that evaluation. We have reviewed the officer's evaluation and we agree with it and adopt it as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. The officer also recommended an amendment to Policy 9.1.5 of the Proposed Plan. We have reviewed that recommended amendment and consider it to be appropriate. We therefore adopt that recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Policy 9.1.6

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
27.12	Horizons Regional Council	Delete the word disposal from Policy 9.1.6: Establish controls to ensure that facilities which involve the use, storage, <u>or</u> transport or disposal of hazardous substances...	517.19 Horticulture NZ – In-Part
93.06	The Oil Companies	Retain intent of Policy 9.1.6	

4.10 The submissions were evaluated by the reporting officer in section 4.8.2 of the officer's report. The Oil Companies, Horizons Regional Council and Horticulture NZ all supported that evaluation. We have reviewed the officer's evaluation and we agree with it and adopt it as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. The officer also recommended an amendment to Policy 9.1.6 of the Proposed Plan. We have reviewed that recommended amendment and consider it to be appropriate. We therefore adopt that recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Policy 9.1.7

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.07	The Oil Companies	Retain intent of Policy 9.1.7	

4.11 The Oil Companies' support for Policy 9.1.7 is noted and their submission is accepted.

Policy 9.1.8

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.08	The Oil Companies	Amend Policy 9.1.8 as follows: Appropriate facilities and systems are to be provided to <u>seek to</u> avoid accidental events involving hazardous substances (such as	

Sub No.	Submitter Name	Decision Requested	Further Submission
		spills and gas escapes) that have the potential to create unacceptable risks to the environment and human health.	

4.12 The Oil Companies' submission was evaluated by the reporting officer in section 4.10.2 of the officer's report. The Oil Companies supported that evaluation. We have reviewed the officer's evaluation and we agree with it and adopt it as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. The officer also recommended an amendment to Policy 9.1.8 of the Proposed Plan. We have reviewed that recommended amendment and consider it to be appropriate. We therefore adopt that recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Policy 9.1.9

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.09	The Oil Companies	Retain intent of Policy 9.1.9 provided that the last two sentences of the Explanation and Principle Reasons are also retained as follows: ...Council does not consider that any consent is necessary specifically for transportation of hazardous substances at the District level. At present there are controls under the Transport Act, the Explosives Act, and New Zealand Standards.	

4.13 The Oil Companies' support for Policy 9.1.9 is noted and their submission is accepted.

Methods for Issue 9.1 and Objective 9.1.1

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.10	The Oil Companies	Retain intent of Methods for Issue 9.1 and Objective 9.1.1 without modification.	

4.14 The Oil Companies' support for the Methods for Issue 9.1 and Objective 9.1.1 is noted and their submission is accepted.

Chapter 9: Hazardous Substances - General Matters

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
11.28	Philip Taueki	No specific relief requested. Inferred: Amend Chapter 9 to restrict the storage, use and disposal of hazardous substances within a chain strip of any waterway, including Lake Horowhenua.	504.00 The Oil Companies - Oppose 519.23 Charles Rudd(Snr) - Support
60.27	Muaupoko Co-operative Society	No specific relief requested. Inferred: Amend Chapter 9 to restrict the storage, use and disposal of hazardous substances within a chain strip of any waterway, including Lake Horowhenua.	

- 4.15 The submissions were evaluated by the reporting officer in section 4.13.2 of the officer's report. The Oil Companies supported that evaluation but Mr Taueki did not.
- 4.16 In his presentation to us Mr Taueki explained that Lake Horowhenua was a taonga of the Muaupoko iwi. He tabled evidence showing the large number of archaeological sites around the western side of the Lake and alongside the Hokio Stream, together with significant areas of Maori owned land adjacent to and in close proximity to the Lake and Hokio Stream. On balance we consider that it would be appropriate to exclude the storage of hazardous substances within 20m of the landward edge of the lake bed and also the bed of the Hokio Stream. We have chosen a buffer distance of 20m as Mr Taueki sought a buffer of one chain (which equates to 20.11m) and 20m is already used as a buffer distance in other Rules of similar effect, such as Rule 19.6.4(a)(v) which deals with building setbacks from water bodies.
- 4.17 We note that the 20m buffer may affect recreational boating activities (should they, for example, wish to store petrol in that 20m buffer area), however we also note that Mr Taueki advised us that the Muaupoko iwi do not wish to have powerboats on the Lake in any case, other than safety craft with small engines.
- 4.18 We therefore consider it appropriate to add a new clause (b) to Rule 23.6.3 that reads as follows:
- (b) There shall be no storage of hazardous substances within 20 metres of the landward edge of the beds Lake Horowhenua and the Hokio Stream.
- 4.19 Paragraphs 4.15 to 4.17 above record our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. Our decision pursuant to Clause 10(1) of Schedule 1 to the RMA is to amend Rule 23.6.3 as indicated above. This means that the Oil Companies submission is accepted in part as we have only applied the 20m exclusion buffer to Lake Horowhenua and the Hokio Stream and have not imposed it on all water bodies in the District.

Chapter 23: Hazardous Substances - Exemptions (23.1)

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
96.39	Federated Farmers of New Zealand	<p>Amend Rule 23.1 as follows:</p> <p>(a) Fuel contained in tanks of motor vehicles, agricultural and forestry equipment, boats, aircraft, locomotives and small engines <u>and the storage of fuel for primary production where it complies with the Guidelines for Safe Above-Ground Fuel Storage on Farms (Department of Labour, Oct 2001) for fuel.</u></p> <p>(e) Storage of superphosphate or lime or <u>any similar other fertiliser in the Rural Zone where that storage is done so in accordance with the Fertiliser Group Standards (corrosive (HSR002569), oxidising (HSR002570, subsidiary hazard HSR002571) and Toxic (HSR002572) 2006.</u></p> <p>And</p> <p>That an advice note be provided for Rule 23.1.1 to ensure that readers of the plan know to refer to the regional plan for rules governing fertiliser use.</p>	<p>506.23 Ernslaw One Ltd - Support</p> <p>513.19 Rayonier New Zealand Ltd - Support</p> <p>517.37 Horticulture NZ - In Part</p>
98.48	Horticulture NZ	Retain Rule 23.1 Exemptions as notified.	
41.46	Powerco	Retain without modification Rule 23.1.1(h)	

4.20 The submissions were evaluated by the reporting officer in section 4.14.2 of the officer's report. Powerco supported that evaluation. Federated Farmers supported the evaluation with regard to fertilisers (Rule 23.1.1(e)) but noted that the Rule omitted any reference to "lime". We have decided to include a reference to lime for completeness and note that Ms McGuire also recommended that to us in her reply.²

² Written Statement dated 21 May 2013, page 5.

