

Proposed Plan Change 91: Hazardous Substances

Section 42A Hearing Report

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1. Introduction

1. This report has been prepared in accordance with section 42A (**s42A**) of the Resource Management Act 1991 (**RMA**) and is the Hearing Report for the Whangārei District Council's (**WDC**) Proposed Plan Change 91 (**PC91**). This report considers matters raised by submissions, received on the proposed plan change and makes recommendations on those submissions. Where appropriate, the report cross-references the Section 32 Evaluation (**s32**), analysis of any background material and legislative discussions.
2. This s42A report has been prepared by Taya Lauren Baxter. I hold a Bachelor of Arts (Hons) in Geography from the University of Auckland. I am an Associate Member of the New Zealand Planning Institute. I began work as a Planner in the District Plan Team at Whangārei District Council in March 2019. My role as part of the Team includes providing planning and policy advice, preparing and processing plan changes, research, consultation and reporting to support the maintenance of the Whangārei District Plan. I commenced employment with Whangārei District Council four and a half years prior to beginning my current role. The roles I held during that time were Planning Assistant - RMA Consents and Support Assistant - District Plan. Additional roles include three and a half years employment as a Planning Policy Officer for Mole Valley District Council in England, where my duties included contributing to the development and delivery of spatial planning policies, and as a Policy Analyst – Water and Soil for three years at Northland Regional Council, where my responsibilities included the preparation and processing of differing aspects of the Regional Water and Soil Plan.
3. I confirm that the evidence on planning matters that I present is within my areas of expertise and I am not aware of any material facts which might alter or detract from the opinions I express. I have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. I have also read and am familiar with the Resource Management Law Association / New Zealand Planning Institute "Role of Expert Planning Witnesses" paper. The opinions expressed in this evidence are based on my qualifications and experience and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that position. I have no vested interest in the outcome of PC91 nor any conflict of interest to declare.

2. Description of the Plan Change as Notified

4. Regional and District Councils have historically had an explicit function to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under the RMA. Since this function was first included in the RMA, the following Acts have been passed:
 - Hazardous Substances and New Organisms Act 1996 (**HSNO**)
 - Health and Safety at Work Act 2015 (**HSW**)
 - The Resource Legislation Amendment Act 2017 (**RLAA**)
5. As a result of these Acts, many existing RMA controls on hazardous substances duplicate those in place under other legislation. The intent of the change to the RLAA was to ensure councils only place

additional controls on hazardous substances if they are necessary to control effects under the RMA that are not covered by the HSNO and HSW Acts.

6. PC91 reviews the hazardous substances provisions in the WDP within the new legislative framework and proposes removing rules on hazardous substances that duplicate other regulations. PC91 also proposes to retain objectives and policies relating to hazardous substances to ensure that any issues are appropriately assessed at the resource consent stage.
7. A comprehensive description of PC91 is included in the s32 report (see **Appendix 3**). The notified text of PC91 is provided as Appendix 1 to the s32 report.

3. Background

8. S79 of the RMA sets Councils the requirement to review district plans. Councils must complete a review of all district plan provisions within any 10 year time period. The WDP became operative on 3 May 2007, after eight years of formulation. The data that the Hazardous Substances Chapter of the WDP was based upon are therefore over ten years old. Monitoring of the provisions related to hazardous substances in the WDP has identified areas of inconsistency and ineffectiveness.
9. S79 of the RMA provides the opportunity for Councils to undertake rolling reviews of district plan provisions. Using this opportunity to improve the integrity of the WDP, a rolling review process has been implemented. PC91 is proposed as part of the WDP rolling review.

4. Statutory Considerations

Resource Management Act 1991

10. The RLAA removed the function of local authorities to control the adverse effects of the use, storage, disposal, and transportation of hazardous substances under the RMA. However, Councils still have a broad function of achieving integrated management and may exercise controls on hazardous substances under the RMA, if existing HSNO or HSW controls inadequately address the environmental effects of hazardous substances.
11. The RLAA has been factored into PC91 as it seeks the removal of any provisions that duplicate the requirements of HSNO or HSW, whilst still seeking to achieve integrated management by addressing the residual risks associated with hazardous substances to people, property and the environment and including land use controls that specifically address the risk of reverse sensitivity effects to protect established activities and their operations.

National Policy Statements or National Environmental Standards

12. There are no National Policy Statements or National Environmental Standards directly relevant to the management of hazardous substances. However, the New Zealand Coastal Policy Statement 2010 and the National Policy Statement on Freshwater Management 2020 are indirectly relevant. As hazardous substances can have adverse effects on the coastal environment, water bodies and freshwater ecosystem, the proposed objectives and policies of PC91 coupled with the other provisions

in the Coastal Environment Chapter and applicable zones, ensure that hazardous substances are appropriately managed within these sensitive environments.

Northland Regional Policy Statement

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 issue¹.

Iwi and Hapū Management Plans

14. S74(2A) of the RMA requires territorial authorities to take into account any relevant planning document recognised by an iwi authority to the extent that its content has a bearing on the resource management issues of the district.
15. Iwi and Hapū Management Plans were referenced in the s32 report. A list of the formally recognised iwi and hapū management plans for the Whangārei District is provided below:
- Ngātiwai – “Te Iwi o Ngatiwai: Iwi Environmental Policy Document 2007”
 - Ngāti Hine – “Ngati Hine Iwi Environmental Management Plan 2008”
 - Patuharakeke – “Patuharakeke Hapu Environmental Management Plan 2014”
 - Ngāti Hau – “Hapu Environmental Management Plan 2016”
 - Te Uriroi Hapū Environmental Management Plan Whatiriri Hapū Environment Plan 2016.
16. Having reviewed each document in the context of the proposed plan change I consider that the proposed provisions of PC91 are generally consistent with, and in some respects will help achieve the outcomes sought in these documents.

5. Section 32 Evaluation

17. WDC completed an evaluation of PC91 in accordance with s32 of the RMA. S32(1) states that an evaluation must:
- a) *examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by —*
 - i. *identifying other reasonably practicable options for achieving the objectives; and*
 - ii. *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - iii. *summarising the reasons for deciding on the provisions; and*

¹ Refer to section 1.6 of NRPS.

- c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

An assessment under subsection s32(1)(b)(ii) must—

- a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for —*
- i. economic growth that are anticipated to be provided or reduced; and*
 - ii. employment that are anticipated to be provided or reduced; and*
- b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*
- c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

18. Evaluation in terms of s32 is ongoing and must be undertaken to confirm the appropriateness of each plan change. Where required, recommendations in this report which differ from the notified provisions are supported by further evaluation in terms of section 32AA of the RMA (**s32AA**).
19. The s32 report included an evaluation with regard to Part 2 of the RMA which includes:
- The purpose of the RMA as contained in s5;
 - S6 - Matters of National Importance that are required to be recognised and provided for;
 - S7 - Other Matters that require particular regard in achieving the purpose of the Act; and
 - S8 - Treaty of Waitangi.
20. The s32 report also considered s31 of the RMA which sets out the functions of territorial authorities in giving effect to the purpose of the RMA.

6. Purpose of Report

21. This report considers submissions received in relation to PC91. It has been prepared in accordance with s42A of the RMA to assist the Commissioner with deliberations on submissions and further submissions.
22. The report includes recommendations to the Commissioner to accept, accept in part or reject individual submissions. Where appropriate, it also includes recommended changes to the plan change provisions. In response to submissions, I have in every instance considered efficiency, effectiveness and appropriateness and my recommendations represent the most appropriate response in accordance with s32AA. In accordance with section 32AA(1)(c), the assessment of each change has been undertaken at a level of detail that corresponds to the scale and significance of the proposed changes.
23. When making its decision, WDC is required under clause 10 of the First Schedule of the RMA to give reasons for allowing or not allowing any submissions (grouped by subject matter or individually). The

decisions of the council may also include consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.

7. Structure of the Report

24. The report assesses the submissions and further submission received by WDC on PC91.
25. The submissions are assessed in the following order:
 - A. Proposed Plan Change
 - B. Issues Section
 - C. HSUB-O1
 - D. HSUB-02
 - E. HSUB-P1
 - F. HSUB-P2
 - G. HSUB-P3
 - H. HSUB-P4
 - I. Definitions
 - J. Consequential Amendments
 - K. Other Decisions Requested
26. Responses have not been written for all further submissions because further submissions are restricted to stating either support or opposition to the original submissions of other submitters. Where further submissions present additional evidence these have been dealt with in that part of the report where the primary submission point has been addressed.
27. The assessment of submissions generally follows the following format:

Submission information – Matters raised in the submissions with a brief outline of relief sought and reasons for relevant submissions.

Discussion – Discusses responses to the relief sought.

Further Submissions – Table summarising responses received.

Recommendation – Outlines a recommendation to the Commissioner in response to the relief sought.
28. Any recommended changes to the notified text as a result of submissions are included in the relevant sections of this report. Any recommended additions to the notified text are shown as underlined and deletions as strike-through.

8. Timeline of Plan Change 91

29. Table 1 below outlines a chronology of events relevant to the proceedings of the plan change.

Table 1 – Chronology of Events	
Event	Date
Draft feedback on proposed plan change	30 March 2022 to 6 May 2022
Date of public notification of plan change for submissions	24 August 2022
Closing date for submissions	21 September 2022
Date of public notification for further submissions	12 October 2022
Closing date for further submissions	14 November 2022
Hearing commences	9 March 2023

30. There were no extensions to the submission period and/or further submission period approved by WDC. The summary of decisions requested was sent to the original submitters and was placed on the WDC website. A public notice notifying the availability of the summary of decisions requested on PC91 was placed in the Whangārei newspaper 'The Leader'.
31. Six original submissions and four further submissions were received on PC91. Please refer to **Appendix 5** for submissions and further submissions, **Appendix 4** for a summary of decisions requested. No late submissions were received.
32. Of the four further submissions received, they were all from people who had made an original submission.

9. Consideration of Submissions

A. Proposed Plan Change

Submission Information

33. Chancery Green on behalf of Channel Infrastructure NZ Limited (**Channel Infrastructure NZ**) (**Sub 2/3**) seeks Council review the relevant zone rules to appropriately manage the design and location of sensitive activities in order to avoid reverse sensitivity effects occurring, as necessary to achieve Objective HSUB-O2 and Policy HSUB-P4 and make any amendments to the WDP as a consequence.
34. Reyburn and Bryant on behalf of Northpower (**Northpower**) (**Sub 3/1**) **support** the proposed plan change as notified.
35. Ngā Tai Ora – Public Health Northland (**Ngā Tai Ora**) (**Sub 5/1**) **oppose** the proposed plan change as notified. The submitter states that "PC91 removes all rules managing hazardous substances in the Whangārei District Plan (WDP), on the basis that there is other legislation that control hazardous substances:

- Hazardous Substances and New Organisms Act 1996 (HSNO Act)
 - Health and Safety at Work Act 2015 (HSW Act)
 - The Resource Legislation Amendment Act 2017 (RLAA)
36. While these pieces of legislation do overlap, Ngā Tai Ora consider that the RMA still has an important role to play in managing the location of land uses which store, use, transport and dispose of hazardous substances, identifying and assessing the risks and, where necessary, requiring these risks be avoided, remedied or mitigated to achieve the purpose of the RMA”.
37. Ngā Tai Ora consider that the approach to PC91 cannot be deemed the most appropriate under the RMA, or how having no rules is considered the most efficient and effective method for achieving the proposed objectives. The submitter states that relying on “other district wide and area specific chapter rules” is vague and ultimately risky. They provide the following two examples:
- Activities including the storage, use and disposal of hazardous substances, may not require resource consent under the “other rules” (e.g., they may be within an existing building with no external changes to the building that do not trigger the need for a resource consent). If no resource consent is required, then no engagement with the objectives and policies is needed, and the ability to the manage risk of hazardous substances is unavailable.
 - If a resource consent is required, it may only be for a controlled or restricted discretionary activity, and the ability to consider matters related to hazardous substances could be limited by the matters of control or discretion.
38. The submitter considers that the overall approach taken in PC91 is inappropriate and could lead to:
- Unacceptable risk on sensitive activities (e.g., residential activities) from the ad hoc location or expansion of hazardous substances facilities throughout the District without management or oversight in the WDP; and
 - Adverse public health (including long term and chronic health effects) and environmental effects from the location of land use activities involving the use, storage, transport and disposal of hazardous substances in inappropriate locations
39. The relief sought is as follows:
1. Include appropriate rules for the management storage, use, transport and disposal of hazardous substances in PC91. At a minimum, this should include (but is not limited to) the inclusion of rules managing:
 - a. The establishment or expansion of facilities managing, storing, using or disposing of hazardous substances within, or in close proximity to, sensitive environments (e.g., residential areas or adjacent to schools or health care facilities and hospitals).

- b. The establishment of sensitive activities (e.g., residential activities, marae schools or healthcare facilities and hospitals) adjacent to, or within close proximity to, lawfully established hazardous substances facilities.
 - c. 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).
 - d. Appropriate limits or thresholds for the storage of certain hazardous substances across the various zones in the WDP
40. 4 Sight Consulting Limited on behalf of BP Fuel NZ Limited / Mobil Fuel NZ Limited / Z Energy Limited (**The Fuel Companies**) (**Sub 6/7**) **support** the exclusion of rules in the Hazardous Substances Chapter.

Discussion

41. I acknowledge the submission which supports the retention of PC91 as notified.
42. In response to the submission by Channel Infrastructure NZ, the WDP utilises provisions within a zone-based framework (see **Appendix 2**) to manage the adverse residual risks and reverse sensitivity effects associated with hazardous substances. In my opinion the existing activity rules and reverse sensitivity rules within each zone are sufficient to manage reverse sensitivity effects. The approach in the Hazardous Substances Chapter is to support the zone-based framework, which seeks to manage activities and avoid reverse sensitivity effects of incompatible activities locating within them. In my opinion the relevant zone provisions appropriately manage the design and location of sensitive activities² in order to avoid reverse sensitivity³ effects occurring and will achieve Objective HSUB-O2 and Policy HSUB-P4.
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. I am not aware of any concerns about the efficiency or effectiveness of the status quo provisions in the WDP in managing reverse sensitivity in relation to hazardous substances or facilities.
44. In response to the submission by Ngā Tai Ora, I do not agree that PC91 is inappropriate and could lead to unacceptable risk on sensitive activities or adverse public health outcomes. PC91 seeks to manage: residual risk to people, property and the environment associated with the use, storage, or disposal of hazardous substances within or adjacent to a sensitive receiving environment; and reverse

² Sensitive activities are defined in the WDP as: *Sensitive Activities means, childcare and education facilities, residential activity and hospitals.*

³ Reverse sensitivity is defined in the WDP as: *Reverse Sensitivity means the potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment of other activities which are sensitive to the pre-existing activity.*

sensitivity risk to activities that use, store, or dispose of hazardous substances, after other industry controls and legislation have been complied with, and where consent is required based on other district-wide and area specific chapter rules. HSNO is the primary legislation designed to manage hazardous substances across their life cycle (import/manufacture, classification, packaging, transport, storage, use and disposal). The HSW Act has given WorkSafe New Zealand the responsibility for establishing workplace controls for hazardous substances and is the principal enforcement and guidance agency in workplaces.

45. The Ministry for the Environment Guidance (2019) states that HSNO and HSW have a generic consideration of surrounding land uses, by including different clearances with respect to specific substance (HSNO) or hazardous facilities according to surrounding land uses (HSW). In most circumstances, HSNO and HSW provide an appropriate level of management of hazardous substances to ensure risks, including cumulative effects, associated with hazardous facilities (activities that use, store, manufacture and/or dispose of hazardous substances) are contained on a site. However, the guidance states there will be some situations where RMA controls may be justified in relation to when hazardous substances are located within sensitive environment and/or incompatible activities.
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.

Further Submissions

Further Sub No.	Submitter Name	Sub 2/3	Sub 3/1	Sub 5/1	Sub 6/7
X007	Channel Infrastructure NZ	-	-	Oppose	Support
X008	Horticulture NZ	-	Support	Oppose	Support
X009	The Fuel Companies	-	-	Oppose	-
X010	Ngā Tai Ora	Support	-	-	Oppose

Recommendation

47. I recommend that the Commissioner:
- **Accept Sub 3/1, Sub 6/7** and that PC91 is retained as notified, except for the minor amendments recommended in the following sections.
 - **Reject Sub 5/1.**

- **Acknowledge Sub 2/3.** The reverse sensitivity provisions have been reviewed and discussed in paragraphs 42 and 43 above.

B. Issues Section

Submission Information

48. The Fuel Companies (**Sub 6/1**) **support with amendments** the Issues section. The submitters consider that PC91 should recognise the need to avoid duplication of the requirements and obligations that arise under other hazardous substances legislation and regulation. The amendment sought are:

Given the level of regulation controlling hazardous substances, the Hazardous Substances Chapter seeks to avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the Plan. The chapter will address the residual risks to people, property and the environment, and reverse sensitivity after other industry controls and legislation have been complied with, and where consent is required based on other district wide and area specific chapter rules.

Discussion

49. In response to the submission by The Fuel Companies, I agree with the amendments sought. They make it clear to plan users that the WDP seeks to avoid duplication of the HSNO, HSW and other relevant regulations.

Further Submissions

Further Sub No.	Submitter Name	Sub 6/1
X007	Channel Infrastructure NZ	Support
X008	Horticulture NZ	Support

Recommendation

50. I recommend that the Commissioner:
- **Accept Sub 6/1**, and that the fourth paragraph of the Issues section is amended as follows:

Issues

Given the level of regulation controlling hazardous substances, the Hazardous Substances Chapter ~~only~~ seeks to avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the District Plan. The chapter will address the residual risks to people, property and the environment, and reverse sensitivity after other industry controls and legislation have been complied with, and where consent is required based on other district wide and area specific chapter rules.

C. HSUB-O1

Submission Information

51. Channel Infrastructure NZ (**Sub 2/1**) **support** Objective HSUB-01 as notified.
52. Horticulture NZ (**Sub 4/1**) **support** Objective HSUB-01 as notified.
53. The Fuel Companies (**Sub 6/2**) **support** Objective HSUB-01 as notified.
54. Ngā Tai Ora (**Sub 5/2**) **oppose** and seek amendments to Objective HSUB-01. The submitter considers that the objective is too narrow, and only seeks to manage “residual risk” and not overall risk of hazardous substances. The submission considers that this will lead to a narrow approach and ultimately the lack of inclusion of rules for the management, storage, use, and disposal of hazardous substances. The submitters states that there should be explicit reference to “health and safety of people” in accordance with s5(2) of the RMA. They also maintain that there is a need to reference to “expansion” and “transport” so that these activities are also covered in the provisions that follow. The amendments sought by the submission are:

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

Discussion

55. I acknowledge the submissions which support the retention of Objective HSUB-01 as notified.
56. In response to the submission by Ngā Tai Ora, I consider that HSNO regulations are intended to manage the overall risk of hazardous substances by preventing environmental effects, including in natural hazard events. It is not appropriate or efficient for the WDP to include objectives, policies, or methods to manage overall risk, as this would duplicate other industry controls and legislation. The RLAA’s purpose was to remove the explicit function of territorial authorities under ss30 and 31 of the RMA to control adverse effects of the storage, use, disposal and transportation of hazardous substances, to ensure that RMA controls do not duplicate controls in HSNO and HSW. The WDP can, however, address the residual risk to people, property and the environment, as this is not addressed by HSNO and HSW. Provisions to manage the adverse residual risks and reverse sensitivity effects associated with hazardous substances are contained within the zone-based framework in the WDP.
57. I support the addition of the words “The health and safety of” to HSUB-01. However, I consider that it would be more appropriate to re-word the objective to ensure that the focus of the objective is not inadvertently narrowed in relation to property and the environment, as follows:

~~People, p~~Property, ~~and the environment~~ and the health and safety of people are protected from any unacceptable levels of residual risk associated with the location of facilities that use, store and dispose of hazardous substances.
58. I consider that HSNO and HSW provide an appropriate level of management of hazardous substances to ensure risks, including cumulative effects, associated with hazardous facilities. Nevertheless, I am not strongly opposed to the inclusion of the word “expansion”. However, I do not consider the

inclusion of “expansion” would contribute materially to how the objective is interpreted, as “location” would apply to new activities and expansions alike.

59. I do not support the addition of the word “transport” in HSUB-O1. Activities transporting hazardous substances must comply with the HSNO as well as the Land Transport Act 1998 and Land Transport Rule: Dangerous Goods 2005 (and its amendments)⁴, which details the legal requirements for transporting dangerous goods⁵ safely.

Further Submissions

Further Sub No.	Submitter Name	Sub 2/1	Sub 4/1	Sub 5/2	Sub 6/2
X007	Channel Infrastructure NZ	-	-	Oppose	-
X008	Horticulture NZ	Support	-	Oppose	Support
X009	The Fuel Companies	Support	-	Oppose	-
X010	Ngā Tai Ora	Oppose	Oppose	-	Oppose

Recommendation

60. I recommend that the Commissioner:
- **Accept Sub 2/1, Sub 4/1, Sub 5/2, and Sub 6/2** and that Objective HSUB-01 is retained as notified, except for the amendments shown below:

HSUB-01 – Residual Risks

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

D. HSUB-02

Submission Information

61. Channel Infrastructure NZ (**Sub 2/2**) **support** Objective HSUB-02 as notified.
62. Horticulture NZ (**Sub 4/2**) **support** Objective HSUB-02 as notified.
63. The Fuel Companies (**Sub 6/2**) **support** with amendments Objective HSUB-02. The submitter considers that the phrase ‘unduly compromise’ is ambiguous and open to interpretation. The amendments sought are:

⁴ [64-dangerous-goods.pdf \(nzta.govt.nz\)](https://www.nzta.govt.nz/64-dangerous-goods.pdf)

⁵ For transport on land dangerous goods include substances that have explosive, flammable, toxic, infectious, corrosive or environmentally hazardous properties, and containers that have held dangerous good.

Sensitive activities are appropriately located to avoid reverse sensitivity effects and unacceptable residual risk from established ~~do not unduly compromise existing areas and~~ activities which use, store or dispose of hazardous substances.

Discussion

64. I acknowledge the submissions which support the retention of Objective HSUB-O2 as notified.
65. In response to the submission from The Fuel Companies, I do not agree that the phrase ‘unduly compromise’ is ambiguous and open to interpretation. The Concise Oxford Dictionary⁶ defines:
- Unduly is a derivative of ‘undue’ which is defined as “unwarranted or inappropriate because excessive or disproportionate”.
 - Compromise is defined as “the expedient acceptance of standards that are lower than is desirable”.
66. I consider that in the context of the objective ‘unduly compromise’ means that sensitive activities will be unable to establish 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. As noted in the s32 (paras 65 and 66) sensitive activities are discouraged in areas where reverse sensitivity risks are most likely to occur. Additionally, ‘unduly compromise’ is used three times in the operative Noise and Vibration (NAV) Chapter⁷ and I am not aware of any issues being raised about its interpretation.

