

UNDER the Resource Management Act 1991 ("**RMA**")
IN THE MATTER Proposed Plan Change 91 ("**PC91**):
Hazardous Substances to the Whangārei
District Plan

STATEMENT OF EVIDENCE OF DAVID BADHAM ON BEHALF OF NGĀ TAI ORA

PLANNING

2 March 2023

1. SUMMARY OF EVIDENCE

- 1.1 Whangārei District Council ("**Council**") have initiated PC91, which updates provisions for the management of hazardous substances in the Whangārei District Plan ("**WDP**"), and proposes to delete current rules. This statement of planning evidence is prepared on behalf of Ngā Tai Ora - Public Health Northland ("**Ngā Tai Ora**"), who submitted in opposition to PC91 highlighting a number of specific issues.
- 1.2 I consider that the RMA, and in turn the WDP, has an important role to play in the management of hazardous substances. However, recent legislative changes have made it necessary to reconsider the role of the management of hazardous substances in the WDP to ensure that it does not result in unnecessary duplication with other legislative requirements.
- 1.3 In my opinion, the key focus for PC91 is whether there any gaps in the hazardous substances management regime that require RMA controls in the WDP. I consider that PC91 should address the following key gaps:
 - (a) The management of incompatible activities within and between zones;
 - (b) Avoidance of reverse sensitivity effects; and
 - (c) The management of hazardous substances within "sensitive environments or areas".
- 1.4 Notwithstanding some minor amendments that I recommend to HSUB-O1, I support the objectives and policies as recommended by the Reporting Planner in the Section 42A Hearing Report ("**s42A**"). My key concern, is the lack of rules in the WDP to give

effect to the proposed objectives and policies relating to matters (a) – (c) above. Council and the Reporting Planner have relied on existing “zone-based rules” to give effect to the proposed objectives and policies, with the Reporting Planner providing more analysis of the zone-based approach in Appendix 2 of the s42A. However, my evidence has identified significant gaps in this analysis, such that I consider it to be incomplete and ultimately inadequate to rely on to conclude PC91 is appropriate pursuant to section 32 of the RMA.

- 1.5 I consider that the inadequacies identified in my evidence are significant and need to be addressed by further analysis by Council. To assist the Commissioner, I have recommended three high level options. Depending on the response to my evidence, it may be that a combination of these options is deemed the most efficient and effective option. I am happy to work with Council and the Reporting Planner prior to or following the hearing to assist with this, if that is the direction of the Commissioner.

2. INTRODUCTION

- 2.1 My full name is David Eric Badham. I am a Partner and Northland Manager with Barker & Associates Limited, a planning and urban design consultancy with offices across New Zealand. I am based in the Whangārei office, but undertake planning work across the country, although primarily in Northland.

- 2.2 I am a qualified planner with a Bachelor of Planning with Honours (1st Class) from the University of Auckland and have been a Full Member of the New Zealand Planning Institute since April 2015. I have over 12 years’ experience as a planner. During this time, I have been employed in various resource management positions in local government and private companies including experience with:

- (a) Statutory resource consent planning in the Northland and Auckland regions, including an extensive range of work in the Whangārei, Kaipara and Far North Districts.
- (b) Consideration of submissions and formulation of policy and policy advice for Whangārei District Council, Kaipara District Council, Far North District Council and private clients.
- (c) Providing planning advice, preparing Cultural Impact Assessments and engaging in consultation on behalf of iwi organisations.

(d) Monitoring and compliance of consent conditions in operational mining environments in Queensland Australia.

2.3 I attach a copy of my CV in **Attachment 1** which provides further detail on my experience and expertise. With particular regard to this project, I highlight that I have extensive experience in policy, more recently through working for Whangārei District Council and private clients on the Urban and Services Plan Changes (“**U&S Plan Changes**”)¹ and other plan changes that form part of the rolling review of the WDP.

2.4 This evidence is in respect of a submission by Ngā Tai Ora on Council’s PC91, which proposes to remove all rules in the WDP relating to hazardous substances. A new set of objectives and policies are included in a new District Wide Hazardous Substances Chapter (“**HSUB**”), with reliance placed on existing provisions in the WDP to capture the consideration of these new objectives and policies.

2.5 My evidence will address the following topics:

- (a) Involvement with PC91 on behalf of Ngā Tai Ora;
- (b) Ngā Tai Ora’s submission and further submission;
- (c) Role of the RMA in the management of hazardous substances;
- (d) Northland Regional Policy Statement (“**NRPS**”);
- (e) Objectives and policies;
- (f) No rules;
- (g) Other sensitive environments and areas;
- (h) Definitions;
- (i) Section 32 evaluation; and
- (j) Recommended changes.

¹ A list of abbreviations used throughout this evidence is included following the conclusion of this document.

2.6 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023. I have complied with the Code of Conduct in preparing this statement of evidence. Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express. I have no conflict of interest to declare with respect of PC91.

3. INVOLVEMENT WITH PC91 ON BEHALF OF NGĀ TAI ORA

3.1 I have been engaged by Ngā Tai Ora to provide independent planning evidence on their behalf for PC91. I was initially engaged by Ngā Tai Ora in August 2022 to review PC91 and assist with the preparation of Ngā Tai Ora's:

- (a) Original submission – Council reference #5 – see Appendix 5 of Council's s42A prepared by Council's Reporting Planner Taya Baxter²; and
- (b) Further submission – Council reference X010 – see Appendix 5 of the s42A.