4.21 Federated Farmers also sought an amendment to the Note that Ms McGuire recommended for insertion after Rule 23.1 as follows:

Note: The exemptions specified in Rule 23.1 are still subject to the requirements in the Horizons Regional Council Proposed One Plan for fertiliser and agrichemical use.

4.22 Ms McGuire advised us that:

“The Proposed Plan has requirements for the discharge and disposal of waste, trade waste and sewage which would not be covered by the [amended] advice note as requested by Federated Farmers.”³

4.23 We accept Ms McGuire’s advice and have decided not to amend the advice note as sought by Federated Farmers.

4.24 Federated Farmers also sought a further amendment to Rule 23.1.1(a) so that it would refer to the Guidelines for “Above ground fuel storage on farms” dated January 2012 and produced by the Environmental Protection Society.⁴ We consider that addition to be appropriate and confirmed with Ms Dasent that she was comfortable with her recommended wording “primary production” being altered to “a primary production activity” as that latter wording is a defined term in the Proposed Plan.

4.25 Horticulture NZ also sought an amendment to Rule 23.1.1(a). Ms Wharfe advised that Horticulture NZ sought an exemption for on farm fuel storage that met the HSNO requirements.⁵ We asked Ms Wharfe if she would be satisfied with the wording sought by Federated Farmers and she advised that she would prefer a direct reference to the HSNO legislation. We then asked Ms Wharfe to consider how the relief sought by Federated Farmers and Horticulture NZ might be jointly accommodated. In the event we received no further input from Ms Wharfe on that matter.

4.26 On balance, we find that it is more helpful to users of the Proposed Plan to refer to the EPA Guideline document as sought by Federated Farmers. We noted that Ms McGuire is of the same view.⁶

4.27 Horticulture NZ also sought an amendment to Rule 23.1.1(m). Ms Wharfe advised that the reference to the New Zealand Standard 8409:2004 Management of Agrichemicals could usefully be confined to Section 4 Storage, Section 5 Use of Agrichemicals and Appendix L Storage requirements. We consider that to be a helpful amendment to the Proposed Plan.

4.28 We adopt the officer’s evaluation in section 4.14.2 of the officer’s report and the written Statement of 21 May 2013 (attached as Appendix C to this Decision) as part of our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. Other reasons are set out above. We therefore generally adopt the officer’s recommended amendments to Rule 23.1 as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA together with the further amendments outlined above.

Chapter 23: Hazardous Substances - Permitted Activities (23.2)

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
98.49	Horticulture NZ	Include a new sub-clause to Rule	

³ Written Statement dated 21 May 2013, page 5.

⁴ Dasent, Statement of evidence, page 4.

⁵ Wharfe, Statement of Evidence, page 5.

⁶ Written Statement dated 21 May 2013, page 7.

Sub No.	Submitter Name	Decision Requested	Further Submission
		23.2 as follows: <u>(c) Storage of fuel in the Rural Zone for primary production activities that meets HSNO requirements is a permitted activity.</u>	
98.50	Horticulture NZ	Amend Table 23 and review quantities in Table 23.2 to determine alignment with HSNO and express quantities in Table 23.2 to include volumes by litre.	

4.29 Horticulture NZ's submission was evaluated by the reporting officer in section 4.15.2 of the officer's report. Horticulture NZ advised that their issue of concern had been addressed by Ms McGuire's evaluation of the changes sought to Rule 23.1. We have reviewed the officer report's section 4.15.2 evaluation and we agree with it and adopt it as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. The officer recommended no amendments to the Proposed Plan. We consider that to be appropriate. We therefore adopt that recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Chapter 23: Hazardous Substances - Controlled Activities (23.3)

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.25	The Oil Companies	Amend Rule 23.3.1(a) as follows: 23.3.1 The following activities shall be Controlled Activities: (a) The retail sale of fuel, up to a storage of 100,000 litres of petrol and up to 50,000 litres of diesel in all zones excluding the Rural Zone and the Industrial Zone , in underground storage tanks, provided it can be demonstrated that the following Codes of Practice are adhered to: Below Ground Stationary Container Systems for Petroleum - Design and Installation HSNOCOP 44, EPA, 2012. Below Ground Stationary Container Systems for Petroleum – Operation	

Sub No.	Submitter Name	Decision Requested	Further Submission
		HSNOCOP 45, EPA, 2012. ...	
93.26	The Oil Companies	Amend Rule 23.3.1(b) as follows: 23.3.1 The following activities shall be Controlled Activities: ... (b) The retail sale of LPG, with a storage of up to six tonnes (single or <u>multi</u> vessel storage) of LPG, provided it can be demonstrated that the following standard is adhered to: Australian and New Zealand Standard 1596:2008 Storage and Handling of LP Gas.	

4.30 The Oil Companies submission was evaluated by the reporting officer in section 4.16.2 of the officer's report. The Oil Companies opposed that evaluation insofar as it related to Rule 23.3.1(b). Ms McPherson advised that the Oil Companies considered that the officer's recommendation to allow multi vessel storage of LPG containers up to a limit of 30 individual vessels was arbitrary.⁷ Ms McPherson advised that a figure of 150 vessels was more realistic, but she had undertaken to consult further with the Oil Companies about that.

4.31 We heard again from Ms McPherson by way of a letter dated 17 May 2013. In that letter Ms McPherson helpfully advised that the design, installation and operation of LPG storage facilities is strictly controlled through HSNO and the Australian and New Zealand Standard 1596:2008 Storage and Handling of LPG (AS/NZS 1596:2008). Ms McPherson stated:

"... the storage of portable LPG cylinders in secure cages is well regulated by HSNO and is specifically addressed in AS/NZS 1596:2008, separately to the requirements around LPG storage in single large vessels (e.g. up to 6 tonnes). In addition, a location test certificate must be issued by an independent test certifier (approved by the Environmental Protection Agency (EPA)) for the storage of LPG in quantities over 100kg.

"AS/NZS 1596:2008 is currently undergoing revision ... [and] the standards relating to exchange facilities for portable cylinders have been agreed with the Environmental Protection Authority ..."

"Of particular relevance is clause H3(d), which specifies that the maximum aggregate capacity of cylinders in a cage or single group of cages shall not exceed 1250kg. This equates to some 138 individual 9kg cylinders and is significantly more than the 30 cylinder maximum storage threshold recommended in the Officer's Report."⁸

4.32 In responding to Ms McPherson's additional information Ms McGuire advised that the HSNO controls on the storage of individual LPG vessel were adequate and she recommended that the Oil Companies relief be granted. We accept that amended recommendation.

⁷ Tabled letter from Burton Consultants, dated 29 April 2013, page 3.

