



SECTION 42A REPORT

Officer's written right of reply 7 July 2025

Hearing 13 Hazardous Substances Chapter

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Appendix 1: Officer's Recommended Amendments Hazardous Substances



1 Introduction

1.1 Background

1. My full name is Lynette Morgan. I am the writer of the original Section 42A Report for Hearing 11 the Hazardous Substances Chapter.
2. In the interests of succinctness, I do not repeat the information contained in Section 2.1 of the Section 42A report and request that the Hearings Panel ("the Panel") take this as read.

2 Purpose of Report

3. The purpose of this report is primarily to respond to the evidence of the submitters and provide my right of reply to the Panel. In this Report I also seek to assist the Panel by providing responses to specific questions that the Panel directed to me during the hearing, under the relevant heading.

3 Consideration of evidence received

4. I have only addressed those sections and evidence where I consider additional comment is required. I have grouped these matters into the following headings:
 - a) HS - R2 - Establishment of a New Significant Hazardous Facility (SHF)
 - b) HS- R6, R7 and R9 -SHF within a significant natural area, a SHF within a flood hazard zone., and SFH within a scheduled heritage resource.
5. In order to distinguish between the recommendations made in the s42A Report and my revised recommendations contained in Appendix 1 of this report:
 - a) Section 42A Report recommendations are shown in black text (with underline for new text and ~~striketrough~~ for deleted text); and
 - b) Revised recommendations from this Report are shown in red text (with red underline for new text and ~~striketrough~~ for deleted text)
6. Where I reference provisions in this report, I use the new reference number (consistent with renumbered provisions in red text in **Appendix 1**).
7. For all other submissions not addressed in this report, I maintain my position set out in my original s42A Report.

3.1 Key issue one - HS R2 – Establishment of a New SHF

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 1 – HS-R2- Establishment of a new significant hazardous facility From Paragraph 83-88
Fletcher Building Ltd	From paragraph 83
FENZ	From paragraph 84
Federated Farmers	From paragraph 85
MoE	From paragraph 86
Nga Ta Ora Public Health Northland	From paragraph 87
Ngati Rangi ki Ngwha Hapu and Ngati Rangi ki Ngwha	From paragraph 88
Evidence in chief - Jesse Mackayla Brenna	Hearing Presentation
Evidence in chief - Mr Andrew Christopher McPhee	From paragraph 33-37

Analysis

8. Federated Farmers Hearing evidence confirmed the original position, they sought no amendment to HS R2.
9. Mr McPhee's submitted the 250m setback for new SHF's in PER-2 had the effect of restricting activities with a large internal setback from sensitive activities within an adjacent Rural Production Zone undermines the very intent of the zone¹. His evidence was either a 250m setback should be applied to the adjacent Rural Production Zone, or the recommended 100m setback in the Rural Production from the Heavy Industrial Zone² should

¹ Paragraph 34, evidence in chief Mr McPhee.

² RPROZ-SZ para 136 Officers Right of Reply Hearing 9 – Rural, Horticulture and Horticulture Processing



apply to ensure that activities provided for within the Heavy Industrial Zone can continue relatively unencumbered.³

10. I have considered Mr McPhee's evidence and suggested changes. Mr McPhee's evidence is based on his client's activities and where those activities are currently taking place, this is confirmed in the sentence "many of the activities within the proposed Heavy Industrial Zone at Waipapa have been operating for some time and do so under existing consents."⁴ However, I note that these activities are not captured by the rule as they are 'existing' and not 'new', and any new sensitive activities are recommended to be set back at least 100m from the zone boundary by the Hearing 9 reporting officer.

11. Mr McPhee did not provide any evidence as to how the suggested changes sought by Fletcher Building Ltd would address significant adverse effects nor how individual activities would be monitored and the risks managed effectively.

Recommendations

12. For the reasons above, I do not recommend any further changes to HS-R2.

Section 32AA Evaluation

13. As no further changes are recommended, no additional evaluation under section 32AA is required.

3.2 Key issue two - HS R6, R7 and R9 – SHF within a significant natural area a SHF within a flood hazard zone and SHF within a scheduled heritage resource

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 2 – HS-R6-R7 –and R9- SHF within a significant natural area and a SHF within a flood hazard zone and SHF within a scheduled heritage resource From Paragraph 92-98
Te Hiku Development Trust	From paragraph 92 and 95 and 98
Federated Farmers	From paragraph 93 -94 and 96
Nga Ta Ora Public Health Northland	From paragraph 97

³ Ibid

⁴ Paragraph 35, evidence in chief Mr McPhee.