3.2 Ngā Tai Ora have also commissioned Jeffery Garnham to prepare expert evidence from a public health perspective. I confirm that I have reviewed Mr Garnham's evidence and refer to it throughout my statement of evidence.

4. NGĀ TAI ORA'S SUBMISSION AND FURTHER SUBMISSION

4.1 Below is a brief summary of what I consider to be the key points of Ngā Tai Ora's submission on PC91:

- (a) Ngā Tai Ora oppose PC91;
- (b) Ngā Tai Ora considers that the RMA has an important role to play in the management of hazardous substances;
- (c) Ngā Tai Ora seek specific amendment to HSUB-O1;
- (d) The overall approach taken to PC91 is inappropriate and could lead to adverse public health effects;

² Henceforth, I refer to Ms Baxter as Council's Reporting Planner in this evidence.

- (e) Relying on other district wide and area specific chapter rules is vague and ultimately risky;
- (f) There is inconsistency in the approach taken by Council and that being outlined elsewhere in the Northland Region;
- (g) Ngā Tai Ora considers that the s32 Evaluation Report (“s32”) provided to support PC91 is inadequate;
- (h) Ngā Tai Ora considers that there should be rules for the management of hazardous substances in the WDP relating to:
 - (i) The establishment of facilities managing, storing, using or disposing of hazardous substances within, or in close proximity to, lawfully established sensitive activities or environments;
 - (ii) The establishment of sensitive activities adjacent to lawfully established facilities managing, storing, using or disposing of hazardous substances;
 - (iii) The establishment or expansion of facilities managing, storing, using or disposing hazardous substances in areas that may increase the risk of accident or adverse effects on public health and safety, and the environment (e.g., in areas subject to natural hazards or adjacent to sensitive natural environments or habitats); and
 - (iv) Appropriate limits or thresholds for the storage of certain hazardous substances across the various zones in the WDP.

4.2 Ngā Tai Ora’s further submission generally opposes the submissions of other submitters³, making similar points to those raised in the original submission. The only specific point I would make, is that Ngā Tai Ora did support a specific submission point from Channel Infrastructure New Zealand Limited regarding reviewing the relevant zone rules to appropriately manage the design and location of sensitive activities in order to avoid reverse sensitivity effects occurring.

³ Manulife Forest Management, Channel Infrastructure NZ Limited, Horticulture New Zealand and the Fuel Companies.

5. ROLE OF THE RMA IN THE MANAGEMENT OF HAZARDOUS SUBSTANCES

- 5.1 I understand that the intent of the Resource Legislation Amendment Act 2017 (“**RLAA**”) was to ensure that local authorities only place additional controls on hazardous substances, if they are necessary to control effects under the RMA that are not covered by the Hazardous Substances and New Organisms Act 1996 (“**HSNO**”) and Health and Safety at Work Act 2015 (“**HSW**”).
- 5.2 Furthermore, the Ministry for the Environment Guidance Note: Hazardous Substances under the RMA (2019) explains the intention of the amendments to the RMA, and states that the changes are not intended to prevent or discourage from keeping or putting in place controls in relation to hazardous substances, but reiterates that councils should ensure that they do not duplicate the requirements of HSNO and HSW.
- 5.3 As a result, I consider that there is scope to have provisions in the WDP relating to hazardous substances. However, these should only be applied where there are effects or residual risks that are not sufficiently controlled by other legislation, such as HSNO or HSW. From my understanding of the s42A, the Reporting Planner and I are in agreement on these points.
- 5.4 Therefore, in my view, the key question for PC91 is: are there any gaps in the hazardous substances management regime that require RMA controls in the WDP?
- 5.5 In my opinion, PC91 should address the following key gaps:
- (a) The management of incompatible activities within and between zones;
 - (b) Avoidance of reverse sensitivity effects; and
 - (c) The management of hazardous substances within “sensitive environments or areas”.⁴
- 5.6 Where I think PC91 is inadequate as proposed, is the provision of rules to address these matters. I address this in more detail below.

⁴ As proposed to be defined in PC91, this includes: “High Natural Character Areas; Outstanding Natural Character Areas; Outstanding Natural Landscapes; Outstanding Natural Features; Flood Hazard Areas; Coastal Hazard Areas; Mining Hazard Areas; Sites and Areas of Significance to Māori; Heritage Buildings, Sites and Objects; and Northpower Critical Electricity Lines.”

5.7 For the avoidance of doubt, I confirm that I support the proposed deletion of Operative Appendix 8 of the WDP. Having worked with the WDP for over a decade, I have found the Appendix 8 provisions to be complicated and difficult to interpret and apply. Further, I understand that the approach taken in Appendix 8 largely duplicates the requirements that now exist in HSNO and HSW. Based on my position in this regard, I understand that Ngā Tai Ora no longer seek the inclusion of limits or thresholds for the storage of certain hazardous substances across the various zones in the WDP that was outlined in their original submission.⁵

6. NORTHLAND REGIONAL POLICY STATEMENT

6.1 The NRPS is addressed in paragraph 13 of the s42A where the following is stated with reference to section 1.6 of the NRPS:

“13. The Northland Regional Policy Statement (NRPS) was made fully operative in 2018. There are no express policies or methods relating to hazardous substances in the NRPS because hazardous substances are not considered a regionally significant issue.”