⁸ Letter from Burton Consultants dated 17 May 2013

- 4.33 We received further advice from Ms McPherson by way of email dated 28 May 2013. In that email she helpfully advised⁹ “as matter of technical accuracy, it would be more appropriate to include a reference to ‘exchange facilities for portable LPG cylinders’ in the wording of Rule 23.3.1 rather than ‘multi-vessel’ ”. Ms McGuire supported that further amendment and we also consider it to be appropriate.
- 4.34 On balance, we agree with the evaluation in the officer’s report and Ms McGuire’s further written statement dated 21 May 2013 and we adopt that evaluation as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. Our decision pursuant to Clause 10(1) of Schedule 1 to the RMA is to amend Rules 23.3.1(a) and 23.3.1(b) as sought by the Oil Companies.
- 4.35 We note that as a result of evaluating the further information provided by Ms McPherson, Ms McGuire identified¹⁰ the need for an amendment to Rule 23.5.1. The amendment is required to ensure that activities which exceed the Chapter 23 Controlled Activity quantity limits for the retail sale of fuel and LPG are assessed as a Discretionary Activity. We are satisfied that the consequential amendment proposed by Ms McGuire to Rule 23.5.1 is a correction of a minor error and so is allowed by Clause 16(2) of Schedule 1 to the RMA. We have therefore amended the Rule accordingly (we have slightly varied the wording recommended to us by Ms McGuire).

Chapter 23: Hazardous Substances - Conditions for Permitted Activities (23.6)

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.29	The Oil Companies	Retain Rule 23.6.	

- 4.36 The Oil Companies’ support for the Hazardous Substances - Conditions for Permitted Activities (Rule 23.6) is noted and their submission is accepted.

Chapter 23: Hazardous Substances - General Matters

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
95.46	New Zealand Defence Force (NZDF)	Retain as notified.	

- 4.37 The New Zealand Defence Force’s support for the Chapter 23: Hazardous Substances provisions is noted and their submission is accepted.

Chapter 26: Definitions - Hazardous Facilities

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
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⁹ Based on information she received from Peter Gilbert of the LPGA.

¹⁰ Written Statement dated 21 May 2013, page 2

Sub No.	Submitter Name	Decision Requested	Further Submission
96.42	Federated Farmers of New Zealand	Amend Hazardous Facility definition by inserting a new sub-clause to the exclusion list as follows: ... <u>On-farm use and storage of fertilisers, fuel and agrichemicals.</u>	506.26 Ernslaw One Ltd - Support
98.04	Horticulture NZ	Delete the definition of Hazardous Facility.	504.02 The Oil Companies - Oppose 506.49 Ernslaw One Ltd - Support

4.38 The submissions were evaluated by the reporting officer in section 4.19.2 of the officer's report and were further considered in Ms McGuire's written statement dated 21 May 2013 (attached as Appendix C to this Decision).

4.39 Federated Farmers supported the amended definition of "hazardous facility" recommended in the officer's report, however, they wished to see that definition further amended by the inclusion of the underlined words as follows¹¹:

"Hazardous facility means any large scale, industrial or commercial activity involving ..."

4.40 We asked Ms Dasent what "large scale" might mean and she accepted that was an undesirably subjective term. We also advised her that as the exclusions in Rule 23.1 included fuel, fertiliser and agrichemicals stored on farms, we failed to understand the residual concern held by Federated Farmers. Ms Dasent advised that it was a general concern about how the rest of the proposed Plan would be implemented. On balance we find that it is not necessary to further amend the definition as sought by Federated Farmers, particularly given the limited use of the term "hazardous facility" in the Plan.

4.41 Horticulture NZ was also concerned about the evaluation in the officer's report. Ms Wharfe sought that the definition be amended to read as follows:¹²

"In respect of Rule 23.6 of this Plan Hazardous Facility means ..."

4.42 In response to that request we asked Ms McGuire to check where in the Plan the term "hazardous facility" was used. She subsequently advised that the defined term is used in Chapter 8 Natural Hazards, Chapter 9 Hazardous Substances and Contaminated Land, and Chapter 23 Hazardous Substances. Therefore we have decided not to make the amendment recommended by Ms Wharfe.

4.43 We adopt the evaluation in section 4.19.2 of the officer's report and Ms McGuire's further written statement¹³ as part of our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA together with the additional reasons set out above. The reporting officer recommended an amendment to the definition of "hazardous facility" in the Proposed Plan.

¹¹ Dasent, Statement of Evidence, page 6.

¹² Wharfe, Statement of Evidence, page 7.

¹³ Appendix C to this Decision, page 7.

We have reviewed that recommended amendment and consider it to be appropriate. We therefore adopt that amended definition as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Issue 9.2 Contaminated Land

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.11	The Oil Companies	Amend Issue 9.2 as follows: The use and development of potentially contaminated land can lead to adverse effects on the environment and human health, when the necessary remediation <u>or management measures</u> works have not been undertaken prior to use.	

- 4.44 The Oil Companies submission was evaluated by the reporting officer in section 4.16.2 of the officer's report. Ms McPherson advised¹⁴ that the Oil Companies opposed the officer's evaluation for a number of reasons, including that the Oil Companies considered that not all contaminated land posed a risk to human health, that it was not appropriate to avoid risks to future users, and that the HDC was not responsible for risks to the "environment" but only for risks to "people".
- 4.45 We had some problems with the views espoused by Ms McPherson and the further wording changes she sought, but as she did not attend the hearing we could not put our queries directly to her, we instead asked Ms McGuire to convey some of our concerns to Ms McPherson and then respond to us accordingly in her written reply.
- 4.46 In her further written statement of 21 May 2013 Ms McGuire discussed the concerns of the Oil Companies and referred to some further comments that had been provided by Ms McPherson.¹⁵ We have carefully considered Ms McGuire's further evaluation of the matters of concern to the Oil Companies and we consider her conclusions to be well founded. In particular we note that under the RMA the environment includes people and communities and that it is entirely appropriate to avoid risks to future users. A risk is an effect and under Section 3(c) of the RMA the definition of effect includes "any past, present, or future effect" (our emphasis).
- 4.47 Consequently, on balance we accept Ms McGuire's overall evaluation and we agree with it and adopt it as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. The officer included a revised recommendation regarding amendments to the Issue Discussion for Issue 9.2 in her further written Statement of 21 May 2013. We have reviewed those recommended amendments and consider them to be appropriate. We therefore adopt that revised recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Objective 9.2.1 Contaminated Land

Submissions Received

¹⁴ Tabled letter from Burton Consultants, dated 29 April 2013, pages 3 to 6.

¹⁵ Appendix C to this Decision, pages 2 and 3.

Sub No.	Submitter Name	Decision Requested	Further Submission
93.13	The Oil Companies	Amend Objective 9.2.1 as follows: To avoid, or mitigate the risk of adverse effects from the <u>subdivision, use, or</u> redevelopment or remediation of contaminated and potentially contaminated land on human health and the environment.	

