

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

**AND**

**IN THE MATTER** of hearing submissions and further submissions on the Proposed Waikato District Plan

**AND**

**IN THE MATTER** of the management of Hazardous Substances – Hearing 8A

## **DIRECTIONS FROM HEARING COMMISSIONERS**

**22 April 2020**

### **Introduction**

1. The hearing to consider submissions on the Hazardous Substances provisions of the proposed Waikato District Plan (“**proposed plan**”) was held on 28 January 2020.
2. At the hearing we expressed the preliminary view that the proposed plan should not duplicate matters regulated under other legislation unless it was clearly necessary (*emphasis ours*) for a resource management purpose. We based that preliminary view on the comprehensive process already required by, for example, the Hazardous Substances and New Organisms Act 1996 and the Health and Safety at Work Act 2015, including the Health and Safety at Work (Hazardous Substances) Regulations 2017, the amendment to sections 30 and 31 of the Resource Management Act 1991 (that removed the control of hazardous substances as a territorial authority function) and the information provided to us by submitters and the Council. During the hearing we expressly asked all submitters and Waikato District Council (“**Council**”) staff for their opinions on our preliminary view and were under the clear impression that it was accepted by all present.
3. We therefore invited the submitters and Council staff to liaise with the purpose of proposing a methodology and timeframe for “reporting back” to the panel on how they might progress this matter and were told that they would provide us with a memorandum setting out the proposed way forward within one month. We duly received the said memorandum on 28 February 2020. In setting out a timetable for identifying the provisions recommended to be included in the proposed plan, the memorandum records our earlier view expressed at the hearing that the proposed plan should not duplicate controls and legislation relating to the

control of hazardous substances. It also records our directions given at the hearing that the analysis (*further work*) is not intended to be a “line by line” approach.

4. Given all the above, we were extremely disappointed to receive a further memorandum from the Council on 21 April 2020, that, amongst other things, stated:

.....

2. It is noted that the further instruments/documents sought from submitters are in addition to the Health and Safety at Work (Hazardous Substances) Regulations 2017 and Hazardous Substances (Hazardous Property Controls) Notice 2017, which Council has already engaged its technical expert, Mr Schaffoener from Resources Consulting, to undertake. Council has now received from submitters the list of additional documents sought to be included in the gap analysis.
3. In light of the extent of additional documents sought to be included, Council now seeks the Panel’s direction in respect of the following three matters:
  - A. The extent of Council’s technical gap analysis based on the information provided in the table below;
  - B. The process which Council intends to follow in terms of the section 32AA evaluation, including consultation with submitters prior to reporting back to the Panel; and
  - C. Revised timeframes for the additional information to be reviewed by Council’s technical expert, the section 32AA evaluation to be undertaken by Council, and consultation with submitters.
4. To inform the Panel’s directions, the following information is provided:

**A. The extent of Council’s technical gap analysis**

.....

**B. The process which Council intends to follow in terms of the section 32AA evaluation and consultation with submitters prior to reporting back to the Panel**

.....

**C. Revised timeframes for the work to be undertaken by both Council and submitters**

14. Given the recommendation in respect to the additional coverage of the technical gap analysis required, Council considers that an additional four weeks is required to undertake the technical analysis. This also provides submitters a further four weeks to provide any additional information that can be used in the technical gap analysis. The implication of this additional work is that the proposed timetable would now be as follows:

	<b>Task</b>	<b>Who</b>	<b>Indicative Completion Date</b>
1	Council’s Technical Expert to undertake an analysis of HSNO and HSWA regulations and additional documents as directed by the Panel.	Council Technical Expert	Friday 22 <sup>nd</sup> May 2020 (4 weeks)
2	Any additional information or documents from submitters to be provided to Council to be included in the technical	All submitters	Friday 22 <sup>nd</sup> May 2020 (4 weeks)

	review.		
3	Council planner to draft S32AA report (incorporating any additional information received from submitters).	Council Planner Reporting	Monday 9 <sup>th</sup> June 2020 (2 weeks, including Queen's birthday)
4	Council to send draft analysis and section 32 evaluation to all submitters	Council S42 Reporting Planner	Tuesday 9 <sup>th</sup> June 2020
5	Submitters to provide feedback on draft analysis and section 32 evaluation report	All submitters	Monday 6 <sup>th</sup> July 2020 (4 weeks)
6	Council reviews feedback received from submitters and makes further amendments to the analysis and evaluation (if necessary)	Council S42 Reporting Planner & Council Technical Expert	Monday 6 <sup>th</sup> July – Friday 17 <sup>th</sup> July 2020 (2 weeks)
7	Council meets with submitters (if required)	Council and submitters (who wish to participate)	Week of 20 <sup>th</sup> July – 24 <sup>th</sup> July 2020
8	Report back to the Panel	Council S42 Reporting Planner	Friday 29 <sup>th</sup> May 2020 Friday 26 <sup>th</sup> June 2020
9	Submit final analysis and evaluation to the Panel	Council S42 Reporting Planner	Monday 27 <sup>th</sup> July 2020

