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Kaipara District Council

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Dear Sarah and Katherine

Proposed Kaipara District Plan– Hazardous Substances Topic

INTRODUCTION

1. Kaipara District Council (“Council”) notified the Proposed District Plan on 28 April 2025 (“PDP”). The purpose of this letter is to assist with the preparation of your s42A planning report for Hearing Topic Hazardous Substances.
2. By way of background, we are aware that some submitters to the PDP seek the deletion of the provisions which control hazardous substances, as they consider that they are already regulated by the Hazardous Substances and New Organisms Act 1996 and the Health and Safety at Work Act 2015 and regulations. In terms of the definitions relevant to the provisions which control hazardous substances, we are also aware that some submitters seek the amendment and/or deletion of the definitions for “hazardous facility” and “significant hazardous facility”, and at least one submitter seeks the addition of a definition for “residual risk”.
3. You seek advice on the following matters:
 - (a) Is there still a role for district plans to manage hazardous substances in light of the Resource Legislation Amendment Act 2017 (“RLAA”)? Please address any case law on this issue.
 - (b) If the answer to (a) is yes, how are hazardous substances dealt with under the Resource Management Act 1991 (“RMA”)?
 - (c) Do any other proposed district plans post the RLAA include provisions managing hazardous substances?
 - (d) Whether the district plan should include a definition for “significant hazardous facility” as opposed to “hazardous facility”. Please address any case law on this issue as well as the approach taken by other recent proposed district plans.
 - (e) Whether Council should include a definition for “residual risk” in the PDP with reference to the approach taken by other recent proposed district plans.
4. We respond below. For convenience, we have dealt with matters (a) and (b) above together.

EXECUTIVE SUMMARY

5. While the explicit function of local authorities to control the storage, use, disposal, or transportation of hazardous substances was removed from sections 30 and 31 RMA in 2017, case law confirms it is still appropriate for district plans to include provisions to manage the land use effects relating to hazardous substances/hazardous facilities. HSNO, HSW legislation and the RMA all play a role in managing risk to human life and health from hazardous facilities. The regimes have similar yet distinct functions which can work together to minimise the risk to those within the hazardous facility and the wider environment. Since the RLAA, we are aware of 12 district councils who have included hazardous substances provisions in their district plans.
6. In terms of the supporting definitions, we have reviewed a number of recent district plans and confirm there is no set theme that is followed. Ultimately, which definition is adopted is a planning decision for Council. Under the current rule framework, any activity that exceeds the permitted thresholds is a hazardous facility, regardless of its significance. On balance, we favour the use of the term “Significant Hazardous Facilities” over “Hazardous Facility” as this is consistent with the overview of the hazardous substances chapter, consistent with the intent of not avoiding duplication of the HSNO and HSWA controls in the PDP and addresses some of the concerns raised by submitters. We have also suggested some edits to the hazardous substances chapter to more clearly establish the link between the “Significant Hazardous Facilities” definition and the hazardous substances rules.
7. Lastly, we do not consider it necessary for Council to include a definition of “residual risk” in the PDP as the proposed definition, based on the approach used by Whangarei District Council, provides no additional guidance on the term beyond the normal meaning of the words.

REGULATORY CONTROL OF HAZARDOUS SUBSTANCES

8. Hazardous substances are managed and regulated in New Zealand under three key Acts. We set out the purposes of those Acts for context:

- (a) Hazardous Substances and New Organisms Act 1996 (“HSNO”):

4 Purpose of Act

The purpose of this Act is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms.

- (b) Health and Safety at Work Act 2015 which includes the Health and Safety at Work (Hazardous Substances) Regulations 2017 (“HSW”):

3 Purpose

- (1) The main purpose of this Act is to provide for a balanced framework to secure the health and safety of workers and workplaces by –
 - a. Protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant; and
 - ...
 - d. Promoting the provision of advice, information, education, and training in relation to work health and safety; and

- e. Securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
 - f. Ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under this Act; and
 - g. Providing a framework for continuous improvement and progressively higher standards of work health and safety.
- (2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable.