4.48 The Oil Companies' submission was evaluated by the reporting officer in section 4.21.2 of the officer's report. The Oil Companies accepted that evaluation. We have reviewed the officer's evaluation and we agree with it and adopt it as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. The officer also recommended an amendment to Objective 9.2.1 of the Proposed Plan. We have reviewed that recommended amendment and consider it to be appropriate. We therefore adopt that recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Policy 9.2.2

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.14	The Oil Companies	Retain intent of Policy 9.2.2 without modification.	

4.49 The Oil Companies' support for Policy 9.2.2 is noted and their submission is accepted.

Policy 9.2.3

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.15	The Oil Companies	Amend Policy 9.2.3 as follows: Require development sites that have a history of land use that could have resulted in contamination of the soil to undertake a preliminary site investigation to confirm whether further investigation, remediation or management is required, to ensure that the land is suitable for increased <u>the intended</u> exposure to humans and the environment.	
98.32	Horticulture NZ	Amend the definition of	

Sub No.	Submitter Name	Decision Requested	Further Submission
		'development' (refer to relief sought in Section 26, Definitions).	

4.50 The submissions were evaluated by the reporting officer in section 4.23.2 of the officer's report. Horticulture NZ did not oppose that evaluation and the Oil Companies supported it. We have reviewed the officer's evaluation and we agree with it and adopt it as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. The officer also recommended an amendment to Policy 9.2.3 of the Proposed Plan. We have reviewed that recommended amendment and consider it to be appropriate. We therefore adopt that recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Policy 9.2.4

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.16	The Oil Companies	Amend Policy 9.2.4 as follows: Ensure that all remediation, use, subdivision and redevelopment of <u>when</u> land affected by soil contamination is used, subdivided, and/or redeveloped, it is managed or remediated in a way that prevents or mitigates adverse effects and <u>unacceptable</u> risk on human health and the environment.	

4.51 The submissions were evaluated by the reporting officer in section 4.24.2 of the officer's report. The Oil Companies opposed that evaluation for the reasons set out in their submission. On balance we prefer the evaluation in the officer's report. We consider the term "unacceptable risk" sought by the Oil Companies is subjective. Consequently we adopt the officer's evaluation as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. In this case the officer recommended no amendments to Policy 9.2.4 of the Proposed Plan. We consider that to be appropriate. We therefore adopt that recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Policy 9.2.5

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.17	The Oil Companies	Amend Policy 9.2.5 as follows: Require management measures for contaminated land, <u>which may include that provides for</u> remediation, or containment, or disposal of contaminated soil, <u>to</u>	

Sub No.	Submitter Name	Decision Requested	Further Submission
		<u>ensure that any</u> so the level of contamination is appropriate for <u>the proposed</u> any likely future use of the land.	

4.52 The Oil Companies' submission was evaluated by the reporting officer in section 4.25.2 of the officer's report. The Oil Companies supported that evaluation. We have reviewed the officer's evaluation and we agree with it and adopt it as our reasons pursuant to Clause 10(2)(a) of Schedule 1 to the RMA. The officer also recommended an amendment to Policy 9.2.5 of the Proposed Plan. We have reviewed that recommended amendment and consider it to be appropriate. We therefore adopt that recommendation as our decision pursuant to Clause 10(1) of Schedule 1 to the RMA.

Policy 9.2.6

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.18	The Oil Companies	Retain intent of Policy 9.2.6 without modification.	

4.53 The Oil Companies' support for Policy 9.2.6 is noted and their submission is accepted.

Chapter 26: Definitions - Contaminated Land

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
93.27	The Oil Companies	Retain definition of Contaminated Land without modification.	

4.54 The Oil Companies' support for the definition of Contaminated Land is noted and their submission is accepted.

5. SECTION 32

5.1 A Section 32 report accompanied the Proposed Plan when it was notified. We have evaluated the changes we intend to make to the Proposed Plan in the light of section 32 of the RMA. Where we have amended objectives we have considered alternatives and have concluded that with the amendments we propose each objective will better achieve the purpose of the RMA. Similarly we are satisfied that the amendments we have made to the policies and rules will enable the objectives to be better achieved.

6. DECISION

6.1 For all of the foregoing reasons we resolve the following:

1. That pursuant to clause 10 of Schedule 1 to the Resource Management Act 1991 Chapter 9 Hazardous Substances and Contaminated Land, Chapter 23 Hazardous Substances and Chapter 26 Definitions and associated other provisions of the Proposed Horowhenua District Plan are approved inclusive of the amendments set out in Appendix A.
2. That for the reasons set out in this decision the submissions and further submissions are accepted, accepted in part or rejected as set out in in Appendix B.

6.2 For the sake of clarity, Appendix B shows whether each submission or further submission is accepted, accepted in part or rejected.



Robert van Voorthuysen



Cr Tony Rush



Cr Leigh McMeeken

Dated: 23 September 2013

APPENDIX A: Proposed Plan as amended by Hearing Decisions

Chapter 9: Hazardous Substances and Contaminated Land

The second paragraph of the Issue Discussion for Issue 9.1 is amended as follows:

The disposal of hazardous substances is a daily need for the community, ranging from the disposal of paint and detergents from residential sites to the residuals of agricultural chemicals from farms. Where these substances are disposed of in a controlled way, the risks to the environment and communities can be avoided or mitigated. Horizons Regional Council is responsible for discharges onto land and therefore the discharge or disposal of hazardous substances into the environment, including farm applications of fertiliser which is controlled through the Proposed One Plan.

Objective 9.1.1 is amended to read:

To ensure that adequate measures are taken to avoid or mitigate the adverse environmental effects of the use, storage, and transport ~~and disposal~~ of hazardous substances.

Policy 9.1.5 is amended to read:

Limit the use and storage ~~and avoid disposal~~ of hazardous substances near any of the following areas ...

Policy 9.1.6 is amended to read:

Establish controls to ensure that facilities which involve the use, storage, or transport ~~or disposal~~ of hazardous substances ...

Policy 9.1.8 is amended to read:

Appropriate facilities and systems are to be provided ~~to~~ that seek to avoid accidental events involving hazardous substances (such as spills and gas escapes) that have the potential to create unacceptable risks to the environment and human health.

Issue 9.2 is amended to read:

The use and development of potentially contaminated land can lead to adverse effects on the environment and human health, when the necessary remediation or management measures ~~works~~ have not been undertaken prior to use.

A new second paragraph is inserted into the Issue Discussion for Issue 9.2 as follows:

In circumstances where more sensitive land uses are proposed on land that has either not been fully remediated (but the level of contamination was acceptable for the previous land use) or is potentially contaminated land, it is important to ensure that the land is remediated to a satisfactory degree to avoid or reduce risks to human health. Alternatively, contaminated land needs to be managed so that it does not pose an unacceptable risk to current or proposed land uses. The on-going management of contaminants on land needs to be adequate to protect the reasonably foreseeable needs of present and future land users. Poorly implemented risk management plans can result in unforeseen and unexpected adverse effects and poorly managed information can result

in uninformed land use decisions, both of which can expose people and the environment to unacceptable risks.

