

Section 42A Report  
Officer's written right of reply

## Hazardous Substances

Prepared for the

Proposed Kaipara District Plan

**22 March 2026**

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## 1. Introduction

1. This right of reply responds to matters raised at Hearing 6 (Hazardous Substances chapter) of the Proposed District Plan (**Kaipara PDP**) held on 10 March 2026. It has been prepared by me (Sarah Horton), as the author of the section 42A report for the hazardous substances topic.
2. This reply supplements the Section 42A report (30 January 2026) and addendum (3 March 2026) and focuses only on matters raised at the hearing. It does not repeat the background information Contained in my S42A report and requests that the Hearings Panel (**the Panel**) take this as read.
3. In preparing this reply, I have considered the evidence presented by submitters, the questions and concerns raised by the Hearings Panel, and the broader statutory and regulatory context for hazardous substances management in New Zealand.

## 2. Purpose of Report

4. This right of reply provides responses to key Panel questions, with a proportionate s32AA evaluation.
5. Having considered the evidence of submitters and the questions raised by the Panel at the hearing, I have now reconsidered my position and the overall approach taken to hazardous substances in the Kaipara PDP.
6. As put forward by the strong submitter evidence and the Panel's steer during the hearing, I now propose to remove the rules within the hazardous substances chapter, which are within the scope of submissions received on this chapter. For example, Northpower sought deletion of the rule framework in its entirety, and the Fuel Companies and New Zealand Agricultural Aviation Association (**NZAAA**) sought significant restructuring.
7. The key reason for my shift in direction is that upon hearing the compelling evidence from Ms Georgina Macpherson and Ms Lynette Wharfe, I now consider there to be adequate regulation in place with HSNO/HSWA regulation of operational hazardous-substance risk; coupled with the regional council's regulation of environmental effects.

### 3. Consideration of evidence heard

8. During the hearing, the Panel chair asked what specific issue the hazardous substances provisions are intended to address, given that no significant hazardous substance incidents have arisen within the District over the past decade, since the Operative Plan provisions came into effect from 2013.
  9. As consistently highlighted through the evidence presented at the hearing, operational risks associated with hazardous substances are comprehensively regulated through HSNO and HSWA. These regimes manage hazardous substance classification, containment systems, storage requirements, emergency management and workplace safety. They are administered by the EPA and WorkSafe New Zealand.
  10. However as, Commissioner Campbell directed via paragraph 32 of the Tompkins Wake legal advice, national legislation does not regulate land-use planning matters. The potential residual effects that may fall within the District Plan's jurisdiction include:
    - the compatibility of hazardous facilities with surrounding land uses;
    - reverse sensitivity effects where sensitive activities locate near established hazardous facilities;
    - the location of hazardous facilities relative to sensitive activities such as residential areas, schools or hospitals; and
    - the interaction between hazardous facilities and natural hazard areas, including flood-prone land.
  11. The absence of incidents involving hazardous substances within the District over the past decade is consistent with the existing national regulatory frameworks operating effectively. As also raised by the Panel, environmental effects from hazardous substances, including discharges to land, air and water are regulated by the Regional Council under the RMA.
- 3.1 Comparison of Regulatory Approaches
12. Upon reflection of the Panel's questions, I considered three regulatory approaches in detail and what it would mean for preparation of the provisions for the hazardous substances chapter. I recommend Option C - the deregulatory approach as being most straight forward, as set out below.

*Figure 1: Comparison of Regulatory Approaches*

Element	Option A: Rules-Based (As Notified)	Option B SHF-Led Model	Option C Deregulatory ✓ Recommended
Overall approach	Rules and quantity thresholds (HS-S1 through HS-R5)	Objectives and policies + single SHF rule for significant facilities	Objectives and policies only — no rules
HS-S1 threshold framework	Retained	Removed	Removed
Rules HS-R1 to HS-R5	Retained with amendments	Removed - replaced by a SHF rule	Removed
SHF definition	Threshold-linked to HS-S1	Effects-based, standalone	Definition not required to refer to Hazardous Substances chapter provisions.
Hazardous Facility definition	Amended as per addendum	Amendment not required	Amendment not required
Cumulative Risk definition	Retained	Amendment not required	Amendment not required
Maungatūroto Dairy Factory	HS-S1 exemption + definition + mapping	Definition + mapping	Definition + mapping retained for certainty (no HS-S1 to exempt from)
NRC role	Supplementary reference	Explicit recognition	Explicit recognition

