

DPR-081

**BEFORE THE HEARING COMMISSIONERS
IN CENTRAL HAWKES BAY DISTRICT**

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

AND

IN THE MATTER of the Proposed Central Hawkes Bay District
Plan Hearing Stream 5 Hazardous
substances

**STATEMENT OF EVIDENCE BY LYNETTE PEARL WHARFE
FOR HORTICULTURE NEW ZEALAND
24 AUGUST 2022**

1. SUMMARY

1.1 This evidence addresses submissions on the definition of major hazardous facility, particularly the changes sought by Fire and Emergency NZ (FENZ) to add additional clauses to the definition.

1.2 The s42A Report recommends that the changes sought by FENZ be included in the definition including new xvii):

The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment.

1.3 I do not support the addition of clause xvii) for the following reasons:

- (a) The addition is inconsistent with the definition in the Hasting District Plan on which the provisions are modelled;
- (b) The addition is inconsistent with other listed facilities as it is generic, whereas the other facilities in the list are specific and readily identified;
- (c) The definition of hazardous waste in the PCHBDP is very broad – wastes of any hazardous substances – so does not provide guidance as to what may be included as a major hazardous facility;
- (d) The wording would capture more hazardous substances than anticipated by the description and reasons set out in the submission;
- (e) The addition presents confusion with the matters exempted under the definition.

1.4 In addition, the high risk matters of concern to the submitter would be adequately included through the addition of:

Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016

1.5 Therefore, in my opinion, the addition of clause xvii) to the definition of major hazardous facility is unnecessary and does not provide clarity in the Plan.

2. QUALIFICATIONS AND EXPERIENCE

- 2.1 My name is Lynette Pearl Wharfe. I am a planning consultant with The AgriBusiness Group. I have a BA in Social Sciences and post graduate papers in Environmental Studies, including Environmental Law, Resource Economics and Resource Management.
- 2.2 I am an accredited commissioner under the Making Good Decisions programme with Ministry for the Environment.
- 2.3 I have been a consultant with The AgriBusiness Group since 2002. The Agribusiness Group was established in 2001 to help build business capability in the primary sector.
- 2.4 I have spent over 20 years as a consultant, primarily to the agricultural industry and rural sector, specialising in resource management, environmental issues, and environmental education and facilitation, including 18 years of providing advice to Horticulture New Zealand (“**HortNZ**”) and its precursor organisations, NZ Vegetable and Potato Growers Federation, NZ Fruitgrowers Federation.
- 2.5 As part of providing advice to HortNZ for submissions and plans across the country I have been involved in development of Regional Policy Statements, Regional Plans and District Plans, including omnibus plans such as the Auckland Unitary Plan and the Marlborough RM Plan and district plans in Dunedin, Christchurch City, Waikato, Whakatane, Opotiki and Hastings so am familiar with the range of matters to be addressed in the Proposed Central Hawkes Bay District Plan (“**PCHBDP**”).
- 2.6 In particular I have been involved in the topic of hazardous substances in many district plans including the new Christchurch DP which was heard by an independent panel, Selwyn District, Waikato District, and Hastings District.
- 2.7 I have been involved as a consultant to HortNZ contributing to submissions and further submissions on the Proposed Central Hawkes Bay District Plan.
- 2.8 I have read the Environment Court’s Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out in Appendix 1. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3. SCOPE OF EVIDENCE

- 3.1 This evidence provides a planning assessment of those provisions on which HortNZ submitted which are addressed in Hearing Stream 5 for hazardous substances.
- 3.2 In undertaking this assessment, I have considered:
- (a) The Section 42A Hearings Report for Hearing Stream 5
 - (b) The s32 Reports for PCHBDP

4. MY UNDERSTANDING OF HORTICULTURE NEW ZEALAND'S SUBMISSIONS

- 4.1 HortNZ made submissions and further submissions on the PCHBDP because horticulture is a key activity within the Central Hawkes Bay District. Growers are users of agrichemicals, fertilisers and fuels which are all classed as hazardous substances. HortNZ supports an approach to managing hazardous substances that avoids duplication from other regulations such as Health and Safety at Work Act (2015) and the Hazardous Substance and New Organisms Act (1996) and associated regulations.