Further Submissions

Further Sub No.	Submitter Name	Sub 2/2	Sub 4/2	Sub 6/2
X007	Channel Infrastructure NZ	-	-	Support
X008	Horticulture NZ	Support	-	Support
X010	Ngā Tai Ora	Oppose	Oppose	Oppose

Recommendation

67. I recommend that the Commissioner:
- **Accept Sub 2/2 and Sub 4/2** and that Objective HSUB-02 is retained as notified.
 - **Reject Sub 6/2.**

⁶ Eleventh Edition (rev. 2006) – Note: This is a different edition to the Concise Oxford Dictionary (Ninth Edition) which the WDP requires for defining terms that are not defined in the Definition section of the Plan.

⁷ Objective NAV.3.2, Policy NAV.4.2.b, Discretionary Activity NAV.7.1.m.

E. HSUB-P1

Submission Information

68. Channel Infrastructure NZ (**Sub 2/1**) **support** Policy HSUB-P1 as notified.
69. Horticulture NZ (**Sub 4/3**) **support** Policy HSUB-P1 as notified.
70. The Fuel Companies (**Sub 6/3**) **support** Policy HSUB-P1 as notified.
71. Ngā Tai Ora (**Sub 5/2**) **oppose** Policy HSUB-P1. The submitter considers that the policy focuses on 'residual risk' and not the overall risk of hazardous substances, which leads to the narrow focus in the approach. The submitter considers that it is unclear, without the inclusion of rules, how the policy would actually be implemented in the WDP. The submitter seeks that the policy is amended to provide an adequate policy framework for the inclusion of rules as outlined in Sub 5/1 (see Section A).

Discussion

72. I acknowledge the submissions which support the retention of Policy HSUB-P1 as notified.
73. In response to the submission by Ngā Tai Ora, I consider that HSNO regulations are intended to manage the overall risk of hazardous substances by preventing environmental effects, including in natural hazard events. It is not appropriate or efficient for the WDP to include objectives, policies, or methods to manage overall risk where existing HSNO or HSW controls adequately address the environmental effects of hazardous substances, as this would duplicate other legislation. The WDP can address the residual risk to people, property and the environment, as this is not addressed in HSNO and HSW. Provisions to manage the adverse residual risks and reverse sensitivity effects associated with hazardous substances are contained within the zone-based framework in the WDP.

Further Submissions

Further Sub No.	Submitter Name	Sub 2/1	Sub 4/3	Sub 5/2	Sub 6/3
X007	Channel Infrastructure NZ	-	-	Oppose	-
X008	Horticulture NZ	Support	-	Oppose	Support
X007	The Fuel Companies	-	-	Oppose	-
X010	Ngā Tai Ora	Oppose	Oppose	-	Oppose

Recommendation

74. I recommend that the Commissioner:
- **Accept Sub 2/1, Sub 4/3 and Sub 6/3** and that Policy HSUB-P1 is retained as notified.
 - **Reject Sub 5/2.**

F. HSUB-P2

Submission Information

75. Horticulture NZ (**Sub 4/4**) **support in part** and seeks amendments to Policy HSUB-P2. The submitter considers that the policy should be written to provide for use, storage and disposal of hazardous substance unless there is an adverse effect from residual risk that needs to be managed. The amendments sought by the submitter are:

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~~ manage residual risk to people and communities by avoiding such risk ~~will be avoided~~, or where avoidance is not practicable, remedied or mitigated to an acceptable level.

76. Ngā Tai Ora (**Sub 5/2**) **oppose** Policy HSUB-P2. The submitters reasons for opposing Policy HSUB-P2 are the same as those for Policy HSUB-P1 (see Section E).
77. The Fuel Companies (**Sub 6/4**) **support** Policy HSUB-P2 as notified.

Discussion

78. I acknowledge the submission which supports the retention of Policy HSUB-P2 as notified.
79. In response to the submission from Horticulture NZ, I consider that the amendments sought would result in a similar outcome and interpretation as the notified HSUB-P2. It is unclear what the amendments seek to achieve, and in my opinion the wording of HSUB-P2 as notified more clearly manages effects on people and communities and more effectively achieves proposed HSUB-O1.
80. My response to the submission from Ngā Tai Ora is the same as that for Policy HSUB-P1 (see Section E).

Further Submissions

Further Sub No.	Submitter Name	Sub 4/4	Sub 5/2	Sub 6/4
X007	Channel Infrastructure NZ	Support	Oppose	-
X008	Horticulture NZ	-	Oppose	Support in part
X007	The Fuel Companies	-	Oppose	-
X010	Ngā Tai Ora	Oppose	-	Oppose

Recommendation

81. I recommend that the Commissioner:
- **Accept Sub 6/4** and that HSUB-P2 be retained as notified.
 - **Reject Sub 4/4 and Sub 5/2.**

G. HSUB-P3

Submission Information

82. Horticulture NZ (**Sub 4/5**) **support in part** and seeks amendments to Policy HSUB-P3. The submitter considers that the policy should be written to provide for use, storage and disposal of hazardous substances in sensitive environments and areas unless there is an adverse effect from residual risk that needs to be managed. There are growers undertaking primary production activities in Outstanding Natural Features where primary production activities are permitted and there are no specific rules for hazardous substances in these areas. Therefore, it should be clear that these activities are able to continue to be undertaken in these areas as long as residual risks are managed. The amendments sought by the submission are:

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

83. Ngā Tai Ora (**Sub 5/2**) **oppose** Policy HSUB-P3. The submitters reasons for opposing Policy HSUB-P3 are the same as those for Policy HSUB-P1 (see Section E).
84. The Fuel Companies (**Sub 6/5**) **support** Policy HSUB-P3 as notified.

Discussion

85. I acknowledge the submission which supports the retention of Policy HSUB-P3 as notified.
86. In response to the submission from Horticulture NZ, in my opinion the amendments sought would result in a similar outcome and interpretation as proposed by HSUB-P3. It is unclear what the amendments seek to achieve, and in my opinion the wording of HSUB-P3 as notified more effectively achieves proposed HSUB-O1.
87. My response to the submission from Ngā Tai Ora is the same as that for Policy HSUB-P1 (see Section E).

Further Submissions

Further Sub No.	Submitter Name	Sub 4/5	Sub 5/2	Sub 6/5
X007	Channel Infrastructure NZ	Support	Oppose	-
X008	Horticulture NZ	-	Oppose	Support in part
X009	The Fuel Companies	-	Oppose	-
X010	Ngā Tai Ora	Oppose	-	Oppose

Recommendation

88. I recommend that the Commissioner:

- **Accept Sub 6/5** and that Policy HSUB-P3 be retained as notified.
- **Reject Sub 4/5 and Sub 5/2.**

H. HSUB-P4

Submission Information

89. Channel Infrastructure NZ Limited (**Sub 2/2**) **support** Policy HSUB-P4 as notified.
90. The Fuel Companies (**Sub 6/6**) **support** Policy HSUB-P3 as notified.
91. Ngā Tai Ora (**Sub 5/2**) **oppose** Policy HSUB-P4. The submitters reasons for opposing Policy HSUB-P4 are the same as those for Policy HSUB-P1 (see Section E).

Discussion

92. I acknowledge the submissions which support the retention of Policy HSUB-P4 as notified.
93. My response to the submission from Ngā Tai Ora is the same as that for Policy HSUB-P1 (see Section E).

Further Submissions

Further Sub No.	Submitter Name	Sub 2/2	Sub 5/2	Sub 6/6
X007	Channel Infrastructure NZ	-	Oppose	-
X008	Horticulture NZ	Support	Oppose	Support
X007	The Fuel Companies	-	Oppose	-
X010	Ngā Tai Ora	Oppose	-	Oppose

Recommendation

94. I recommend that the Commissioner:
- **Accept Sub 2/2 and Sub 6/2** and that HSUB-P4 is retained as notified.
 - **Reject Sub 5/2.**

I. Definitions

Submission Information

95. Ursula Buckingham (**Sub 1/1**) seeks amendment to the proposed 'Sensitive Environments and Areas' definition. The submitter considers that the "'Area of High Susceptibility to Instability Hazards' should be removed from the proposed definition until the Natural Hazards Plan Change is resolved. Alternatively, the submitter seeks the provision of "an exception that Permitted Activities that operate in an Area of High Susceptibility to Instability Hazards are excluded from the Sensitive Environments and Areas definition".

96. Horticulture NZ (**Sub 4/1**) seeks the inclusion of a definition for ‘Residual Risk’ as follows:

Means in relation to hazardous substances, any risk of an adverse effect that remains after other industry controls and legislation and regional planning instruments have been complied with.

97. The Fuel Companies (**Sub 6/8**) **support** the addition of the proposed ‘Sensitive Environments and Areas’ definition and the deletion of the definitions of ‘Hazardous Facility’ and Hazardous Sub Facility’ as notified.

Discussion

98. I acknowledge the submission which supports the amendments to the Definitions section.

99. In response to the submission from Ursula Buckingham, I agree that the ‘Area of High Susceptibility to Instability Hazards’ should be removed from the proposed definition of ‘Sensitive Environments and Areas’ as it is not currently defined in the WDP.

100. In response to the submission from Horticulture NZ, I agree that ‘Residual Risk’ should be included in the Definitions section of the WDP. I recommend that the definition of ‘Residual Risk’ should apply only to the Hazardous Substances Chapter of the District Plan and reference relevant legislation.

Further Submissions

Further Sub No.	Submitter Name	Sub 1/1	Sub 4/1	Sub 6/8
X007	Channel Infrastructure NZ	-	Neutral	-
X008	Horticulture NZ	-	Support	-
X009	The Fuel Companies	-	Neutral	-
X010	Ngā Tai Ora	Oppose	Oppose	-

Recommendation

101. I recommend that the Commissioner:

- **Accept Sub 4/1** and include the Definition of Residual Risk as shown below:

<p>Definitions</p> <p><u>Residual Risk</u> <i>(This definition only applies to the Hazardous Substances Chapter of the District Plan)</i></p> <p><u>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.</u></p>
--

- **Accept Sub 6/8.**
- **Accept Sub 1/1** and amend the Definition of Sensitive Environments and Areas as shown below:

Definitions

Sensitive Environments and Areas

means:

- a. High Natural Character Areas.
- b. Outstanding Natural Character Areas.
- c. Outstanding Natural Landscapes.
- d. Outstanding Natural Features.
- e. Flood Hazard Areas.
- f. Coastal Hazard Areas.
- g. Mining Hazard Areas.
- ~~h. Area of High Susceptibility to Instability Hazards.~~
- ih. Sites and Areas of Significance to Māori.
- ji. Heritage Buildings, Sites and Objects.
- kj. Northpower Critical Electricity Lines.

I. Consequential Amendments

Submission Information

102. Horticulture NZ (**Sub 4/6**) **support** the consequential amendments as notified.
103. The Fuel Companies (**Sub 6/9**) **support** the consequential amendments as notified.

Discussion

104. I acknowledge the submissions which support the consequential amendments as notified.

Further Submissions

Further Sub No.	Submitter Name	Sub 4/6	Sub 6/9
X008	Horticulture NZ	-	Support

Recommendation

105. I recommend that the Commissioner:
 - **Accept Sub 4/6 and Sub 6/9** and that the consequential amendments be retained as notified.

J. Other Decisions Requested

Submission Information

106. Ngā Tai Ora (**Sub 5/3**) seek that PC91 is amended to include a new policy and accompanying rules, seeking to avoid the storage, use, transport and disposal of hazardous substances in natural hazard areas. The submitter seeks this relief as they are concerned about facilities for the storage, use, transport and disposal of hazardous substances in locations subject to natural hazards. The submitter considers this can increase the likelihood of a release of hazardous substances into the environment should a natural hazard event occur. They also consider that PC91 fails to give effect to policies

7.1.2(a) and 7.1.3(g), and method 7.1.7 of the NRPS, which specifically require mitigation to reduce natural hazard risks with respect to hazardous substances. The submitter also considers that consideration should be given to climate change effects which have the potential to increase the frequency, magnitude, and consequences of natural hazard events.

Discussion

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 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 contain 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.

Further Submissions

Further Sub No.	Submitter Name	Sub 5/3
X007	Channel Infrastructure NZ	Oppose
X008	Horticulture NZ	Oppose
X009	The Fuel Companies	Oppose

Recommendation

109. I recommend that the Commissioner:

- **Reject Sub 5/3.**

10. Conclusion

110. After carefully considering the submissions and further submissions received, I recommend that PC91 be amended to the extent detailed in the preceding sections of this report and as illustrated in **Appendix 1.**

Author

A handwritten signature in blue ink that reads "Taya Baxter". The signature is written in a cursive style with a large initial 'T'.

Taya Lauren Baxter
Planner – District Plan

Appendix 1: Recommended Text

Hazardous Substances (HSUB)

Issues

Hazardous substances are used throughout the District and include a wide range of substances such as medical waste, petroleum products, explosives, and industrial, agricultural and household chemicals. These substances can pose potential threats to the health and safety of people and can have significant adverse **effects** on the **environment**. At the same time, their use, **storage**, manufacture and disposal allow people to provide for their social and economic wellbeing, and their health and safety.

There is a wide range of legislation and industry standards controlling **hazardous substances**. Principal amongst these is the Hazardous Substances and New Organisms Act 1996 which provides the general framework for controlling **hazardous substances** during their entire life cycle. There are additional controls relating to **hazardous substances** in the Proposed Regional Plan for Northland, the Land Transport Act 1998, the Radiation Safety Act 2016, the Building Act 2004, the Health and Safety at Work Act 2015 and the Health and Safety at Work (Hazardous Substances) Regulations 2017.

In addition to the above controls, the District Plan manages adverse **effects** associated with **hazardous substances** and potential **reverse sensitivity effects** through spatial zoning and underlying zone rules.

Given the level of regulation controlling **hazardous substances**, the Hazardous Substances Chapter seeks to avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the District Plan. The chapter will address the **residual risk** to people, property and the **environment**, and **reverse sensitivity** after other industry controls and legislation have been complied with, and where consent is required based on other district wide and area specific chapter rules.

Objectives

HSUB-O1 – Residual Risks	Property, the environment and the health and safety of people are protected from any unacceptable levels of residual risk associated with the location of facilities that use, store and dispose of hazardous substances .
HSUB-O2 – Reverse Sensitivity	Sensitive activities do not unduly compromise existing areas and activities which use, store or dispose of hazardous substances .

Policies

HSUB-P1 – Residual Risks	To recognise the role of national and regional organisations, including the Environmental Protection Authority, WorkSafe and Northland Regional Council, in managing hazardous substances and avoid regulating hazardous substances where an adequate level of human health and environmental protection is already provided and there are no identified residual risks .
HSUB-P2 – People and Communities	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.
HSUB-P3 – Sensitive Environments and Areas	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.

HSUB-P4– Reverse Sensitivity

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.

New Definitions:

Sensitive Environments and Areas

means:

- a. High Natural Character Areas.
- b. Outstanding Natural Character Areas.
- c. Outstanding Natural Landscapes.
- d. Outstanding Natural Features.
- e. Flood Hazard Areas.
- f. Coastal Hazard Areas.
- g. Mining Hazard Areas.
- h. Sites and Areas of Significance to Māori.
- i. Heritage Buildings, Sites and Objects.
- j. Northpower Critical Electricity Lines.

Residual Risk (*This definition only applies to the Hazardous Substances Chapter of the District Plan*).

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.

Consequential Amendments:

- Delete Hazardous Substances Chapter and Appendices 8a – 8d.
- Delete “hazardous facility” and “hazardous sub facility” definitions.
- Delete the following reference documents from the Referenced Documents Chapter:
 - Department of Labour, 1992 Code of Practice for Design Installation and Operation of Underground Petroleum System.
 - AS/NZ 1596:1997 Australian and New Zealand standard for Storage and Handling of LPG.
 - New Zealand Radiation Protection Regulations 1982.
 - NZS 8409: 1999 New Zealand Code of Practice for the Management of Agrichemicals.
 - New Zealand Chemical Industry Council 1987 Code of Practice or Warning Signs for Premises Storing Hazardous Substances.
 - New Zealand Ministry for the Environment 1999 Land Use Planning for Hazardous Facilities – A Resource for Local Authorities and Hazardous Facility Operators.

Appendix 2: Zone-Based Approach

Zone	Sensitive Activity Rules	Industrial Activities Grouping	Commercial Grouping – Service Stations
Large Lot Residential Zone	LLRZ-R12 – Sensitive Activity Permitted Where: 1. The sensitive activity is set back further than: a. 500m from a Quarrying Resource Area b. 500m from a Heavy Industrial Zone c. 30m from the Rural Production Zone	Artisan – Permitted with requirements All other Industrial Activities – Non-Complying or Prohibited	Service Stations – Non-Complying
Low Density Residential Zone	-	Industrial Activities – Prohibited	Service Stations – Non-Complying
General Residential Zone	-	Industrial Activities – Prohibited	Service Stations – Non-Complying
Medium Residential Zone	-	Industrial activities – Prohibited	Service Stations – Non-Complying
Rural Lifestyle Zone	RLZ-R11- Sensitive Activity Permitted Where: 1. The sensitive activity (excluding non-habitable buildings) is set back at least: a. 500m from: i. The Mining Area of all Quarrying Resource Areas. ii. The Strategic Rural Industries Zone. iii. Business Zones. b. 20m from:	Industrial Activities – Non-Complying	Commercial Activities – Default to Discretionary – For service stations likely, due to traffic movements

	<ul style="list-style-type: none"> i. The Rural Production Zone. ii. All unsealed through roads. c. 30m from all existing plantation forestry on a separate site. d. 250m from: <ul style="list-style-type: none"> i. Existing intensive livestock farming on a separate site. ii. Existing activities ancillary to farming or forestry on a separate site. iii. The Fonterra Kauri Milk Processing Site Strategic Rural Industries Zone – Ancillary Irrigation Farms 		
Rural Production Zone	<p>RPROZ-R9 – Sensitive Activity</p> <p>Permitted</p> <p>Where:</p> <p>1. The sensitive activity (excluding non-habitable buildings) is set back at least:</p> <ul style="list-style-type: none"> a. 500m from: <ul style="list-style-type: none"> i. The Mining Area of all Quarrying Resource Areas. ii. The Strategic Rural Industries Zone. iii. Business Zones. b. 30m from: <ul style="list-style-type: none"> i. All unsealed metal roads ii. All existing plantation forestry on a separate site. c. 250m from: <ul style="list-style-type: none"> i. Existing intensive livestock farming on a separate site. ii. Existing activities ancillary to farming or forestry on a separate site. 	Industrial Activities – Non- Complying	Commercial Activities – Permitted - Default to Discretionary – For service stations likely

	iii. The Fonterra Kauri Milk Processing Site Strategic Rural Industries Zone – Ancillary Irrigation Farms		
Settlement Zone – Industry Sub Zone	<p>SETZ-R39 - Sensitive Activities</p> <p>Non-Complying</p> <p>Where:</p> <p>1. The sensitive activity is a primary activity or ancillary activity.</p>	<p>Industrial Activities – Prohibited in Residential Sub-Zone</p> <p>Industrial Activities - Non-Complying in Centre Sub-Zone</p> <p>Any Activity – Permitted in Industry Sub-Zone</p>	<p>Commercial Activities – Permitted in Residential Sub-Zone - Default to Discretionary/Non-Complying – For service stations likely.</p> <p>Commercial Activities – Permitted in Centre Sub-Zone</p> <p>Any Activity – Permitted in Industry Sub-Zone</p>
Future Urban Zone	<p>FUZ-R10 – Sensitive Activity</p> <p>Permitted</p> <p>Where:</p> <p>1. The sensitive activity (excluding non-habitable buildings) is set back at least:</p> <p>a. 500m from:</p> <p>i. The Mining Area of all Quarrying Resource Areas.</p> <p>ii. The Strategic Rural Industries Zone.</p> <p>b. 20m from:</p> <p>i. The Rural Production Zone.</p> <p>ii. Business Zones.</p> <p>iii. An existing plantation forestry on a separate site.</p>	Industrial Activities – Prohibited	Commercial Activities – Permitted - Default to Discretionary/Non-Complying – For service stations likely
Strategic Rural Industries Zone	<p>SRIZ-R9 – Sensitive Activities</p> <p>Non-Complying</p> <p>Where:</p> <p>1. The activity is a primary activity or ancillary activity.</p>	-	-

Natural Open Space Zone	-	Industrial Activities – Non-Complying	Service Station – Non-Complying
Open Space Zone	-	Industrial Activities – Non-Complying	Commercial Activities – Non-Complying
Sport and Active Recreation Zone	-	Industrial Activities – Non-Complying	Service Station – Non-Complying
Hospital Zone	-	Industrial Activities (Excluding research laboratories used for scientific or medical research) – Prohibited	Service Station – Non-Complying
Port Zone	Residential, Commercial, Visitor Accommodation – Non-Complying	General Industry and other Industrial Activities which exclude Port Activities – Restricted Discretionary	Service Station – Permitted in Port Area C Service Station – Non-Complying in Areas A and B
Local Centre Zone	-	Artisan – Permitted with requirements Repair and Maintenance Services – Discretionary General Industry – Non-Complying	Service Station – Discretionary
Neighbourhood Centre Zone	-	Industrial Activities – Non Complying	Service Station – Non-Complying
Commercial Zone	Residential – Non-Complying	Industrial Activities – Permitted with setback of 30m from existing sensitive activities in the Mixed Use Zone; and residential or open space and recreation zone boundaries	Service Station – Permitted – default to Discretionary
Mixed Use Zone	Residential Unit – Permitted	Industrial Activities – Non-Complying	Service Station – Discretionary
City Centre Zone	Residential Unit – Permitted	Industrial Activities – Prohibited	Service Station – Non-Complying

Waterfront Zone	Residential Unit – Permitted in mixed-use area In commercial area – Non-Complying	Artisan – Permitted The remainder it depends on what part of the Waterfront Zone the activity is in	Service Station – Non-Complying
Shopping Centre Zone	Residential – Prohibited	Industrial Activities – Prohibited	Service Station – If existing at operative date – permitted otherwise Non-Complying

Plan Change 91: Hazardous Substances

Section 32 Evaluation Report

Prior to Notification

July 2022

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1. Introduction and Purpose

1.1 Purpose of Report

1. This report is in relation to proposed Plan Change 91 (**PC91**) to the Whangarei District Plan (**WDP**) which seeks to amend the hazardous substances provisions, as part of the WDP rolling review. The report has been prepared in accordance with the requirements of Schedule 1 of the Resource Management Act 1991 (**RMA**) and incorporates an evaluation under section 32 of the RMA (**s32**).
2. S32 of the RMA requires Councils to examine whether the proposed objectives are the most appropriate to achieve the purpose of the RMA and whether the provisions (i.e. policies, rules, and standards) are the most appropriate way to achieve the objectives. This evaluation must identify and assess environmental, economic, social, and cultural effects, benefits and costs anticipated from the implementation of the provisions.
3. S32 evaluations represent an on-going process in RMA plan development. A further evaluation under section 32AA of the RMA is expected throughout the review process in response to submissions received following notification of PC91

1.2 Overview of Topic

4. The adverse effects of hazardous substances on the environment, including people and communities can be significant, if not managed appropriately.
5. The 2017 amendments to the RMA removed the explicit function of local authorities to control the adverse effects of the storage, use, disposal, and transportation of hazardous substances. Controls on hazardous substances in district plans should now only be used where the risks and adverse effects from hazardous substances are not adequately addressed by other legislation, including the Hazardous Substances and New Organisms Act 1996 (**HSNO**) and the Health and Safety at Work Act 2015 (**HSW**).
6. The WDP Hazardous Substances chapter currently predates the 2017 RMA amendments and so includes provisions that duplicate controls under HSNO and HSW. Given the wider legislative changes, the management approach for hazardous substances in the WDP requires amendment. PC91 seeks to amend the Hazardous Substances Chapter by introducing objectives and policies at a district wide level that manage:
 - Residual risks to people, property, and the environment associated with the use, storage, or disposal of hazardous substances within or adjacent to a sensitive receiving environment.
 - Reverse sensitivity risk to activities that use, store, or dispose of hazardous substances, after other industry controls and legislation have been complied with, and where consent is required based on other district-wide and area specific chapter rules.
7. Zone chapters in Part 3: Area Specific Matters of the WDP are relevant to this evaluation report, as the compatibility of hazardous facilities and sensitive activities was considered in the setting of the Zone frameworks.