6.2 While I acknowledge the reference to section 1.6 of the NRPS, I do not agree with the statement that there are no express policies or methods relating to hazardous substances in the NRPS. There are two policies, that specifically reference “hazardous substances” in the NRPS, which I consider are directly relevant to the consideration of PC91. These are policies 7.1.2 and 7.1.3 included in **Attachment 2** to my evidence and relate to the new subdivision, development and land use within areas subject to flooding and potential coastal hazards. These are discussed further by the Reporting Planner in paragraphs 107 and 108 of the s42A:

“107. In response to the submission from Ngā Tai Ora and as outlined in the s32 report, section 1.6 of the NRPS sets out that the regional responsibility for specifying objectives, policies and methods including rules, is delegated to the district council. There are no express policies or methods relating to hazardous substances in the NRPS, because hazardous substances are not considered a regionally significant issue. Yet, the NRPS does include reference to hazardous substances in relation to the policies for natural hazards. Therefore, NRPS policies require PC91 to control hazardous substances in areas subject

⁵ Referred to in paragraph 4.1(h) above.

to flooding and coastal hazards. However, it is important to emphasise, that this policy direction was prepared prior to the RLAA that removed the explicit function of local authorities to manage hazardous substances.

108. HSNO and HSW manage adverse effects in all instances, including areas susceptible to hazards. Therefore, the NRPS policies will primarily be achieved through HSNO and HSW. The WDP does contains rules which restrict buildings and activities in natural hazards areas. These rules will be reviewed through the Natural Hazards Plan Changes which are currently being drafted.”

6.3 I make the following comments in response to the above:

- (a) I acknowledge that the NRPS was prepared prior to the RLAA. However, PC91 includes HSUB-P3 which seeks:

“To ensure activities which use, store or dispose of hazardous substances are not located within sensitive environments and areas, unless it can be demonstrated that the residual risk to people, property and the environment will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level.”

“Sensitive environments and areas” are a term proposed to be defined in PC91, and include Flood Hazard and Coastal Hazard areas. Therefore, within Council’s own policy framework there is an acknowledgement that hazardous substances need to be managed within areas subject to flooding and coastal hazards.

- (b) The Reporting Planner’s statement that “...*HSNO and HSW manage adverse effects in all instances...*” is contrary to previous statements in the s32⁶ and s42A⁷ which generally state that residual risks relating to incompatible activities and reverse sensitivity should be addressed within PC91 / WDP.
- (c) If HSNO and HSW do manage adverse effects in areas susceptible to hazards, then in my opinion, further detail of how this is achieved should be provided by

⁶ See for instance, paragraphs 59, 61, 66, 79 and 89 of the s32.

⁷ See for instance, paragraphs 11, 42, 45, 46, 56 and 73 of the s42A.

Council. I consider that the WDP has an important role to play in giving effect to policies 7.1.2 and 7.1.3 of the NRPS and HSUB-P3 because:

- (i) It is the primary planning document for managing new subdivision and development on land in the Whangārei District; and
 - (ii) There is residual risk if appropriate rule triggers are not included within WDP.
- (d) While I agree with the Reporting Planner’s statement that “*the WDP does contain rules which restrict buildings and activities in natural hazard areas*”, there is no detailed analysis of the Natural Hazards Chapter rules and how they relate to PC91 and the management of hazardous substances within the s32 or s42A. This is problematic as, for instance, hazardous substances may not be located within a building – they could be stored outside with no building or earthworks required, and therefore not trigger the applicable rule that I assume is being referred to.⁸
- (e) I acknowledge that the Council is currently preparing the Natural Hazards Plan Changes, but they have not been notified and currently have no statutory weight. While this may be symptomatic of a Rolling Review⁹, in my opinion, it is important that suitable provisions remain in place to appropriately address the management of hazardous substances in natural hazard areas, until such time as they are updated in the Natural Hazards Plan Changes. This is particularly important given that PC91 is seeking to remove existing hazardous substances rules from the WDP.

7. OBJECTIVES AND POLICIES

HSUB-O1 Residual Risks

- 7.1 Ngā Tai Ora sought specific amendments to HSUB-O1. These are addressed in Section C of the s42A, where the Reporting Planner recommends the acceptance in part of Ngā Tai Ora’s requested relief.

⁸ As it is not stated in the s42A, I assume that the Reporting Planner is referring to NH-R4 Flooding.

⁹ Where chapters are progressed either individually or collectively in packages at different times.

- 7.2 I support the Reporting Planner’s recommended addition of “the health and safety of people”. However, I consider that the words “or expansion” should be included because the expansion of an existing hazardous substance facility has the potential to increase residual risk. For instance, a hazardous substance facility could be established centrally on a large site, but an expansion to take it closer to the boundary of a neighbouring property with sensitive activities and could significantly increase the residual risk to the health and safety of people and property and increase the risk of conflict between incompatible activities.
- 7.3 As currently worded, a hypothetical facility would be required to “use, store and dispose of hazardous substances”¹⁰ for the HSUB-O1 to apply. It is important in my opinion that this is addressed, as in some instances a hypothetical facility may do one or both, but not necessarily all three, and I do not consider that it is the intent of the objective to require a facility to do all three to be captured. This is also inconsistent with the wording of HSUB-O2 which states “...use, store or dispose of hazardous substances.” For the avoidance of any doubt in this regard, I recommend the replacement of the “and” with an “or” HSUB-O1 as outlined below.
- 7.4 As a result of the above, in my opinion HSUB-O1 should read as follows:¹¹

Property, the environment and the health and safety of people are protected from any unacceptable levels of residual risk associated with the location or expansion of facilities that use, store ~~and~~ or dispose of hazardous substances.