Objective 9.2.1 is amended to read:

To avoid, or mitigate the risk of adverse effects from the subdivision, use, redevelopment or remediation of contaminated and potentially contaminated land on human health and the environment.

Policy 9.2.3 is amended to read:

Require development sites that have a history of land use that could have resulted in contamination of the soil to undertake a preliminary site investigation to confirm whether further investigation, remediation or management is required, to ensure that the land is suitable for ~~increased~~ the intended exposure to humans and the environment.

Policy 9.2.5 is amended to read:

Require management measures for contaminated land, which may include ~~that provides for~~ remediation, or containment, or disposal of contaminated soil, to ensure that any ~~so the level of~~ contamination is appropriate for the proposed ~~any likely~~ future use of the land.

Chapter 23: Hazardous Substances

Rule 23.1.1 is amended to read:

- (a) Fuel contained in tanks of motor vehicles, agricultural and forestry equipment, boats, aircraft, locomotives and small engines and the storage of fuel for a primary production activity where it complies with the Guidelines for Above Ground Fuel Storage on Farms (Environmental Protection Authority, January 2012).
- (e) Storage of ~~superphosphate or lime or similar~~ fertilisers or lime on farms for the purpose of primary production activities in the Rural Zone where that storage is in accordance with the Fertiliser Group Standards (corrosive (HSR002569), oxidising (HSR002570, subsidiary hazard HSR002571) and Toxic (HSR002572) 2006.

Note: The exemptions specified in Rule 23.1 are still subject to the requirements in the Horizons Regional Council Proposed One Plan for fertiliser and agrichemical use.

Rule 23.3.1 is amended to read:

- (a) The retail sale of fuel, up to a storage of 100,000 litres of petrol and up to 50,000 litres of diesel in all zones ~~excluding the Rural Zone and the Industrial Zone~~, in underground storage tanks, provided it can be demonstrated that the following Codes of Practice are adhered to:
 - Below Ground Stationary Container Systems for Petroleum - Design and Installation HSNOCOP 44, EPA, 2012.
 - Below Ground Stationary Container Systems for Petroleum – Operation HSNOCOP 45, EPA, 2012.

- (b) The retail sale of LPG, with a storage of up to six tonnes of LPG (in either single vessel storage) or in an exchange facility for portable LPG cylinders, provided it can be demonstrated that the following standard is adhered to:
- Australian and New Zealand Standard 1596:2008 Storage and Handling of LP Gas.

Rule 23.5 is amended to read:

23.5.1 The following activities shall be a Discretionary Activity:

...

- (b) The retail sale of fuel in all zones where the storage of petrol in underground storage tanks exceeds 100,000 litres or the storage of diesel in underground storage tanks exceeds 50,000 litres of diesel.
- (c) The retail sale of LPG where the storage of LPG exceeds six tonnes (involving either single or multi vessel storage).

A new clause (b) is added to Rule 23.6.3 as follows:

- (b) There shall be no storage of hazardous substances within 20 metres of the landward edge of the beds Lake Horowhenua and the Hokio Stream.

Chapter 26

The definition of hazardous facility is amended as follows:

Hazardous Facility means any activity involving hazardous substances and the sites where hazardous substances are used, stored, handled or disposed of, and any installations or vehicles parked on site that contain hazardous substances. ~~Hazardous facility does not include any of the following:~~

- ~~• The incidental use and storage of hazardous substances in domestic quantities.~~
- ~~• Fuel in motor vehicles, boats and small engines.~~
- ~~• Retail outlets for domestic usage of hazardous substances (e.g. supermarkets, hardware shops, pharmacies, home garden centres).~~
- ~~• Gas and oil pipelines.~~
- ~~• Trade waste sewers."~~

APPENDIX B: Schedule of Decisions on Submission Points

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
93.00		The Oil Companies		Accept
93.12		The Oil Companies		Accept
27.10	517.17	Horizons Regional Council Horticulture NZ	In-Part	Accept Accept In-Part
93.01		The Oil Companies		Accept
93.02		The Oil Companies		Accept
93.03		The Oil Companies		Accept
98.31		Horticulture NZ		Accept
93.04		The Oil Companies		Accept
27.11	517.18	Horizons Regional Council Horticulture NZ	In-Part	Accept Accept In-Part
93.05		The Oil Companies		Accept
27.12	517.19	Horizons Regional Council Horticulture NZ	In-Part	Accept Accept In-Part
93.06		The Oil Companies		Accept
93.07		The Oil Companies		Accept
93.08		The Oil Companies		Accept In-Part
93.09		The Oil Companies		Accept
93.10		The Oil Companies		Accept
11.28	504.00 519.23	Philip Taueki The Oil Companies Charles Rudd	Oppose Support	Accept Accept In-Part Accept
60.27		Muaupoko Co-operative Society		Accept
96.39	506.23 513.19	Federated Farmers Ernslaw One Ltd Rayonier New Zealand Ltd	Support Support	Accept In-Part Accept In-Part Accept In-Part

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
	517.37	Horticulture NZ	In-Part	Accept In-Part
98.48		Horticulture NZ		Accept
41.46		Powerco		Accept
98.49		Horticulture NZ		Accept In-Part
98.50		Horticulture NZ		Reject
93.25		The Oil Companies		Accept
93.26		The Oil Companies		Accept
93.29		The Oil Companies		Accept
95.46		New Zealand Defence Force (NZDF)		Accept
96.42		Federated Farmers		Accept In-Part
98.04		Horticulture NZ		Accept In-Part
93.11		The Oil Companies		Accept
93.13		The Oil Companies		Accept In-Part
93.14		The Oil Companies		Accept
93.15		The Oil Companies		Accept
98.32		Horticulture NZ		Reject
93.16		The Oil Companies		Reject
93.17		The Oil Companies		Accept
93.18		The Oil Companies		Accept
93.27		The Oil Companies		Accept

APPENDIX C: Officer's statement dated 21 May 2013

Proposed Horowhenua District Plan

Hazardous Substances & Contaminated Land Hearing: 30 April 2013

Reporting Officer Response – 21 May 2013

Response to Tabled Evidence

The Oil Companies (submitter number 93.00) sought a number of changes to the Proposed Plan provisions relating to the management of hazardous substances and contaminated land. The Oil Companies provided evidence to be tabled at the Hearing which addressed three matters where the submitter sought amendment to the recommendations made in the Section 42A Report. I have outlined and provided a response to these matters below.