2. Statutory and Policy Context

8. The WDP sits within a layered policy framework. The relevant policy documents that were taken into consideration when preparing PC91 are discussed below.

2.1 Resource Management Act 1991

9. Under the RMA it is mandatory for a territorial authority to prepare a district plan, which manages land use and development within its territorial boundaries. The RMA requires district plans, whether private or Council initiated to meet the purpose and principles of the RMA. Consideration has been given to the extent to which PC91 achieves the purpose and principles of Part 2 of the RMA.
10. The statutory context for the preparation and evaluation of plan changes under the RMA is summarised as follows:

Section 31 - One of the functions of the Council is to review the WDP to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.

Section 74 - Matters that the plan change must “accord with” and “have regard to” are set out in this section.

Section 75 - Higher order plans that the plan changes must “give effect to” are set out in this section.

Section 32 - The manner in which an evaluation of a plan change must be carried out is set out in this section.

11. S79 of the RMA sets Councils the requirement to review district plans. Councils must complete a review of all district plan provisions within any 10 year time period. The WDP became operative on 3 May 2007, after eight years of formulation. The data that the WDP was based upon are therefore over ten years old. Monitoring of the WDP has identified areas of inconsistency and ineffectiveness.
12. S79 of the RMA provides the opportunity for Councils to undertake rolling reviews of district plan provisions. Using this opportunity to improve the integrity of the WDP, a rolling review process has been implemented. To remedy some of the missing links between WDP sections, a new structure has been adopted. The WDP structure will evolve and the chapter format will be adjusted through the rolling review to be more consistent with the manner in which the provisions are applied in practice (assessment of activities and resource consent applications and enforcement of rules).
13. The rolling review provides an opportunity to include further objectives and policies on an Environment (zone) by Environment basis. A policy heavy approach to the WDP has been introduced. The new structure provides opportunity for policy at a district wide, geographical, locality or neighbourhood context. The scope and degree of specification in the objectives and policies will be proportional to the level of context and relevance to ensure objectives and policies at each level do not overlap or contradict each other.
14. In carrying out a s32 analysis, an evaluation is required of how the proposal achieves the purpose and principles contained in Part 2 of the RMA. Section 5 sets out the purpose of the RMA, which is to promote the sustainable management of natural and physical resources. Sustainable management means:

‘managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety’

15. The RMA provides the statutory framework for the sustainable management of natural and physical resources. The RMA defines sustainable management as:

'managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety'

16. To achieve the purpose of the RMA, all those exercising functions and powers under the RMA are required to:

- Recognise and provide for the matters of national importance identified in section 6.
- Have particular regard to a range of other matters in section 7
- Take into account the principles of the Treaty of Waitangi in section 8 of the RMA.

17. The matters of national importance under section 6 relevant to hazardous substances are:

- (a) *The preservation of natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *.....*
- (e) *The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) *The protection of historic heritage from inappropriate subdivision, use, and development:*
- (g) *The protection of protected customary rights:*
- (h) *The management of significant risks from natural hazards.*

18. Hazardous substances have the potential to impact on these section 6 matters. The PC91 objectives and policies, coupled with the geographical application of appropriate zones, ensure hazardous facilities are not located within sensitive areas and environments.

19. Section 7 requires Councils to have particular regard to the following matters, which are relevant to the management of hazardous substances:

- (b) *The efficient use and development of natural and physical resources:*
- (c) *The maintenance and enhancement of amenity values:*
- (f) *Maintenance and enhancement of the quality of the environment.*

20. Hazardous substances pose risks to amenity values, ecosystem health and the quality of the environment if not appropriately sited and managed. The PC91 objectives and policies, coupled with the zone framework on the WDP, manages the proximity of hazardous facilities to sensitive activities and environments.

21. Section 8 requires where all persons exercising functions and powers under the RMA shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

2.2 National Policy

22. Section 75(3) of the RMA requires district plans to give effect to higher order planning instruments – National Environmental Standards (**NES**), National Policy Statements (**NPS**) and the National Planning Standards (**Planning Standards**). The section below provides an overview of provisions in higher order planning instruments directly relevant to the management of hazardous substances.

2.2.1 National Environmental Standards

23. Section 44 of the RMA requires local authorities to recognise NES by ensuring plan rules do not duplicate provisions in an NES. There are seven NES's currently in force:
- NES for Air Quality 2004
 - NES for Sources of Human Drinking Water 2007
 - NES for Telecommunication Facilities 2016
 - NES for Electricity Transmission Activities 2009
 - NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011
 - NES for Plantation Forestry 2017
 - NES for Freshwater 2020
24. There are no NES's directly relevant to the management of hazardous substances.

2.2.2 National Policy Statements

25. Section 55 of the RMA requires local authorities to recognise National Policy Statements (**NPS**) and Section 75 requires local authorities to give effect to them in their plans. There are currently five National Policy Statements.
26. The NPS on Urban Development (**NPS-UD**) refers to 'business land' which includes industrial land. The NPS-UD refers to the demands of different types of business activities for different locations within the urban environment. This NPS-UD is recognised in the WDP through the zoning of land for businesses which store and use hazardous substances and as such may require areas of land removed from other land uses in order to manage risks associated with these substances. This is reflected in the PC91 policy approach.
27. No other NPS are considered directly relevant to the consideration of PC91. However, the following NPS's are indirectly relevant:
- The NZCPS 2010, which seeks to manage the adverse effects of activities in the Coastal Environment and protect the values of the Coastal Environment.
 - The National Policy Statement on Freshwater Management 2020, which seeks to maintain and improve the health and well-being of water bodies and freshwater ecosystems.
28. Hazardous substances can have adverse effects on the Coastal Environment, water bodies and freshwater ecosystems if not appropriately controlled and managed. The objectives and policies of

PC91, coupled with other provisions in the Coastal Environment chapter and applicable zones, ensure hazardous facilities are not located within, and are setback from, these sensitive environments.

2.2.3 National Planning Standards

29. The Planning Standards were gazetted in April 2019. Their purpose is to improve consistency in plan and policy statement structure, format, and content. The Planning Standards were introduced as part of the 2017 RMA amendments. Their development is enabled by sections 58B–58J of the RMA. They support implementation of other national direction such as national policy statements and help people to comply with the procedural principles of the RMA.

30. Mandatory direction 7(13) requires the following, if addressed in the plan, to be located within a single Hazardous Substances chapter in the Hazards and Risks section of the district plan:

If the following matters are addressed, they must be located in a Hazardous Substances chapter:

- *any provision required to manage the land use aspects of hazardous substances*
- *provisions relating to the use, storage and disposal of hazardous substances on land that presents a specific risk to human or ecological health, safety and property*
- *provisions required to manage land use in close proximity to major hazard facilities to manage risk and reverse sensitivity issues.*

31. The Planning Standards also prescribe a definition for ‘Hazardous Substances’, which must be used if the term is used in the WDP.

32. The Urban and Services Plan Changes combined the existing provisions from the WDP into one chapter to align with the Planning Standards requirements but did not review the efficiency or effectiveness of the provisions.

2.3 Regional Policy

2.3.1 Northland Regional Policy Statement

33. Section 1.6 of the Northland Regional Policy Statement (**NRPS**) sets out the responsibilities for controlling the use of land to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances. The regional responsibility for specifying objectives, policies and methods including rules is delegated to the district councils in relation to land outside of the coastal marine area and beds of rivers, lakes, and other water bodies.

34. There are no express policies or methods relating to hazardous substances in the NRPS because hazardous substances are not considered a regionally significant issue.

2.3.2 Regional Plans

35. The new Regional Plan for Northland (**RPN**) combines the operative Regional Plans applying to the coastal marine area, land and water, and air into one combined Plan. Hazardous substances are included in relation to contaminated land and discharges. The term hazardous substance is not defined in the RPN but is referred to as being those substances approved under HSNO to be applied to land (or otherwise).

36. The RPN controls discharges (to water, land, or air) and refuse disposal with hazardous substances. The plan simply links spraying of agrichemicals to the HSNO and noting compliance with EPA approval of hazardous substances.
37. In summary, the RPN provisions focus on controlling the use of hazardous substances to manage adverse effects on waterbodies, land, and air, which the PC91 provisions are consistent with.

2.4 District Policy

2.4.1 Whangarei District Growth Strategy, Sustainable Futures 30/50

38. The 'Whangarei District Growth Strategy: Sustainable Futures 30/50' (**30/50**) is Whangarei's strategic planning document, produced in response to growth in the District over the period 2001-2008. It was adopted by Council in 2010.
39. 30/50 developed three broad long-term development scenarios for Whangarei. After extensive consultation, a long term integrated, strategic planning programme was developed based on the principles which will assist progress towards the sustainable development of the District over the next 30-50 years. 30/50 identifies four sustainability criteria – sustainable economy, environment, society and culture.
40. There is no section within 30/50 directly relating to hazardous substances, although there is consistent reference to support for the growth in industry which is likely to result in an increase in the volume of hazardous substances used and stored within the District.

2.4.2 Whangarei District Operative Plan 2007

41. The use of land associated with the use, storage, and disposal of hazardous substances, otherwise termed hazardous facilities, is controlled through the WDP. The current provisions in the WDP apply in all Zones across the District and use a tool called the Hazardous Facilities Screening Procedure (**HFSP**) to identify whether a resource consent is required for the storage or use of a substance. Those facilities which store hazardous substances in quantities which are 'permitted' are required to comply with 'conditions' set out in Appendix 8 of the WDP.
42. The WDP defines hazardous substances in chapter 4 'Meaning of Words' and includes a component of the definition of hazardous substances under HSNO, expanding this to also include substances which have a high biochemical oxygen demand.

"Hazardous Substance

means, unless expressly provided otherwise by regulations, any substance: a) With one or more of the following intrinsic properties:

- i. Explosiveness;*
- ii. Flammability;*
- iii. A capacity to oxidise;*
- iv. Corrosiveness;*
- v. Toxicity (including chronic toxicity);*
- vi. Ecotoxicity, with or without bioaccumulation; or*

Which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph (a) of this definition; or

When discharged to surface water or groundwater, has the potential to deplete oxygen as a result of microbial decomposition of organic matter (for example, milk)."¹

2.4.3 Iwi and Hapu Management Plans

43. According to s74(2A) of the RMA, Council must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district. At present there are five such documents accepted by Council, being Te Iwi O Ngatiwai Environmental Policy Document (2007), Patuharakeke Te Iwi Trust Board Environmental Plan (2014), Ngati Hine Iwi Environmental Management Plan (2008), Ngati Hau Hapu Environmental Management Plan (2016) and Te Uriroroi Hapu Environmental Management Plan and Whatatiri Environmental Plan (2016).
44. Each plan is comprehensive and covers a range of issues of importance to the respective iwi. The plans contain statements of identity and whakapapa and identify the rohe over which mana whenua (and mana moana) are held. The cultural and spiritual values associated with the role of kaitiaki over resources within their rohe are articulated.
45. Of particular significance to PC91 are the following issues:
 - The protection of water, soils and the air from the discharge of contaminants.
 - Sustainable environmental management practices.
 - The protection and enhancement of areas or sites of customary value.
46. It is considered that the proposed PC91 objectives seek to achieve these outcomes.

2.5 Other Legislation and Policy Documents

47. When preparing or changing a district plan, section 74(2)(b)(i) of the RMA requires council to have regard to management plans and strategies prepared under other Acts to the extent that it has a bearing on resource management issues of the district. There is also a general requirement in section 18A of the RMA to ensure district plans only include matters relevant to achieving the purpose of the RMA and therefore do not duplicate controls in other legislation.

2.5.1 The Hazardous Substances and New Organisms Act 1996 (HSNO)

48. HSNO is the primary legislation designed to manage hazardous substances across their life cycle (import/manufacture, classification, packaging, transport, storage, use and disposal). The purpose of HSNO is stated at section 4 of the Act:

"... to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms."

49. HSNO is administered by the Ministry for the Environment, with the Environmental Protection Agency (**EPA**) tasked with implementation and enforcement.

¹ Chapter 4 Operative Whangarei District Plan

50. HSNOs application is considered to be location independent and does not specifically provide for a consideration of neighbouring land uses or particular features of the land such as natural hazards and identified values.
51. Currently² HSNO includes provisions for assessing new substances and organisms, managing compliance and enforcement and setting regulations. Section 142 of HSNO sets out the relationship with other legislation³. As such, HSNO is considered a relevant and complimentary legislative regime to the RMA. The functions of HSNO have been considered when reviewing the provisions for hazardous substances.

2.5.2 Health and Safety at Work Act 2015 (HSW)

52. The key purpose of the HSW is to provide a balanced framework to secure the health and safety of workers and workplaces. As such it details a number of ways in which this is to be achieved and applies regulations and controls. The HSW also enables regulation of hazardous substances for a number of purposes including (but not limited to) record keeping, emergency management, and requirements to be imposed in relation to duties, obligations, or restrictions.
53. Section 230⁴ of the HSW is similar to that of section 142 of HSNO and states:

(3) Nothing prescribed in regulations made under this Act for the safe use, handling, manufacture, or storage of hazardous substances applies in relation to any resource consent to which this subsection applies that is—

- (a) a land use consent relating to the use, handling, manufacture, or storage of any hazardous substance; or*
- (b) a coastal permit to do something that would otherwise contravene section 15 of the Resource Management Act 1991; or*
- (c) a discharge permit.*

(4) Subsection (3) applies where the resource consent concerned was granted before the coming into force of any regulations made under the Hazardous Substances and New Organisms Act 1996 and until such time as the conditions on the resource consent are reviewed in accordance with section 128 of the Resource Management Act 1991.

(5) In this section, resource consent has the same meaning as in section 2(1) of the Resource Management Act 1991.”

54. Under HSW there are specific requirements for ‘major hazardous facilities’ (**MHF**s). MHFs are of a size, scale, and nature where they can pose significant risks beyond the site of the hazardous facility. There are two MHFs in the Whangarei District:

² HSNO is subject to consequential amendments as a part of the RMLA bill which proposes the deletion of s.142(2) and s.142(3)

³ HSNO Section 142

(4) Nothing in this Act shall apply to any resource consent, being—

- (a) a land use consent relating to the storage, use, disposal, or transportation of any hazardous substance; or
- (b) a coastal permit to do something that would otherwise contravene section 15 of the Resource Management Act 1991; or
- (c) a discharge permit,—

where that resource consent was granted before the coming into force of any regulations made under this Act (other than regulations made under Parts 11 to 16) until such time as the conditions on the resource consent are reviewed in accordance with section 128 of the Resource Management Act 1991....”

(6) Any controls prescribed under any other Act for any hazardous substance shall not contravene the provisions of EPA notices issued under sections 75 and 76 unless—

- (a) there is a provision in that other Act that expressly provides that controls made under that other Act for specified purposes may contravene the provisions of EPA notices issued under this Act; and
- (b) the controls are made for the purposes provided for in that Act.

⁴ HSAW is subject to consequential amendments as a part of the RLAB bill which proposes the deletion of s.230(1) and s.230(2)

- Channel Terminal Services Limited – Port Marsden Highway, Ruakaka (upper tier).
 - Wiri Oil Services Limited – Port Marsden Highway, Ruakaka (lower tier).
55. In summary, the HSW is therefore considered to be complimentary to the RMA in managing hazardous substances primarily associated with workplaces. The functions of HSW have been considered when reviewing the provisions for hazardous substances.
56. Other legislation which is broadly relevant to the management of hazardous substances, includes the:
- Building Act 2004 – safe storage of hazardous substances.
 - Fire Service Act 1975 – incidents involving hazardous substances and considered to be emergencies that are attended by the Fire Service.
 - Health Act 1956 – control nuisances, offensive trades, and the handling and storage of noxious substances.
 - Agricultural Compounds and Veterinary Medicines Act 1997 – registration and use of chemicals.
57. 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, discourage or oblige councils 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.

3. Current State and Resource Management Issues

58. This section provides an overview of the relevant context for the management of hazardous substances, the current approach to managing Hazardous Substances in the WDP, and key issues raised through consultation. It concludes with a summary of the key resource management issues for the management of hazardous substances to be address through the WDP.

3.1 Context

59. The 2017 RMA amendments removed the function of local authorities to control the adverse effects of the use, storage, disposal, and transportation of hazardous substances. However, Councils still have a broad function of achieving integrated management and may exercise controls on hazardous substances under the RMA, if existing HSNO or HSW controls inadequately address the environmental effects of hazardous substances.
60. HSNO and HSW do not address residual risk⁵ to people, property, and the environment. They only have a generic consideration of surrounding land use. Hence, controls may be required to manage the adverse residual risks associated with hazardous substances within or adjacent to a sensitive receiving environment.

⁵ For the purposes of PC91 'residual risk' means, any risk to an adverse effect after other industry controls, legislation and regulations, include 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.

61. Additionally, HSNO and HSW do not include land use controls to specifically address the risk of reverse sensitivity effects, such as housing, locating close to activities that involve hazardous substances. Under the RMA, new activities may be restricted where they have the potential to result in reverse sensitivity effects in order to protect established activities and their operations. Where residual risk occurs, it is appropriate that these are addressed in the district plan framework.

3.2 Operative District Plan Approach to Hazardous Substances

62. The WDP has a standalone chapter for hazardous substances which controls the use of land associated with the use, storage, disposal, and transportation of hazardous substances. The objectives, policies, and rules in the WDP apply in all Zones across the District and use a tool called the Hazardous Facilities Screening Procedure (**HFSP**) to identify whether a resource consent is required for the storage or use of a substance. Those facilities which store hazardous substances in quantities which are 'permitted' are required to comply with 'conditions' set out in Appendix 8 of the WDP.
63. The current management approach in the WDP is to assess the risk to the environment from the location of hazardous facilities if an accidental discharge occurs. It also seeks to promote awareness of the risk of environmental damage from hazardous substances to reduce the number of accidental discharges to the environment. Finally, the WDP seeks to ensure the safe and efficient disposal of hazardous substances.

3.2.1 Limitation with current approach

64. The Council has reviewed the current hazardous substances provisions in the WDP. This review identified a number of issues with the current approach, which are outdated and does not reflect best practice. The WDP's focus on managing the effects of accidental spillages and discharges from hazardous facilities, duplicates the HSNO and HSW regulatory regime, which imposes a detailed and comprehensive set of controls which achieve, in large measure, the same performance outcomes. This includes the disposal of hazardous substances which is a matter now dealt with in detail by the Hazardous Substances (Disposal) Notice 2017.
65. The key issue is that the WDP provisions were prepared at a time when local authorities has specific functions under the RMA to manage the use, storage, disposal, or transportation of hazardous substances. Therefore, it also unnecessarily duplicates the NRP in respect of discharges of contaminants, which includes hazardous substances, which is a regional council function under sections 15 and 30 of the RMA.
66. The Council's analysis found that the use and storage of hazardous substances is generally associated with industrial activities located in the Industrial Zones. Whangarei Districts industrial areas contained an agglomeration of activities that involve hazardous substances and were at most risk from reverse sensitivity effects. Reverse sensitivity risks are most likely to arise from inappropriate activities locating in or adjacent to Industrial Zones. The Zone provisions for the Light and Heavy Industrial Zones strongly discourage sensitive activities, such as residential and education, unless they are ancillary to an industrial activity. The two MHF's within the Whangarei District are located within the Heavy Industrial Zone.

67. Services stations also use and storage of hazardous substances and in the WDP and they fall under the commercial activity grouping. Services stations are a non-complying activity in residential and open space and recreation zones, as they are not anticipated in these more sensitive zones.
68. Other zones associated with the use and storage on hazardous substances are the Port Zone (**PORTZ**), the Airport Zone (**AIRPZ**), and the Strategic Rural Industries Zone (**SRIZ**). The PORTZ recognises the significance of the Whangarei Port and regionally significant infrastructure and aims to see a balance between the continued and future operation and development of the Port, providing for appropriate commercial and industrial activities, and managing effects on the environment. The AIRPZ recognises that significance of the Whangarei Airport and the purpose of the Zone is to provide for activities that are compatible with the Airport in a manner that protects the Airport from adverse effects and reverse sensitivity. The SRIZ recognises and provides for the retention and managed expansion of several established industries of strategic significance located in the rural areas of the District. Complementary commercial activities and industrial activities that do not compromise the functioning of existing strategic rural industries may be appropriate in this Zone. Sensitive activities are not anticipated in the SRIZ.
69. A review of other district plans⁶ was undertaken to assess the approaches that have been adopted to managing hazardous substances in other areas. The key findings are as follows:
- There has been a move away from managing the use, storage, and disposal of hazardous substances to the management of the siting of certain facilities.
 - There is a recognition of the role of other legislation and regulations.
 - A focus on managing reverse sensitivity risk to established facilities that use, store, or dispose of hazardous substances.

3.3 Consultation undertaken to date

70. The s32 report provides a detailed overview of the consultation and engagement Council has undertaken with tangata whenua, stakeholders and communities throughout the district to inform the development of PC91.
71. Initial pre-notification feedback on the draft Hazardous Substances chapter, as part of a wider plan change package, was sought from 30 March to 6 May 2022. Letters were sent to every landowner in the Whangarei District providing them with an overview of the proposed changes and a link to a consultation website for further information and an avenue to provide informal feedback. Briefings were also held with Te Huinga, Te Karearea and the building sector.

3.3.1 Summary of key issues raised in pre-notification engagement phase

72. Overall, there was a relatively low level of interest in the draft Hazardous Substances chapter from stakeholders and the community when early feedback was sought. The key issues identified in the feedback on the draft chapter include:

⁶ The plans assessed include the draft Far North District Plan, the Porirua Proposed District Plan, the Wellington District Plan, the appeals version Kapiti Coast District Plan, and the appeals version South Taranaki District Plan.