- 7.5 Notwithstanding the above, I otherwise support the objectives and policies as recommended by the Reporting Planner in the s42A. I consider that the objectives are the most appropriate way of achieving the purpose of the RMA and other higher order documents. I consider that the policies are appropriate for achieving the objectives, however, the lack of rules to give effect to the policies and objectives is what I consider to be the fundamental issue for PC91.

¹⁰ *Underlined and italicised text* indicates my emphasis added.

¹¹ This below outlines only my recommended track changes. I have not included tracked changes of the text already recommended by the Reporting Planner that I have agreed with above and below.

8. NO RULES

The status quo

8.1 No rules are proposed as part of PC91, with the two existing rules within the operative WDP, HSUB-R1 which references Appendix 8, and HSUB-R2 which refers to the movement of hazardous substances between sites, being proposed for deletion.

8.2 The Reporting Planner states at paragraph 43 of the s42A:

“43. Effectively PC91 is seeking to maintain the status quo. The Operative Hazardous Substances Chapter does not contain any reverse sensitivity rules, so PC91 is not proposing to remove any rules relating to reverse sensitivity.”

8.3 In my opinion, this statement is incorrect for the following reasons:

- (a) PC91 is not maintaining the status quo, as it recommends the deletion of HSUB-R1 and HSUB-R2 and further significant amendments to the current objectives and policies;
- (b) While there are issues with Appendix 8 provisions that I have identified previously,¹² I consider that HSUB-R1 and Appendix 8 is, in part, designed to manage reverse sensitivity effects in the context of the operative WDP; and
- (c) The s32 assesses two options, Option 1 being the status quo (the operative provisions (policies and rules) within the WDP), and Option 2 the proposed provisions. It identifies Option 2 as the preferred option, confirming that PC91 is not seeking to maintain the status quo.

Council’s proposed approach to PC91

8.4 Council has undertaken a rolling review of the WDP, which commenced in 2009. This has meant chapters have been reviewed over a number of years either individually or in combined packages. The two most significant packages include the Rural Plan Changes, which were made operative in 2018, and the more recent U&S Plan

¹² See paragraph 5.7 of this statement of evidence.

Changes, which were deemed operative in early 2023.¹³ During the preparation and s32 analysis of both these packages, I understand that zone-based analysis was undertaken on the basis of the operative WDP Appendix 8 provisions being in place, and that this was relied on for the management of hazardous substances. Below is a passage from the overall s32 Report for the U&S Plan Changes:¹⁴

“158. The WDP contains provisions relating to hazardous substances to manage potential adverse effects. The WDP provisions refer to WDP Appendix 8 which contains the performance standards for hazardous substances and the method of calculating the levels of hazardous substances. The Urban Plan Changes propose to retain the operative provisions and Appendix 8 but to relocate the provisions into a single “Hazardous Substances” Chapter. This approach will retain the status quo but will remove the repetitiveness of restating the hazardous substances rules within each zone chapter. This is consistent with the draft Standards.

159. A full review of the hazardous substances provisions is intended as part of a separate plan change in the rolling review, which will enable the provisions to be reviewed comprehensively. The current restructuring is proposed as an interim measure to simplify and streamline the district plan.”

8.5 As is evident in paragraph 159 of the Council U&S Plan Changes s32 above, at the time of the U&S Plan Changes, the intention was to undertake a comprehensive review of the hazardous substances’ provisions, presumably as part of PC91. I do not consider that the PC91 s32 provided by Council constitutes a comprehensive review of the provisions to manage residual risk and reverse sensitivity, given the approach that Council has elected to take. As Council are relying on the zone-based provisions, in my opinion, a comprehensive review of all existing zones and activities should have been undertaken in the s32 to demonstrate that there are sufficient activity-based provisions to give effect to the objectives and policies. In my view, this was a significant gap in the analysis undertaken in Council’s s32. For example, there are a number of

¹³ Following the resolution of the Noise and Vibration Environment Court Appeal from KiwiRail and Waka Kotahi on – see ENV-2020-AKL-000131. [Available online here.](#)

¹⁴ Urban Plan Changes: Technical Introduction Section 32 Evaluation Report – Prior to Notification dated March 2019 – paragraph 158-159 on pages 40 and 41. [Available online here.](#)

references to “zone-based rules”¹⁵ throughout Council’s s32, but there was no actual analysis of what these are, and how they would apply in a manner that would trigger consideration of the proposed HSUB objectives and policies.

8.6 In relation to this, the Reporting Planner states in paragraph 46 of the s42A:

“46. In my opinion the zone-based approach in the WDP is the most appropriate way of managing the establishment of hazardous substances/facilities adjacent to and within sensitive environments to ensure acceptable levels of risk of off-site adverse effects; and preventing sensitive or incompatible activities establishing in areas where hazardous facilities/activities are located where these activities have the potential to constrain or curtail the operation of a lawfully established hazardous facility. Appendix 2 details the zones which have a sensitive activity rule, along with the activity statuses for activities that may use, store, manufacture and/or dispose of hazardous substances. I also note that despite Ngā Tai Ora’s submission raising concerns about PC91’s approach, it does not provide any evidence of instances where the proposed approach would be inefficient and ineffective.”