Relevant Document	Relevant Section
Evidence in chief - Jesse Mackayla Brenna	Hearing Presentation

Analysis

14. Federated Farmers during the hearing confirmed the original position that they sought HS R6-7 and HS R9 be discretionary rather than non-complying.
15. Federated Farmers concerns were on the basis while they *accepted "there is no clear definition for a 'milk processing facility' provided in relevant planning documents or the PDP, FFNZ understands this to mean a plant that takes raw milk and processes it into various dairy products."*⁵ Federated Farmers accepted *"the definition of SHF in terms of the storage of hazardous substances to only apply when it is associated with manufacturing"*.⁶
16. Federated Farmers sought further confirmation HS-R6 HS7 and HSR9 were not intended to capture farm activities such as dairy farms producing milk and storing this short term on farm for collection, or the storage of hazardous substances (including agrichemicals, fertilisers acids/alkalis, etc) as a SHF.
17. At the hearing it was reiterated to Federated Farmers the definition of a SHF as set out at paragraph 53 of my s42A Report and the amendment sought by the Oil Companies which I had recommended be adopted did not include working dairy farms. However, in my opinion, a specific exemption for dairy farms is both not necessary nor appropriate as the definition does not capture any activities that would occur as part or dairying, but also there is nothing precluding a dairy farm from also having a SHF.
18. The definition of SHF at paragraph 53 with the amendment is consistent with other District Plans.

Recommendations

19. For the reasons above, I do not recommend any further changes to HS-R6 HS7 and HSR9.

Section 32AA Evaluation

20. As no further changes are recommended, no additional evaluation under section 32AA is required.

3.3 Additional Information / Questions from the Hearing Panel

21. At the commencement of the hearing it was brought to my attention there was an inconsistency in the number of submissions in paragraphs 2 and 43

⁵ Paragraph 16 evidence in chief Jesse Mackayla Brennaan

⁶ Ibid paragraph 17



in the 42A report. The number of further submissions in paragraph 43 should read 14 not 17.

22. The Panel raised a question in respect of the terminology used in HS-01 and HS-02 specifically the term 'minimise' in HS-01 and 'avoid' in HS-02 questioning how these terms would become actions that could be measurable as outcomes to achieve the objectives. No submissions were received by any submitter so there is no scope to address this question.
23. The Panel raised questions about the phrase 'avoid where practicable' in HSP2, seeking clarification what it actually means in practise saying they are asked about the phrase a lot. Te Hiku Development Trust, Federated Farmers and the Oil Companies all submitted in respect of HS-P2⁷.
24. The Panel accepted the use of the phrase may be deliberate but sought some clarification as to what is meant by its use. The phrase is intended to "reduce" or 'minimise' the effects between SHF and activities. Consideration was given to deleting the words and only have the phrase which follows "or otherwise mitigate". I recommend keeping both phrases as none of the submitters made any submissions on the wording of HS-P2 and while I agree the wording appears to have an element of duplication the two are different. The definition of avoid is to keep away from, while mitigate is to reduce or make something less serious. To 'avoid where practicable' also has a subjective element for the plan user to turn their mind to which mitigation does not.
25. The Panel also questioned the wording of HS-P3 specifically the following underlined words, "*manage new or expanded significant hazardous facilities and sensitive activities to address the effects of the activity requiring resource consent, including (but not limited to) consideration of the following matters where relevant to the application*".
26. During the discussion between the FNDC officers and the Panel, council officers gave evidence changes have been made to the wording of the Chapters where there are consideration policies such HS-P3 to make the policies easier to read and understand.
27. In terms of consistency for the PDP I recommended HS-P3 be amended to

HS-P3 ~~Manage new or expanded significant hazardous facilities and sensitive activities to address the effects of the activity requiring resource consent, including (but not limited to) consideration of the following matters where relevant to the application.~~ Consider the following matters for expanded significant hazardous facilities and sensitive activities to address the effects of the activity requiring resource consent, including (but not limited to) the following matters.

⁷ Paragraphs 69 and 70 S42A report



28. Clarification was sought in respect of HS-R1 PER-1, specifically the Panel queried if a plan user would understand what was meant by “the site will not be located closer to any sensitive activities”. In addressing this issue it was noted there is no hyperlink in the PDP to the definition of sensitive activities which would help the plan user to understand PER -1 and what is meant by a sensitive activity. This has been corrected. Given the correction to HS-1 PER-1 no further clarification is necessary. I am of the view that the phrase ‘not be located closer to’ can be read plainly on its face and easily interpreted.