5. BACKGROUND TO HAZARDOUS SUBSTANCE PROVISIONS IN DISTRICT PLANS

- 5.1 When the RMA was enacted in 1991 it included s30 and 31 which gave regional and district councils explicit functions to control the adverse effects of the storage, use, disposal or transportation of hazardous substances.
- 5.2 Many first generation district plans included provisions for hazardous substances based on the Hazardous Facilities Screening Procedure (HFSP) as they were developed before the Hazardous Substance and New Organisms Act (1996) and associated regulations were developed.
- 5.3 The Resource Legislation Amendment Act (2017) removed the explicit functions for hazardous substances in s30 and 31. Councils may still manage hazardous substances where necessary to achieve integrated management and where the potential environmental effects are not adequately addressed by other legislation.
- 5.4 When reviewing district plans councils have considered a number of approaches to how hazardous substances should be managed in district plans.

- 5.5 Of particular relevance is the decision of the Independent Hearing Panel of the Christchurch Replacement Plan where the panel (chaired by a High Court judge) undertook a robust enquiry as to appropriate provisions in the plan, ultimately rejecting the approach proposed by the Council based on Activity Status Tables (AST) and adopting an approach seeking to avoid duplication with other legislation.¹
- 5.6 Hastings District took a similar approach when reviewing the district plan in 2013 which resulted in a framework based on permitting most uses of hazardous substances and including rules for major hazardous facilities, as defined in the Plan.
- 5.7 More recently (2019-2020) the Waikato District Independent Hearing Panel has considered the issue of managing hazardous substances with considerable differences between the council's proposed approach and that of submitters. The Panel determined that the Hastings approach is the most appropriate and adopted a similar approach and inclusion of a definition for significant hazard facility.²
- 5.8 In reviewing the Operative CHB District Plan the Initial s32 Scoping Report considered the HFSP approach, an updated approach or a change of approach.³ The recommendation was to change the approach to generally leaving the management of hazardous substances to the HSNO Act and also align with the approach of neighbouring TLA's such as Hastings District.
- 5.9 As a result, both the draft and Proposed CHB District Plans include a definition for major hazardous facility based on the Hastings District Plan. The HortNZ submissions supported the definition and approach.

6. DEFINITION MAJOR HAZARDOUS FACILITY

- 6.1 HortNZ made a submission (81.020) seeking that the definition of major hazardous facility be retained.

¹ <https://chchplan.ihp.govt.nz/wp-content/uploads/2015/03/Decision-18-Hazardous-Substances-and-Contaminated-Land-and-relevant-definitions-Stages-1-and-2.pdf>

² [https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/decisions/proposed-waikato-district-plan-\(decisions-version\)/part-2-district-wide-matters/natural-features-and-landscapes/part-2_14-haz-hazardous-substances.pdf?sfvrsn=48e09ac9_2](https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/decisions/proposed-waikato-district-plan-(decisions-version)/part-2-district-wide-matters/natural-features-and-landscapes/part-2_14-haz-hazardous-substances.pdf?sfvrsn=48e09ac9_2)

³ S32 Overview Evaluation Report Appendix 1 Initial S32 Scoping Report Pg 82

6.2 The s42A Report is recommending changes to the definition of major hazardous facility as a result of a submission by Fire and Emergency NZ (FENZ).

6.3 The recommended change seeks to add additional clauses to the definition:

xvii) The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment.

xviii) Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016

6.4 I consider that inclusion of Health and Safety at Work regulations is appropriate as a threshold for major hazardous facilities, so support the inclusion of xviii).

6.5 But I do not support the addition of clause xvii) for the following reasons:

(a) The addition is inconsistent with the definition in the Hastings District Plan on which the provisions are modelled;

(b) The addition is inconsistent with other listed facilities as it is generic, whereas the other facilities in the list are specific and readily identified;

(c) The definition of hazardous waste in the PCHBDP is very broad – wastes of any hazardous substances – so does not provide guidance as to what may be included as a major hazardous facility;

(d) The wording would capture more hazardous substances than anticipated by the description and reasons set out in the submission;

(e) The addition presents potential confusion with the matters exempted under the definition.

6.6 The reasons provided in the submission of FENZ states:

The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling or treatment should be included as a 'Major Hazardous Facility'. This would provide council the ability to manage facilities that become high risk as a result of stockpiling materials. Where the economics of the business changes and they cannot process or dispose of materials, this can become a high fire risk and poses a risk to the health and safety of communities