8.7 In my view, it is important that there are clear rules to trigger consideration of the proposed HSUB objectives and policies. Based on the above paragraph, I understand that Council and the Reporting Planner are essentially seeking to rely on the existing rule framework in the Zone Chapters of the WDP to address residual risk associated with reverse sensitivity effects and incompatible activities.

8.8 The Reporting Planner has included a table in Appendix 2 of the s42A in an attempt to demonstrate that these rules do exist, and that they will be suitably triggered to enable consideration of the proposed HSUB objectives and policies. In my opinion, the Reporting Planner’s inclusion of Appendix 2 is helpful, although I consider that it highlights some fundamental gaps that I outline below.¹⁶

¹⁵ See for instance, Section 5.5.2 Summary of Rules, paragraph 89 on page 19 of the s32.

¹⁶ The matters I outline below are not an exhaustive list, as there are a number of such issues that I have identified within the table. I have simply highlighted what I consider to be the key ones to demonstrate that the table is incomplete, and ultimately inadequate to rely on as proof that the zone-based approach is the most appropriate.

Sensitive activities

8.9 The second column of the table in Appendix 2 of the s42A includes “sensitive activity rules.”¹⁷ Below are some examples of the gaps that I have identified on review of Appendix 2 with regard to “sensitive activity rules”:

- (a) The Settlement Zone (“**SETZ**”) includes 3 Sub Zones: Settlement Zone Residential, Settlement Zone Centre and Settlement Zone Industry. The table in Appendix 2 only identifies and assesses SETZ-R49.¹⁸ Within the Centre Sub-Zone, residential units, care centres and educational facilities are all permitted.
- (b) Within the Commercial Zone (“**COMZ**”), the table correctly identifies that residential activity is non-complying. While care centres and hospitals are also discretionary, educational facilities are permitted (subject to some minor landscaping requirements).
- (c) Within the Mixed-Use Zone (“**MUZ**”), the table highlights that residential units are permitted. Educational facilities are also permitted.
- (d) Within the City Centre Zone (“**CCZ**”), the table highlights that residential units are permitted. Care centres and educational facilities are also permitted.
- (e) Within the Local Centre Zone (“**LCZ**”) and Neighbourhood Centre Zone (“**NCZ**”), nothing is included within the table, but both residential units and educational facilities are permitted.

8.10 These are several examples that I have identified on a brief review, and it is possible that there are more. In my opinion, it is important to ensure that all “sensitive activities” are captured to ensure that appropriate consideration can be given to HSUB-P4 which seeks:

¹⁷ Sensitive activities are already defined in the Definitions Chapter – “means, childcare and education facilities, residential activity and hospitals.” There are also separate definitions for “care centre”, “educational facility”, “residential activity” and “hospitals” in the Definitions Chapter.

¹⁸ There appears to be a rule reference error in the table where it references SETZ-R39 which is the General Community Rule within the Settlement Zone Centre Sub-Zone. I have assumed that the correct rule intended to be referenced is SETZ-R49 Sensitive Activity within the Settlement Zone Industrial Sub-Zone.

*“To avoid reverse sensitivity effects **by requiring sensitive activities** to be appropriately designed and located in relation to existing areas and activities which use, store or dispose of hazardous substances.” [My emphasis added]*

Industrial activities and commercial grouping – service stations

- 8.11 The third and fourth column of the table in Appendix 2 of the s42A includes “industrial activities grouping” and “commercial grouping – service stations.”
- 8.12 No explanation is provided within the s42A as to why the table this has been limited to these activities. On review of the s32¹⁹, it appears that this is based on Council’s own analysis that the use, storage or disposal of hazardous substances, including major hazardous facilities (“MHF”)²⁰, are generally located within Industrial Zones, and because service stations also use and store hazardous substances. In my opinion, it is important to ensure that all relevant activities are captured to ensure that appropriate consideration can be given to HSUB-P2 which seeks:

*“To ensure **activities which use, store or dispose of hazardous substances are not located in areas** where they may adversely affect the health, safety and wellbeing of people and communities, unless it can be demonstrated that the residual risk to people and communities will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level.” [My emphasis added].*

- 8.13 In my opinion, Council’s approach to narrowing this down to essentially two broad activity definitions, is risky and does not necessarily capture the full range of activities that could generally use, store or dispose of hazardous substances. For instance, “trade retail” is a specific activity identified within the “commercial activities” grouping in the Definitions Chapter as follows:

“means motor vehicle sales, garden centres, marine retail, trade suppliers and hire premises.”²¹

¹⁹ See paragraph 66 and 67 of Council’s s32.

²⁰ The two MHF being Channel Terminal Services Limited – Port Marsden Highway, Ruakaka (upper tier) and Wiri Oil Services Limited – Port Marsden Highway, Ruakaka (lower tier).

²¹ All of these activities have their own definitions.

8.14 “Trade suppliers” are defined as:

“means an activity supplying one or more of the categories below, engaged in sales to businesses and institutional customers but may also include sales to the general public:

a. automotive suppliers;

b. building suppliers;

c. catering equipment suppliers;

d. farming and agricultural suppliers;

e. industrial clothing and safety equipment suppliers;

f. landscape suppliers; and

g. office furniture, equipment and systems suppliers.”