### 3.2 Alignment with Other District Plans

13. Submitter evidence at the hearing from Ms Lynette Wharfe from NZAAA and Ms Georgina Macpherson from the Fuel Companies, indicated a clear post-RLAA shift away from quantity-threshold-based hazardous substances frameworks. District plans notified post-RLAA and progressed to at least decision stage have generally not included threshold or zone-based rules, instead adopting no-rules or low-intervention approaches.
14. Mr Michelle from NZAAA identified a number of district plans that do not include provisions managing on-farm fertiliser storage, including Timaru, Napier, Waitomo, Waimakariri, Gore,

Westland, Wairarapa, Selwyn, Central Hawke’s Bay, Taupō, Wellington City, Mackenzie, Dunedin and Far North.

15. In forming my revised view on approach, I looked closely at the approach of the other Northland Councils, particularly Whangārei District Council’s plan, which adopted a full de-regulatory approach through Plan Change 91, removing all rules and relying on objectives and policies to manage residual land-use effects.
16. Kaipara operates within the same national and regional regulatory framework as Whangārei and is subject to NRC regulation. The regulatory environment for hazardous substances in Kaipara is therefore materially similar to that in Whangārei, and therefore the same deregulatory approach is appropriate.
17. The Tompkins Wake legal advice confirms that there is no single uniform template following the RLAA and that the approach remains a planning judgment for each council. In my view the evidence before this Panel supports adoption of option C the deregulatory approach for Kaipara. The Panel queried what some practical examples of activity management would look like if the rule framework was removed from the District Plan. The below table has some examples :

<b>Activity</b>	<b>How the activity is managed</b>
Service stations	HSNO/HSWA manage fuel systems/operations; PDP manages location/compatibility via zones and reverse-sensitivity provisions.
On-farm fertiliser storage	HSNO and standards manage storage/handling; PDP manages natural hazard/location effects through Natural Hazards and zone provisions.
Industrial facilities	Operations regulated nationally; PDP manages land-use compatibility through zoning (including Heavy Industrial Zoning where applicable).
Facilities in flood hazard areas	Assessed under Natural Hazard provisions (location effects). KDC PDP - Part 2 District-wide matters - Hazards and Risks Natural Hazards - NH-R12 Significant hazardous facility in a coastal erosion hazard area, coastal flood hazard area, or river flood hazard area All zones Activity status: Non-Complying

## 4. Recommended Provisions

18. As shown in the revised Appendix B, I have revised my planning position in respect to the rules on hazardous substances and moved towards a de-regulatory framework which removes the rule framework, leaving only the overview, objectives and policies.

19. The following recommended amendments to definitions would remain applicable if the rules are to be removed:

Definition	Section 42A / Addendum Position	Right of Reply Recommendation
Significant Hazardous Facility	Retained threshold-linked to HS-S1	Will need to be amended so can we a standalone definition and does not link to HS-S1. It is suggested as the definition will relate to the Natural Hazards Rule NH-R12 that this consequential amendment be addressed in that topic s42a reporting.
Hazardous Facility	Minor amendment recommended in addendum	No amendment required
Hazardous Substances	Remove definition	No amendment required
Cumulative Risk	Retained as notified	No amendment required Corresponding hazardous substance rules removed, definition does not need to be altered to address hazardous substances chapter matters.
Residual Risk	No definition, can simply rely on ordinary meaning	No definition recommended. Corresponding hazardous substance rules removed; therefore, definition does not need to be included to address hazardous substances chapter matters.
Maungatūroto Dairy Factory	New definition recommended in addendum	RETAIN new definition. Insert new definition Fonterra requested this. Definition and

Definition	Section 42A / Addendum Position	Right of Reply Recommendation
		mapping provide certainty and transparency regarding the site.

#### 4.1 Definition of Significant Hazardous Facility

20. A consequential amendment of the removal of the rules would mean that the corresponding existing definition for Significant Hazardous Facility would be redundant. It is suggested as the definition will relate to the Natural Hazards Rule NH-R12 that this consequential amendment be addressed in that topic s42a reporting.