15. Council therefore seeks directions and guidance from the Hearings Panel in respect to the following three matters set out as follows:

- A. The extent of Council's technical gap analysis based on the information and recommendations provided in the table above. If the Panel agrees with Council's recommendations in the table above, the additional documents and parts of those documents to be included in the technical review are:
- Health and Safety at Work (Hazardous Substances) Regulations 2017 that relate to transit depots as follows: definition of transit depot, regulations 2.7, 10.37, 12.20, 12.46 and 13.28;
  - Environmental Protection Agency notices concerning property control and disposal;
  - The Health and Safety at Work (Hazardous Substances) Regulations 2017 referred to in the information provided by Ms Walker on behalf of Federated Farmers of New Zealand (i.e. clause 9, regulation 2.9 and regulation 2.11);
  - Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 Parts 1 – 4; and

- The Health and Safety at Work (Hazardous Substances) Regulations 2017 referred to in the information provided by Mr Le Marquand on behalf of Oil Companies.
- B. Guidance on the process which Council intends to follow in terms of the section 32AA evaluation, including consultation with submitters prior to reporting back to the Panel; and
- C. Acceptance of the revised timeframes for the additional information to be reviewed by Councils technical expert as well as any additional information to be received by Council from submitters, the section 32AA evaluation to be undertaken by Council and consultation with submitters.
5. We decline to issue any such Directions of the type sought and are of the view that the level of detail proposed (i.e. a “line by line” approach that we expressly said we did not require) is neither helpful to us, nor necessary. We also remind the parties and the Council of their duty to provide us with information in a timely manner that will assist us in reaching sound, defensible decisions on the contents of the proposed plan. The Directions of the type sought in the Council memorandum of 21 April 2020 (provided nearly 3 months after the adjournment of the hearing and proposing a further 3 month work programme) fall well short of achieving that.

## Directions

6. In order to conclude this matter efficiently, and in a way that will be of assistance to us, we direct as follows:
- a) The Hearings Administrator is to provide these Directions to the parties that filed evidence on the Hazardous Substances provisions of the proposed plan (i.e. for the hearing held on 28 January 2020) **as soon as possible** and post them on the Council’s website.
  - b) As a priority, Council staff are to liaise with the parties that filed evidence on the Hazardous Substances provisions for the hearing on 28 January 2020, to ascertain if there is a consensus position on what matters relating to the management of Hazardous Substances should and should not be included in the district plan.
  - c) Council staff are to advise the Hearings Administrator, Ms Sandra Kelly, of the extent to which there is, or is not, any consensus position, no later than **5pm on Friday 24 April 2020**.
  - d) The full details, including proposed plan provisions, of any consensus position reached are to be documented and provided to the Hearings Administrator, no later than **5pm on Friday 8 May 2020**.
  - e) In the event that no consensus is reached:
    - i. Submitters and further submitters are invited to prepare memoranda setting out the details of the proposed plan provisions they consider to be appropriate, including reasons, and provide these to the Hearings Administrator, no later than **5pm on Tuesday 19 May 2020**.
    - ii. The section 42A report author is invited to prepare a memorandum setting out the details of the proposed plan provisions she considers to

be appropriate, including reasons, and provide these to the Hearings Administrator, no later than **5pm on Friday 29 May 2020**.

- f) For the avoidance of doubt regarding e) above, no further statements of evidence are to be provided and one memorandum per submitter is to be provided (should they wish to do so) and one memorandum is to be provided from the section 42A author.
- g) Any questions regarding these Directions are to be addressed to the Hearings Administrator, Ms Sandra Kelly, who may be contacted either by:

Email                    [Districtplan@waidc.govt.nz](mailto:Districtplan@waidc.govt.nz)

or

Telephone            027 382 0021



**P H Mitchell (Chair)**

**On behalf of Commissioners P Mitchell, P Cooney, J Sedgwick and W Maag**

**22 April 2020**