8.15 Many of these activities could, and in my opinion often would, use, store or dispose of hazardous substances. Despite this, the “trade retail” activity is not used in the table in Appendix 2. This is problematic because it means that there has been no analysis of where these activities occur within the various zones. One example that I have identified on a brief review, is that “trade suppliers” are a permitted activity subject to landscaping requirements and being a maximum of business net floor area of 600m² in the MUZ. Within the MUZ “residential units” and “educational activities” are also permitted, creating the prospect of a reverse sensitivity / incompatible activity conflict that the HSUB objectives and policies are seeking to avoid and manage.

8.16 In the absence of a comprehensive activity-based analysis by Council, there could, and likely will, in my opinion, be more instances where this occurs.

Activities between zones

8.17 While the Appendix 2 table analyses activities within zones, it does not account for the zone interface, or management of activities between zones.

8.18 An example of where this could be in an issue, is between the interface between the Light Industrial Zone (“LIZ”) and General Residential Zone (“GRZ”).²² To demonstrate this, I have provided a screenshot of the WDP online zone maps in **Figure 1** below, illustrating a LIZ and GRZ zone interface in Raumanga within central Whangārei City. I have chosen this example as it is located within the wider areas subject to high deprivation and vulnerability in the maps in Attachment 2 of Mr Garnham’s evidence. While there are rules²³ within the LIZ requiring setbacks for some industrial activities²⁴ from Residential Zones, including the GRZ, there are no equivalent rules requiring setbacks for “sensitive activities” in the Residential Zones from existing industrial activities that may use, store or dispose of hazardous substances in the LIZ.

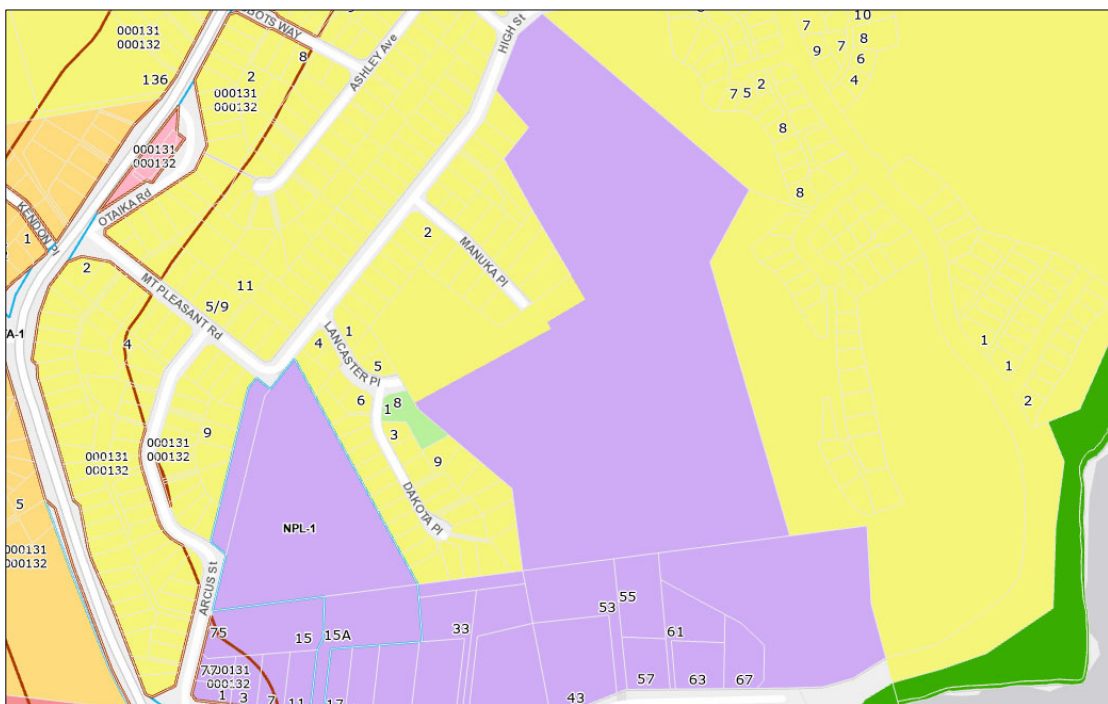


Figure 1 – Zoning screenshot in the Raumanga Area showing interface between LIZ (light purple) and GRZ (light yellow) (Source: Whangārei District Council Online Maps).

8.19 Another example of where this could be an issue is within the interface between Rural and Residential Zones. As is outlined in the evidence of Mr Garnham, rural production

²² This includes the Large Lot Residential Zone, Low Density Residential Zone, General Residential Zone and Medium Density Zone.

²³ See for instance LIZ-R8 – 11 clause 3.

²⁴ Noting my comments in paragraphs 8.11 – 8.16 above that there may be other activities that should be captured.

activities often use, store or dispose of hazardous substances such as pesticides which have the potential to adversely affect the health and safety of people. While the Rural Zones generally contain “sensitive activity” setback rules²⁵, the Residential Zones that often surround the Rural Production Zone (“**RPOZ**”), do not contain any sensitive activity rules relating to setbacks from the RPOZ.

