

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Hearings by Commissioners appointed by the Waikato
District Council regarding submissions and further
submissions to the Proposed Waikato District Plan –
Hearing 8A– Hazardous Substances and Contaminated
Land

STATEMENT OF EVIDENCE BY NICOLA MARIE WILLIAMS

17 DECEMBER 2019
FOR TUAKAU PROTEINS LIMITED SUBMITTER #402

Evidence Summary

1. While I consider that the adverse effects of hazardous substances on the environment can be significant and include the loss or injury of human life, property and/ or damage to the natural environment, I do not consider that it is necessary for separate hazardous substance provisions to be included in the Proposed Waikato District Plan.
2. As part of Resource Legislation Amendment Act 2017, sections 30 and 31 of the RMA (1991) were amended to remove the control of hazardous substances as an explicit Council function. This means councils no longer have an explicit obligation to manage hazardous substances in RMA plans, or policy statements.
3. Tuakau Proteins Limited has lodged a submission and further submissions in relation to Chapter 20: Hazardous Substances and Contaminated Land.
4. In summary, the key points addressed in my evidence in relation to the submissions and further submissions is on the overlap of provisions in the proposed district plan with existing legislation including the Hazardous Substances and New Organisms Act 1996 and the Health and Safety at Work Act 2015.

Introduction

5. My name is Nicola Marie Williams and I am an Associate with Mitchell Daysh Limited. Mitchell Daysh Limited is a specialist environmental consulting practice with offices in Auckland, Hamilton, Napier, Nelson and Dunedin.
6. I hold a Bachelor of Regional Planning from Massey University (1988) and I am a member of the New Zealand Planning Institute and the Resource Management Law Association. I have worked as a consultant and in local government and I have had approximately 30 years of experience as a resource management adviser including

20 years' local government experience including plan preparation, policy planning work and resource consents.

7. As I will not be attending the hearing in person, I request that the hearings panel accept this evidence as tabled. Should the panel have any questions, I am happy to provide further information regarding the matters addressed in my evidence.
8. I confirm that I have read the "code of conduct for expert witnesses" contained in the Environment Court consolidated Practice Note 2014. I agree to comply with this Code of Conduct. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
9. I refer you to the evidence presented at hearing 7 - Industrial Zone and Heavy Industrial Zone which sets out my experience.

Tuakau Proteins Limited Background and Submissions

10. The Tuakau Proteins Limited submissions and my Hearing 7 evidence sets out the background to Tuakau Proteins Ltd interests in the Waikato District.
11. My evidence for Hearing 8A deals with TPL's submission on the hazardous substances and hazardous facilities component of the plan.

Submission Point 402.7 and Further Submission points 1353.6,.31,.32, .33, & .34.

12. Tuakau Proteins Ltd sought to have the rules relating to hazardous substances deleted from the Proposed District Plan and supported the similar submissions of Balle Bros Group, LPG Association of New Zealand, Buckland Marine Limited and Fire and Emergency NZ. I have read the S42a report on Hazardous Substances & Contaminated Land prepared by

Katherine Overwater dated 2 December 2019 and the additional reports attached as Appendix 4 Background report from Resources Consultancy and Appendix 6 the Legal Opinion from Tompkins Wake. I do not propose to repeat the matters addressed in those reports other than to identify aspects addressed in the Tuakau Proteins Limited submissions and further submissions.

13. I consider that the adverse effects of hazardous substances on the environment can be significant and include the loss or injury of human life, property and/ or damage to the natural environment.
14. As set out in Appendix 6, to the S42a staff report, the Tompkins Wake opinion states that the Resource Legislation Amendment Act 2017 amended Sections 30 and 31 of the RMA to remove the control of hazardous substances as an explicit function of territorial authorities. This means councils no longer have an explicit obligation to manage hazardous substances in RMA plans, or policy statements. While I agree that Councils have a broad function of achieving integrated management, and it may be appropriate to exercise this to place extra controls on hazardous substances under the RMA if the existing Hazardous Substances and New Organisms Act 1996(HSNO) or the Health and Safety at Work Act 2015(HSW) controls inadequately address the environmental effects of hazardous substances.
15. As Council's across the country have reviewed their district plans various options have been adopted in relation to the land use controls for the prevention or mitigation of any adverse effects of the storage, use, disposal and transport of hazardous substances. The Tompkins Wake opinion refers to the recent Proposed South Taranaki District Plan which includes provisions for hazardous substances that places restrictions on "significant hazardous facilities" located in sensitive environments or areas. The Proposed New Plymouth District Plan has followed the Proposed South Taranaki District Plan format.

16. The Christchurch Replacement Plan also opted to limit the rules relating to hazardous substances and it is my understanding that as part of the process the Christchurch Replacement District Plan Independent Hearings Panel heard evidence submitted from the Crown relating to the overlap between the provisions of the Replacement Plan and HSNO. I understand that the Independent Hearing Panel found the evidence from the Crown's witness Dr Peter Dawson particularly helpful with respect to the regulations. This evidence can be found via the following link:

<http://www.chchplan.ihp.govt.nz/hearing/chapter-12-hazardous-substances-and-contaminated-land-deferred-to-stage-2/>

17. In that process the Independent Hearing Panel accepted evidence from Dr Dawson and that of the Crown witnesses in their decision dated 15 March 2016. This decision is now beyond appeal and may be useful to the Hearing Panel to understand how the overlap between the regulations was dealt with. The decision can be found via the following link:

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

18. In summary therefore I consider that while it is important to include a specific chapter on hazardous substances that provides a policy framework to provide for and manage the use, storage, disposal and transportation of hazardous substances while ensuring that unacceptable risks are avoided I consider that it is not appropriate for the Proposed District Plan to create unnecessary overlaps between the HSNO Act and the District Plan. It is my view that only significant hazardous facilities need to be managed through the rules of the Proposed District Plan.

Nicola Williams

17 December 2019

