

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Report to Auckland Council

Hearing topic 039

**Hazardous substances and
industrial and trade activities**

July 2016

Report to Auckland council topic 039 - Hazardous substances and industrial and trade activities

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1. Hearing topic overview

1.1. Topic description

Topic 039 Hazardous substances and Industrial or Trade Activities (ITA) addresses the regional coastal plan, regional plan and district plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent hearings Panel reference
039 Hazardous Substances and Industrial and Trade Activities	Chapter C Auckland wide objectives and policies 5.5 Cleanfills, managed fills and landfills 5.7 Managing hazardous substances 5.9 Industrial or trade activities (ITA)	E13 Cleanfills, managed fills and landfills E31 Hazardous substances E33 Industrial and trade activities
039 Hazardous Substances and Industrial and Trade Activities	Chapter H Auckland wide rules 4.4 Cleanfills, managed fills and landfills 4.6 Managing hazardous substances 4.8 Industrial or trade activities (ITA)	E13 Cleanfills, managed fills and landfills E31 Hazardous substances E33 Industrial and trade activities
		E29 Emergency management area - hazardous facilities and infrastructure

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

The Panel makes the following recommendations on key issues in respect of the provisions covered by Topic 039:

- i. the definitions of cleanfill material and managed fill material should be amended as agreed by the parties;
- ii. cleanfills and managed fills should be classified as controlled activities, but should not be located on the land where there is a high risk of instability;
- iii. a plan change is required to address the issues associated with the Stolthaven site at Gabador Place and that this be treated as a matter of urgency;
- iv. the Unitary Plan can include provisions relating to the transport of hazardous substances. However, the focus should be on locating land use activities so that the adverse effects of the transport of hazardous substances can be avoided, remedied or mitigated;
- v. subject to the amendments recommended by the Panel to improve the workability of the hazardous substance provisions, the provisions proposed by Council are necessary to meet its obligations under section 30 of the Resource Management Act 1991 and should be included in the Unitary Plan;
- vi. the storage, use and disposal of compressed air at fire stations and firefighting training facilities should be provided for as a permitted activity in all zones and should not be subject to the thresholds for hazardous facilities that store or use hazardous substances;
- vii. the amendments proposed by the Heavy Industry Working Group to the Industrial or Trade Activities objectives be adopted along with the amendments proposed by the Panel to improve the overall workability of the Industrial or Trade Activities provisions.

1.3. Overview

The body of this report sets out the issues raised through the submission and hearing process, the Panel's response to these issues and the reasons for the response.

The Council and submitters have made a significant effort to resolve issues and reach agreement on the drafting of provisions that are covered by Topic 039. Consequently, there are only a limited number of outstanding issues relating to this topic.

In many cases with this topic the Panel has agreed with the position taken by the Council where there has been disagreement between the parties. However, like a number of the submitters the Panel is concerned about the drafting of many of the provisions, the lack of

alignment with related provisions in other parts of the Plan and the overall workability of the provisions. Therefore, the Panel has made additional amendments to the provisions, particularly the hazardous substances and Industrial or Trade Activities provisions to improve their clarity of meaning and ease of use.

The additional amendments to the provisions recommended by the Panel are not considered to be out of scope as a number of submitters generally sought that the provisions be simplified and improved. A number of the changes are also consequential changes to support vertical and horizontal integration and alignment with other provisions including hazardous substances and those relating to stormwater discharges.

1.4. Scope

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see sections 2 to 4 below) are within scope of submissions.

For an explanation of the Panel's approach to scope see Section 2.1 (Overview) of the Independent Hearings Panel's Report to Auckland Council July 2016.

1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed below in Section 9 Reference documents.

2. Cleanfills, managed fills and landfills

2.1. Statement of issue

At the end of the hearing on Topic 39 there were three key outstanding issues relating to cleanfills, managed fills and landfills. These related to the definitions of cleanfill material and managed fill material, policy and rules for land instability; and classification of managed fills as controlled activities.