1. Rule 23.3.1(b) - Hazardous Substances - Controlled Activities

In their original submission, the Oil Companies sought amendment to Rule 23.3.1(b) to provide for the multi vessel storage of LPG for retail sale. In responding to this submission point, Council received comment from hazardous substances expert Kerry Laing. Mr Laing held some reservations in providing for the multi vessel storage of a large number of LPG bottles given the increased risk and uncertain demand for such facilities in the Horowhenua. In the Section 42A Report on Hazardous Substances and Contaminated Land I recommended that multi vessel storage be provided for as a controlled activity provided the total number of multi vessels does not exceed 30. In making this recommendation I realised that this was a departure from the relief sought and therefore provided the submitter with an opportunity to present their case at the hearing.

The Oil Companies have provided a written statement which I have attached to this report. In this statement, the Oil Companies outline current and future regulations which seek to control the storage of LPG, outside of the District Plan. The Oil Companies have helpfully provided some context behind their relief sought in their original submission and have provided useful direction in terms of revisions to a New Zealand Standard to specifically address the storage of portable LPG cylinders. I am satisfied that there is a process in place to successfully address the storage of single and multi vessel LPG and that there are adequate regulations outside of the District Plan which will control this storage in the interim before the New Zealand Standard is finalised. I accept that the proposed threshold of 30 would seem to be overly restrictive in light of the other controls that would be regulated. On this basis, I recommend that the relief sought by the Oil Companies in submission point 93.26 is accepted and note that once the New Zealand Standard comes into effect, amendment to the District Plan to correctly refer to this updated standard will be necessary.

Recommended amendment:

Rule 23.3.1(b)

The retail sale of LPG, with storage of up to six tonnes (single or multi vessel storage) of LPG, provided it can be demonstrated that the following standard is adhered to:

- *Australian and New Zealand Standard 1596:2008 Storage and Handling of LP Gas.*

In providing a written statement to the Hearing Panel the Oil Companies have raised a matter which does not appear to fall within the scope of their original submission however, I consider it is a valid matter to have been raised. Controlled Activities in Chapter 23 provide quantity limits for the retail sale of fuel and of LPG. In the case that these quantity limits are exceeded, the Proposed

Plan should have caught these activities as a Discretionary Activity. This default has not been provided for in the Proposed Plan which may lead to Plan users then relying on the Permitted and Discretionary quantities of fuel and LPG provided in Table 23-2. This is not the intent of Chapter 23 as the retail sale of hazardous substances has specifically been addressed as a controlled activity whereas the table seeks to control storage and use of fuel and LPG not for retail sale. The Oil Companies made specific submissions on both clause (a) and (b) of Rule 23.3.1 (submission points 93.25, 93.26) however do not specifically address the matter of the activity status where an activity exceeds the quantity limits of fuel and LPG. I recognise that there may not be the scope to address this matter as the submission points were not explicit about this, but I consider it appropriate to identify this matter for consideration by the Hearing Panel. If the Hearing Panel do consider there is scope, perhaps as a consequential change, to make an amendment to the rule I recommend the following changes to address this matter:

Rule 23.5 Discretionary Activity

23.5.1 The following activities shall be a Discretionary Activity:

...

(b) The retail sale of fuel, exceeding a storage of 100,000 litres of petrol and exceeding 50,000 litres of diesel in all zones in underground storage tanks.

(c) The retail sale of LPG, exceeding a storage of six tonnes (single or multi vessel storage) of LPG.

2. Issue Discussion for Issue 9.2 Contaminated Land

In their original submission (submission point 93.11), the Oil Companies sought amendment to the wording of Issue 9.2 to ensure that remediation is appropriately recognised as one method of managing contaminated land. The Section 42A Report recommends that this submission point be accepted and in addition, the Issue Discussion is amended to further support the requested relief.

The Oil Companies' tabled evidence provides alternative amendments to the Issue Discussion for Issue 9.2 for the purpose of clarification and consistency with the focus of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES).

The Oil Companies seek amendments to the Issue Discussion to ensure that contaminated land is managed to avoid unacceptable risk to current land owners, occupiers and/or users. The Issue Discussion as recommended in the Section 42A Report refers to unacceptable risk to current and future land owners, occupiers and/or users. I accept that the key issue that the NES seeks to manage contaminated land in a way that is fit for its intended or proposed purpose and not all potential future works on the subject site as different activities have different levels of unacceptable risk. However, I think that management measures should seek to avoid unacceptable risk in the long term not only for the current land owner or user. The land may be used for the same purpose in the future and the management measures should seek to maintain the level of risk over time. I also consider that in the case of a subdivision application concerning contaminated land, the intended or future use of the land may not be known and may change over time (e.g. subdivision of commercial land could be used for various activities in the future which may have a greater or lesser risk to exposure from contamination depending on the number and length of occupancy). In addition, the use of land could change overtime, particularly if different activities (change of use) is permitted by the plan (e.g. commercial land changing from warehouse/storage to an education facility or child-care centre).

The Oil Companies also seek change to the Issue Discussion to remove any duplication or confusion with the management of 'contaminants on land' which could be misinterpreted to be referring to the management of hazardous substances. I support change to this sentence however,

I do not support the deletion of the sentence. As outlined above, contaminated land requires ongoing management to avoid unacceptable risk in terms of current and future activities.

I accept the amendment to the final sentence of the second paragraph as sought by the Oil Companies in their tabled evidence for the purpose of clarification.

The Oil Companies also sought the removal of 'the environment' in managing the effects of contaminated land. I do not support this amendment as the 'the environment' is not considered to be solely natural elements such as land, air and water, but can include the built environment and people. The Proposed Plan refers to 'the environment' in policies for the management of contaminated land and the submitter has not objected to the use of the term in these provisions of the Plan. On this basis, I recommend that 'the environment' remains in the final sentence of the second paragraph.

I recommend that the Issue Discussion of Issue 9.2 as recommended in the Section 42A Report, is amended as follows:

“Hazardous substances can contaminate land when discharges occur and are not cleaned up. Contaminated land is an area where contaminants occur at greater levels than naturally occurring background levels. Within the Horowhenua there are a number of known sites containing contaminated land where testing has confirmed the presence of hazardous substances. An owner wishing to conduct activities on contaminated land needs to ensure the contaminant is not exposed during activities or that it is appropriately managed, usually through remediation or removal of contaminated material from the land or other management measures.

In circumstances where more sensitive land uses are proposed on land that has not been fully remediated (but level of contamination was acceptable for the previous land use) or is potentially contaminated land, it is important to ensure that the land is remediated to a satisfactory degree to avoid or reduce risks to human health. Alternatively, contaminated land needs to be managed so that it does not pose an unacceptable risk to current or proposed land uses~~future owners, occupiers and/or users~~. The on-going management of contaminants on land needs to be adequate to protect the reasonably foreseeable needs of present and future landowners, occupiers and users. Poorly implemented risk management plans can result in unforeseen and unexpected adverse effects and poorly managed information can result in uninformed land use decisions both of which can ~~and~~ expose people and the environment to unacceptable risks.