- Support for avoiding unnecessary duplication of controls in HSNO and HSW.
- Support for the introduction of a rule to appropriately manage the design and location of sensitive activities in order to avoid reverse sensitivity effects occurring.
- Support for the introduction of a rule to manage where hazardous substances and hazardous facilities should and should not be located (i.e. service stations should not be placed in coastal flooding or erosion areas).
- Support for the introduction of a rule to manage residual risk.

3.3.2 Summary of advice from engagement/consultation with iwi authorities

73. Section 32(4A)(a) of the RMA requires that evaluation reports include a summary of advice on a proposed plan received from iwi authorities. In the pre-notification and engagement process described above, no feedback was received from iwi authorities or hapū that directly related to the draft Hazardous Substances chapter. General feedback in relation to the wider draft plan change package was received from Te Parawhau Hapū. They listed the matters of concern for their hapū, which include, but are not limited to:

- Alienation of land.
- Loss of kainga.
- Protection of wāhi tapu and taonga.
- Widespread environmental degradation.
- Exercise of Tino Rangatiratanga.

74. Te Parawhau Hapū requested that the opportunity to work with the Council to prepare and review plan changes as the process progresses.

4. Summary of resource management issues

75. Based on the analysis of relevant context, current management approach, efficiency and effectiveness review and early feedback from consultation on the draft Hazardous Substances chapter outlined above, the key resource management issues for the hazardous substances to be addressed through PC91 are:

- The WDP provisions are out-of-date and do not reflect the 2017 RMA amendments that removed the specific functions of local authorities to manage the use, storage, disposal and transportation of hazardous substances. PC91's approach for hazardous substances needs to be refined to address residual risks that are not adequately addressed through controls in other legislation and regulations, in particular HSNO and HSW.
- Reverse sensitivity risk to areas that accommodate activities that use, store, or dispose of hazardous substances. PC91's approach needs to protect and provide for these activities.
- Activities using and storing hazardous substances present a risk to sensitive environments and areas, and sensitive activities. The controls in HSNO and HSW do not consider these site-specific risks, which need to be addressed through appropriate RMA land-use controls.

The current zoning framework with the WDP adequately manages these risks and PC91 objectives and policies will serve to support the zoning framework.

5 Proposed District Plan Provisions

76. The management approach taken is to provide specific objectives and policies in a proposed Hazardous Substances chapter, with the rules around managing the location of hazardous facilities remaining in the relevant zone chapters. These provisions should be referred to in conjunction with this s32 evaluation report. The storage, use, disposal, and transport of hazardous substances will be managed through HSNO, HSW and other legislation.

5.1 Strategic Objectives

77. The proposed HSUB objectives are subservient to the higher order district wide objectives set out in the Strategic Directions District Growth and Development (**DGD**) Chapter. The relevant overarching DGD Chapter objectives and policies, and their links to the proposed HSUB objectives are shown in Table 1 below and illustrates that the objectives of the HSUB are effectively linked to the relevant overall objectives and policies of the DGD Chapter.

Table 1: Links between the Strategic Direction and proposed HSUB Objectives

Linking between Strategic Direction Chapters and HSUB Objectives		
DGD Objective	DGD Policies	Proposed HSUB Objective
DGD-O5 – Incompatible Activities and Reverse Sensitivity Avoid conflict between incompatible land use activities from new subdivision, use and development.	DGD-P2	HSUB-O2
Regional Significant Infrastructure Objectives		
DGD-O14 – Recognised Benefits The benefits of Regionally Significant Infrastructure and recognised and provided for.	DGD-P15	HSUB-O2
DGD-O15 – Adverse Effects Avoid, remedy or mitigate or offset adverse effects arising from the development, operation, maintenance, and upgrading of Regionally Significant Infrastructure.	DGD-P16, DGD-P17	HSUB-O1

5.2 Proposed management approach

78. This section provides a summary of the proposed management approach for the management of hazardous substances in the WDP.
79. The Council considers that there is a role for the WDP to manage the residual risk to people's health and safety, and the natural environment. There is also a role for land use controls to manage the effects of reverse sensitivity to established activities that store, use, or dispose of hazardous substances from the establishment of more sensitive activities near to them. As such the role of the

WDP will be restricted to controlling effects on land and land use under the RMA, that are not dealt with by other regimes.

5.2.1 Key changes from Operative District Plan

80. As identified earlier, the use, storage, and disposal of hazardous substances is largely controlled under HSNO and HSW. This legislation combined with regional instruments, including the NRP, create a comprehensive framework for managing hazardous substances. Due to the WDP duplicating many of these controls the key changes proposed to the Appeals Version of the WDP are:

- Rationalisation of the provisions to avoid duplication of controls by introducing amended objective and policies and by deleting operative/current rules HSUB-R1 and HSUB-R2.
- The deletion of Appendices 8a – 8d.
- The deletion of “hazardous facility” and “hazardous sub facility” definitions.
- The introduction of a definition for “sensitive environments and areas”.
- The deletion of the following reference documents from the Referenced Documents Chapter:
 - Department of Labour, 1992 Code of Practice for Design Installation and Operation of Underground Petroleum System.
 - AS/NZ 1596:1997 Australian and New Zealand standard for Storage and Handling of LPG.
 - New Zealand Radiation Protection Regulations 1982.
 - NZS 8409: 1999 New Zealand Code of Practice for the Management of Agrichemicals.
 - New Zealand Chemical Industry Council 1987 Code of Practice for Warning Signs for Premises Storing Hazardous Substances.

5.3 Northland Regional Policy Statement Direction

81. As stated earlier, 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 (policies 7.1.2 ‘New subdivision and land use within 10-year and 100- year flood hazard areas’ and 7.1.3 ‘New subdivision, use and development within areas potentially affected by coastal hazards (including high risk coastal hazard areas)’). Overall the policy direction seeks to ensure that risks are not increased through the location of hazardous substances in natural hazard areas, and includes a requirement that hazardous substances will not be inundated by flood flows and that mechanisms are in place to ensure safe storage of hazardous substances.

82. The policy direction is also supported by method (8) at section 7.1.7 which states:

“Where buildings occupied by people, animals and / or hazardous substances in 10-year flood areas and high risk coastal hazard areas have been materially damaged or destroyed by a natural hazard event, the regional council (through the relevant regional plan) will require land use consent for the repair or reconstruction of the building. The regional council will limit its discretion in determining the land use consent to avoiding or mitigating natural hazards.”

83. This function is retained as a regional function as noted in the method itself. District councils, in this instance, play more of a key role in terms of new development (use and subdivision).

84. In summary, NRPS policies require PC91 to control hazardous substances in areas subject to flooding and coastal hazards. However, it is important to emphasise that that these policies were prepared prior to the 2017 RMA amendments that removed the explicit function of local authorities to manage hazardous substances.

5.4 Consent activity status and thresholds

85. The objectives and policies would be triggered for discretionary and non-complying activities in the zones and overlays. Examples include:

- Residential activities in the Light Industrial Zone (**LIZ**) where the activity is a primary or ancillary activity are non-complying. In considering a proposal to locate a residential unit within the LIZ, the assessment would need to include HSUB-P4, which requires that sensitive activities be appropriately designed and located in relation to existing areas and activities which use, store or dispose of hazardous substances to avoid reverse sensitivity effects.
- Service stations in residential zones where the activity is a primary or ancillary activity is non-complying. In considering a proposal to locate a service station in a residential zone, the assessment would need to include HSUB-P2 and HSUB-P3, which require that the service station is not located in an area where it may adversely affect the health, safety and wellbeing of people and communities, or it is not located within a sensitive environment or area, unless it can be demonstrated that the residual risk will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level.

86. Industrial activities are prohibited activities in the Low Density, Medium Density, General Residential Zones, the Future Urban, City Centre, and Shopping Centre Zones. In the Hospital Zone, industrial activities are prohibited except for research laboratories which are used for scientific or medical research.

5.5 Summary of proposed objectives and provisions

87. This section provides a summary of the proposed objectives and provisions which are the focus of the s32 evaluation. The proposed objective are as follows:

Objectives	
HSUB-O1 – Residual Risks	People, property and the environment are protected from any unacceptable levels of residual risk associated with the location of facilities that use, store and dispose of hazardous substances.
HSUB-O2 – Reverse Sensitivity	Sensitive activities do not unduly compromise existing areas and activities which use, store, or dispose of hazardous substances.

5.5.1 Summary of policies

88. For the purposes of s32 evaluations, ‘provisions’ are the “policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change”. Policies have been drafted to give effect to these objectives and provide specific guidance as to how the objectives are to be achieved. The proposed policies are as follows:

Policies	
HSUB-P1 – Residual Risks	To recognise the role of national and regional organisations, including the Environmental Protection Authority, WorkSafe and Northland Regional Council, in managing hazardous substances and avoid regulating hazardous substances where an adequate level of human health and environmental protection is already provided and there are no identified residual risks.
HSUB-P2 – People and Communities	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.
HSUB-P3 – Sensitive Environments and Areas	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.
HSUB-P4– Reverse Sensitivity	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.

5.5.2 Summary of rules

89. The proposed provisions do not propose rules in the draft Hazardous Substances chapter because:

- 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 approach instead is to support the zone-based provisions to avoid incompatible activities locating within them, and in particular the Light and Heavy Industrial Zone, which was found to have an agglomeration of activities that use, store or dispose of hazardous substances.
- The Council’s planning analysis identified that the role of the WDP should be limited to managing residual risk only; in relation to human health and safety, and a range of cultural, historic heritage and natural environment values. The approach is to support overlay-based provisions that already seek to protect the values and qualities in these sensitive environments.
- The Council is undertaking other Plan Changes, as part of its rolling review, that will address natural hazard risk in relation to the management of activities that involve the use, storage, and disposal of hazardous substances.

5.5.3 Any new definitions

90. PC91 proposes the following definition for ‘Sensitive Environments and Areas’:

Sensitive Environments and Areas

means:

- High Natural Character Areas.*
- Outstanding Natural Character Areas.*
- Outstanding Natural Landscapes.*

- d. *Outstanding Natural Features.*
- e. *Flood Hazard Areas.*
- f. *Coastal Hazard Areas.*
- g. *Mining Hazard Areas.*
- h. *Area of High Susceptibility to Instability Hazards.*
- i. *Sites and Areas of Significance to Māori.*
- j. *Heritage Buildings, Sites and Objects.*
- k. *Northpower Critical Electricity Lines.*

91. The purpose of the definition is to be clear on where the location of activities using hazardous substances are not appropriate, and to give effect to section 6 of the RMA. There is an existing definition of 'Sensitive Activities' in the WDP, which includes residential activity, and that term is used when addressing reverse sensitivity matters.

5.5.5 Responses to advice from iwi authorities

92. Section 32(4A) of the RMA requires evaluation reports to summarise advice received from iwi authorities on a proposed plan and the response to that advice, including and provisions that are intended to give effect to the advice. Section 3.3.2 of this report provide a summary of advice received from iwi authorities on the provisions relating to hazardous substances.

93. As advice from iwi authorities has been very general to date, currently no response is required.

6. Approach to Evaluation

6.1 Introduction

94. Council must evaluate in accordance with s32 of the RMA the extent to which each objective proposed in PC91 is the most appropriate way to achieve the purpose of the RMA. To confirm the appropriateness of the proposed objectives, section 6 of this report assesses whether the proposed objectives are the most appropriate way to achieve the purpose of the RMA as well as other higher order documents and objectives in the DGD and consistency across other District Wide Chapters. The level of analysis undertaken in this report is considered appropriate to the scale of the proposal

6.2 Evaluation of scale and significance

95. Section 32(1)(c) of the RMA requires that evaluation reports contain a level of detail that corresponds with the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of this proposal. This step is important as it determines the level of detail required in the evaluation of objectives and provisions so that it is focused on key changes from the status quo. The scale and significance of the environmental, economic, social, and cultural effects of the provisions in PC91 are evaluated in Table 2 below.

Table 2: Assessment of the scale and significance of the proposal

Criteria	Comment	Assessment
Raises any principles of the Treaty of Waitangi	The proposed provisions have limited significance in relation to principles of the Treaty of Waitangi. The proposed provisions will ensure hazardous facilities are not located within sites and areas of significance to Māori.	Low

Degree of change from the Operative Plan	The WDP provisions are based on a prescriptive approach. The 2017 RMA amendment warrants a change from this approach. Therefore, there is a moderate degree of change due to the overall reduction of the regulation of hazardous substances through PC91. The proposed provisions are intended to integrate with, rather than duplicate, existing controls under other legislation and regulations.	Moderate
Effects on matters of national importance	The provisions will indirectly address a number of matters of national importance, as noted in Section 2.1 of this report by controlling the proximity of hazardous facilities to sensitive environments and areas. 'Sensitive environments and areas' are proposed to be defined by PC91 and include a number of areas recognised in Section 6 of the RMA (outstanding natural landscapes etc.)	Low
Scale of effects – geographically (local, district wide, regional, national)	The potential scale of adverse geographical effects from the use, storage and disposal of hazardous substances is low as hazardous substances are generally managed under other regulations. The provisions in the WDP are intended to manage residual risk only.	Low
Scale of people affected – current and future generations (how many will be affected- single landowners, multiple landowners, neighbourhoods, etc.)	The potential scale of adverse effects on current and future generations from the use, storage and disposal of hazardous substances is low, as hazardous substances are generally managed under other regulations. The provisions in the WDP are intended to manage residual risk only and reverse sensitivity issues.	Low
Scale of effects on those with a specific interest e.g. iwi/ hapū	The potential scale of adverse effects on those with a specific interest from the use, storage and disposal of hazardous substances is low as hazardous substances are generally managed under other regulations. The provisions in the WDP are intended to manage residual risk only and reverse sensitivity issues.	Low
Degree of policy risk- does it involve effects that have been considered implicitly or explicitly by higher order documents? Does it involve effects addressed by other standards/commonly accepted best practice	PC91's provisions respond to the clear direction provided through the 2017 RMA amendments to only use WDP controls to manage hazardous substances if adverse effects are not adequately addressed through other legislation. The degree of policy risk is low as the purpose of this chapter is to manage residual risk and reverse sensitivity after compliance with the existing regulatory framework for hazardous substances under HSNO, HSW and other legislation.	Low

6.2.1 Potential impacts on Māori

96. The potential impact on Māori is limited since the HSNO, HSW and the NRP already provide a regulatory framework for hazardous substances. The purpose of this plan change is to integrate with the controls under the existing framework.

6.3 Summary of scale and significance assessment

97. The overall scale and significance of this proposal has been assessed as low. This means that this s32 evaluation report needs to contain a lower relative level of detail and analysis for the objectives and provisions for the Hazardous Substances chapter including:

- A planning analysis of the key changes and provisions.
- Reference and reliance on an existing information/evidence base.
- Evidence of community, landowner, iwi and hapū engagement and consideration of feedback.

7. Evaluation of Objectives

98. Section 32(1)(a) of the RMA requires that the evaluation report examine the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA. The assessment of the appropriateness of the objectives for hazardous substances is against four criteria to test different aspects of 'appropriateness' as outlined in Table 3 below.

Table 3: Criteria to assess the objectives of the proposal

Criteria	Assessment
Relevance	<ul style="list-style-type: none"> • Is the objective directly related to a resource management issue? • Is the objective focused on achieving the purpose of the RMA?
Usefulness	<ul style="list-style-type: none"> • Will the objective help Council carry out its RMA functions? • Does the objective provide clear direction to decision-makers?
Reasonableness	<ul style="list-style-type: none"> • Can the objective be achieved without imposing unjustified high costs on Council, tangata whenua, stakeholders, and the wider community?
Achievability	<ul style="list-style-type: none"> • Can the objective be achieved by those responsible for implementation?

99. Tables 4, 5, 6 and 7 below provide an assessment of the existing objective, the proposed HSUB-O1 and HSUB-O2, and no provisions in the WDP relating to hazardous substances, against the above criteria.

7.1 Evaluation of Existing Objective

Table 4: Evaluation of Existing Objective

Existing Objective	Appropriateness to Achieve Purpose of the RMA
HSUB-O1 - Adverse Effects - Protection of the environment from the adverse effects and risks, from activities involving the use, storage, manufacture, transport and disposal of hazardous substances	<p>The intent of this objective is to manage the effects of accidental spillages and discharges from hazardous facilities on the environment.</p> <p>The objective is no longer relevant as it only seeks to manage accidental spillages and discharges caused by the use, storage, manufacture, transportation, and disposal of hazardous substances.</p>

	The object is no longer useful, reasonable, or achievable due to legislative changes, which mean that the objective duplicates controls in HSNO, HSW and the NRP.
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100. In summary, the existing objective is no longer relevant, useful, reasonable, or achievable and it only seeks to manage accidental spillages and discharges and it duplicates other legislation.

7.2 Evaluation of Proposed Objectives

Table 5: Evaluation of Objective HSUB-O1

HSUB-O1 - Residual Risks - People, property and the environment are protected from any unacceptable levels of residual risk associated with the location of facilities that use, store, and dispose of hazardous substances.	
Relevance	The objective is directly relevant as it implements the RPS which requires that district councils have responsibility for the management of hazardous substances in relation to land outside of the coastal marine area and beds of rivers, lakes, and other water bodies.
Usefulness	The objective is useful as it makes it clear that the WDP is focused on the management of residual risk, which will guide decision making when consider a resource consent application under s104.
Reasonableness	The objective is reasonable as it does not create additional costs to the community. As the HSNO and HSW requirements, and those under the NRP are already operative the objective removes the current duplication (and therefore costs to applicants).
Achievability	The objective is achievable as it is limited to managing residual effects after compliance with regulations under HSNO, HSW and the NRP.
Overall evaluation: The above evaluation concludes that HSUB-O1 is the preferred option as it is the most appropriate way to achieve the purpose of the RMA in terms of relevance, usefulness, reasonableness and achievability, and the proposed objective is preferred over the status quo.	

Table 6: Evaluation of Objective HSUB-O2

HSUB-O2 - Reverse Sensitivity - Sensitive activities do not unduly compromise existing areas and activities which use, store, or dispose of hazardous substances.	
Relevance	The objective is relevant as it supports strategic direction (DGD-O5) in relation to reverse sensitivity. Additionally, the objective implements the RPS that requires that district councils have responsibility for the management of hazardous substances in relation to land outside of the coastal marine area, and beds of rivers, lakes, and other water bodies.
Usefulness	The objective is useful as it requires the management of reverse sensitivity risks from sensitive activities or established activities that involve hazardous substances, which will guide decision making when considering a resource consent application under s104.
Reasonableness	The objective is reasonable because it recognises the economic importance and benefits of protecting hazardous facilities from reverse sensitivity risk.

	The objective will, however, restrict land uses in certain locations, because the types of activities permitted within certain zones are not generally considered suitable or compatible with sensitive activities.
Achievability	The objective is achievable as it is limited to managing reverse sensitivity effects, which is already provided for in other sections of the WDP.
Overall evaluation: The above evaluation concludes that HSUB-O2 is the preferred option as it is the most appropriate way to achieve the purpose of the RMA in terms of relevance, usefulness, reasonableness and achievability, and is preferred over the status quo objective.	

7.3 Evaluation of no provisions

Table 7: Evaluation of no provisions in the WDP relating to hazardous substances

Removal of all provisions relating to hazardous substances in the WDP	
Relevance	The removal of all provisions does not support strategic direction (DGD-O5) in relation to reverse sensitivity. Additionally, provisions are required to implement the RPS, that requires that district councils have responsibility for the management of hazardous substances in relation to land outside of the coastal marine area, and beds of rivers, lakes, and other water bodies.
Usefulness	The removal of some of the current provisions is useful in that there is no risk of overlap or duplication of other legislation. However, the removal of all provisions (including objectives and policies) is not useful as controls are required to manage reverse sensitivity risks from sensitive activities or established activities that involve hazardous substances.
Reasonableness	Removing all provisions is not reasonable as provisions are required to ensure that the economic importance and benefits of protecting hazardous facilities from reverse sensitivity risk is recognised. The removal of all provisions could be considered reasonable in that there will be no additional consenting costs.
Achievability	Removing all provisions is not achievable as this approach is inconsistent with the Planning Standards. .
Overall evaluation: The above evaluation concludes that the removal of all provisions is not the most appropriate water to achieve the purpose of the RMA in terms of relevance, usefulness, reasonableness and achievability.	

7.4 Overall evaluation of objectives statement

101. The proposed objectives give effect to matters in Section 6, 7 and 8 of the RMA as the objectives, along with the geographical application of appropriate zones, ensure that hazardous facilities are not located with sensitive environments and areas, and the proximity of hazardous facilities to sensitive activities is managed.

8. Evaluation of Provisions to Achieve Objectives

8.1 Introduction

102. Section 32(1)(b) of the RMA requires the evaluation report to examine whether the provisions are the most appropriate way to achieve the objectives by:

- Identifying other reasonably practicable options for achieving the objectives; and

- Assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
- Summarising the reasons for deciding on the provisions.

103. When assessing the efficiency and effectiveness of the provisions in achieving the objectives, section 32(2) of the RMA requires that the assessment:

- (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for -*
 - (i) economic growth that are anticipated to be provided or reduced; and*
 - (ii) employment that are anticipated to be provided or reduced; and*
- (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and*
- (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

104. This section provides an assessment of reasonably practicable options and associated provisions (policies) for achieving the objectives in accordance with these requirements. This assessment of options is focused on the key changes from the status quo as outlined in the 'proposed management approach' in section 5.2 of this report.

105. Each option is assessed in terms of the benefits, costs, and effectiveness and efficiency of the provisions, along with the risks of not acting or acting when information is uncertain or insufficient. For the purposes of this assessment:

- **Effectiveness** assesses how successful the provisions are likely to be in achieving the objectives and addressing the identified issues.
- **Efficiency** measures whether the provisions will be likely to achieve the objectives at the least cost or highest net benefit to society.

106. The sections below provide an assessment of options (and associated provisions) for achieving the objectives in accordance with sections 32(1)(b) and 32(2) of the RMA.