Following the hearing, Council and submitters (Winstone Aggregates, Fulton Hogan, Holcim NZ, the Aggregates and Quarry Association of New Zealand and Stevenson Group) met and agreed definitions for cleanfill material and managed fill material

In terms of policy and rules for land instability of fill sites, a number of submitters sought changes to these provisions that focused on managing land stability risks through the design and operation of fill sites. The Council did not support these proposed amendments and considered that the siting of cleanfill, managed fill and landfills was the primary method for avoiding risks from land instability. The Council did however, recognise that for some sites the risk of land instability could be avoided through design and construction and therefore, proposed amendments to policy to reflect this.

One submitter (EnviroWaste Services Ltd.) considered that discharges from all managed fills should be classified as restricted discretionary activities. Council did not agree with this approach. Council considered that managed fills should be classified as controlled activities subject to meeting standards that require them to be located on land that does not have a high risk of instability and not to exceed specified fill contamination levels.

2.2. Panel recommendation and reasons

The Panel supports the agreed amendments to the definitions of cleanfill material and managed fill material. The amendments result in definitions that are certain, easy to apply and to understand.

The Panel agrees with Council's position that controlled activity cleanfills and managed fills should not be located on the land where there is a high risk of instability as the risks from land instability cannot always be avoided through design and construction of the fill.

The Panel also agrees with Council's classification of managed fills as controlled activities and that the proposed standards will ensure the appropriate level of environmental protection.

3. Hazardous facilities – sensitive activity restriction

3.1. Statement of issue

Stolthaven Australia Propriety Limited (Stolthaven) has sought the inclusion of a "Hazardous Facilities – Sensitive Activity Restriction" overlay around its leased Gabador Place site in Mount Wellington. The intent of the overlay as explained by Stolthaven's planning witness Ms Baverstock is to ensure that the ongoing operation and potential expansion of Stolthaven's facility is not restricted by the close proximity of sensitive activities and to

ensure that the adverse effects of an incident or emergency scenario on activities sensitive to hazardous substances are appropriately avoided, remedied or mitigated.

Council indicated that in principle, it did not oppose the protection of hazardous facilities from reverse sensitivity effects. However, at the time of the hearing Council considered it was not in a position to agree to the proposed overlay because:

- i. concerns about the wider implications for the surrounding properties. Council considers that there are approximately 200 potentially affected landowners who may be unaware of Stolthaven's proposed overlay;
- ii. the effect on the residential intensification policies in the Unitary Plan;
- iii. concerns about whether a reverse sensitivity overlay in the Plan at a broader scale is appropriate; and
- iv. the lack of detail and in particular any economic analysis of the costs and benefits of the proposed overlay.

In its closing statement the Council noted that as a result of the hearing, there are at least five major parties that need to be involved in any discussion about the proposed overlay around the Stolthaven leased site at Gabador Place, these include the Council, Stolthaven, Housing Corporation of New Zealand, Ports of Auckland Ltd and the NZ Institute of Architects.

3.2. Panel recommendation and reasons

The Panel is most concerned that the issue of Stolthaven's activities in Gabador Place has been ongoing and has still not been resolved. While the Council in its closing statement proposed to convene a meeting of all interested parties to try and establish a way forward, there has been no report back to the Panel as to any outcomes of this process.

This has left the Panel in a difficult position of having a proposed overlay which Ms Baverstock acknowledges is only an early draft of the provisions and which does not include supporting information as required by Section 32AA of the Resource Management Act 1991 and no information regarding the outcomes of any meetings held with the various affected parties.

Under these circumstances the only option available to the Panel is not to support the inclusion of a "Hazardous Facilities – Sensitive Activity Restriction" overlay in the Plan. The Panel considers that this is not a satisfactory outcome as this does not provide any resolution to the issue.