- 6.7 The new clause would be reliant on the definition of hazardous waste which is very broad – waste of any hazardous substance.
- 6.8 The focus of the submission is on ‘high risk’ facilities but the wording would capture waste from any hazardous substances or hazardous substances awaiting reuse, recycling or treatment.
- 6.9 This could include agrichemicals stored in a sprayer awaiting future use or disposal. Such an activity is not ‘high risk’ and is managed by other regulation and should not be implicated as being ‘high risk’.
- 6.10 The inclusion of new clause xvii) introduces a tension between provisions in the definition as there is an exclusion in the definition for the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities from being a major hazardous facility.
- 6.11 But the exclusion only applies to ‘storage and use’ and does not include a specific exclusion for storage of hazardous substances that are surplus and awaiting disposal. Under the definition of hazardous waste in the Proposed Plan these would be considered a hazardous waste and so captured by new clause xvii) as a major hazardous facility.
- 6.12 If the submitter seeks to address recycling facilities that are of significant risk, then any additional clause should be specific to that activity and set at a threshold that makes the facility ‘major’, rather than a broad generic clause that would capture facilities that are not major in terms of the intent of the policy framework.
- 6.13 I note that FENZ did not make comment on the definition at the Draft CHB Plan stage, nor did they seek changes to the definition of significant hazard facility as part of the Waikato DP process which is mirrored on Hastings, in which they were also involved.⁴
- 6.14 The s42A Report (5.3.13) considers that storage and/or treatment of hazardous waste would clearly pose potentially significant off-site risks to people, property and the environment and so recommends the addition to the definition, but does not consider the scope of what would be included as ‘hazardous waste’ and the level of risk associated with all hazardous waste, which includes small scale or minor storage.

⁴ [https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/decisions/proposed-waikato-district-plan-\(decisions-version\)/part-2-district-wide-matters/natural-features-and-landscapes/part-2_14-haz-hazardous-substances.pdf?sfvrsn=48e09ac9_2](https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/decisions/proposed-waikato-district-plan-(decisions-version)/part-2-district-wide-matters/natural-features-and-landscapes/part-2_14-haz-hazardous-substances.pdf?sfvrsn=48e09ac9_2)

- 6.15 The s42A Report does not consider the implications of the addition of the second part of the clause: *or hazardous substances awaiting reuse, recycling, or treatment*.
- 6.16 Nor does the s42A Report consider the premise in the s32 Report that the definition and provisions align with Hastings District.
- 6.17 In my opinion, matters covered under the additional clause xvii) would be captured by the addition of the Health and Safety at Work thresholds, thereby making xvii) unnecessary.
- 6.18 Objective HAZS-O2 seeks to avoid unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act (1996) and the Health and Safety at Work Act (2015). Given that major hazardous facilities are identified through the Major Hazardous Facility regulations it is not necessary to include a generic clause in the definition in the Plan as this would be duplication.
- 6.19 I also consider that the provisions should be clear and simple with no potential ambiguity or debate as to which clause has precedence.

7. CONCLUSION

- 7.1 This evidence addresses submission and further submission points regarding hazardous substances, specifically the definition of major hazardous facility.
- 7.2 I do not support the recommended change to the definition of major hazardous facility to include clause xvii) as it presents potential confusion in the plan and is not necessary to achieve the objectives and policies in the Plan.

Lynette Wharfe

24 August 2022

Appendix 1: Experience of Lynette Wharfe

Some of the projects I have been involved in that I consider are particularly relevant in this context are:

- a) Project Manager and facilitator for a Sustainable Management Fund (“**SMF**”) Project ‘Reducing nitrate leaching to groundwater from winter vegetable crops’, to develop management tools for vegetable growers to implement best practice for fertiliser applications, to assist in changing fertiliser usage.
- (b) Managed an SMF project for NZ Agrichemical Education Trust communicating the revised NZS 8409:2004 Management of Agrichemicals to local authorities throughout NZ, including development and leading workshops with councils.
- (c) Revised the Manual for the Introductory GROWSAFE® Course for the NZ Agrichemical Education Trust, to make the Manual more user friendly and accessible and to align it with the Hazardous Substances and New Organisms legislation. (
- (d) Managing the research component for SFF project – SAMSN – developing a framework for the development of Sustainable Management Systems for agriculture and horticulture.
- (e) Project Manager MAF Operational Research Project Effectiveness of Codes of Practice investigating the use of codes of practice in the agriculture and horticulture sectors.
- (f) Undertook a review of Current Industry and Regional Programmes aimed at reducing pesticide risk, including assessing a number of Codes of Practice.
- (g) Contributed as a project team member for a Sustainable Farming Fund project ‘Environmental best practice in agricultural and rural aviation’ that included developing a Guidance Note on agricultural aviation, which is now on the Quality Planning website.
- (h) Undertook a review of agrichemical provisions in the Auckland Regional Air Land and Water Plan and developed a risk-based response for inclusion in the Proposed Auckland Unitary Plan.
- (i) Member of the Rural Advisory Group for the development of the National Planning Standards.