Horizons Regional Council has accepted principal responsibility for identifying and investigating contaminated sites within the region. Territorial authorities are responsible for controlling the effects of the use and development of land for the purpose of preventing or mitigating any adverse effects of the subdivision, use and development of contaminated land. When land has been contaminated by historical activities, it is not controlled by regional councils because hazardous substances are no longer being discharged to the environment. In this situation, processes need to be put in place so that future owners and users of the land are not adversely affected. The best time to do this is when there is an application to subdivide the land, or to change the land use. The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health directs the requirement for consent or otherwise for activities on contaminated or potentially contaminated land in this regard.”

Response to Commissioners Questions

The Oil Companies' response on the use of the term 'unacceptable risk' in Policy 9.2.4:

In terms of the query on 'unacceptable risk', this is illustrated quite well by the Soil Contaminant Standards set out in Appendix B of the MfE User Guide on the NES for assessing and managing contaminants in soil ("the NES") – refer: <http://www.mfe.govt.nz/publications/rma/users-guide-nes-for-assessing-managing-contaminants-in-soil/guide-nes-for-assessing-managing-contaminants-in-soil.pdf>

The Appendix sets out the soil contamination standards that have been derived by MfE for five standard land-use scenarios:

- *Rural / lifestyle block*
- *Residential*
- *High-density residential*
- *Parks / residential*
- *Commercial / industrial outdoor worker (unpaved)*

The standards essentially indicate what level of soil contamination is considered acceptable for each of those land-use scenarios.

The soil contaminant standard for arsenic, for example, is set at 70mg/kg for a commercial site, but only 17mg/kg for a rural residential block, where 25% consumption of home-grown produce is assumed.

So at a commercial site where arsenic concentrations are up to 70mg/kg, while there will still be some risk to human health, that risk is considered to be acceptable because the type of land use involves few pathways by which the contaminants could affect human health.

In contrast, if that same site was to be used for rural / lifestyle purposes a concentration of 70 mg/kg of arsenic in the soil would be considered to pose an 'unacceptable risk', as there are numerous pathways by which the soil contaminants could affect human health, including through eating food grown on the site.

These soil contamination standards are also used as consent thresholds in the NES itself.

So in terms of Policy 9.2.4, the Oil Companies are seeking to include a reference to 'unacceptable risk' rather than just to 'risk' to recognise that in some situations, a higher level of soil contamination (e.g. 70 mg/kg of arsenic), may be considered acceptable because the risk of those contaminants affecting human health is low because of the specific land use (e.g. a commercial site).

Reporting Officers Right of Reply

Federated Farmers of New Zealand and Horticulture New Zealand both spoke to their submissions on the hazardous substances provisions in the Proposed Plan. There were several parallels between the two submitters in their response to the recommendations in the Section 42A Report and the further amendments sought. I have discussed these points below.

Rule 23.1 Exemptions

Fertilisers

Federated Farmers sought an advice note referring plan users to the Regional Council requirements for fertiliser and agrichemical use. Federated Farmers tabled an amended advice note at the hearing which refers specifically to Regional Council requirements for fertiliser and agrichemical use. This advice note applies to all exemptions listed in Rule 23.1 and if the note refers specifically to the use of fertilisers and agrichemicals, this implies that there are no other Regional Council requirements that apply to any exemption. Rule 23.1(i) and (j) refer to hazardous wastes contained in waste disposal facilities and trade waste or sewage stored, transported, treated or disposed respectively. The Proposed Plan has requirements for the discharge and disposal of waste, trade waste and sewage which would not be covered by the advice note as requested by Federated Farmers. For this reason I recommend that the wording of the advice note as provided in the Section 42A Report is retained.

Horticulture NZ support in part the Section 42A Report recommended amendments to the exemption of fertilisers. Horticulture NZ raised a concern that the Proposed Plan does not include a definition of 'Fertiliser' and some definitions of fertiliser do not include the substance lime. For completeness Horticulture NZ requested in their tabled evidence at the hearing, that the exemption be amended to refer to "Storage of fertilisers and lime...". I recommend that the amendment sought to the exemption be accepted for the purpose of clarity and certainty in the application of the exemption.

Commissioner van Voorthuysen also suggested amending the wording of the exemption to refer to "primary production activities". I support this suggestion as this term is defined in the Proposed Plan and therefore the amendment would provide consistency and clarity in the application of the exemption.

Rule 23.1.1(e)

As notified

"Storage of superphosphate or lime or similar fertilisers in the Rural Zone."

As recommended in the Section 42A Report

"Storage of ~~superphosphate or lime or similar~~ fertilisers on farms for the purpose of primary production in the Rural Zone where that storage is in accordance with the Fertiliser Group Standards (corrosive (HSR002569), oxidising (HSR002570), subsidiary hazard (HSR002571) and toxic (HSR002572) 2006)."

As recommended following the hearing

"Storage of ~~superphosphate or lime or similar~~ fertilisers **and lime** on farms for the purpose of primary production **activities** in the Rural Zone where that storage is in accordance with the Fertiliser Group Standards (corrosive (HSR002569), oxidising (HSR002570), subsidiary hazard (HSR002571) and toxic (HSR002572) 2006)."

Storage of fuel above ground

Federated Farmers and Horticulture NZ made submissions on the Proposed Plan seeking amendment to Chapter 23 to provide specifically for storage of fuel above ground for primary production purposes on farms. The Section 42A Report discusses this matter and recommends that the storage of fuel above ground on farms is provided for in large quantities in the existing provisions as a permitted activity.

Both Federated Farmers and Horticulture NZ presented evidence at the hearing supporting their original submissions in seeking to make the above ground storage of fuel on farms an exempt activity in Chapter 23 provided the relevant HSNO requirements and guidelines are complied with.

The submitters raise concern for the administrative difficulties of applying the quantity limits in practice as the quantities for fuel are not provided in litres. The submitters also express concern for unnecessary duplication of the Hazardous Substances and New Organisms Act (HSNO) requirements and the District Plan. I attach the thresholds in place for the storage of fuel that trigger the requirement for a location test certificate. Horticulture NZ provided these thresholds to highlight regulations that would still apply if the storage of fuel is an exempt activity under the Proposed Plan.

I consider that without this exemption the permitted quantity limits for fuel stored above ground would allow for storage of fuel on farms in relatively large quantities and although the storage facility would be required to comply with the conditions for permitted activities, these conditions are not dissimilar to the standards outlined in the EPA Guidelines for 'Above ground fuel storage on farms'. As the storage of fuel is not likely to trigger consent in many cases, I consider that the EPA Guidelines could provide for best practice implementation of the HSNO Act which would also remove duplication between the Proposed Plan and national legislation. I also note that both

Federated Farmers and Horticulture NZ stated that the storage of fuel on farms is largely industry-regulated in that facilities for the storage of fuel on farms must remain at a high standard with relevant guidelines to receive and store substances such as fuel.