8.2 Assessment of options of different planning management approaches

107. For the purpose of this evaluation, the Council has considered the following potential options:

- Option 1: The Status Quo (i.e. The operative provisions (policies and rules) in the WDP)
- Option 2: The Proposed Provisions (i.e. The proposed policies (HSUB-P1 to P4) outlined in section 5 of this report)

108. As already stated, the proposed provisions do not propose rules in the Hazardous Substances Chapter.

8.2.1 Option 1: The Status Quo

Table 8: Assessment of the effectiveness and efficiency of the status quo provisions

Option 1: The status quo (the operative provisions (policies and rules) in the WDP)		
Benefits	Costs	Risk of acting/not acting
<p><u>Environmental</u></p> <p>The provisions will not provide any additional benefits over and above those achieved by compliance with HSNO and HSW, as well as the NRP.</p> <p><u>Economic</u></p> <p>There is a cost to Council in administering the provisions which duplicate controls under other regulations and regional plans. There are also additional consenting costs to applicants.</p> <p><u>Social</u></p> <p>None identified.</p> <p><u>Cultural</u></p> <p>None identified.</p>	<p><u>Environmental</u></p> <p>The provisions do not actually prevent sensitive activities from locating adjacent to hazardous facilities they only manage the amount of hazardous substances used and stored at a site.</p> <p>The provisions do not manage residual risk and largely duplicate controls available under other regulations.</p> <p>The provisions fail to manage the effects of the use, storage, and disposal of hazardous substances in sensitive areas or environments.</p> <p><u>Economic</u></p> <p>The provisions duplicate controls in other legislation, creating inefficiencies and compliance costs.</p> <p>The provisions are complex and difficult to interpret and administer, creating inefficiencies and implementation costs.</p> <p>As the provisions do not prevent sensitive activities from locating adjacent to established activities that</p>	<p>It is considered that there is certain and sufficient information on which to act. Continuing with the status quo provisions duplicates controls in other legislation. The operative provisions will continue to be complex and technical to administer and will be inconsistent with current best practice to limit controls on hazardous substances in RMA plans.</p>

	<p>involve hazardous substances. This could require these established activities to amend their procedure and processes or undertake additional requirements to protect health and safety of people, which adds costs to their operations.</p> <p><u>Social</u></p> <p>None identified.</p> <p><u>Cultural</u></p> <p>The provisions fail to protect cultural and historic heritage values.</p>	
<p>Effectiveness: The status quo provisions are not the most effective method for achieving the proposed objectives, as they do not manage residual and reverse sensitivity risk.</p>	<p>Efficiency: The status quo provisions duplicate controls in other legislation which is highly inefficient for industry and regulators.</p>	
<p>Overall evaluation of Option 1: Retaining the status quo is not the most appropriate option to achieve the proposed objectives because the provisions are outdated, difficult to administer and complex. They do not recognise the new role of the WDP to manage residual risk and to control reverse sensitivity risk between hazardous facilities and sensitive activities. The status quo is also inefficient as it duplicates controls in other legislation.</p>		

8.2.2 Option 2: The Proposed Provisions

Table 9: Assessment of the effectiveness and efficiency of the proposed provisions

Option 2: The proposed provisions (proposed policies HSUB-P1 to P4)		
Benefits	Costs	Risk of acting/not acting
<p><u>Environmental</u></p> <p>HSNO regulations are intended to prevent environmental effects from hazardous substances, including in natural hazard events. However, HSNO and HSW do not address residual risk to the environment. They only have a generic consideration of surrounding land use. Hence, provisions are required to manage the adverse residual risks associated with hazardous substances within or adjacent to a sensitive receiving environment.</p> <p><u>Economic</u></p> <p>The provisions support the zone-based framework in the WDP which prevents incompatible activities locating in the light and heavy industrial zones. The HSUB objectives and policies will only be triggered for discretionary or non-complying activities, such as residential units which are not ancillary to an industrial activity.</p> <p>There will be reduced costs to the Council in administering the new provisions, particularly in relation to processing consent applications by avoiding duplication with non-RMA regulations and the NRP. There will be reduced costs to applicants as the duplication of rules will be removed.</p> <p><u>Social</u></p> <p>Non identified</p> <p><u>Cultural</u></p>	<p><u>Environmental</u></p> <p>The provisions only manage residual risk, not the risk to the wider environment.</p> <p><u>Economic</u></p> <p>Reduced location options for activities that store, use, or dispose of hazardous substances.</p> <p><u>Social</u></p> <p>None identified.</p> <p><u>Cultural</u></p> <p>The provisions are restricted to managing residual risk to cultural values.</p>	<p>It is considered that there is certain and sufficient information on which to act. The proposed provisions are a departure from the status quo, but they rely on HSNO and HSW to manage the use, storage and disposal of hazardous substances and the RMA controls are limited to managing factors not addressed in this legislation.</p>

Provisions ensure residual risk to cultural values are avoided, or else appropriately remedied or mitigated.

Effectiveness: The proposed provisions (policies) will be the most effective method for achieving the proposed objectives as they as they manage the potential residual risks to people, communities, and the environment without duplicating existing legislation.

Efficiency: The proposed provisions will achieve the proposed objectives as the provide a more efficient approach than the status quo as they avoid duplication of other legislation.

Overall evaluation of Option 2: This is the most appropriate option to achieve the proposed objectives since it best recognises the role of non-RMA regulations and the NRP in managing the effects of hazardous substances, and the role for the WDP to manage residual risk and reverse sensitivity effects.

9. Conclusions

109. This evaluation has been undertaken in accordance with s32 of the RMA in order to identify the need, benefits and costs arising from PC91 and the appropriateness of current and proposed methods and rules having regard to their effectiveness and efficiency relative to other means of achieving the purpose of the RMA.
110. With regard to hazardous substances, this review has found that the most appropriate way to manage hazardous substances is to regulate only those matters that are not covered by the NRP or legislation (HSN and HSW), in order to avoid duplication.
111. Pursuant to s32 of the RMA, the proposed objectives have been analysed against Part 2 of the RMA and the relevant provisions of higher order plans and policy documents. It is considered that the proposed objectives are the most appropriate way to achieve the purpose of the RMA.
112. The proposed provisions (policies) have been detailed and compared against viable alternatives and are considered to represent the most efficient and effective means of achieving the proposed objectives and of addressing the underlying resource management issues relating to hazardous substances.

10. Appendices

Appendix 1: Proposed Hazardous Substances Chapter

Hazardous Substances (HSUB)

Issues

Hazardous substances are used throughout the District and include a wide range of substances such as medical waste, petroleum products, explosives, and industrial, agricultural and household chemicals. These substances can pose potential threats to the health and safety of people and can have significant adverse effects on the environment. At the same time, their use, storage, manufacture and disposal allow people to provide for their social and economic wellbeing, and their health and safety.

There is a wide range of legislation and industry standards controlling hazardous substances. Principal amongst these is the Hazardous Substances and New Organisms Act 1996 which provides the general framework for controlling hazardous substances during their entire life cycle. There are additional controls relating to hazardous substances in the Proposed Regional Plan for Northland, the Land Transport Act 1998, the Radiation Safety Act 2016, the Building Act 2004, the Health and Safety at Work Act 2015 and the Health and Safety at Work (Hazardous Substances) Regulations 2017.

In addition to the above controls, the District Plan manages adverse effects associated with hazardous substances and potential reverse sensitivity effects through spatial zoning and underlying zone rules.

Given the level of regulation controlling hazardous substances, the Hazardous Substances Chapter only seeks to address the residual risks to people, property and the environment, and reverse sensitivity after other industry controls and legislation have been complied with, and where consent is required based on other district wide and area specific chapter rules.

Objectives

HSUB-O1 – Residual Risks	People, property and the <u>environment</u> are protected from any unacceptable levels of residual risk associated with the location of facilities that use, store and dispose of <u>hazardous substances</u> .
HSUB-O2 – Reverse Sensitivity	<u>Sensitive activities</u> do not unduly compromise existing areas and activities which use, store or dispose of <u>hazardous substances</u> .

Policies

HSUB-P1 – Residual Risks	To recognise the role of national and regional organisations, including the Environmental Protection Authority, WorkSafe and Northland Regional Council, in managing <u>hazardous substances</u> and avoid regulating <u>hazardous substances</u> where an adequate level of human health and environmental protection is already provided and there are no identified residual risks.
HSUB-P2 – People and Communities	To ensure activities which use, store or dispose of <u>hazardous substances</u> 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.
HSUB-P3 – Sensitive Environments and Areas	To ensure activities which use, store or dispose of <u>hazardous substances</u> are not located within <u>sensitive environments and areas</u> , unless it can be demonstrated that the residual risk to people, property and the <u>environment</u> will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level.

Hazardous Substances (HSUB)

HSUB-P4– Reverse Sensitivity

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](#).

New Definitions:

Sensitive Environments and Areas

means:

- a. High Natural Character Areas.
- b. Outstanding Natural Character Areas.
- c. Outstanding Natural Landscapes.
- d. Outstanding Natural Features.
- e. Flood Hazard Areas.
- f. Coastal Hazard Areas.
- g. Mining Hazard Areas.
- h. Area of High Susceptibility to Instability Hazards.
- i. Sites and Areas of Significance to Māori.
- j. Heritage Buildings, Sites and Objects.
- k. Northpower Critical Electricity Lines.

Consequential Amendments:

- Delete Hazardous Substances Chapter and Appendices 8a – 8d.
- Delete “hazardous facility” and “hazardous sub facility” definitions.
- Delete the following reference documents from the Referenced Documents Chapter:
 - Department of Labour, 1992 Code of Practice for Design Installation and Operation of Underground Petroleum System.
 - AS/NZ 1596:1997 Australian and New Zealand standard for Storage and Handling of LPG.
 - New Zealand Radiation Protection Regulations 1982.
 - NZS 8409: 1999 New Zealand Code of Practice for the Management of Agrichemicals.
 - New Zealand Chemical Industry Council 1987 Code of Practice or Warning Signs for Premises Storing Hazardous Substances.
 - New Zealand Ministry for the Environment 1999 Land Use Planning for Hazardous Facilities – A Resource for Local Authorities and Hazardous Facility Operators.

Appendix 4: Summary of Decisions Requested

Sub #	Sub Point	Submitter Name	Address for Service	Support / Oppose / Amend	Summary of Decision Requested
1	1	Ursula Buckingham	Attn: Ursula Buckingham c/- Manulife Forest Management PO Box 1860, Whangarei 0110	Seek Amendment	Remove Area of High Susceptibility to Instability Hazards from the Sensitive Environments and Areas definition. OR Provide an exception that Permitted Activities that operate in an Area of High Susceptibility to Instability Hazards are excluded from the Sensitive Environments and Areas definition.
2	1	Chancery Green on behalf of Channel Infrastructure NZ Limited	Attn: Chris Simmons / Ebony Ellis PO Box 47516, Ponsonby 1144	Support	Retain Objective HSUB-O1 and Policy HSUB-P1 as notified.
2	2	Chancery Green on behalf of Channel Infrastructure NZ Limited	Attn: Chris Simmons / Ebony Ellis PO Box 47516, Ponsonby 1144	Support	Retain Objective HSUB-O2 and Policy HSUB-P4 as notified.
2	3	Chancery Green on behalf of Channel Infrastructure NZ Limited	Attn: Chris Simmons / Ebony Ellis PO Box 47516, Ponsonby 1144	N/A	Council to review the relevant zone rules to appropriately manage the design and location of sensitive activities in order to avoid reverse sensitivity effects occurring, as necessary to achieve Objective HSUB-O2 and Policy HSUB-P4 and make any amendments to the Whangārei District Plan as a consequence.
3	1	Reyburn and Bryant on behalf of Northpower	Attn: David Johnson PO Box 191, Whangarei 0110	Support	Approve the Proposed Plan change.
4	1	Horticulture New Zealand	Attn: Sarah Cameron PO Box 10-232, Wellington 6011	Support	Retain HSUB-O1 Include a definition for residual risk as follows: Means in relation to hazardous substances, any risk of an adverse effect that remains after other industry controls and legislation and regional planning instruments have been complied with.
4	2	Horticulture New Zealand	Attn: Sarah Cameron PO Box 10-232, Wellington 6011	Support	Retain HSUB-O2
4	3	Horticulture New Zealand	Attn: Sarah Cameron PO Box 10-232, Wellington 6011	Support	Retain HSUB-P1
4	4	Horticulture New Zealand	Attn: Sarah Cameron PO Box 10-232, Wellington 6011	Support in Part	Amend HSUB-P2 as follows: 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 <u>manage</u> residual risk to people and communities <u>by avoiding such risk will be avoided</u> , or where avoidance is not practicable, remedied or mitigated to an acceptable level.
4	5	Horticulture New Zealand	Attn: Sarah Cameron PO Box 10-232, Wellington 6011	Support in Part	Amend HSUB-P3 as follows: To ensure activities which use, store or dispose of hazardous substances <u>which are located</u> are not located within sensitive environments and areas <u>manage unless it can be demonstrated that the</u> residual risk to people, property and the environment <u>by avoiding such risk will be avoided</u> , or where avoidance is not practicable, remedied or mitigated to an acceptable level.

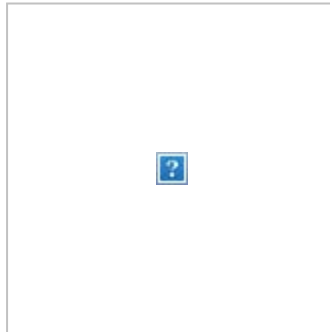
6	6	4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	Attn: Megan Barr PO Box 911310, Auckland Central	Support	Retain Policy HSUB-P4 as notified.
6	7	4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	Attn: Megan Barr PO Box 911310, Auckland Central	Support	No rules should be added to the Hazardous Substances chapter.
6	8	4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	Attn: Megan Barr PO Box 911310, Auckland Central	Support	Confirm the addition of the proposed definition of 'sensitive environments and areas' and the deletion of the definitions of 'hazardous facility' and 'hazardous sub facility' as notified.
6	9	4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	Attn: Megan Barr PO Box 911310, Auckland Central	Support	Confirm the proposed consequential amendments as notify.

***Plan Change 91 – Hazardous
Substances***

Original Submissions

From: [Mail Room](#)
To: [Mail Room](#)
Subject: Plan Change 91 - Form 5 submission - Ursula Buckingham - PC91-1
Date: Monday, September 5, 2022 12:47:30 PM

EXTERNAL: This email originated from outside Whangarei District Council. Do not click links or open attachments unless you recognise the sender and know the content is safe.



Plan Change 91 - Form 5 submission - Ursula Buckingham - PC91-1

Receipt Number: PC91-1

Plan Change details:

Plan Change number:	91
Plan Change name:	Hazardous Substances

Your details:

Submitters full name:	Ursula Buckingham
Address for service:	Manulife Forest Management PO Box 1860 Whangarei 0110
Telephone number:	0274998416
Email:	ubuckingham@manulife.com

Declaration:

Do you gain advantage in trade competition through this submission?	I could not gain an advantage in trade competition
Are you directly affected by an effect of the subject matter of the submission?	I am directly affected

Your submission:

The specific provisions of the Plan Change that my submission relates to are:	New Definition of Sensitive Environments and Areas
Do you support, oppose or seek amendment to the specific provision listed above?	Seek amendment
My submission is:	Sensitive Environments and Areas definition include Area of High Susceptibility to Instability Hazards. This chapter in the District Plan is under review (draft plan change 139). Certain land in PC 139 prohibits plantation forestry, however plantation forestry is permitted under the NES for Plantation Forestry. Plantation Forestry can have hazardous substances on site as part of their everyday operations. By including Area of High Susceptibility to Instability Hazards in the Sensitive Environments and Areas definition it has the potential to capture Plantation Forestry activities.
My reasons are:	Until the Area of High Susceptibility to Instability Hazards Plan Change is resolved this should not be included in the Hazardous Substance Plan Change 91.
State the decision you wish Council to make to ensure the issues you raise can be dealt with:	Remove Area of High Susceptibility to Instability Hazards from the Sensitive Environments and Areas definition. OR Provide an exception that Permitted Activities that operate in an Area of High Susceptibility to Instability Hazards are excluded from the Sensitive Environments and Areas definition.

Hearing:

I wish to be heard in support of my submission:	Yes
If others make a similar submission, I will consider presenting a	Yes

joint case with them at a hearing:

SUBMISSION ON PROPOSED PLAN CHANGE 91 HAZARDOUS SUBSTANCES TO THE WHANGAREI DISTRICT PLAN

To: Whangarei District Council
Private Bag 9023
Whangarei 0148
By email: mailroom@wdc.govt.nz

Name of Submitter: Channel Infrastructure NZ Limited

Address for Service: c/- ChanceryGreen
PO Box 47516
Ponsonby 1144
Attention: Chris Simmons / Ebony Ellis
chris.simmons@chancerygreen.com / ebony.ellis@chancerygreen.com

INTRODUCTION

1. This is a submission by Channel Infrastructure NZ Limited (“Channel Infrastructure”) on proposed plan change 91 to the Whangarei District Plan (“PC91”).
2. Channel Infrastructure generally supports PC91, and sets out its principal submission, as well as more detailed comments.
3. Channel Infrastructure has previously provided feedback on the draft Hazards and Esplanades Plan Change Package, which included draft PC91. It is pleased to see that this feedback has been incorporated into the notified version of PC91.

BACKGROUND TO CHANNEL INFRASTRUCTURE

4. Channel Infrastructure (formerly named Refining NZ) is New Zealand’s leading fuel infrastructure company, based at Marsden Point.
5. As of 1 April 2022, the Marsden Point Oil Refinery converted to a dedicated fuel import terminal (the “Marsden Point Import Terminal”). At the time of writing, refinery assets continue to be decommissioned and works undertaken at the site to support its use as an import terminal. Across the wider site, repurposing opportunities are being explored which may incorporate reuse of refinery assets.

6. The Marsden Point Import Terminal is zoned Heavy Industry in the appeals version of the Whangarei District Plan, and the Marsden Point Energy Precinct (“MPEP”) also applies to the site.
7. Operations at the Marsden Point Import Terminal involve the use and storage of hazardous substances. Channel Infrastructure has a range of detailed policies, systems and procedures to regulate the storage, use and disposal of hazardous substances and these are externally monitored by agencies including WorkSafe and the Environmental Protection Authority (“EPA”).
8. Channel Infrastructure also operates the 170km long high-pressure fuel pipeline (the “Pipeline”) which runs from the Marsden Point Import Terminal to the Wiri Oil Terminal in South Auckland. The Pipeline is designated along its entire length, including in the Whangarei District Plan.¹ The physical operation of the Pipeline remains unchanged as a result of the conversion to a dedicated import terminal.
9. The Marsden Point Import Terminal is a major national infrastructure resource. Both the Marsden Point Import Terminal and the Pipeline are regionally significant infrastructure.² Channel Infrastructure is also a lifeline utility operator pursuant to the Civil Defence Emergency Management Act 2002.
10. Channel Infrastructure is concerned to ensure the continued safe and efficient operation of the Marsden Point Import Terminal and the Pipeline as physical resources which require sustainable management pursuant to the Resource Management Act 1991 (“RMA”). Channel Infrastructure considers PC91 generally enables this, subject to the below.

PRINCIPAL SUBMISSION

11. Channel Infrastructure seeks to ensure the continued safe and efficient operation of the Marsden Point Import Terminal and Pipeline as regionally significant infrastructure, including to protect its operations from reverse sensitivity effects.

¹ Designation unique identifier: CTS-1. Note that the requiring authority responsible for the designation is a related entity in the Channel Infrastructure group of companies.

² See Appendix 3 Regional Policy Statement for Northland and Appendix H.9 proposed Northland Regional Plan (appeals version). See also PREC-6 Marsden Point Energy Precinct within the Heavy Industrial Zone Chapter of the Whangarei District Plan (appeals version).

12. As noted above, Channel Infrastructure generally supports the approach in PC91 to managing hazardous substances.
13. Channel Infrastructure supports the acknowledgement in PC91 that there is a range of legislation and industry standards (beyond those established pursuant to the RMA) controlling hazardous substances. On a practical level, storage and use of hazardous substances at the Marsden Point Import Terminal is controlled by a combination of agencies, including Northland Regional Council, the EPA, and WorkSafe, including certifying authorities recognised by WorkSafe such as Lloyd's Register.

RESIDUAL RISKS

14. The approach taken in PC91 is to address the residual risks to people, property and the environment, and reverse sensitivity after these other industry controls and legislation have been complied with. Channel Infrastructure endorses this approach, on the basis that it avoids unnecessary duplication and confusion in the regulation of hazardous substances.
15. Channel Infrastructure therefore supports Objective HSUB-O1 and Policy HSUB-P1, which relate to residual risks.

Relief Sought

Channel Infrastructure seeks that Objective HSUB-O1 and Policy HSUB-P1 are retained as drafted (and as set out below):

<i>HSUB-O1 – Residual Risks</i>	<i>People, property and the environment are protected from any unacceptable levels of residual risk associated with the location of facilities that use, store and dispose of hazardous substances.</i>
...	
<i>HSUB-P4 – Residual Risks</i>	<i>To recognise the role of national and regional organisations, including the Environmental Protection Authority, WorkSafe and Northland Regional Council, in managing hazardous substances where an adequate level of human health and environmental protection is already provided and there are no identified residual risks.</i>

REVERSE SENSITIVITY

16. Reverse sensitivity is an ongoing issue for Channel Infrastructure. The continued development of the Marsden Point/Ruakaka area by third parties introduces new activities, including sensitive activities, in proximity to the heavy industry hub which includes the Marsden Point Import Terminal. Channel Infrastructure is concerned to ensure that any development is managed appropriately in order to provide requisite levels of amenity, whilst avoiding unnecessary restrictions on the ongoing operation, maintenance and development of hazardous facilities and infrastructure.
17. The higher-level planning documents for Northland provide for the recognition and protection of regionally significant infrastructure, including the Marsden Point Import Terminal and the Pipeline.³ In particular, the Regional Policy Statement for Northland (“RPS”) provides for coordinated development and protection against reverse sensitivity effects,⁴ and the proposed Northland Regional Plan (“pNRP”) requires the protection of regionally significant infrastructure.⁵ In accordance with the RMA,⁶ district plans must give effect to any regional policy statement and must not be inconsistent with a regional plan.
18. Channel Infrastructure supports Objective HSUB-O2 and Policy HSUB-P4 which relate to reverse sensitivity, on the basis that they give effect to the RPS and pNRP.

Relief Sought

Channel Infrastructure seeks that Objective HSUB-O2 and Policy HSUB-P4 are retained as drafted (and as set out below):

*HSUB-O2 – Reverse
Sensitivity*

Sensitive activities do not unduly compromise existing areas and activities which use, store or dispose of hazardous substances.

...

*HSUB-P4 – Reverse
Sensitivity*

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.

³ See for example Appendix 3, Objectives 3.7, 3.8 and 3.9, and the Policies and Methods set out at part 5.3 of the Regional Policy Statement for Northland. See also Appendix H.9, Objective F.1.6, and Policies D.2.5 and D.2.11 of the proposed Northland Regional Plan (appeals version).

⁴ See for example Objective 3.6 and Policy 5.1.1 of the Regional Policy Statement for Northland.

⁵ See for example Policy D.2.11 of the proposed Northland Regional Plan (appeals version).

⁶ S 75 Resource Management Act 1991.

CONSEQUENTIAL AMENDMENTS

19. PC91 as notified does not contain any rules to implement its objectives and policies, including the objectives and policies supported by Channel Infrastructure as described above. However, it notes that the District Plan includes zone rules that seek to avoid reverse sensitivity effects more generally.⁷
20. Channel Infrastructure recommends that Council review those provisions to ensure they adequately reflect the policy direction and intent of PC91.

Relief Sought

Accordingly, Channel Infrastructure seeks that Council review the relevant zone rules to appropriately manage the design and location of sensitive activities in order to avoid reverse sensitivity effects occurring, as necessary to achieve Objective HSUB-O2 and Policy HSUB-P4.