As noted in Council's closing statement, during the hearing the Panel commented that the pressure exerted by the proposed Auckland Unitary Plan process could be relieved somewhat if the Council was to signal that it would be prepared to consider either initiating its own plan changes or accepting private plan change requests in relation to areas that are subject of contentious submissions, in particular where the Panel considers that the matters should more properly be considered through a plan change process.

In response, the Council agreed that while it would consider any future plan change proposals on their merits, if the Panel was to recommend that a matter be deferred to a

future plan change such a recommendation would be influential upon Council in considering the matter.

The Panel is clearly of the view that an appropriate planning mechanism needs to be put in place in the Unitary Plan to address the issues associated with the Stolthaven site at Gabador Place and that a plan change is required to achieve this. The Panel considers that this is a matter of urgency.

As set out in section 4 below, the Panel has agreed to include in the Plan provisions to manage the risk of adverse effects on activities located in proximity to existing hazardous facilities and infrastructure. These provisions are Auckland-wide provisions rather than an overlay as proposed by Stolthaven. However, the intent of the provisions is similar to the planning outcomes being sought by Stolthaven and could provide the basis for any future plan change.

The Panel has also noted that while the regional policy statement includes policy restricting the establishment of sensitive activities near hazardous facilities, there are no policies in C5.7 Managing hazardous substances to give effect to the regional policy statement. The Panel considers that this is a policy gap and supports the inclusion of the new policy proposed by Ms Baverstock that requires separation distances between hazardous facilities and sensitive activities to avoid or mitigate risk to the activities and to avoid reverse sensitivity effects.

The regional policy statement policies and the inclusion of this new policy provide policy support for any future plan change to address the issues associated with the Stolthaven site at Gabador Place.

4. Transport of hazardous substances

4.1. Statement of issue

A number of submitters sought the deletion of references to the transport of hazardous substances from the hazardous substances provisions and have also questioned whether the Unitary Plan should include controls on the transportation of hazardous substances, and the practicality and enforceability of these controls.

The Council accepted that it cannot impose controls on transport operators about the routes that their vehicles take when transporting hazardous substances to and from a site, and that to try to do so would be impractical. However, the Council considered it can take into account transportation matters when assessing resource consent applications involving hazardous substances and if appropriate impose conditions relating to transport matters.

4.2. Panel recommendation and reasons

The Panel notes that as set out in the legal submission of Auckland Council sections 30(1)(c)(v) and 31(1)(b)(ii) the Resource Management Act 1991 provides for the Council to impose controls on the storage, use, disposal or transportation of hazardous substances and the associated effects of these activities.

The Panel agrees that the Unitary Plan can include provisions that specify that the adverse effects of the transport of hazardous substances is a valid matter for consideration when assessing resource consent applications. However, the Panel considers that the policy focus should be on locating land use activities so that the adverse effects of the transport of hazardous substances are avoided, remedied or mitigated.

5. Reliance on Hazardous Substances and New Organisms Act, New Zealand standards and codes of practice

5.1. Statement of issue

Some submitters were of the view that the Unitary Plan should not regulate the management of hazardous substances. This is because the submitters considered that hazardous substances were already regulated by the Hazardous Substances and New Organisms Act 1996 (HSNO), New Zealand Standards and codes of practice e.g. the Fertiliser Association's Code of Practice for Nutrient Management 2013 and New Zealand Standard NZS8409:2004 Management of Agrichemicals.

The Council did not agree with the submitters. Its position is that there is a clear role for the Resource Management Act in managing the location of such hazardous substances or facilities with a consideration of the sensitivity of land uses, environmental sensitivities and risks in relation to natural hazards. HSNO, codes of practice and NZ Standards do not control the location of hazardous facilities within a zone, nor do they enable the imposition of conditions on hazardous substances facilities to avoid, remedy or mitigate the potential adverse effects of their activities.

5.2. Panel recommendation and reasons

The Panel is of a similar view to Council that the Unitary Plan has a role to play in managing adverse effects associated with the use and development of land for hazardous facilities. This is necessary to ensure that people, property and the environment are protected from the adverse effects of hazardous substances, to ensure hazardous facilities are not located near sensitive activities and to restrict sensitive activities from locating near hazardous facilities.