Commissioner van Voorthuysen also suggested amending the wording of the exemption to refer to "primary production activities". I support this suggestion as this term is defined in the Proposed Plan and therefore the amendment would provide consistency and clarity in the application of the exemption.

It was also raised at the hearing whether it would be appropriate to amend the wording of the exemption to refer to 'all subsequent amendments' of the Guidelines for Above Ground Fuel Storage on Farms. I do not support using this phrasing where a particular standard or guideline has been referred to in the Proposed Plan. I note that the Quality Planning website¹⁶ advises against this practice of using words such as "or any replacement standard" or "or any subsequent corresponding successor" after the reference to the document. Clause 31 of Schedule 1 requires that there has to be a variation or plan change for an amendment to an externally referenced document to have effect through the Plan. On this basis it is not appropriate to simply expect an updated version of the Guidelines for Above Ground Fuel Storage on Farms to apply to the Proposed Plan without that updated standard or document having gone through the First Schedule process. If documents by reference were replaced by any subsequent or amended document without this process, the community would not have their say on these changes and the Council would not have discretion to choose whether the updated standard was appropriate without a Plan Change. For this reason I recommend that only the document incorporated by reference is referred to in this provision.

On this basis, I recommend that Rule 23.1 Exemptions is amended to include the following:

23.2.1(a) Fuel contained in tanks of motor vehicles, agricultural and forestry equipment, boats, aircrafts, locomotive and small engines and the storage of fuel of primary production activities where it complies with the Guidelines for Above Ground Fuel Storage on Farms (Environmental Protection Agency 2012).

Definition - Hazardous Facility

Federated Farmers and Horticulture NZ made submissions seeking the amendment and deletion of the definition for Hazardous Facility.

Federated Farmers submitted that the definition did not provide a full list of those activities exempt from the provisions for hazardous facilities and therefore was not consistent with Rule 23.1. Federated Farmers upheld this position at the hearing.

Horticulture NZ made a submission that questioned the relevance of the definition and sought the deletion of the definition. Horticulture NZ upheld this view at the hearing and further reinforced that the definition for hazardous facility is provided in District Plan's where the Hazardous Facility Screening Procedure is adopted. As the Horowhenua District Council has not adopted this approach Horticulture NZ do not see the need for such a definition.

Federated Farmers are concerned that if the definition does not specifically set out the facilities that would be exempt from the term, this could be a cause of confusion in application of provisions relating to hazardous facilities. While it is important that the Proposed Plan provides clarity for plan users to ensure that provisions are interpreted and applied correctly, the exemptions of Chapter 23 are clearly stated at the outset of the Chapter and the submitter noted this helpful location for plan users. I consider that the definition of hazardous facility would become overly complicated and extensive if all exemptions were provided when these are already clearly outlined within the chapter relating specifically to hazardous facility provisions.

¹⁶ [http://www.qualityplanning.org.nz/index.php/plan-steps/witig-plans/external-documents-and-appendices\(e\)](http://www.qualityplanning.org.nz/index.php/plan-steps/witig-plans/external-documents-and-appendices(e))

In addressing the matter of relevance raised by Horticulture NZ, a full search of the Proposed Plan identified that the following chapters of the Proposed Plan Chapter 8 Natural Hazards, Chapter 9 Hazardous Substances and Contaminated Land and Chapter 23 Hazardous Substances all contained references to the term Hazardous Facility. For this reason I consider that there is the need for the definition of the term Hazardous Facility for the purpose of clarity and consistency in the application of this term.

Rule 19.6.25

Horticulture NZ also raised that the hazardous substances provision in Chapter 19 Rural Zone does not reference all provisions in Chapter 23 and could in turn undermine the purpose of Rule 23.1 Exemptions.

This matter was addressed in the Miscellaneous section of the Section 42A Report for General Parts 2, 3 and 4. I have provided an extract from this report below:

“In the hearing for Hazardous Substances and Contaminated Land submitter Horticulture NZ raised that Rule 19.6.25 fails to refer to all provisions in Chapter 23 - Hazardous Substances, namely Rule 23.1 Exemptions. This could be problematic as the Rule currently (as notified) only refers to the quantity limits in Table 23-1 in requiring all hazardous facilities within the Rural Zone to comply with the defined quantity limits. This Rule does not account for a list of exemptions to these quantity limits as outlined in Rule 23.1. These exemptions include the storage of fertiliser and the storage of fuel above ground on farms and without such exemptions in the Rural Zone, farmers and growers could be unnecessarily caught which would undermine the intent and purpose of Rule 23.1. Council seek that the Rural Zone Conditions for Permitted Activities provide a rule for hazardous substances which replicates the wording of the identical rule in all other zones in the Proposed Plan.

Rule 19.6.25 should read:

(a) All activities using or storing hazardous substances shall comply with the Hazardous Substances Classification parameters for the Rural Zone in Table 23.2 in Chapter 23 and shall comply with the permitted activity conditions in that Chapter.

While this rule does not specifically refer to Rule 23.1 Exemptions, it refers to Chapter 23 in its entirety and therefore applies the exempt activities. This matter was not raised in Horticulture NZ's original submission but was raised during the hearing by this submitter. It would seem that there is no scope within the submissions received to have addressed this matter and seek to resolve this issue.

The Commissioner's may wish to keep these matters in mind when preparing the decisions on submissions in case the opportunity arises to address these matters as consequential changes or alternatively by providing some direction to Council on matters that would need to be addressed as part of future plan changes.”

Response to Commissioners Comments:

Councillor Rush raised that the function and responsibilities of Regional Council should not only be clarified by way of an advice note for Rule 23.1 as requested by Federated Farmers (96.39), but also clearly outlined in the policy context of Chapter 9.

As discussed at the hearing, it was agreed that I would amend the second paragraph of the Issue Discussion for Issue 9.1 to clarify the function of Regional Council in relation to both disposal and discharges of hazardous substances. I recommend that the second paragraph of Issue Discussion for Issue 9.1 is amended as follows:

"The disposal of hazardous substances is a daily need for the community, ranging from the disposal of paint and detergents from residential sites to the residuals of agricultural chemicals from farms. Where these substances are disposed of in a controlled way, the risks to the environment and communities can be avoided or mitigated. Horizons Regional Council is responsible for discharges onto land and therefore the discharge or disposal of hazardous substances into the environment, including farm applications of fertiliser which is controlled through the Proposed One Plan."

Response prepared by Sheena McGuire

Response reviewed by David McCorkindale

Dated: 21 May 2013