

**BEFORE THE HEARING COMMISSIONER
AT WHANGAREI**

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

AND

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AND

IN THE MATTER of the Proposed Plan Change 91 to the Whangarei District Plan

**ORAL STATEMENT BY LYNETTE PEARL WHARFE
FOR HORTICULTURE NEW ZEALAND
9 MARCH 2023**

1. INTRODUCTION

1. This statement is a summary of my Evidence in Chief (EIC) dated 2 March 2023 on PC91 to the Whangarei District Plan.
2. I also respond briefly to matters raised in other Statements of Evidence, particularly the statement by Mr Badham for Nga Tai Ora Public Health.

2. SUMMARY OF EVIDENCE

- 2.1 I support in principle the approach of the council to PC91 in that the plan change seeks to manage risks from the storage, use or disposal of hazardous substances.
- 2.2 PC91 does not have explicit rules for hazardous substances because:
 - (a) Management is addressed through other legislation and regulations
 - (b) The zone rules will provide for consideration of reverse sensitivity and inappropriate location of activities.
- 2.3 I have set out in my evidence the types of controls that are applied through HSNO which manages risks from hazardous substances. These form a comprehensive suite of provisions.
- 2.4 A question has arisen as to whether there are any gaps where regulations are insufficient and rules should be included in the district plan.
- 2.5 While a residual risk may exist it should not trigger a rule in the district plan unless there is a likely adverse effect to arise. Council considers that these risks are managed through the zone rules and I support that approach.
- 2.6 I seek some changes to wording of provisions in my evidence:
 - (a) Amend HSUB-O2: *Sensitive activities are appropriately located to avoid reverse sensitivity effects and unacceptable residual risk from established activities which use, store or dispose of hazardous substances.*

This change is to be clearer about the need to avoid reverse sensitivity effects and was sought in the submission of the Fuel Companies.
 - (b) Amend HSUB-P2: *To ensure that activities which use, store or dispose of hazardous substances manage residual risk to people and communities by avoiding such risk or where avoidance is not practicable, remedied or mitigated to an acceptable level.*

This change is to better word that activities can use store or dispose of hazardous substances as long as residual risks are managed.
 - (c) Amend HSUB-P3: *To ensure activities which use, store or dispose of hazardous substances which are located within sensitive environments and*

areas manage the residual risk to people, property and the environment by avoiding such risk, or where avoidance is not practicable, remedied or mitigate to an acceptable level.

The change to HSUB-P3 changes the presumption that it is acceptable to locate within sensitive environments as long as residual risks are avoided remedied or mitigated.

No evidence has been presented by the Council that seeks to preclude use storage or disposal of hazardous substances within sensitive environments.

I understand that the matter will be addressed in respect of Natural Hazards through a review of the natural hazard provisions.

- (d) Accept recommendation in the s42A Report to include a definition for residual risk: *Means any risk of an adverse effect after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, The Land Transport Act 1998, the Health and Safety at Work Act 2015 and regional planning instruments have been complied with.*

I note that the evidence of Sarah Westoby for the Fuel Companies seeks that the definition is slightly amended to refer to residual risks beyond the site boundary:

Means any risk of an adverse effect beyond the site boundary after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, The Land Transport Act 1998, the Health and Safety at Work Act 2015 and regional planning instruments have been complied with.

I support the intent that the adverse effects are those which occur off site.

3. EVIDENCE OF NGA TAI ORA PUBLIC HEALTH

- 3.1 I acknowledge the statement in Para 5.7 of Mr Badham's evidence that Nga Tai Ora Public Health (Public Health) are no longer seeking rules with limits and thresholds in PC91. That position is supported.
- 3.2 Mr Badham considers that there are gaps in the Council's s32 analysis in terms of the approach to PC91.
- 3.3 It should be noted that a gap in the Council's analysis is not the same as a gap in the provisions that the HSNO and HSWA legislation does not manage. They should not be taken to be the same gaps.
- 3.4 I note that Mr Badham makes reference to the Significant Hazard Facilities in the Proposed Far North District Plan and seems to suggest that PC91 should include similar provisions.

- 3.5 The s32 Report at Para 89 states that the council's planning analysis did not identify any major hazardous facilities that required specific protection buffers around them over and above the zone-based rules that manage reverse sensitivity effects. The two major hazard facilities in Whangarei District are located in the Heavy Industrial Zone and the provisions of that zone will apply.
- 3.6 Therefore there does not appear to be any necessity to include specific provisions for Significant Hazard Facilities.
- 3.7 Mr Badham seeks more detailed analysis by council and seeks to work with the Council on this. It should be noted that if any additional work is to be undertaken it must involve all submitters and also consider the scope of submissions.
- 3.8 I do note that the district plan role is to manage the land use associated with hazardous substances where necessary. The Regional Council manages discharges to air and there is a comprehensive package to manage agrichemical use in the Regional Plan. Therefore discussion regarding such discharges is not relevant in the district plan context (e.g Garnham 6.2 - 6.5).
- 3.9 In addition, it is not the district plan's function to enforce regulations under other legislation or regulation. Non-compliance with HSNO should not trigger a district plan response.

4. CONCLUSION

- 4.1 I support PC91 with the changes I have set out above to better provide for the use, storage or disposal of hazardous substances in the Whangarei District.