

**BEFORE THE HEARING COMMISSIONERS  
WAIKATO DISTRICT COUNCIL**

**IN THE MATTER of the Resource Management Act 1991**

**AND**

**IN THE MATTER of Hearing 8A: Hazardous Substances and Contaminated  
Land of the Proposed Waikato District Plan**

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**STATEMENT OF HILARY JEAN WALKER ON BEHALF OF FEDERATED FARMERS  
OF NEW ZEALAND**

**16 December 2019**

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## Introduction

1. My name is Hilary Jean Walker. I am a Senior Policy Advisor for Federated Farmers of New Zealand ("**Federated Farmers**").
2. I have read the s 42A report, prepared by Katherine Overwater, dated 2 December 2019, for Hearing 8A – Hazardous Substances and Contaminated Land in relation to the Proposed Waikato District Plan ("**PWDP**"). This report addresses matters to which Federated Farmers made submissions (submitter 680) and further submissions (FS1342) that have been assigned to this hearing topic.
3. The contents of this statement are made in my role as Senior Policy Advisor, and will address matters as they relate to Federated Farmers interests by reference to the s42A report sections:
  - (a) Topic 1: Chapter 10 - All of chapter submissions
  - (b) Topic 3: Policy 10.1.2 - Location of new hazardous facilities
  - (c) Topic 4: Policy 10.1.3 - Residual risks of hazardous substances
  - (d) Topic 5: Policy 10.1.4 - Reverse sensitivity effects
  - (e) Topic 6: Objective 10.2.1 – Contaminated Land
  - (f) Topic 7: Policy 10.2.2 – Managing the use of contaminated land
  - (g) Topic 8: Definitions
  - (h) Topic 17: Rural Zone (Chapter 22)

### **Topic 1: Chapter 10 Hazardous Substances and Contaminated Land – 10.1 Hazardous Substances – All of Chapter Submissions**

4. Federated Farmers is always keen to ensure planning approaches adopt the most efficient and effective methods to achieve legislated purposes. It is usual for Federated Farmers to register concern if a proposed plan includes provisions which, in our view, look to duplicate functions or controls better addressed by other jurisdictions. As representatives of resource users the risk of duplicated processes, extra costs, time delays and uncertainty which can be created are key drivers of this concern.
5. Federated Farmers made a submission (680.119) seeking deletion of the proposed planning framework as it applies to hazardous substances, and replacing it with an advice note outlining the Resource Legislation Amendment Act ("**RLAA**") removal of the specific s31(1)(b)(ii) function under the Resource Management Act 1991 ("**RMA**") and signalling the relevance of the Hazardous Substances and New Organisms Act ("**HSNO**") and Health and Safety at Work Act 2015 ("**HSWA**") to plan users.
6. Federated Farmers has read the Tompkins Wake legal opinion, Proposed Waikato District plan – Chapter 10 Hazardous Substance and Contaminated Land, dated 22 November 2019, and accepts that whilst Council's explicit functions under section 31 of the RMA have been removed, there can still a role for Council to play in respect to

managing the effects of land use, if necessary, to control effects not covered by HSNO or HSWA.

7. Federated Farmers considers that whether the notified provisions of the plan have gone beyond that scope, to control effects which are more appropriately covered by HSNO or HSWA, is a planning and legal question and I am not qualified to make a comment on either.
8. The focus of the hearing statement is to respond to the section 42 Report recommendations as they apply to key Federated Farmers submission points.

### **Topic 3: Policy 10.1.2 – Location of new hazardous facilities**

9. Federated Farmers made a submission (680.121) seeking to improve clarity around the intention of the policy and to introduce some practicality into Policy 10.1.2(a)(iii) requirements. Federated Farmers acknowledges the concept of internalisation of effects. However, we content that total internationalisation of effects is not always able to be undertaken (or at any cost). In these circumstances adverse effects should be avoided, remedied or mitigated.
10. It is accepted that at the time of designing and constructing a new hazardous facility it is appropriate to incorporate design techniques which can internalise any adverse effects within the site as much as possible. However, the notified policy requires that there are no adverse effects beyond the site, this sets the standard too high and is inconsistent with accepted planning practices.
11. Federated Farmers sought to replace the requirement to contain any and all adverse effects within the site, with the direction to avoid, remedy or mitigate adverse effects. In our view this gives better effect to the Waikato Regional Policy Statement, Policy 4.2.9 Hazardous Substances which specifies that land use controls should prevent or mitigate any adverse effects.
12. The s42A report does not accept this point, incorrectly reasoning that the WRPS policy requires the prevention and mitigation of adverse effects and as such recommends the rejection of proposed changes to Policy10.1.2(a)(iii).
13. Federated Farmers retains the view that the relief sought in submission 680.121 sets an appropriate expectation that off-site adverse effects should be avoided in the first instance without setting an unreasonable standard that all adverse effects must be contained within the site.