The Panel considers that subject to the amendments made by the Panel to improve the workability of the provisions, the provisions proposed by Council are necessary to meet Council's obligations under section 30 of the Resource Management Act 1991 in terms of controlling land use for the purpose of the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.

6. Compressed air at fire stations and firefighting training facilities

6.1. Statement of issue

The New Zealand Fire Service Commission has sought that the storage, use and disposal of compressed air at fire stations and firefighting training facilities should be provided for as a permitted activity in all zones and should not be subject to the thresholds for hazardous facilities that store or use hazardous substances.

The Council's planning witness Ms Clarke considers that, if the New Zealand Fire Service Commission cannot meet the permitted activity limits, a resource consent application should be required, as for any other land use.

6.2. Panel recommendation and reasons

The Panel agrees with the New Zealand Fire Service Commission that it is difficult to envisage what a resource consent process would be able to add, other than causing the New Zealand Fire Service Commission cost and delay. The Panel also agrees that it would be hard to imagine Council declining consent for the storage and use of a permanent non-hazardous gas which is such an essential component of firefighting operations and critical to the New Zealand Fire Service being able to carry out its statutory responsibilities to the community.

The Panel recommends that the amendments sought by the New Zealand Fire Service Commission to the hazardous substance rules be accepted. This is consistent with the Panel's plan making principle adopted from the Auckland Plan of only putting a proposal through a resource consent process if the outcome justifies this and another Panel principle of not imposing constraints on activities without good reason.

7. Industrial or trade activities

7.1. Statement of issue

Clarity of meaning and ease of use of the Industrial or Trade Activities provisions.

Council has made extensive changes to the Industrial or Trade Activities provisions of the notified version of the Plan to improve the clarity and workability of the provisions. The changes were proposed through mediation and in response to evidence filed by submitters.

The key issues that remained outstanding between submitters and the Council at the close of the hearing generally relate to further amendments to improve the clarity and workability of the provisions.

The Council proposed the inclusion of a new objective (Objective 2) that states there will be no discharge of contaminants from Industrial or Trade Activities to land, water or into the stormwater network. This was the subject of much discussion between the Panel and submitters during the hearing. Many submitters were strongly opposed to the objective and the Council acknowledged that it was out of scope. A number of submitters proposed

alternatives to the objective. Council's closing statement has set out that it has accepted the amendments proposed by the Heavy Industry Working Group (see Mr Van de Munckhof's evidence in chief) to Objective 1 and the deletion of the new objective (Objective 2).

7.2. Panel recommendation and reasons

The Panel acknowledges the work of Council and submitters in improving the overall workability and clarity of the Industrial or Trade Activities provisions. However, it still had concerns with the version of provisions as proposed in Council's closing statement. Consequently, the Panel has made additional amendments to the Industrial or Trade Activities provisions to further assist with improving their clarity of meaning and ease of use. These additional amendments include amendments to clarify that land use rules are for controlling environmentally hazardous substances and that the discharge rules are for controlling the discharge of contaminants, restructuring of activity tables to make it easier to interpret activity status and numerous amendments in accordance with the Panel's best practice drafting of provisions.

The additional amendments to the Industrial or Trade Activities provisions recommended by the Panel are not considered to be out of scope as a number of submitters generally sought that the provisions be simplified and improved. A number of the changes are also consequential changes to support vertical and horizontal integration and alignment with other provisions including hazardous substances and those relating to stormwater discharges.

The Panel supports the amendments proposed by the Heavy Industry Working Group to Objective 1 and the deletion of the new objective (Objective 2) proposed by the Council.

8. Consequential changes

8.1. Changes to other parts of the plan

As a result of the Panel's recommendations on this topic, there are consequential changes to other parts of the Plan as listed below.