Channel Infrastructure seeks the relief sought above and any and all other consequential, similar or further amendments to the Whangarei District Plan, as required to give effect to the issues raised in this submission.

CONCLUSION

21. Channel Infrastructure wishes to be heard in support of this submission. If others make a similar submission, Channel Infrastructure would consider presenting a joint case with them at a hearing.
22. Channel Infrastructure could not gain an advantage in trade competition though this submission.

⁷ See for example Rules LIZ-R14-R16; LIZ-R21-R22; LIZ-R26-R39; HIZ-R20; HIZR-22-R37; and RPROZ-R9.

Dated this 19thth day of September 2022

**CHANNEL INFRASTRUCTURE NZ
LIMITED** by its solicitors ChanceryGreen,
per:



C H Simmons / E J Ellis

To: Policy Department – Attention: Policy and Monitoring Department

Whangarei District Council
Private Bag 9023
Whangarei 0148
Email: mailroom@wdc.govt.nz

RE: Submission on Plan Change 91 'Hazardous Substances'

1. Details of person(s) making submission

Northpower Limited and Northpower Fibre Limited (Northpower)

Ref: 17274

C/- Reyburn and Bryant
Attention: David Johnson
PO Box 191
WHANGAREI

2. Background and context

- 2.1 Northpower owns and operates the electricity distribution network supplying customers across the Whangārei and Kaipara districts and an ultra-fast fibre network, servicing urban areas across Whangārei and Kaipara.
- 2.2 Northpower is owned by the Northpower Electric Power Trust, on behalf of the Whangārei and Kaipara electricity consumers.
- 2.3 Northpower is an electricity distributor under the Electricity Industry Act 2010 and an electricity operator under the Electricity Act 1992. Northpower's electricity network links the national grid, owned by Transpower New Zealand Limited, to power consumers in Whangārei and Kaipara.
- 2.4 Northpower assets include key infrastructure required for the distribution of electricity and provision of ultra-fast broadband to the Whangārei district. Northpower also owns and operates a 5MW hydro generation scheme on the Wairua River. Northpower's backbone infrastructure and the Wairua Hydro Power Station are identified as Regionally Significant Infrastructure in Appendix 3 of the Regional Policy Statement for Northland ('RPS').
- 2.5 Northpower are responsible for the provision, operation, maintenance, and repair of the electricity lines and fibre networks and the power station. Those assets are all

physical resources under the Resource Management Act 1991 ('RMA') and as a result need to be sustainably managed as a matter of national and regional significance.

2.6 Northpower are continually shaping these networks to provide, safe, reliable electricity and communications infrastructure both now and for future generations. Northpower is continually investing in the networks through upgrading, replacing and refurbishing assets.

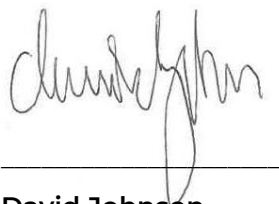
2.7 Northpower cannot gain an advantage in trade competition through this submission. They are directly affected by the plan changes. The effects are not related to trade competition.

3. Plan Change 91 'Hazardous Substances' (PC91)

3.1 This submission relates to all of the provisions of PC91, including any consequential amendments.

3.2 Northpower supports the approach taken in PC91 where the use of hazardous substances is controlled by other legislation and industry standards. This is a more efficient and effective approach in the context of Section 32 of the RMA relative to the operative provisions.

4. Northpower wishes to be heard in support of their submission at a hearing if one is held.



David Johnson

Planning Consultant

On behalf of Northpower

Dated this 21st day of September 2021

SUBMISSION

SUBMISSION ON

Proposed Plan Change 91 Hazardous Substances Whangarei District Plan

21 September 2022

To: Whangarei District Council

Name of Submitter: Horticulture New Zealand

Contact for Service:

Sarah Cameron

Senior Policy Advisor

Horticulture New Zealand

PO Box 10-232 WELLINGTON

Ph: 021 446 281

Email: sarah.cameron@hortnz.co.nz

OVERVIEW

Submission structure

- 1 Part 1: HortNZ's Role
- 2 Submission

HortNZ's Role

Background to HortNZ

HortNZ represents the interests of approximately 5,500 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruit, and vegetables. The horticultural sector provides over 40,000 jobs.

There is approximately, 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

Submission

Horticulture New Zealand (HortNZ) thanks Whangarei District Council for the opportunity to submit on the Proposed Plan Change 91 and welcomes any opportunity to continue to work with Council and to discuss our submission.

HortNZ wishes to be heard in support of our submission and would be prepared to consider presenting our submission in a joint case with others making a similar submission at any hearing.

The details of HortNZ's submission and decisions we are seeking from Council are set out in our submission below.

In particular HortNZ supports the approach that council is taking with PC91 Hazardous substances recognising that there should not be duplication in requirements.

Submission on Plan Change 91

Without limiting the generality of the above, HortNZ seeks the following decisions on Plan Change 91 as set out below, or alternative amendments to address the substance of the concerns raised in this submission and any consequential amendments required to address the concerns raised in this submission.

Additions are indicated by bolded underline, and deletions by strikethrough text.

Provision	Support/oppose	Reason	Decision sought
HSUB-O1 - Residual risks	Support	HortNZ supports the focus on residual risk associated with the location of facilities that use, store and dispose of hazardous substances. However residual risk is not defined. For clarity a definition would assist. The Proposed Far North District Plan includes a definition of residual risk which is sought to be included in PC91.	Retain HSUB-O1 Include a definition for residual risk as follows: <u>Means in relation to hazardous substances, any risk of an adverse effect that remains after other industry controls and legislation and regional planning instruments have been complied with</u>
HSUB-O2 - Reverse sensitivity	Support	HortNZ supports recognition that sensitive activities can generate reverse sensitivity effects.	Retain HSUB-O2
HSUB-P1 - Residual Risks	Support	HortNZ supports a policy that seeks to avoid duplication of regulation.	Retain HSUB-P1
HSUB-P2 - People and communities	Support in part	HortNZ considers that the policy should be written to provide for use, storage and disposal of hazardous substances	Amend HSUB-P2 as follows: To ensure activities which use, store or dispose of hazardous substances are

		unless there is an adverse effect from residual risk that needs to be managed.	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 manage residual risk to people and communities by avoiding such risk will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level.
HSUB-P3 - Sensitive Environments and Areas	Support in part	<p>HortNZ considers that the policy should be written to provide for use, storage and disposal of hazardous substances in sensitive environments and areas unless there is an adverse effect from residual risk that needs to be managed.</p> <p>There are growers undertaking primary production activities in Outstanding Natural Features where primary production activities are permitted and there are no specific rules for hazardous substances in these areas. Therefore it should be clear that these activities are able to continue to be undertaken in these areas as long as residual risks are managed.</p>	<p>Amend HSUB-P3 as follows:</p> <p>To ensure activities which use, store or dispose of hazardous substances which are located are not located within sensitive environments and areas manage unless it can be demonstrated that the residual risk to people, property and the environment by avoiding such risk will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level.</p>
Consequential amendments	Support	<p>HortNZ supports the deletion of:</p> <ul style="list-style-type: none"> -Hazardous substances chapter and Appendices 81-8d - Definitions of hazardous facility and hazardous sub-facility 	Retain deletion of consequential amendments.

- Deletion of reference documents listed in the Plan Change 91



To: Whangārei District Council (**WDC**)

From: Ngā Tai Ora - Public Health Northland (**Ngā Tai Ora**)

Date: 21 September 2022

Address for Service: Gavin De Klerk, Ngā Tai Ora - Public Health Northland Gavin.DeKlerk@northlanddhb.org.nz

Re: Plan Change 91 Hazardous Substances (**PC91**) – Ngā Tai Ora Submission

Submission Information:

Ngā Tai Ora could not gain an advantage in trade competition through this submission.

The specific provisions of PC91 that Ngā Tai Ora submission relates to are attached.

Ngā Tai Ora **opposes** PC91. The reasons are provided in the attached document.

The decisions that Ngā Tai Ora wishes Whangārei District Council to make to ensure the issues raised by Ngā Tai Ora are dealt with, are also contained in the attached document.

Ngā Tai Ora **wishes to be heard** in support of this submission.

If others make a similar submission, Ngā Tai Ora will consider presenting a joint case with them at the Hearing.

Gavin De Klerk

Interim Service Manager

Ngā Tai Ora - Public Health Northland / Te Tai Tokerau / Northern Region



1.0 Introduction

Te Whatu Ora – Health New Zealand leads the day-to-day running of the health system across New Zealand, with functions delivered at local, district, regional and national levels. Te Whatu Ora undertakes the operational functions of the Ministry of Health, including the management of all health services, including hospital and specialist services, and primary and community care. Te Whatu Ora will also be responsible for improving services and outcomes across the health system. We will do this in partnership with the Māori Health Authority.

Te Whatu Ora has statutory obligations under the Pae Ora Act 2022, New Zealand Public Health and Disability Act 2000 and the Health Act 1956 to improve, promote and protect the health of people and communities of Aotearoa New Zealand.

Within Te Whatu Ora sits the National Public Health Service (**NPHS**) which delivers national, regional and local programmes of health promotion, protection and prevention. The goals of the National Public Health Service, which includes Ngā Tai Ora – Public Health Northland (a sub-group under Te Whatu Ora and the party making this submission), are to improve population and public health with an emphasis on health equity, particularly for Māori, Pacific peoples, disabled peoples, and other population groups that continue to experience inequitable health outcomes. As the founding document of Aotearoa New Zealand, Te Tiriti o Waitangi represents an agreement between Māori and the Crown. Māori are afforded equity and protection of health as a result of this document and as a Crown agent we honour our responsibilities to Te Tiriti o Waitangi.

This submission covers matters addressed by PC91 that Ngā Tai Ora consider have potential health effects on people and communities. Ngā Tai Ora is providing this feedback to achieve a reduction of adverse health effects and promote positive public health outcomes for people and communities in the Whangārei District.

Section 2.0 contains Ngā Tai Ora's submissions on PC91, giving consideration to how it could be improved to efficiently and effectively achieve the proposed objectives of the plan change, and the purpose of the Resource Management Act 1991 (**RMA**).

Section 3.0 provides a conclusion for Ngā Tai Ora's submission.





2.0 Ngā Tai Ora’s Submission

2.1 Overall Approach to PC91

Ngā Tai Ora is **opposed** to PC91 as currently proposed.

Ngā Tai Ora consider that it is important to manage the risks to community health and safety from the storage, use, disposal or transportation of hazardous substances.

PC91 removes all rules managing hazardous substances in the Whangārei District Plan (**WDP**), on the basis that there is other legislation that control hazardous substances:


- Hazardous Substances and New Organisms Act 1996 (**HSNO Act**)
- Health and Safety at Work Act 2015 (**HSW Act**)
- The Resource Legislation Amendment Act 2017 (**RLAA**)


While these pieces of legislation do overlap, Ngā Tai Ora consider that the RMA still has an important role to play in managing the location of land uses which store, use, transport and dispose of hazardous substances, identifying and assessing the risks and, where necessary, requiring these risks be avoided, remedied or mitigated to achieve the purpose of the RMA.

PC91 only includes objectives and policies¹ and a new definition for “Sensitive Environments and Areas.” All previous rules in the WDP managing hazardous substances are proposed to be deleted. The issues section of the proposed Hazardous Substances Chapter (**HSUB**) states that:

“Given the level of regulation controlling hazardous substances, the Hazardous Substances Chapter only seeks to address the residual risks to people, property and the environment, and reverse sensitivity after other industry controls and legislation have been complied with, and where consent is required based on other district wide and area specific chapter rules. ”

¹ HSUB-O1, HSUB-O2, HSUB-P1 – P4.







Ngā Tai Ora consider that the approach to PC91 cannot be deemed the most appropriate under the RMA, or how having no rules is considered the most efficient and effective method for achieving the proposed objectives. Relying on “other district wide and area specific chapter rules” is vague and ultimately risky. Two obvious examples are provided below:

- activities including the storage, use and disposal of hazardous substances, may not require resource consent under the “other rules” (e.g., they may be within an existing building with no external changes to the building that do not trigger the need for a resource consent). If no resource consent is required, then no engagement with the objectives and policies is needed, and the ability to manage risk of hazardous substances is unavailable.
- If a resource consent is required, it may only be for a controlled or restricted discretionary activity, and the ability to consider matters related to hazardous substances could be limited by the matters of control or discretion.

There is inconsistency with the approach proposed by WDC in PC91, with what is being outlined elsewhere in Te Tai Tokerau / Northland. For instance, Kaipara District Council have recently notified its [Exposure Draft of the Kaipara District Plan](#), which includes a Hazardous Substances Chapter with rules for the use, storage and disposal of hazardous substances. Ngā Tai Ora is generally supportive of that approach, subject to some feedback it has provided around the management of hazardous substances in areas subject to natural hazards (this is addressed below with regard to PC91). Far North District Council has also included rules in its Hazardous Substances Chapter within the recently notified [Proposed Far North District Plan](#). This includes provisions relating to setbacks from significant hazardous facilities for sensitive activities and vice versa, which Ngā Tai Ora is generally supportive of. Ngā Tai Ora’s work and interests are spread across Te Tai Tokerau / Northland. It is illogical for there to be different regimes for the management of hazardous substances across these neighbouring Districts, and Ngā Tai Ora would support cross boundary consistency by WDC applying a similar approach to FNDC and KDC and including rules for the management of hazardous in PC91 / WDP.

Ngā Tai Ora consider that the Section 32 Evaluation Report provided to support PC91 is inadequate. In Ngā Tai Ora’s opinion, there appears to be a preconceived conclusion from the outset that there should be no rules for the storage, use and disposal of hazardous substances in the WDP. This has resulted in a negligible evaluation of the potential alternative objectives which could be deemed the most appropriate to achieve the purpose of the RMA pursuant to section 32(1)(a), and the identification and assessment of only two options (the status quo and the proposed provisions) for efficiency and effectiveness in terms of section 31(1)(b) and 32(2) of the RMA. Looking at





the approaches proposed by Kaipara and Far North District Councils in their district plans, it is apparent that there are other reasonably practicable options that should be considered, but haven't in PC91.

In Ngā Tai Ora's opinion, the overall approach taken in PC91 to the management, storage, use, and disposal of hazardous substances is inappropriate and could lead to:

- Unacceptable risk on sensitive activities (e.g., residential activities) from the ad hoc location or expansion of hazardous substances facilities throughout the District without management or oversight in the WDP; and
- Adverse public health (including long term and chronic health effects) and environmental effects from the location of land use activities involving the use, storage, transport and disposal of hazardous substances in inappropriate locations.

Relief Sought:

Ngā Tai Ora seek the following:

- (1) Include appropriate rules for the management storage, use, transport and disposal of hazardous substances in PC91. At a minimum, this should include (but is not limited to) the inclusion of rules managing:
 - a. The establishment or expansion of facilities managing, storing, using or disposing of hazardous substances within, or in close proximity to, sensitive environments (e.g., residential areas or adjacent to schools or health care facilities and hospitals).
 - b. The establishment of sensitive activities (e.g., residential activities, marae schools or healthcare facilities and hospitals) adjacent to, or within close proximity to, lawfully established hazardous substances facilities.
 - c. 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).
 - d. Appropriate limits or thresholds for the storage of certain hazardous substances across the various zones in the WDP.

2.2 Objectives





Ngā Tai Ora generally oppose the objectives in PC91.

The reasons for this opposition are similar to those outlined in 2.1 above. In particular, the objectives are too narrow, and only seek to manage “residual risk” and not overall risk of hazardous substances. This leads to a narrow approach and ultimately the lack of inclusion of rules for the management, storage, use, and disposal of hazardous substances. There should be explicit reference to “health and safety of people” in accordance with section 5(2) of the RMA. There also needs to be reference to “expansion” and “transport” so that these activities are also covered in the provisions that follow.

Relief Sought:

Ngā Tai Ora seek the following:

- (1) Amend HSUB-O1 as follows:

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


2.3 Policies


Ngā Tai Ora generally oppose the policies in PC91.

Similar to the objectives, the policies focus on “residual risk” and not the overall risk of hazardous substances, which again leads to the narrow focus in the approach.

It is also unclear, without the inclusion of rules, how these policies would actually be implemented in the WDP. For instance, it is unclear how HSUB-P3 (Sensitive Environments and Areas) and HSUB-P4 can be implemented without there being rules regarding the setbacks from existing hazardous substances facilities for new sensitive activities, or specific consenting requirements in sensitive environments and areas.

Ngā Tai Ora is particularly concerned about facilities for the storage, use, transport and disposal of hazardous substances in locations subject to natural hazards. This can increase the likelihood of a release of hazardous substances into the environment should a natural hazard event occur. It is considered that PC91 fails to give effect





to policies 7.1.2(a) and 7.1.3(g), and method 7.1.7 of the Operative Northland Regional Policy Statement, which specifically require mitigation to reduce natural hazard risks with respect to hazardous substances. Consideration should also be given to climate change effects which have the potential to increase the frequency, magnitude, and consequences of natural hazard events. These considerations would enable the risks to be managed to an acceptable level.

Feedback Summary:

Ngā Tai Ora seek the following:

- (1) Amend the policies as required to give effect to HSUB-O1 as per the proposed amendments outlined by Ngā Tai Ora in section 2.2 above.
- (2) Amend the policies to provide an adequate policy framework for the inclusion of rules as outlined by Ngā Tai Ora in section 2.1 above.
- (3) Include a new policy and accompanying rules, seeking to avoid the storage, use, transport and disposal of hazardous substances in natural hazard areas.


3.0 Conclusion

In conclusion, Ngā Tai Ora seeks the following relief, that:

- a. Ngā Tai Ora's feedback in Section 2.0 is adequately addressed, and any necessary changes incorporated into the PC91 provisions.
- b. Any further necessary consequential amendments required to achieve a. above.

Ngā Tai Ora places a great emphasis on the Social Determinants of Health which refer to social, economic and environmental factors that influence individual and population health. Local government exert a large influence over the determinants of health. One of the strongest recommendations we can make is that WDC apply a health/wellbeing lens over all their activities, and work more closely with Ngā Tai Ora to facilitate this. This would help steer Te Tai Tokerau through the challenges it faces into a healthy sustainable future.

Ngā Tai Ora looks forward to working collaboratively with WDC to address the above relief and is happy to meet with WDC policy staff to work through these matters in a constructive manner prior to the hearing for PC91.



**SUBMISSION ON PLAN CHANGE 91 – HAZARDOUS SUBSTANCES
TO THE WHANGAREI DISTRICT PLAN PURSUANT TO CLAUSE 6
OF THE FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991**

To: Whangarei District Council
Private Bag 9023
WHANGAREI 0148
Attention: District Plan Department

By email only: mailroom@wdc.govt.nz

Submitter: bp Oil New Zealand Limited
PO Box 99 873
Auckland 1149

Mobil Oil New Zealand Limited
PO Box 1709
Auckland 1140

Z Energy Limited¹
PO Box 2091
Wellington 6140

Hereafter referred to as the Fuel Companies

Address for Service: 4Sight Consulting Limited
201 Victoria Street West
Auckland Central
PO Box 911310

Attention: Megan Barr
Phone: 021 468 108
Email: megan.barr@4sight.co.nz

Date: 21 September 2022

¹ On behalf of the wider Z group, including the Z Energy and Caltex operations in New Zealand.

INTRODUCTION

1. bp Oil New Zealand Limited, Mobil Oil New Zealand Limited, and Z Energy Limited (*the Fuel Companies*) receive, store and distribute refined petroleum products around New Zealand. In Whangarei, the Fuel Companies' core business relates to retail fuel outlets including service stations and truck stops, and supply to commercial facilities. The Fuel Companies also access, and have an interest in, the Marsden Point Truck Loading Facility operated by Wiri Oil Services Limited (which is owned by the Fuel Companies). The WOSL facility is fed via pipeline from the import terminal at Marsden Point and is the point of distribution for tankers supplying Northland².
2. Whangarei District Council (*the Council*) has now publicly notified Plan Change 91 – Hazardous Substances (*PC91*) pursuant to Clause 5 of the First Schedule of the Resource Management Act 1991 (*RMA*).
3. The Fuel Companies have previously provided feedback on the draft version of Plan Change 91 – Hazardous Substances – to the Whangarei District Plan. While the proposed provisions are significantly improved from those proposed to be rolled over in 2019, it is the Fuel Companies' view that there continue to be areas that require further amendment; these points form the basis of this submission.

THE SPECIFIC PROVISIONS OF PLAN CHANGE 91 THAT THE FUEL COMPANIES' SUBMISSION RELATES TO ARE SUMMARISED AS FOLLOWS:

4. The specific provisions submitted on, the rationale for the Fuel Companies' submission on each of these matters, and the relief sought is contained in the attached schedule. The Fuel Companies support alternative relief that achieves the same outcomes.
5. In addition to the specific outcomes and relief sought, the following general relief is sought:
 - a. Achieve the following:
 - i. The purpose and principles of the Resource Management Act 1991 (*RMA*) and consistency with the relevant provisions in Sections 6 - 8 *RMA*;
 - ii. Give effect to the Regional Policy Statement;
 - iii. Avoid duplication with the Regional Plan for Northland and other legislation;
 - iv. Assist the Council to carry out its functions under Section 31 *RMA*;
 - v. Meet the requirements of the statutory tests in Section 32 of the *RMA*;
 - vi. Avoid, remedy or mitigate any relevant and identified environmental effects.
 - b. Make any alternative or consequential relief as required to give effect to this submission, including any consequential relief required in any other sections of the plan that are not specifically subject of this submission but where consequential changes are required to ensure a consistent approach is taken throughout the document.
 - c. Any other relief required to give effect to the issues raised in this submission.

THE FUEL COMPANIES WISH TO BE HEARD IN SUPPORT OF THIS SUBMISSION

IF OTHERS MAKE SIMILAR SUBMISSIONS THE FUEL COMPANIES MAY BE PREPARED TO CONSIDER PRESENTING A JOINT CASE WITH THEM AT ANY HEARING

THE FUEL COMPANIES COULD NOT GAIN AN ADVANTAGE IN TRADE COMPETITION THROUGH THIS SUBMISSION

² Note Channel Infrastructure NZ (formerly Refining NZ) is a separate entity and may make its own submissions.

THE OIL COMPANIES ARE DIRECTLY AFFECTED BY AN EFFECT OF THE SUBJECT MATTER OF THAT SUBMISSION THAT:

- I. ADVERSELY AFFECTS THE ENVIRONMENT; AND**
- II. DOES NOT RELATE TO TRADE COMPETITION OR THE EFFECTS OF TRADE COMPETITION.**

Signed on behalf of Z Energy Limited, bp Oil New Zealand Limited and Mobil Oil New Zealand Limited

A handwritten signature in black ink, appearing to read 'Megan Barr', with a long horizontal line extending to the right.