### **Topic 4: Policy 10.1.3 – Residual risks of hazardous substances**

14. Federated Farmers made a submission (680.122) seeking changes to the policy if concerns raised with regards to the all-encompassing nature of the Hazardous Facility definition were not able to be addressed.

15. The s42A recommendations to include exemptions to the definition of Hazardous Facility will appropriately narrow the scope of this policy.

#### **Topic 6: Objective 10.2.1 – Contaminated Land**

16. Federated Farmers made a submission point (680.124) seeking to provide clarity to the purpose of the Objective.
17. Federated Farmers supports the s42A report recommended changes.

#### **Topic 7: Policy 10.2.2 – Managing the use of contaminated land**

18. Federated Farmers made a submission (680.125) supporting the planning approach and seeking the inclusion of an advice note to better inform plan users.
19. Federated Farmers supports the s42A report recommended changes in response to this submission point.

#### **Topic 8: Definitions**

20. Federated Farmers made a submission (680.140) seeking changes to the definition of Hazardous Substances.
21. The s42A report recommends adopting the National Planning Standards definition and this is supported.
22. Federated Farmers made a submission on the definition of Hazardous Facility (680.139).
23. The s42A response, whilst sympathetic to most of the issues raised, serves to highlight that the Hazardous Facility definition will remain contentious until the rules framework, with regards to what activities/ hazardous substances, may or may not be captured are addressed.

#### **Topic 17: Rural Zone (Chapter 22)**

24. Federated Farmers made a submission (680.209) to amend Rule 22.2.4(P1) to provide a practical and simple way to ensure the land use controls within the PWDP do not apply an extra, and in our view, unnecessary layer of control over and above other legislated controls and industry codes of practice.
25. The submission point raises concerns with both permitted activity Rule 22.2.4(1) and the associated Table 5.1. In our view Table 5.1, which provides the thresholds to determine whether an activity is permitted or discretionary, are difficult for resource users to interpret and assess whether the hazardous substances they may typically require for farming purposes require a resource consent for use, storage or disposal, or not.

26. A layer of complexity, uncertainty and the potential for unintended consequences has also been created by Table 5.1 Rule 1 exemptions. Rule 1 states:

For the purpose of the table, a hazardous substance shall have the class and sub-class given by the Environmental Protection Authority when approving the importation and manufacture of that substance under the Hazardous Substances and New Organisms Act 1996. Use, storage and disposal of hazardous substance sub-classes 1.4, 1.5, 1.6, 6.1D, 6.1E, 6.3, 6.4, 6.5, 9.1D, 9.2D, and 9.3 are exempt from this table

27. It is unclear how the sub-classes of substances which are exempt from the threshold limits in Table 5.1 (note the table and appendix is referenced incorrectly in the notified rule) can comply with permitted activity Rule 22.2.4 (P1):

(a) The use, storage or disposal of any hazardous substances where:

(i) The aggregate quantity of hazardous substances of any hazard classification on a site is less than the quantity specified for the Rural Zone in Table 6.1 contained within Appendix 6 (Hazardous Substances).

28. Non-compliance with Rule 22.2.4 (P1) triggers the need for a discretionary consent as per Rule 22.2.4(D1):

The use, storage or disposal of hazardous substances that does not comply with Rule 22.2.4 P1, P2 or C1.

29. We understand the Rule 1 exemptions would apply to a number of products typically used on farm and that the intention for not including quantity restrictions into Table 5.1 for those sub-classes of substances was to not subject the use, storage and disposal of those products to a consenting regime.

30. This intention is confirmed in the section 42A report at para 564, which states:

[F]urther, advice from Mr Schaffoener is that Rule 1 of Appendix 5 (following the AST) exempts hazard sub-classes applicable to fertilisers, and it is likely that the quantity thresholds of fuels and other substances stored on farms would be well below the thresholds which trigger resource consent. I agree with this approach and consider that the AST included in Appendix 5 provides for these exceptions, which do not make sense to replicate in the rule

31. The recommendation is to reject Federated Farmers submission, to be explicit with the exemptions and include them in the permitted activity rule, on the basis that the proposed planning framework achieves the stated intentions. It is suggested that amendments to the permitted activity would be an unnecessary replication.

32. Federated Farmers concerns with the possible unintended consequences of the rule drafting was not addressed by the s42A report. The s42 report did not provide any rationale as to how the sub-classes, which are exempt from threshold quantities in

Table 5.1, comply with the conditions of Rule 22.2.4 (P1) and as such not subject to Rule 22.2.4(D1).

33. Without that clarification from the report we remain unconvinced that activities which are intended to be permitted will not default to a discretionary status. Federated Farmers is concerned that planning expertise may be required to interpret the notified rules framework. This is unreasonable for plan users simply trying to determine whether they meet permitted activity rule conditions or not.



Hilary Walker  
16 December 2019