- 8.20 Again, the above are just two examples that I have identified and there may be more in the absence of a detailed analysis. In my opinion, it is important that this is addressed in PC91 in order to give effect to HSUB-P2 and HSUB-P4.

Missing zones

- 8.21 The Appendix 2 table is not comprehensive as it misses the following Special Purpose zones:

- (a) Airport Zone;²⁶
- (b) Marsden Primary Centre Zone;²⁷ and
- (c) Ruakaka Equine Zone.

9. OTHER SENSITIVE ENVIRONMENTS AND AREAS

- 9.1 I have already addressed the inadequacies in the PC91 approach relating to Flood Hazard Areas and Coastal Hazard Areas in Section 6 above.

- 9.2 There are further issues with other areas identified within the definition of “sensitive environments and areas”. For instance, within the Natural Features and Landscapes

²⁵ Such as the Rural Lifestyle Zone – see RLZ-R11, Rural Production Zone – see RPROZ-R9, Future Urban Zone – see FUZ-R10. I note that the Settlement Zone – Residential Sub-Zone does not contain such a rule and is often located adjoining the Rural Production Zone.

²⁶ Although I acknowledge that this is discussed in paragraph 68 of the s32.

²⁷ I acknowledge private plan change PC150 has been lodged and is subject to an Environment Court Appeal that I am involved in, but the rules in the MPC are still operative until the proposed Marsden City Precinct is made operative.

Chapter²⁸ and Historic Heritage Chapter²⁹ I can find no reference or rule triggers for activities which use, store or dispose of hazardous substances.

- 9.3 As a result, I do not understand how HSUB-P3 can be achieved if there is not a relevant rule trigger requiring resource consent for the use, storage or disposal of hazardous substances within these identified “sensitive environments and areas.”

10. DEFINITIONS

- 10.1 I support including a definition of “residual risk” as I consider that this is a key term in the HSUB chapter and the wording proposed by the Reporting Planner seems clear and logical.

11. SECTION 32 EVALUATION

- 11.1 In my opinion, Ngā Tai Ora’s submission that the s32 is inadequate is valid because, as outlined in my evidence above, there are significant gaps in the approach to PC91 that I consider need to be addressed in order to justify the proposed approach.
- 11.2 I consider that only identifying and assessing two options in the s32 is narrow in its focus, and has resulted in a minimal evaluation of the efficiency and effectiveness of other potentially reasonably practicable options for achieving the objectives and policies.
- 11.3 For instance, I consider that Council should have assessed other alternative approaches proposed by other local authorities such as Far North District Council in the Proposed Far North District Plan (“**FNDP**”).³⁰ This approach includes a definition of “significant hazardous facility” and includes rules requiring resource consent where these are located within a sensitive environment or within 250m from a “sensitive

²⁸ This includes provisions for High Natural Character Areas, Outstanding Natural Character Areas, Outstanding Natural Landscapes, and Outstanding Natural Features.

²⁹ This includes provisions for Heritage Buildings, Sites and Objects.

³⁰ I acknowledge that PC91 was approved for notification by Council on 28 July 2022, and that the Proposed FNDP was only notified on 27 July 2022. However, as identified in paragraph 18 of the s42A, section 32 evaluation requirements are ongoing throughout the plan change process. Ngā Tai Ora specifically identified the Proposed FNDP approach on page 4 of its submission.

activity.” There is also a requirement that new “sensitive activities” cannot be located within 250m of a “significant hazardous activity.”³¹

12. RECOMMENDED CHANGES

12.1 I consider that the inadequacies I have identified above are significant, and need to be addressed by further more detailed analysis by Council. Notwithstanding the minor amendments I have outlined to HSUB-O1, until this is completed, I consider that I am unable to recommend a full suite of detailed amendments to the PC91 provisions to conclude that that they are the appropriate to achieve the proposed HSUB objectives.

12.2 To assist the Commissioner, I do however highlight the following high-level options:

- (a) Option 1 – further consequential changes to update the zone-based rules to ensure that all “sensitive activities” and activities that generally use, store or dispose of hazardous substances are adequately captured by appropriate rule triggers to enable the consideration of the HSUB objectives and policies. However, given the scale of the changes that may be required, I suspect that this may have issues as to the scope of PC91 and submissions that go beyond my area of expertise, and may require specific legal advice.
- (b) Option 2 – Include overall provisions for setbacks for “sensitive activities” from “significant hazardous facilities” and vice versa, similar to the approach applied in the Proposed FNDP.
- (c) Option 3 – placeholder provision requiring discretionary activity consent for “significant hazardous facilities” in “sensitive environments and areas.” This could remain until Council completes other plan changes that it has signalled within its Rolling Review.³²

12.3 Depending on the Council’s response to my evidence and the Commissioner’s position, it may be that a combination of the above options is identified as the most efficient and effective option.

³¹ For clarity, I have provided the Proposed FNDP approach as an example for consideration. This does not necessarily mean that I agree with the 250m setback, as I am unaware of the justification for this setback.

³² For instance, the Natural Hazards Plan Changes discussed in the s42A.

12.4 I am happy to work with Council and the Reporting Planner prior to or following the hearing to assist with this if that is the direction of the Commissioner.