Megan Barr

Senior Planning and Policy Consultant

21 September 2021

SCHEDULE 1
PLAN CHANGE 91 (PC91) - HAZARDOUS SUBSTANCES (HSUB)

A. The specific parts of the PC91 that are subject of this submission are:

- Issues, which is opposed in part.
- Objective HSUB-O1, which is supported.
- Objective HSUB-O2, which is opposed in part.
- Policy HSUB-P1, which is supported.
- Policy HSUB-P2, which is supported.
- Policy HSUB-P3, which is supported.
- Policy HSUB-P4, which is supported.
- Rules – none proposed, which is supported.
- New definition of ‘Sensitive Environments and Areas’, which is supported.
- Consequential amendments, which are supported.

B. The reasons for the submission are:

6. The Resource Legislation Amendment Act 2017 (*RLAA*) removed the explicit function of district and regional councils to control the adverse effects of the storage, use, disposal, or transportation of hazardous substances under sections 30 and 31 of the Resource Management Act 1991 (*RMA*). While councils do retain a broad power under the RMA to manage hazardous substances through their plans and policy statements to achieve the purpose of the RMA and to carry out the function of integrated management of natural and physical resources in their region/district, this should only be exercised where the potential environmental effects are not adequately addressed by other legislation, including by the Hazardous Substances and New Organisms Act 1996 (*HSNO*) and the Health and Safety at Work Act 2015 (*HSWA*).
7. HSNO and HSWA consider surrounding land uses generically, by including different clearances with respect to substances (HSNO) or surrounding land uses (HSWA). Most of these controls apply regardless of where that substance is stored or used and apply a precautionary approach which provides for an acceptable level of safety in most circumstances.
8. In most cases, the Fuel Companies consider that HSNO and HSWA controls are adequate to avoid, remedy or mitigate adverse environmental effects of hazardous substances. This position is supported by the Ministry for the Environment³⁴ (*MfE*). However, in particular circumstances, it may be appropriate that RMA controls are used, subject to robust section 32 analysis to ensure that such controls are both necessary and efficient. The expectation is, however, that controls on hazardous substances in RMA plans will be the exception rather than the norm.
9. Recognition of the need to avoid duplication regarding hazardous substances is already reflected in several plans around the country. For instance, the Independent Hearing Panel (which included both a High Court and an Environment Court Judge) on the Christchurch Replacement District Plan rejected Christchurch City Council’s hazardous substance controls (which were based on an activity status table approach) and only retained controls relating to hazardous substances in close proximity to the National Grid. The Hearing Panel’s decision followed a rigorous examination process, including significant debate and cross-examination of expert witnesses. The Hearing Panel considered the provisions gave effect to the Canterbury Regional Policy Statement 2013. Importantly the decisions adopted overlays around Major Hazard Facilities (*MHF*), for instance the bulk fuel storage facilities of the Fuel Companies at Lyttelton and Woolston, to protect critical infrastructure from reverse sensitivity effects. In terms of hazard overlays, additional hazardous substance controls apply under the Canterbury Land and Water Regional Plan where storage of hazardous substances is proposed within 250 metres of an active fault

³ Resource Legislation Amendments 2017 – Fact Sheet 2, MfE, Amended in September 2017

⁴ Plan Topics, Hazardous Substances under the RMA – MfE, updated in 2019

(<https://www.qualityplanning.org.nz/sites/default/files/2019-05/managing-hazardous-substances.pdf>)

(recurrence period of less than 10,000 years) **and** over an unconfined or semi-confined aquifer or within 50 metres of a permanently or intermittently flowing river or lake. These provisions were adopted at a time when councils still had the explicit function to control hazardous substances. Importantly the decisions adopted overlays around MHF, for instance the bulk fuel storage facilities of the Fuel Companies at Lyttelton and Woolston, to protect critical infrastructure from reverse sensitivity effects.

10. Councils have responded differently to the RLAA. Several councils propose no rules relating to hazardous substances (for instance the Porirua District Plan) while others propose focused provisions on MHF (as defined in the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 (*the MHF Regs*), for instance the proposed Selwyn District Plan) or have come up with a new definition - significant hazards facilities (*SHF*, for instance the proposed New Plymouth District Plan and the draft Timaru District Plan). The Fuel Companies have provided feedback to these draft/proposed plans and have been generally supportive of the approaches taken, except where the definitions of MHF or SHF are not appropriately risk based. In contrast to the Councils mentioned, Waikato District Council essentially sought to rollover existing hazardous substance threshold controls in its proposed district plan. Through the hearing process, the Hearing Panel determined that the threshold approach proposed by Waikato District Council was inappropriate and recommended provisions relating to SHF only. As relevant to the Fuel Companies, the definition of SHF in the decisions version only captures above ground storage of both petrol (in excess of 50,000 litres) and diesel (in excess of 100,000l), neither of which will capture typical hazardous substance storage for retail purposes.
11. As a first step to reviewing hazardous substance provisions, the Fuel Companies consider Councils should identify:
 - specific hazardous substance related activities that are occurring within their area that might pose a risk off site (using MHF as a starting point and noting that in the Whangarei District there are two such sites listed by WorkSafe (<https://www.worksafe.govt.nz/topic-and-industry/major-hazard-facilities/mhf-public-information/>) namely the import terminal and the WOSL facility mentioned above); and
 - the probability of a particular risk event (such as a fire or explosion); and
 - sensitive land uses that may require additional protection not otherwise provided for.
12. Councils should then confirm whether there is appropriate environmental protection through HSNO or HSWA or any other relevant legislation to address these matters. If not, consideration should be given to whether adequate controls are provided through zoning/overlay controls (in combination with compliance with HSNO and HSWA) and, if not, establish if it is necessary to provide additional protection for any of these areas or activities.
13. In most circumstances, the Fuel Companies consider this analysis is likely to show that existing zoning controls and/or overlays in plans provide adequate protection to manage the risks of hazardous substances, and therefore it is unnecessary to require additional controls. For example, hazardous substances in non-domestic quantities are usually associated with industrial activities, which are generally undertaken in industrial zones. Industrial activities are less likely to experience reverse sensitivity effects from neighbours who would typically be undertaking similar activities. Conversely, activities that use hazardous substances in large quantities in more sensitive zones (i.e. within residential areas) are often non-residential activities and it is more likely that resource consent would be required for such activities in any event and the effects of any associated hazardous substance use or storage could be addressed at that stage. If it is demonstrated that there is a gap, and a corresponding issue, then additional land use controls may help address it. Careful consideration would, however, need to be given to the type of information and potential controls to avoid the status quo (in the Fuel Companies' experience) whereby controls required simply require compliance with other legislation.
14. One area where the Fuel Companies recognise there is a potential land use planning gap (as has been recognised by the Independent Hearing Panels on the Auckland Unitary Plan and Christchurch City Plan) is in relation to MHF and the potential interface with adjoining land uses. This is because these facilities are usually of such a scale that potential adverse effects (risk) will extend beyond the boundary. The risk levels may be acceptable where there is compatible land use (noting that while NZ does not have any risk

criteria the New South Wales criteria has been adopted around the country at various facilities and these criteria draw a distinction between land use types as a result of the likes of mobility preparedness, training etc such that industrial areas have a much higher tolerance for risk than say residential areas). Where effects from these facilities are not completely addressed by compliance with HSNO and HSWA, measures such as location specific risk overlays or separation distances (using risk contours based on a risk analysis) may be appropriate. Depending on the risk, it may be appropriate to consider land use restrictions on land in the vicinity of a MHF to enable the MHF to carry out operations, including maintenance and upgrades, without being unreasonably constrained by encroachment of sensitive activities. This approach was reflected in the decisions of the Hearing Panel in Christchurch which applied an interim overlay around the Mobil Oil New Zealand Limited and Liquid gas terminals at Woolston. The sunset clause on that overlay has since been removed via Plan Change 1 to the plan.

15. In light of the RLAA and controls under other legislation, district plan hazardous substance controls are largely considered to be unnecessary in most circumstances, unless intervention is clearly justified by robust section 32 analysis. Councils may have grounds to control a wider range of facilities, however, such an approach must be clearly justified.

Issues

16. PC91 recognises the role that other legislation plays in controlling hazardous substances, with the issues section of the hazardous substances chapter stating:

“There is a wide range of legislation and industry standards controlling hazardous substances... the chapter only seeks to address residual risks to people, property and the environment, reverse sensitivity after other industry controls have been complied with, and where consent is required based on other district wide and area specific chapter rules”.

17. This approach is consistent with the RLAA and is supported by the Fuel Companies. However, the Fuel Companies seek that PC91 recognises the need to avoid duplication of the requirements and obligations that arise under other hazardous substances legislation and regulations.

Objectives

18. The Fuel Companies support Objective HSUB-O1 as notified.
19. The Fuel Companies support the intent of Objective HSUB-O2, which seeks that sensitive activities do not unduly compromise established hazardous facilities. However, the phrase ‘unduly compromise’ as drafted in HSUB-O2 is ambiguous and open to interpretation. Given the focus on hazardous substances and the nature of sites in the district which may have off site residual risk associated with hazardous substances, the Fuel Companies consider it is important that the objective directs avoidance of reverse sensitivity effects and unacceptable residual risk.

Policies

20. The Fuel Companies support Policy HSUB-P1 which seeks, generally, that duplication of hazardous substances regulation is avoided.
21. The Fuel Companies support Policy HSUB-P2 which seeks to ensure that activities involving the use, storage or disposal of hazardous substances avoid residual risk to people and communities, however if such risk cannot be avoided, requires that risk can be reduced to an acceptable level.
22. The Fuel Companies support Policy HSUB-P3, which adopts the same approach as Policy HSUB-P2 in relation to sensitive environments.

23. The Fuel Companies support HSUB-P4 and its direction to avoid reverse sensitivity effects and consider it aligns with the amended version of HSUB-O2 as sought by the Fuel Companies. In conjunction with the zoning of properties at Marsden Point, this provides clear direction to manage potential reverse sensitivity effects, for instance in relation to the WOSL Facility.

Rules

24. No rules are proposed in PC91, and this approach is supported on the assumption that the Councils' analysis has identified none are required in the district.

Definitions

25. PC91 proposes to add a definition of 'sensitive environments and areas' and delete the definitions of 'hazardous facility' and 'hazardous sub facility'. The Fuel Companies' understanding is that all other definitions are to be as per the operative plan. This approach is supported.

Consequential Amendments

26. PC91 proposes a number of consequential amendments (as set out below), which the Fuel Companies support.
- Delete Hazardous Substances Chapter and Appendices 8a – 8d.
 - Delete 'hazardous facility' and 'hazardous sub facility' definitions.
 - Delete the following reference documents from the Referenced Documents Chapter:
 - Department of Labour, 1992 Code of Practice for Design Installation and Operation of Underground Petroleum System.
 - AS/NZ 1596:1997 Australian and New Zealand standard for Storage and Handling of LPG.
 - New Zealand Radiation Protection Regulations 1982.
 - NZS 8409: 1999 New Zealand Code of Practice for the Management of Agrichemicals.
 - New Zealand Chemical Industry Council 1987 Code of Practice or Warning Signs for Premises Storing Hazardous Substances.
 - New Zealand Ministry for the Environment 1999 Land Use Planning for Hazardous Facilities – A Resource for Local Authorities and Hazardous Facility Operators.

C. The relief sought is:

Issues

27. The Fuel Companies request that the issues section should be amended to the following (additions in underline, deletion in ~~strikethrough~~):

Given the level of regulation controlling hazardous substances, the Hazardous Substances Chapter seeks to avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the Plan. The chapter will address the residual risks to people, property and the environment, and reverse sensitivity after other industry controls and legislation have been complied with, and where consent is required based on other district wide and area specific chapter rules.

Objectives

28. The Fuel Companies request that Objective HSUB-O1 be retained as notified.

29. The Fuel Companies request that Objective HSUB-O2 be amended as follows (additions in underline, deletions in ~~striketrough~~):

Sensitive activities are appropriately located to avoid reverse sensitivity effects and unacceptable residual risk from established ~~do not unduly compromise existing areas and~~ activities which use, store or dispose of hazardous substances.

Policies

30. The Fuel Companies request that Policies HSUB-P1 to P4 be retained as notified.

Rules

31. The Fuel Companies support the Council's decision not to include rules in relation to hazardous substances and request that no rules are added to the Hazardous Substances chapter.

Definitions

32. The Fuel Companies support the addition of the proposed definition of 'sensitive environments and areas' and the deletion of the definitions of 'hazardous facility' and 'hazardous sub facility'.

Consequential amendments

33. The Fuel Companies support the proposed consequential amendments.

***Plan Change 91 – Hazardous
Substances***

Further Submissions

**FURTHER SUBMISSION ON PROPOSED PLAN CHANGE 91 HAZARDOUS
SUBSTANCES TO THE WHANGAREI DISTRICT PLAN**

To: Whangarei District Council
Private Bag 9023
Whangarei 0148
By email: *mailroom@wdc.govt.nz*

Name of Submitter: Channel Infrastructure NZ Limited (“Channel Infrastructure”)

Address for Service: c/- ChanceryGreen
PO Box 47516
Ponsonby 1144
Attention: Chris Simmons / Ebony Ellis
*chris.simmons@chancerygreen.com /
ebony.ellis@chancerygreen.com*

INTRODUCTION

1. This is a further submission by Channel Infrastructure on proposed plan change 91 to the Whangarei District Plan (“PC91”).
2. Channel Infrastructure made an initial submission on PC91.¹
3. Channel Infrastructure has an interest in PC91 that is greater than the interest the general public has.
4. Channel Infrastructure, formerly named Refining NZ, is New Zealand’s leading fuel infrastructure company. Channel Infrastructure owns and operates the Marsden Point Import Terminal.
5. Operations at the Marsden Point Import Terminal involve the use and storage of hazardous substances.
6. Channel Infrastructure also operates the 170km long high-pressure fuel pipeline (the “Pipeline”) which runs from the Marsden Point Import Terminal to the Wiri Oil Terminal in South Auckland. The Pipeline is designated along its entire length, including in the Whangarei District Plan.²

¹ Dated 19 September 2022, being submission number 2.

² Designation unique identifier: CTS-1. Note that the requiring authority responsible for the designation is a related entity in the Channel Infrastructure group of companies.

7. Both the Marsden Point Import Terminal and the Pipeline are nationally significant infrastructure resources.³ Channel Infrastructure is a lifeline utility operator pursuant to the Civil Defence Emergency Management Act 2002.
8. Channel Infrastructure sets out its further submissions in **Attachment A** in respect of the following submissions:
 - (a) Horticulture New Zealand;
 - (b) Ngā Tai Ora – Public Health Northland; and
 - (c) BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited.
9. Channel Infrastructure wishes to be heard in support of this further submission.
10. If others make a similar submission, Channel Infrastructure would consider presenting a joint case with them at a hearing.
11. Channel Infrastructure could not gain an advantage in trade competition though this submission.

Dated this 11th day of November 2022

**CHANNEL INFRASTRUCTURE NZ
LIMITED** by its solicitors ChanceryGreen,
per:



C H Simmons / E J Ellis

³ The Marsden Point Import Terminal and Pipeline are identified as regionally significant infrastructure in Appendix 3 of the Regional Policy Statement for Northland and Appendix H.9 of the proposed Northland Regional Plan (appeals version). See also PREC-6 Marsden Point Energy Precinct within the Heavy Industrial Zone Chapter of the Whangarei District Plan (appeals version).

ATTACHMENT A

Sub no.	Submitter name	Sub point	Submission	Support/oppose	Reasons	Relief sought
4	Horticulture New Zealand	1	<p>Include a new definition for 'residual risk' as follows:</p> <p><u>Means in relation to hazardous substances, any risk of an adverse effect that remains after other industry controls and legislation and regional planning instruments have been complied with.</u></p>	Neutral	<p>Channel Infrastructure does not consider that a new definition for 'residual risk' is necessary in light of the context of PC91 and the Council's approach to hazardous substances. However, if a new definition is to be included, Channel Infrastructure wishes to ensure that it is appropriate and sufficiently clear.</p>	N/A
		4	<p>Amend Policy HSUB-P2 People and Communities as follows:</p> <p>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 manage residual risk to people and communities by avoided such risk will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level.</p>	Support	<p>Channel Infrastructure agrees with the reasons set out in the submission. There may be circumstances in which it is necessary and appropriate for activities that use/store hazardous substances to locate in areas where there is a potential for effects on health, safety and wellbeing to occur. Such activities should be able to be undertaken provided that residual risks are managed.</p> <p>The Policy should be worded in a way that provides for activities that use, store and dispose of hazardous substances except where there are residual risks.</p>	Accept relief sought in the submission.

Sub no.	Submitter name	Sub point	Submission	Support/oppose	Reasons	Relief sought
		5	<p>Amend Policy HSUB-P3 Sensitive Environments and Areas as follows:</p> <p>To ensure activities which use, store or dispose of hazardous substances <u>which are located</u> are not located within sensitive environments and areas <u>manage, unless it can be demonstrated that the residual risk to people, property and the environment by avoided such risk will be avoided</u>, or where avoidance is not practicable, remedied or mitigated to an acceptable level.</p>	Support	<p>Channel Infrastructure agrees with the reasons set out in the submission. There may be circumstances in which it is necessary and appropriate for activities that use/store hazardous substances to locate in proximity to sensitive activities. Such activities should be able to be undertaken as long as residual risks are managed.</p> <p>The Policy should be worded in a way that provides for use, storage and disposal of hazardous substances in sensitive environments and areas unless there are residual risks.</p>	Accept relief sought in the submission.

Sub no.	Submitter name	Sub point	Submission	Support/oppose	Reasons	Relief sought
5	Ngā Tai Ora – Public Health Northland	1	Include rules for the management, storage, use, transport and disposal of hazardous substances.	Oppose	<p>Channel Infrastructure agrees with the Council's approach in PC91 to avoid duplication of existing controls relating to hazardous substances in a range of legislation and industry standards.</p> <p>Channel Infrastructure acknowledge that the Council retains a broad power under the RMA to include rules in its District Plan to manage hazardous substances. However, Channel Infrastructure consider that Council's approach is appropriate, including for the following reasons and set out in more detail in the s32 Report.</p> <p>Existing legislative controls (including the Hazardous Substances and New Organisms Act 1996 and the Health and Safety at Work Act 2015) and regional provisions (including in the proposed Northland Regional Plan) are adequate to avoid, remedy or mitigate adverse environmental effects associated with hazardous substances.</p> <p>The spatial zoning and underlying zone rules in the District Plan are effective to manage effects associated with hazardous substances. In particular, the two major hazard facilities in Whangarei (including the Marsden Point Import Terminal) are located in the Heavy Industrial Zone, in which sensitive activities are not anticipated.</p>	Reject the relief sought and retain the approach to hazardous substances in the notified PC91, which does not include rules.

Sub no.	Submitter name	Sub point	Submission	Support/oppose	Reasons	Relief sought
		2	<p>Amend Objective HSUB-O1 Residual Risks as follows:</p> <p><u>The health and safety of P</u>people, property and the environment are protected from any unacceptable levels of residual risk associated with the location or expansion of facilities that use, store, transport and/or dispose of hazardous substances.</p>	Oppose	<p>Channel Infrastructure considers the focus of the Objective is appropriate.</p> <p>The proposed amendments are unclear. Further, the inclusion of the words "The health and safety of" could have the effect of inappropriately narrowing the focus of the Objective.</p>	Reject the relief sought and retain Objective HSUB-O1 as notified.

Sub no.	Submitter name	Sub point	Submission	Support/oppose	Reasons	Relief sought
		3	Amend the policies and include a new policy and accompanying rules, seeking to avoid the storage, use, transport and disposal of hazardous substances in natural hazard areas.	Oppose	<p>Channel Infrastructure does not agree that the policies require amendment. It considers that the focus of the policies on residual risk is appropriate.</p> <p>Channel Infrastructure does not agree that PC91 fails to give effect to policies 7.1.2(a) and 7.1.3(g), and method 7.1.7 of the Regional Policy Statement for Northland. These provisions expressly require the management of effects associated with hazardous substances in natural hazard areas. They do not require the avoidance of the use, storage, transport and disposal of hazardous substances in natural hazard areas. Further, and as noted in the s 32 Report, the Regional Policy Statement was prepared prior to the 2017 amendments to the RMA that removed the explicit function of local authorities to manage hazardous substances.</p> <p>Additionally, coastal and other natural hazards will be addressed in separate chapters of the Whangarei District Plan.</p> <p>Therefore, Channel Infrastructure does not consider that a new policy or new rules seeking that the storage, use, transport and disposal of hazardous substances in natural hazard is avoided is appropriate.</p>	Reject relief sought.

Sub no.	Submitter name	Sub point	Submission	Support/oppose	Reasons	Relief sought
6	BP Oil NZ Ltd / Mobil Oil NZ Ltd / Z Energy Ltd	1	Amend the Issues section to include references to the need to avoid duplication of the requirements and obligations that arise under other legislation/regulation/policy.	Support	Channel Infrastructure considers the amendments sought are appropriate and provide further context/clarification regarding the Council's approach to hazardous substances in the District Plan.	Accept relief sought in the submission.
		3	Amend Objective HSUB-O2 Reverse Sensitivity as follows: <u>Sensitive activities are appropriately located to avoid reverse sensitivity effects and unacceptable residual risk from established do not unduly compromise existing areas</u> and activities which use, store or dispose of hazardous substances.	Support	Channel Infrastructure agrees with the reasons set out in the submission, including that the phrase "unduly compromise" is ambiguous and that the Objective should direct avoidance of reverse sensitivity effects and unacceptable residual risk, in particular by appropriately locating sensitive activities.	Accept relief sought in the submission.
		7	No rules should be included in the Hazardous Substances chapter.	Support	Channel Infrastructure agrees with the reasons set out in the submission and supports the Council's approach to hazardous substances.	Accept relief sought in the submission.

FURTHER
SUBMISSION

FURTHER SUBMISSION ON

Proposed Plan Change 91 Hazardous
Substances Whangarei District Plan

14 November 2022

To: Whangarei District Council

Name of Submitter: Horticulture New Zealand

Contact for Service:

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OVERVIEW

Submission structure

- 1 Part 1: HortNZ's Role
- 2 Part 2: Further submissions on behalf of HortNZ

Our submission

Horticulture New Zealand (HortNZ) made a submission on Plan Change 91 and welcomes any opportunity to continue to work with council and to discuss our submission.

The details of HortNZ's further submissions and decisions we are seeking from council are set out below.

HortNZ's Role

Background to HortNZ

HortNZ represents the interests of approximately 5,500 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruit, and vegetables. The horticultural sector provides over 40,000 jobs.

There is approximately, 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

Further Submission

1. Horticulture New Zealand's (HortNZ) further submissions are contained in the attached table below.
2. HortNZ represents commercial fruit and vegetable growers in the Whangarei region so represents a relevant aspect of the public interest.
3. HortNZ is not a trade competitor and could not gain any advantage in trade competition through this further submission.
4. HortNZ wishes to be heard in support of its further submissions.
5. If others make similar submissions, HortNZ will consider presenting a joint case with them at the hearing.

