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## **APPROVAL OF DISTRICT PLAN CHANGE 35: HAZARDOUS SUBSTANCES**

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### **1. Purpose of Report**

To report the recommendations of the District Plan Hearing Committee concerning District Plan Change 35 (Hazardous Substances) to Council for approval.

### **2. Recommendation**

- 1. That Council approves the recommendations of the District Plan Hearing Committee in respect of District Plan Change 35 (Hazardous Substances) as attached in Appendix One.*

### **3. Background**

The Hazardous Substances and New Organisms Act (HSNO) and the Resource Management Act (RMA) are designed to complement each other in how they deal with hazardous substances. The HSNO Act provides the framework for developing technical standards for the use, storage, inspection, identification and regulation of hazardous substances. The RMA outlines the responsibilities Councils have to control the effects of the use or development of land, and to prevent or mitigate any adverse effects that may result from the use, storage, disposal or transportation of hazardous substances. That is, the RMA provides additional controls over and above HSNO to ensure that local circumstances are taken into account. HSNO requirements are the minimum requirements and need to be met in all parts of New Zealand. District Plans cannot specify lesser requirements for hazardous substances covered by HSNO.

As a result of changes to the Hazardous Substances and New Organisms Act, some of the hazardous substances provisions of the District Plan are out of date. Consequently, a change to the District Plan was prepared to ensure that the Plan remains consistent with the legislation.

The Plan Change was notified in May 2005 to all ratepayers. Despite this extensive notification, only two submissions were received. The submissions were from Rockgas Ltd and the New Zealand Chemical Industry Council.

## 4. Discussion

As neither of the submitters wanted to be heard in a hearing, the Hearings Committee met at its own convenience on Tuesday, 20 September to consider the written submissions and Officer's Report.

Of the matters raised in submissions, it is recommended that only one change is made to the Plan Change. This change, requested by the New Zealand Chemical Industry Council (NZCIC), is for an approved Code of Practice to be referred to in the District Plan as one means of complying with the permitted activity standards for signage.

The Committee considers that the Plan Change, with the amendment sought by the NZCIC, will ensure that the provisions in the Wellington City District Plan are appropriate to manage the risks associated with the use, storage and handling of hazardous substances as required by the Resource Management Act.

*Councillor Robert Armstrong*

*Chair of the District Plan Hearings Committee on PC 35 – Hazardous Substances*

<b>Supporting Information</b>
<b>1) Strategic Fit / Strategic Outcome</b> The District Plan supports a wide range of strategic outcomes particularly under the Built Environment and Transport KAA's. A review of the hazardous substances provisions is necessary to ensure the Council remains consistent with HSNO legislation.
<b>2) LTCCP/Annual Plan reference and long term financial impact</b> Project C533 – District Plan.
<b>3) Treaty of Waitangi considerations</b> All District Plan work is required to take account of the principles of the Treaty of Waitangi (refer: Section 8 Resource Management Act 1991). The Wellington Tenth Trust and Ngati Toa were contacted about this Plan Change, but neither submitted on it.
<b>4) Decision-Making</b> This report asks the Council to approve the recommendations of the Hearings Committee that considered the submissions and Officers Report. The Plan Change involves numerous small, but significant changes to the way the provisions are worded; changes that are necessary to ensure consistency with HSNO.
<b>5) Consultation</b> <b>a) General Consultation</b> Significant consultation occurred with the Council's resource consents staff and Dangerous Goods Officer over a number of months. Statutory consultation also carried out as required by the RMA. <b>b) Consultation with Maori</b> Noted above.
<b>6) Legal Implications</b> Legal review of some provisions carried out.
<b>7) Consistency with existing policy</b> Care has been taken to ensure provisions will complement new regime for managing hazardous substances (ie. licensing of hazardous substances to be removed).

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## **APPENDIX ONE REPORT OF THE HEARING COMMITTEE**

**SUBJECT:** PROPOSED DISTRICT PLAN CHANGE 35: Hazardous Substances

**COMMITTEE MEMBERS:** CRS ARMSTRONG, GILL and MORRISON

**DATE OF DELIBERATIONS:** 20 SEPTEMBER 2005

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### **1. RECOMMENDATIONS**

The Hearings Committee recommends that the Council:

1. *Approves Proposed District Plan Change 35 as set out in the Public Notice of Wednesday 14 May 2005, subject to the following amendment:*
  - a. *Include a reference to the HSNO approved NZCIC Code of Practice for the “Signage for Premises Storing Hazardous Substances and Dangerous Goods” in the relevant permitted activity standards, as outlined in the amended Plan Change Document (attached).*
2. *Accepts or rejects all the submissions and further submissions to the extent that they accord with Recommendation 1 above.*

### **2. PLAN CHANGE PROCESS**

This proposed Plan Change was first considered by Council in April 2004 and then later in October 2004, at which time agreement was given to notify the Plan Change. The Plan Change was eventually notified in May 2005 to all ratepayers (after some delay associated with a city-wide mail out of the public notice). Despite this extensive notification, only two submissions were received.

The Planning Officer advised the Committee that neither submitter wished to be heard at a hearing. Given this, the Committee met on Tuesday 20th September to deliberate the decision based solely on the Officer’s Report and the written submissions. Liz Clark, Planning Officer for the District Plan Team, was also there to clarify aspects of the report and the Plan Change itself.

### **3. BACKGROUND**

The Officer’s Report contains a useful background to this Plan Change, so it is convenient to repeat part of that report below.