David Eric Badham

Date: 2 March 2023

LIST OF ABBREVIATIONS USED IN THIS STATEMENT OF EVIDENCE:

CCZ	City Centre Zone
COMZ	Commercial Zone
Council	Whangārei District Council
GRZ	General Residential Zone
HSNO	Hazardous Substances and New Organisms Act 1996
HSUB	Hazardous Substances Chapter
HSW	Health and Safety at Work Act 2015
LCZ	Local Centre Zone
LIZ	Light Industry Zone
MHF	Major Hazardous Facility
MUZ	Mixed Use Zone
NCZ	Neighbourhood Centre Zone
Ngā Tai Ora	Ngā Tai Ora - Public Health Northland
NRPS	Northland Regional Policy Statement
PC91	Plan Change 91 – Hazardous Substances
RLAA	Resource Legislation Amendment Act 2017
RMA	Resource Management Act 1991
RPOZ	Rural Production Zone
S32	Section 32 of the RMA / Council's Section 32 Evaluation Report
S42A	Section 42A of the RMA / Council's Section 42A Report
SETZ	Settlement Zone
U&S Plan Changes	Urban and Services Plan Changes
WDP	Whangārei District Plan

Attachment 1 – David Eric Badham CV



David Badham

Partner/Northland Manager

BPlan (1st Class Hons); MNZPI

David has over 12 years' experience as a planner across a number of fields including policy and plan development, land use and subdivision and iwi and hapu engagement. He is skilled in working with multi-disciplinary teams and bringing together a diverse range of stakeholders to achieve positive planning outcomes. David's experience includes applying for and processing complex resource consent applications, input into regional and district plan reviews on behalf of private clients and councils, preparing non-statutory strategies and documents, environmental monitoring and iwi and hapu engagement.

Projects / Key Experience

Marsden City Private Plan Change: Lead planning consultant for the private plan change for the establishment of a town centre and associated mixed use, commercial and residential activity on a 127ha site.

Whangarei District Council District Plan Rolling Review: Reporting planner on behalf of council for topics including strategic rural industries zone, rural urban expansion zone, minerals among others. This included undertaking section 32 evaluations and preparing section 42A hearing reports through to hearings and Environment Court appeals and mediation.

Far North District Plan Review: Preparation of section 32 evaluations and provisions for the minerals, quarrying and earthworks topics.

Designations Review: Lead planning consultant for Northpower Limited (for their Environment Court appeals in the review of their designations).

Te Tai Tokerau (Northland) Papakāinga Toolkit: Lead consultant on the toolkit which provides comprehensive advice to Māori land owners seeking to develop communal housing on their ancestral lands.

Te Oneroa-a-Tōhē (90 Mile Beach) Beach Management Plan: Planning consultant for the development of the Te Oneroa-a-Tōhē Beach Management Plan. The beach is subject to a post treaty settlement joint management agreement between iwi and councils and is the first of its kind in Aotearoa / New Zealand.

Expertise

- Plan reviews and policy development
- Iwi / hapu engagement
- Resource consent preparation
- Council hearing evidence and presentation
- Environment Court appeals, mediation and hearings
- Preparation of non-statutory strategies and documents
- Processing subdivision and land use resource consents on behalf of councils

Affiliations

- Full Member of the NZ Planning Institute
- Winner NZ Planning Institute Best Practice Award Non-Statutory Planning 2018 for Te Tai Tokerau Papakāinga Toolkit

Attachment 2 – Northland Regional Policy Statement Provisions

Bold underlined text indicates where my emphasis has been added below.

7.1.2 Policy – New subdivision and land use within 10-year and 100- year flood hazard areas

New subdivision, built development (including wastewater treatment and disposal systems), and land use change may be appropriate within 10-year and 100-year flood hazard areas provided all of the following are met:

(a) Hazardous substances will not be inundated during a 100-year flood event.

(b) Earthworks (other than earthworks associated with flood control works) do not divert flood flow onto neighbouring properties, and within 10-year flood hazard areas do not deplete flood plain storage capacity;

(c) A minimum freeboard above a 100-year flood event of at least 500mm is provided for residential buildings.

(d) Commercial and industrial buildings are constructed so as to not be subject to material damage in a 100 year flood event.

(e) New subdivision plans are able to identify that building platforms will not be subject to inundation and / or material damage (including erosion) in a 100-year flood event;

(f) Within 10-year flood hazard areas, land use or built development is of a type that will not be subject to material damage in a 100-year flood event; and

(g) Flood hazard risk to vehicular access routes for proposed new lots is assessed.

7.1.3 Policy – New subdivision, use and development within areas potentially affected by coastal hazards (including high risk coastal hazard areas)

Within areas potentially affected by coastal hazards over the next 100 years (including high risk coastal hazard areas), the hazard risk associated with new use and development will be managed so that:

(a) Redevelopment or changes in land use that reduce the risk of adverse effects from coastal hazards are encouraged;

(b) Subdivision plans are able to identify that building platforms are located outside high risk coastal hazard areas and these building platforms will not be subject to inundation and / or material damage (including erosion) over a 100-year timeframe;

(c) Coastal hazard risk to vehicular access routes for proposed new lots is assessed;

(d) Any use or development does not increase the risk of social, environmental or economic harm (from coastal hazards);

(e) Infrastructure should be located away from areas of coastal hazard risk but if located within these areas, it should be designed to maintain its integrity and function during a hazard event;

(f) The use of hard protection structures is discouraged and the use of alternatives to them promoted; and

(g) Mechanisms are in place for the safe storage of hazardous substances.