Further submission on behalf of HortNZ on Plan Change 91

Submitter	Sub #	Plan Provision	Support/oppose	Reason	Decision sought
Chancery Green on behalf of Channel Infrastructure NZ Limited	2.1	HSUB - 01 HSUB - P1	Support	HortNZ supports the focus on residual risk associated with the location of facilities that use, store and dispose of hazardous substances.	Retain HSUB-O1 Include a definition for residual risk as sought in the submission of HortNZ.
Chancery Green on behalf of Channel Infrastructure NZ Limited	2.2	HSUB - 02 HSUB - P4	Support	HortNZ supports recognition that sensitive activities can generate reverse sensitivity effects.	Retain HSUB-O2
Reyburn and Bryant on behalf of Northpower	3.1	Whole plan	Support in part	General support for plan change however HortNZ has made amendments to HSUB - P2 and HSUB - P3	Retain plan change with consideration to amendments to HSUB - P2 and HSUB - P3 as sought in the submission of HortNZ.
Ngā Tai Ora - Public Health Northland	5.1	Whole plan change	Oppose	The submitter considers that PC91 should be consistent with the draft Kaipara District Plan and the proposed Far North District Plan and seeks changes that align with the draft Kaipara DP. HortNZ has made submissions opposing the approach in the draft	Reject submission of Nga Tai Ora and retain plan change 91 with amendments to HSUB - P2 and HSUB - P3 as sought by HortNZ.

Submitter	Sub #	Plan Provision	Support/oppose	Reason	Decision sought
				<p>Kaipara District Plan and would not support Whangarei DC amending the PC91 as sought by the submitter.</p> <p>The draft Kaipara District Plan is not a statutory document and should not be used as a model.</p> <p>PC91 follows recent developments in management of hazardous substances that reflect changes in legislation that manage hazardous substances.</p> <p>This issue was well canvassed by the Independent Hearing Panel for the Christchurch Replacement District Plan and HortNZ supports the approach set out by the panel.</p> <p>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</p> <p>The approach in PC91 is consistent with the Christchurch decision and is supported by HortNZ.</p> <p>Previously regional and district councils had an explicit function to control the adverse effects of the storage, use, disposal or</p>	

Submitter	Sub #	Plan Provision	Support/oppose	Reason	Decision sought
				<p>transportation of hazardous substances under the RMA.</p> <p>Since this function was first included in the RMA in 1991, the following Acts have been passed:</p> <ul style="list-style-type: none"> • Hazardous Substances and New Organisms Act 1996 (HSNO), which regulates the management, disposal, classification, packaging and transport of hazardous substances • Health and Safety at Work Act 2015 (HSW Act), under which Worksafe New Zealand is responsible for establishing workplace controls for hazardous substances, and is the principal enforcement and guidance agency in workplaces. <p>Some existing RMA controls on hazardous substances duplicate or increase those in place under HSNO, which can be confusing for users of hazardous substances.</p>	

Submitter	Sub #	Plan Provision	Support/oppose	Reason	Decision sought
				Sections 30 and 31 of the RMA have been amended to remove the control of hazardous substances as an explicit function of councils. This means councils no longer have an explicit obligation to regulate hazardous substances in RMA plans, or policy statements.	
Ngā Tai Ora - Public Health Northland	5.2	HSUB - 01	Oppose	HortNZ supports the focus on residual risk associated with the location of facilities that use, store and dispose of hazardous substances.	Retain HSUB - 01 Include a definition for residual risk as sought in the submission of HortNZ.
Ngā Tai Ora - Public Health Northland	5.3	New Policy and rules	Oppose	The submitter seeks a new policy and accompanying rules. As set out above HortNZ opposes this approach.	Reject submission to add new policy and rules.
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	6.1	Issues	Support	Support amendments to the issues section to state the need to avoid duplication.	Amend as sought by the submitter.

Submitter	Sub #	Plan Provision	Support/oppose	Reason	Decision sought
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	6.2	HSUB - 01	Support	HortNZ supports the focus on residual risk associated with the location of facilities that use, store and dispose of hazardous substances.	Retain HSUB - 01 Include a definition for residual risk as sought in the submission of HortNZ
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	6.2	HSUB - 02	Support in part	HortNZ supports recognition that sensitive activities can generate reverse sensitivity effects. The submitter seeks changes to include residual risk. HortNZ does not oppose this addition but seeks to retain reference to not compromising existing areas and activities.	Retain HSUB - 02 as notified or amend to: Sensitive activities are appropriately located to avoid unacceptable residual risk from established activities and reverse sensitivity effects do not unduly compromise existing areas and activities which use, store or dispose of hazardous substances.
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	6.3	HSUB - P1	Support	HortNZ supports a policy that seeks to avoid duplication of regulation.	Retain HSUB - P1
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil	6.4	HSUB - P2	Support in part	The submitter seeks to retain HSUB-P2. HortNZ considers that the policy should be written to provide for	Amend HSUB-P2 as sought in the submission of HortNZ.

Submitter	Sub #	Plan Provision	Support/oppose	Reason	Decision sought
NZ Limited / Z Energy Limited				use, storage and disposal of hazardous substances there is an adverse effect from residual risk that needs to be managed	
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	6.5	HSUB - P3	Support in part	The submitter seeks to retain HSUB-P3. HortNZ considers that the policy should be written to provide for use, storage and disposal of hazardous substances in sensitive environments and areas unless there is an adverse effect from residual risk that needs to be managed.	Amend HSUB-P3 as sought in the submission of HortNZ.
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	6.6	HSUB-P4	Support	HortNZ supports HSUB-P4	Retain HSUB-P4
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	6.7	Whole chapter	Support	The submitter seeks that no rules be added to PC91. HortNZ supports that position.	Accept submission to not add rules to PC91.

Submitter	Sub #	Plan Provision	Support/oppose	Reason	Decision sought
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	6.8	Definitions	Support	The submitter supports the proposed definition of sensitive environments and areas and deletion of the definitions of hazardous facility and hazardous sub-facility. HortNZ supports that position.	Accept submission relating to definitions.
4Sight Consulting Limited on behalf of BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	6.9	Consequential amendments	Support	HortNZ supports the consequential amendments in PC91	Retain deletion of consequential amendments.

**NOTICE OF FURTHER SUBMISSION ON PLAN CHANGE 91 – HAZARDOUS SUBSTANCES
TO THE WHANGĀREI DISTRICT PLAN PURSUANT TO CLAUSE 8 OF THE FIRST SCHEDULE
OF THE RESOURCE MANAGEMENT ACT 1991**

To: Whangārei District Council
Private Bag 9023
WHANGĀREI 0148
Attention: District Plan Department

By e-mail only: mailroom@wdc.govt.nz

Submitter: bp Oil New Zealand Limited
PO Box 99 873
AUCKLAND 1149

Mobil Oil New Zealand Limited
PO Box 1709
AUCKLAND 1140

Z Energy Limited¹
PO Box 2091
WELLINGTON 6140

Hereafter referred to as the Fuel Companies

Address for service: 4Sight Consulting Limited
201 Victoria Street West
Auckland Central
PO Box 911 310

Attention: Megan Barr
Phone: (021) 468 108
Email: megan.barr@4sight.co.nz

Date: 14 November 2022

¹ On behalf of the wider Z group, including the Z Energy and Caltex operations in New Zealand

1. THE FUEL COMPANIES' FURTHER SUBMISSION POINTS ARE AS CONTAINED IN THE ATTACHED TABLE.
2. THE FUEL COMPANIES' INTEREST IN THE PROPOSED DISTRICT PLAN CHANGE IS GREATER THAN THE INTEREST OF THE GENERAL PUBLIC.
3. THE FUEL COMPANIES WISH TO BE HEARD IN SUPPORT OF THIS FURTHER SUBMISSION.
4. IF OTHERS MAKE SIMILAR SUBMISSIONS, THE FUEL COMPANIES WOULD BE PREPARED TO CONSIDER PRESENTING A JOINT CASE WITH THEM AT ANY HEARING.

Signed on behalf of bp Oil New Zealand Limited, Mobil Oil New Zealand Limited, and Z Energy Limited.



Megan Barr

Senior Planning and Policy Consultant

14 November 2022

Sub No.	Submitter name	Relief Sought by Submitter	FuelCo position	Reason for Support / Opposition	Relief sought
2.1	<i>Channel Infrastructure</i>	Council to review the relevant zone rules to appropriately manage the design and location of sensitive activities in order to avoid reverse sensitivity effects occurring, as necessary to achieve Objective HSUB-O2 and Policy HSUB-P4 and make any amendments to the Whangārei District Plan as a consequence.	Support	The Fuel Companies are not opposed to zone rules providing the key rules to manage reverse sensitivity issues associated with the design and location of sensitive activities in proximity to Marsden Point. For that to be effective, the Fuel Companies agree it is critical that the zone rules give effect to the objectives and policies of the amended hazardous substance chapter, including HSUB-O2 and HSUB-P4.	Ensure the rule framework in the relevant zones gives effect to the direction to avoid reverse sensitivity effects as sought by the Fuel Companies.
4.1	<i>Horticulture NZ</i>	Include a definition for residual risk as follows: <i>Means in relation to hazardous substances, any risk of an adverse effect that remains after other industry controls and legislation and regional planning instruments have been complied with.</i>	Neutral	The Fuel Companies do not consider a new definition is critical in the context of PC91 but if one is adopted seek to ensure that it is clearly focused on off site risk associated with the storage and use of hazardous substances not controlled by other legislation or regulation.	Ensure any definition of residual risk is specific to off site risk remaining after compliance with other legislation and regulation.
5.1	<i>Ngā Tai Ora – Public Health Northland</i>	1) Include appropriate rules for the management storage, use, transport and disposal of hazardous substances in PC91. At a minimum, this should include (but is not limited to) the inclusion of rules managing: a. The establishment or expansion of facilities managing, storing, using or disposing of hazardous substances within, or in close proximity to, sensitive environments (e.g., residential areas or adjacent to schools or health care facilities and hospitals).	Oppose	The Fuel Companies support Council’s approach in PC91 to avoid duplication with other legislation that controls hazardous substances, including the Hazardous Substances and New Organisms Act 1996 (HSNO Act), the Health and Safety at Work Act 2015 (HSW) and the Resource Legislation Amendment Act 2017 (RLAA). The Fuel Companies agree with the submitter that Council retains a broad power under the RMA to manage hazardous substances to achieve the purpose of the RMA and carry out the function of integrated management of natural and physical resources. Similarly, the Fuel Companies agree that the RMA has a role to play in managing the storage and use of	Reject the relief sought and ensure that any rules that are introduced are justified by robust s32AA analysis.

Sub No.	Submitter name	Relief Sought by Submitter	FuelCo position	Reason for Support / Opposition	Relief sought
		<p>b. The establishment of sensitive activities (e.g., residential activities, marae schools or healthcare facilities and hospitals) adjacent to, or within close proximity to, lawfully established hazardous substances facilities.</p> <p>c. 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).</p> <p>d. Appropriate limits or thresholds for the storage of certain hazardous substances across the various zones in the WDP.</p> <p>2) Amend the policies to provide an adequate policy framework for the inclusion of the above rules.</p>		<p>hazardous substances. However, this should only be exercised where the potential environmental effects are not adequately addressed by other legislation, including by HSNO and HSWA and there is an identified issue or problem – there is no value in regulating matters that are not causing an issue. To inform its position, Council has undertaken a s32 analysis.</p> <p>Particularly in seeking to control the overall hazardous substance risk and not just residual risk off site, and seeking to regulate the transport of hazardous substances, the relief sought by the submitter is directly contrary to national direction and clearly duplicates other requirements. Any introduction of regulation in this area must be re-evaluated in terms of the regulatory functions and s32AA analysis.</p> <p>The submitter refers to the notified hazardous substance provisions in FNDC but does not recognise that those provisions are much more targeted than the submitter seeks via relief to PC91. In terms of the exposure draft of the Kaipara District Plan, the Fuel Companies are strongly opposed to those provisions for many of the same reasons set out here.</p>	
5.2	Ngā Tai Ora – Public Health Northland	<p>Amend HSUB-O1 as follows (additions underlined and deletions struck through):</p> <p><u>The health and safety of people, property and the environment are protected from any unacceptable levels of residual risk associated</u></p>	Oppose	<p>The Fuel Companies oppose the changes sought in relation to residual risk and transport, including for the reasons set out above re 5.1. Similarly the intent of the drafting in relation to health and safety is unclear and seems to narrow the focus of the objective significantly.</p>	Reject the relief sought.

Sub No.	Submitter name	Relief Sought by Submitter	FuelCo position	Reason for Support / Opposition	Relief sought
		<p><i>with the location <u>or expansion</u> of facilities that use, store, transport <u>and</u> <u>or</u> dispose of hazardous substances.</i></p> <p>Amend the policies as required to give effect to the amended HSUB-O1.</p>		The nature and extent of consequential changes sought to policies are unclear.	
5.3	Ngā Tai Ora – Public Health Northland	Include a new policy and accompanying rules, seeking to avoid the storage, use, transport, and disposal of hazardous substances in natural hazard areas.	Oppose	<p>The District Plan definition of “natural hazard” covers a wide range of hazards, including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire or flooding.</p> <p>A policy approaching requiring the avoidance of hazardous substances in natural hazard areas is not risk based and would necessitate rules prohibiting the same. Doing so would likely exclude the ongoing operation, maintenance and upgrading of a range of facilities, including regionally significant infrastructure at Marsden Point.</p>	Reject the relief sought.



To: Whangārei District Council (WDC)

From: Ngā Tai Ora - Public Health Northland (Ngā Tai Ora)

Date: 14 November 2022

Address for Service: Gavin De Klerk, Ngā Tai Ora - Public Health Northland Gavin.DeKlerk@northlanddhb.org.nz

Re: Plan Change 91 Hazardous Substances (PC91) – Ngā Tai Ora Further Submission

Further Submission Information:

This is a further submission by Ngā Tai Ora on proposed plan change 91 to the Whangārei District Plan (PC91).

Ngā Tai Ora made an initial submission on PC91.¹

Ngā Tai Ora has an interest in PC91 that is greater than the interest the general public has. It also represents a relevant aspect of the public interest in its role relating to public health interests and outcomes.

Ngā Tai Ora could not gain an advantage in trade competition through this further submission.

The specific submission points on PC91 that Ngā Tai Ora's further submission relates to are attached.

Ngā Tai Ora **opposes** PC91. It also opposes and supports further submissions as per the attached document. The reasons are provided in the attached document.

The decisions that Ngā Tai Ora wishes Whangārei District Council to make to ensure the issues raised by Ngā Tai Ora are dealt with, are also contained in the attached document.

Ngā Tai Ora **wishes to be heard** in support of this further submission.

Gavin De Klerk, Interim Service Manager

Ngā Tai Ora - Public Health Northland / Te Tai Tokerau / Northern Region

¹ Dated 21 September 2022 submission #5.

1.0 Introduction

Te Whatu Ora – Health New Zealand leads the day-to-day running of the health system across New Zealand, with functions delivered at local, district, regional and national levels. Te Whatu Ora undertakes the operational functions of the Ministry of Health, including the management of all health services, including hospital and specialist services, and primary and community care. Te Whatu Ora will also be responsible for improving services and outcomes across the health system. We will do this in partnership with the Māori Health Authority.

Te Whatu Ora has statutory obligations under the Pae Ora Act 2022, New Zealand Public Health and Disability Act 2000 and the Health Act 1956 to improve, promote and protect the health of people and communities of Aotearoa New Zealand.

Within Te Whatu Ora sits the National Public Health Service (**NPHS**) which delivers national, regional and local programmes of health promotion, protection and prevention. The goals of the National Public Health Service, which includes Ngā Tai Ora – Public Health Northland (a sub-group under Te Whatu Ora and the party making this submission), are to improve population and public health with an emphasis on health equity, particularly for Māori, Pacific peoples, disabled peoples, and other population groups that continue to experience inequitable health outcomes. As the founding document of Aotearoa New Zealand, Te Tiriti o Waitangi represents an agreement between Māori and the Crown. Māori are afforded equity and protection of health as a result of this document and as a Crown agent we honour our responsibilities to Te Tiriti o Waitangi.

Ngā Tai Ora made an initial submission on PC91 in opposition for the reasons outlined in the initial submission, primarily relating to the potential adverse health effects of PC91, and promoting positive health outcomes for people and communities in the Whangārei District.² This further submission addresses submissions from other parties which relate to these matters.

Ngā Tai Ora sets out its further submissions in **Attachment 1** in respect of the following submissions:

- a) Sub #1 Manulife Forest Management
- b) Sub #2 Channel Infrastructure NZ Limited
- c) Sub #4 Horticulture New Zealand
- d) Sub #6 BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited

² Dated 21 September 2022 submission #5.

Attachment 1 – Ngā Tai Ora Further Submissions



Sub #	Submitter Name	Sub Point	Submission	Support / Oppose	Reasons	Relief Sought
1	Urusula Buckingham c/o Manulife Forest Management	1	Remove Area of High Susceptibility to Instability Hazards from the Sensitive Environments and Areas definition. OR Provide an exception that Permitted Activities that operate in an Area of High Susceptibility to Instability Hazards are excluded from the Sensitive Environments and Areas definition.	Oppose	Ngā Tai Ora oppose this relief. Areas subject to high susceptibility of instability are at greater risk where subject to hazardous substances storage. These should not be excluded from the definition to address requirements of plantation forestry operators, nor is providing an exemption for permitted activities appropriate in a definition.	Decline the relief sought in this submission point and retain the definition of “Sensitive Environments and Areas” as notified.
2	Channel Infrastructure NZ Limited	1	Retain Objective HSUB-O1 and Policy HSUB-P1 as notified.	Oppose	Ngā Tai Ora oppose this relief in these submission points, as it has sought changes the objective and policies as outlined in its original submission (see Sub# 5-2 and 5-3).	Decline the relief sought in these submission points, and make changes to the objectives and policies as outlined in Ngā Tai Ora’s
		2	Retain Objective HSUB-O2 and Policy HSUB-P4 as notified.			

Sub #	Submitter Name	Sub Point	Submission	Support / Oppose	Reasons	Relief Sought
						original submission (see Sub# 5-2 and 5-3).
2	Channel Infrastructure NZ Limited	3	Council to review the relevant zone rules to appropriately manage the design and location of sensitive activities in order to avoid reverse sensitivity effects occurring, as necessary to achieve Objective HSUB-O2 and Policy HSUBP4 and make any amendments to the Whangārei District Plan as a consequence.	Support	Ngā Tai Ora support reviewing the relevant zoning rules to manage reverse sensitivity for the location of sensitive activities to achieve the objectives and policies. This is consistent with the relief sought in Ngā Tai Ora's original submission (see Sub #5-1 clause b). It is important that the conflicts between incompatible activities (e.g., sensitive activities and lawfully established hazardous substances facilities) are avoided. Ngā Tai Ora would also add that it is important that this is managed the other way as well (e.g., the establishment of a hazardous substances facility in an area with lawfully established sensitive activities).	Accept the relief sought, noting Ngā Tai Ora's original submission (see Sub #5-1 clause b).

Sub #	Submitter Name	Sub Point	Submission	Support / Oppose	Reasons	Relief Sought
4	Horticulture New Zealand	1	Retain HSUB-O1 Include a definition for residual risk as follows: Means in relation to hazardous substances, any risk of an adverse effect that remains after other industry controls and legislation and regional planning instruments have been complied with.	Oppose	Ngā Tai Ora oppose this relief in this submission point, as it has sought changes the objective as outlined in its original submission (see Sub# 5-2). Ngā Tai Ora do not consider that a definition for residual risk is necessary given the current approach to PC91. However, if a new definition is to be included, Ngā Tai Ora wishes to ensure that it is appropriately worded so that it is clear in its application and purpose.	Decline the relief sought in this submission point.
4	Horticulture New Zealand	2	Retain HSUB-O2	Oppose	Ngā Tai Ora oppose the relief sought in these submission points, as it has sought changes the objectives and policies as outlined in its original submission (see Sub# 5-2 and 5-3). Furthermore, Ngā Tai Ora consider that the specific changes to HSUB-P2 and HSUB-P3 are inappropriate, as they attenuate the effectiveness	Decline the relief sought in these submission points, and make changes to the objectives and policies as outlined in Ngā Tai Ora's original submission (see Sub# 5-2 and 5-3).
		3	Retain HSUB-P1	Oppose		
		4	Amend HSUB-P2 as follows: 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	Oppose		

Sub #	Submitter Name	Sub Point	Submission	Support / Oppose	Reasons	Relief Sought
			<p>communities, unless it can be demonstrated that the <u>manage</u> residual risk to people and communities <u>by avoiding such risk</u> will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level.</p>		<p>of the policies by removing necessary references to health, safety and wellbeing of people and communities.</p>	
		5	<p>Amend HSUB-P3 as follows: To ensure activities which use, store or dispose of hazardous substances <u>which are located</u> are not located within sensitive environments and areas <u>manage</u> unless it can be demonstrated that the residual risk to people, property and the environment by avoiding such risk <u>by avoiding such risk</u> will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level.</p>	Oppose		

Sub #	Submitter Name	Sub Point	Submission	Support / Oppose	Reasons	Relief Sought
6	BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	2	Retain Objective HSUB-O1 as notified	Oppose	Ngā Tai Ora oppose the relief sought in these submission points, as it has sought changes the objectives and policies as outlined in its original submission (see Sub# 5-2 and 5-3). Furthermore, Ngā Tai Ora consider that the specific changes to HSUB-O2 are inappropriate, as they attenuate the effectiveness of the objective by removing necessary references to “unduly compromising” which is consistent with the language in the Northland Regional Policy Statement.	Decline the relief sought in these submission points, and make changes to the objectives and policies as outlined in Ngā Tai Ora’s original submission (see Sub# 5-2 and 5-3).
		2 ³	Amend Objective HSUB-O2 as follows: Sensitive activities are appropriately located to avoid reverse sensitivity effects and <u>unacceptable residual risk from established</u> do not unduly compromise existing areas and activities which use, store or dispose of hazardous substances.			
		3	Retain Policy HSUB-P1 as notified.			
		4	Retain Policy HSUB-P2 as notified.			
		5	Retain Policy HSUB-P3 as notified.			
		6	Retain Policy HSUB-P4 as notified.			
6	BP Oil NZ Limited / Mobil Oil NZ Limited / Z Energy Limited	7	The Fuel Companies support the Council’s decision not to include rules in relation to hazardous	Oppose	Ngā Tai Ora sought rules be added to the Hazardous Substances Chapter to manage the adverse effects of hazardous substances.	Decline the relief sought in this submission point, and make changes to include rules

³ Ngā Tai Ora note that there appears to be two submission points labelled “2” for the Fuel Companies submission. It is assumed that this is in error, and for the avoidance of doubt, Ngā Tai Ora’s further submission relates to both.

Sub #	Submitter Name	Sub Point	Submission	Support / Oppose	Reasons	Relief Sought
			substances and request that no rules are added to the Hazardous Substances chapter.			consistent with Ngā Tai Ora's original submission (Sub #5-1).