The Hazardous Substances and New Organisms Act (HSNO) and the Resource Management Act are designed to complement each other in how they deal with hazardous substances. The HSNO Act provides the framework for developing technical standards for the use, storage, inspection, identification and regulation of hazardous substances. The RMA outlines the responsibilities Councils have to

control the effects of the use or development of land, and to prevent or mitigate any adverse effects that may result from the use, storage, disposal or transportation of hazardous substances. That is, the RMA provides additional controls over and above HSNO to ensure that local circumstances are taken into account. HSNO requirements are the minimum requirements and need to be met in all parts of New Zealand. District Plans cannot specify lesser requirements for hazardous substances covered by HSNO.

As a result of changes to the Hazardous Substances and New Organisms Act, some of the hazardous substances provisions of the District Plan are out of date. Consequently, a change to the District Plan was prepared to ensure that the Plan remains consistent with the legislation.

Another reason for the plan change was that the Ministry for the Environment has issued a revised edition of the Hazardous Facilities Screening Procedure (HFSP). This procedure, which is included in the Wellington City District Plan, helps Councils to determine whether the potential cumulative environmental effects of a hazardous substance on a proposed site are significant (requiring a resource consent) or not (treated as a permitted activity). Where the adverse effects and risks of a proposed activity are significant, a resource consent will be required involving a more detailed assessment of the proposed activity.

A plan change is required to replace the existing version of the HFSP in the District Plan with the revised version. The latest version also has an accurate Excel calculation package which can be used by resource consent planners and customers to simplify the calculations required by the HFSP.

#### **4. Submissions Analysis and Recommendations**

As noted previously, only two submissions were received on this plan change. As there was no hearing of submitters, the Committee has relied exclusively on the written submissions and analysis prepared by the Planning Officer. Four areas of relief were sought by the two submitters, as discussed below.

##### *Submitter No. 1: Rockgas*

Rockgas supported the provisions that exclude LPG from the requirement to provide on-site containment and seeks that these be adopted as proposed. The Committee noted that the Planning Officer considered that these provisions were already a part of the Plan. The Plan Change did not seek to alter this intention, but merely to change the wording of those provisions to better reflect the revised legislation.

Rockgas also asked for clarification on whether the reference to comply “*with a range of other legislation and regulations*” (as set out at the end of the permitted activity rules in all chapters of the Plan) is a rule or an explanatory statement or an advisory note. If it is meant to be a rule, then Rockgas considers that it is *ultra vires*. Accordingly, Rockgas seeks clarification as to whether they are rules or explanatory statements. If it is meant to be a rule, then Rockgas seeks that the references be notated as advisory notes instead.

The Hearings Committee noted that this matter was clarified by the Planning Officer in her report. The Committee agrees with the advice given (that those words are explanatory text and do not form part of the rule) and trusts that Rockgas is satisfied that no further decision is required in respect of its submission.

*Submitter No. 2: New Zealand Chemical Industry Council (NZCIC)*

Mr Birch, acting for the NZCIC, queried why Class 6.2 (Infectious Substances), Class 7 (radioactive materials) and Class 9.2 A-D (Eco-toxic in soils) were not included in the revised HFSP tables. Though not explicit in the submission, it appears that submitter requests that these substances are included in the HFSP tables. The submitter notes that by adding Classes 6.2, 7 and 9.2, the complete scope of all chemical hazards will be covered.

The Committee considered all the evidence presented to it in the Officer's report and concluded that it was not appropriate to amend the Plan as requested by this submitter. It is accepted that the HFSP tables were prepared by a wider group of experts in the hazardous substances profession and it would not be wise for this Council to make the changes requested without those changes being considered by that peer-review group first. As a result the Committee does not recommend that the changes requested to the HFSP tables are made and suggests that the submitter takes this matter further with either the Environmental Risk Management Authority or the Ministry for the Environment if desired.

The submitter also requested that the HSNO approved Code of Practice for 'Signage for Premises Storing Hazardous Substances and Dangerous Goods' be specifically referred to in the District Plan.

The Committee agrees that it is desirable for reference to this ERMA approved Code of Practice to be included in the District Plan. It notes that the Plan currently includes an outdated reference to an earlier version of the Code of Practice. Hence, it is entirely appropriate as part of this Plan Change to include a reference to the revised Code of Practice.

*Other Matters*

In the deliberations, the Planning Officer drew the Committee's attention to one other significant change that was proposed in the Plan Change, but which did not attract any submissions. Ms Clark outlined the proposal to include the concept of 'sub-facilities' in the Plan. Ms Clark explained that introducing 'sub-facilities' would help to reduce unnecessary regulation of certain hazardous facilities that are located more than 30m away from another hazardous facility on the same site.

As the Committee understands it, the current provisions mean that all hazardous substances on any one site must be included in the HFSP calculation to determine whether a resource consent is needed or not. This can be problematic for very large sites with multiple tenants who carry out a range of activities that do not relate to each other. The Committee agrees that provided there is a distance of 30 metres between such facilities, then those facilities should be treated independently of each other. It appears to be a sensible provision that will help to reduce unnecessarily regulation associated with the Plan, without increasing the risk to the environment.

## **Conclusions**

Just two submissions were received on this Plan Change, despite it being notified to all Wellington ratepayers due to the possible wide ranging effect of the amended hazardous substances provisions. As neither of the submitters wanted to be heard in a hearing, the Hearings Committee met at its own convenience to consider the written submissions and the Officer's Report.

Of the matters raised in submissions, it is recommended that only one change to the plan change is required. This change, requested by the NZCIC, is for an approved Code of Practice to be referred to in the District Plan as one means of complying with the permitted activity standards for signage.

The Committee considers that the plan change, with the amendment sought by the NZCIC, will help to ensure that the provisions in the Wellington City District Plan are appropriate to manage the risks associated with the use, storage and handling of hazardous substances as required by the Resource Management Act.

*Committee Chair: Cr Robert Armstrong*