The rehabilitation of quarries using cleanfill and managed fill is now provided for in the rural zones. This is because H4.4 Cleanfills, managed fills and landfills only deals with discharges from cleanfills and managed fills and does not address land use activities under section 9(3) of the Resource Management Act 1991.

8.2. Changes to provisions in this topic

As a result of the Panel's recommendations on other topics, there are consequential changes to the provisions in this part of the Plan as set out below.

H1.3 Policy 5(c) has been deleted as a consequence of a decision in Topic 38 contaminated Land not to assess closed landfills under the contaminated land provisions.

9. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website (www.aupihp.govt.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

9.1. General topic documents

Panel documents

[039-Submission Point Pathway Report - 28 January 2015](#) (5 February 2015)

[039-Parties and Issues Report - 28 May 2015](#) (28 May 2015)

[039 - Mediation Joint Statement - Session 1 \(25 March 2015\)](#) (1 April 2015)

[039 - Mediation Joint Statement - Session 2 \(10 April 2015\)](#) (15 April 2015)

[039 - Mediation Joint Statement - Session 3 \(20 April 2015\)](#) (23 April 2015)

Auckland Council marked up version

[039 - Proposed Marked-up Version \(Clean Fills, Landfills and Managed Fills\)](#) (18 March 2015)

[039 - Proposed Marked-up Version \(Hazardous Substances\)](#) (18 March 2015)

[039 - Proposed Marked-up Version \(Industrial and Trade Activities\)](#) (18 March 2015)

[039 - Proposed Marked-up Version \(Industrial and Trade Activities\) - Issue 13 of Position Paper as referenced on last page of marked-up version](#) (8 April 2015)

Auckland Council closing statement

[Hearing Evidence - Closing Statement - Cleanfills, Landfills and Managed Fills](#) (21 June 2015)

[Hearing Evidence - Closing Statement - Cleanfills, Landfills and Managed Fills - Attachment A](#) (21 June 2015)

[Hearing Evidence - Closing Statement - Cleanfills, Landfills and Managed Fills - Attachment B](#) (21 June 2015)

[Hearing Evidence - Closing Statement - Cleanfills, Landfills and Managed Fills - Attachment C](#) (21 June 2015)

[Hearing Evidence - Closing Statement - ITAs \(21 June 2015\)](#)

[Hearing Evidence - Closing Statement - post hearing track change provisions - ITAs \(21 June 2015\)](#)

Panel Interim Guidance

[039 Hrg - Auckland Council - Joint Memorandum - 14 October 2015 \(15 October 2015\)](#)

[039 Hrg - Auckland Council - Post Hearing Clean Provisions ITAs \(Vector Amendment\) \(15 October 2015\)](#)

[039 Hrg - Auckland Council - Post Hearing Track Change Provisions ITAs \(Vector Amendment\) \(15 October 2015\)](#)

9.2. Specific evidence

Auckland Council

[Hearing Evidence - Closing Statement - Cleanfills, Landfills and Managed Fills \(21 June 2015\)](#)

[Hearing Evidence - Closing Statement - Cleanfills, Landfills and Managed Fills - Attachment A \(21 June 2015\)](#)

[Hearing Evidence - Closing Statement - Cleanfills, Landfills and Managed Fills - Attachment C \(21 June 2015\)](#)

[Hearing Evidence - Legal Submissions - Cleanfills, Landfills and Managed Fills \(9 June 2015\)](#)

[Hearing Evidence - Larissa Clarke \(Planning\) - Hazardous Substances \(5 May 2015\)](#)

Downer NZ Limited (Heavy Industry Working Group)

[Primary statement of evidence of Rob Van de Munckhof \(Stormwater\) on behalf of ACI Operations New Zealand, trading as O-I New Zealand \(submitter no. 852\) and Downer NZ Limited \(submitter no. 5812\) \(18 May 2015\)](#)

Stolthaven Australia Propriety Limited

[Hearing Evidence - Karen Baverstock \(Planning\) \(20 May 2015\)](#)