#### 4.2 Fonterra Maungatūroto Dairy Manufacturing Site

21. The Section 42A addendum recommended a site-specific exemption for the Maungatūroto Dairy Manufacturing Site from the HS-S1 quantity threshold framework, together with mapping of the site within the Heavy Industrial Zone (HIZ) on the Planning Maps and insertion of a new definition of 'Maungatūroto Dairy Factory'.

22. Under the recommended de-regulatory framework, HS-S1 and the associated rules are removed in their entirety. A site-specific exemption from HS-S1 is therefore no longer needed.

23. However, I recommend continuing to support the inclusion of the mapping of the Maungatūroto Dairy Factory site within the HIZ on the Planning Maps and the insertion of the new definition. Fonterra requested this identification specifically, and I accept that:

- the HIZ zoning and associated provisions appropriately manage land-use effects and reverse sensitivity for the site;
- other provisions of the PDP, including the Natural Hazards chapter and the Zone chapters and zone provisions, address any residual land-use effects;
- the mapping and definition provide planning certainty and transparency for the site and surrounding landowners; and
- the identification is spatially confined and clearly defined, consistent with the Operative District Plan framework.

24. The rationale for the inclusion the definition and mapping therefore shifts from 'exemption from HS-S1' to 'identification for planning certainty'. The definition recommended is:

**MAUNGATŪROTO DAIRY FACTORY**

*The Heavy Industrial Zone area within Maungatūroto shown as 'Maungatūroto Dairy Factory' on the planning maps.*

Note: retained for planning certainty only; effects are managed through HIZ and other PDP provisions.

## 5. Recommendation

25. Having considered the evidence presented by submitters, the questions raised by the Panel, and the broader regulatory and statutory context, I now recommend that the Panel adopts a de-regulatory framework for the Hazardous Substances chapter of the Proposed Kaipara District Plan.

5.1 Under this revised approach:

- Hazardous Substances Rules HS-R1 to HS-R5, Matters for Discretion HS-MAT 1, HS-MAT2, Standard HS-S1 - Hazardous substances permitted activity thresholds are all recommended to be removed from the Hazardous Substances chapter;
- The Hazardous Substances chapter is recommended to consist of only objectives and policies addressing residual land-use effects;
- Operational risks are now only managed through HSNO, HSWA and associated regulations;
- Environmental effects from the effects of hazardous substances in respect to land, air and water are regulated by the Regional Council;
- The Maungatūroto Dairy Factory definition and planning map identification are recommended to be included in the new District Plan;
- It is recommended that the definition of Significant Hazardous Facility is amended in the PDP stage that is addressing the Natural Hazards chapter and Rule NH-R12;
- No other associated definitions are recommended to be amended.

## 6. Section 32AA – For a no rules approach

### Efficiency and Effectiveness

26. The de-regulatory approach is considered to be both efficient and effective in achieving the objectives of the Hazardous Substances chapter. Operational risks are already comprehensively regulated through HSNO and HSWA. Environmental effects are regulated by the NRC. District plan rules controlling hazardous substance quantities would duplicate those frameworks without

providing additional environmental or safety benefit. Removing the rules improves efficiency by reducing regulatory complexity and compliance costs for activities already subject to comprehensive national regulation.

#### Costs and Benefits

27. The primary benefits of the approach include avoiding duplication of national regulatory controls, improving plan clarity, reducing compliance costs, and reducing potential risk of appeal from submitters. The primary cost is the reduced cost in terms of hazardous substance activities. This cost is mitigated by the comprehensive national and regional regulatory frameworks that continue to manage operational and environmental risks under HSW/HSNO legislation.

#### Risk of Acting or Not Acting

28. While submitters in their evidence did not identify a clear regulatory gap requiring additional district plan rules, it is clear from my revised consideration that the risk of not including rules in the Kaipara PDP is low, given the comprehensive national and regional frameworks in place; the risk of retaining rules is higher potentially leading to unnecessary duplication, increased compliance costs, and appeal risk from submitters who opposed the rules-based framework.

#### Most Appropriate Method

29. The reporting officer is satisfied that the de-regulatory framework is the most appropriate method of achieving the objectives of the Hazardous Substances chapter and the purpose of the RMA in the Kaipara context. It is proportionate, avoids duplication, and reflects the respective roles of national, regional and district regulatory frameworks.