(c) Resource Management Act 1991 (“RMA”):

5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while –
- a. Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - b. Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
 - c. Avoiding, remedying, or mitigating any adverse effects of activities on the environment.
9. HSNO regulates the management, disposal, classification, packaging and transport of hazardous substances. The Environmental Protection Authority (“EPA”) is responsible for approving and classifying all hazardous substances for use in New Zealand under HSNO legislation. The controls imposed by the EPA manage the risks of hazardous substances and safeguard people and the environment. EPA is responsible for approving pesticides, household chemicals and other dangerous goods and substances under the HSNO legislation.
10. The HSW legislation aims to secure the health and safety of workers, workplaces and communities. From 1 December 2017 the rules around managing hazardous substances that affect human health and safety in the workplace have been transferred from HSNO to the Hazardous Substances Regulations under HSW. Worksafe New Zealand is responsible for establishing workplace controls for hazardous substances and is the principal enforcement and guidance agency in workplaces. The HSW legislative regime sets out specific requirements/obligations but does not generally prescribe how compliance must be achieved.
11. The RMA is focused on sustainable management which means controlling the use of “natural and physical resources in a way or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety...”. Decisions on the use of land, in particular the location of certain activities, falls for consideration under the RMA.

HAZARDOUS SUBSTANCES UNDER THE RMA

Sections 30 and 31 RMA

12. The RMA is one of three key pieces of legislation that direct how hazardous substances are managed in New Zealand. In 2017 the RLAA removed the control of hazardous substances as

an explicit function of regional and territorial councils under sections 30 and 31 RMA respectively. Prior to the RLAA, section 30(1)(c)(v) provided:

30 Functions of regional councils under this Act

- (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:

...

- (c) The control of the use of land for the purpose of –

...

(v) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:

13. Furthermore, prior to the RLAA, section 31(1)(b)(ii) provided:

31 Functions of territorial authorities under this Act

- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

...

- (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –

...

(ii) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.

14. The Ministry for the Environment Resource Legislation Amendments 2017 Fact Sheet 2 states that the intent of the above changes is to remove the perception that councils must always place controls on hazardous substances under the RMA, and to ensure councils only place **additional controls** on hazardous substances if they are necessary to control effects under the RMA that are not covered by the HSNO or HSW Acts. The Fact Sheet provides that in most cases HSNO and HSW controls will be adequate to avoid, remedy or mitigate adverse environmental effects (including potential effects) of hazardous substances.
15. The Fact Sheet states that Councils still have a broad function of achieving integrated management, and may use this function to place **extra controls** on hazardous substance use under the RMA, if existing HSNO or HSW controls are not adequate to address the environmental effects of hazardous substances in any particular case (including managing the risk of potential effects on the local environment).
16. Although the RLAA removed the explicit functions of regional and district councils regarding hazardous substances, the Environment Court in a decision issued post the RLAA has concluded that the RMA and WorkSafe legislation and regulations¹ all play a role in managing risk to human life and health from hazardous facilities. The Court found that the RMA regime and the WorkSafe legislation and regulation regimes have similar, yet distinct functions which work together to minimise risk to those within the hazardous facility and the wider environment both now and in the future.² We discuss this case in further detail below.

¹ *Taranaki Energy Watch v South Taranaki District Council* [2018] NZEnvC 227 footnote 39, states that when “WorkSafe legislation and regulations” is referred to in this decision, this mean Health and Safety at Work Act 2015 and its regulations and Hazardous Substances and New Organisms Act 1996. Although not relevant to the decision, we record that from 1 December 2017 the rules around managing hazardous substances that affect human health and safety in the workplace have been transferred from HSNO to the Hazardous Substances Regulations under HSWA.

² *Taranaki Energy Watch v South Taranaki District Council* [2018] NZEnvC 227.

INTERFACE BETWEEN THE RMA AND HSNO/HSW LEGISLATION

17. The starting point in terms of the role and scope of the RMA can be found in the judgment of Whata J in *Meridian Energy Ltd v Southland District Council* [2014] NZHC 3178:

[23] The RMA provides a comprehensive framework for the regulation of the use of land, water and air. It signalled a major change from the direct and control emphasis of the previous planning regime to the sustainable management of resources, with its composite objective of enabling people and communities to provide for their wellbeing, while, among other things, mitigating, avoiding or remedying adverse effects on the environment. The Act is carefully framed to provide for the control of the effects of resource use, including regulatory oversight given to functionaries at national, regional and district levels. **In general terms, all resource use is amenable to its framework, unless expressly exempted from consideration.**

18. Therefore, unless expressly exempted, it follows that hazardous substances (a resource use) are amenable to the RMA framework. Notably, the RLAA did not expressly exempt councils from managing hazardous substances. We agree with the approach outlined in the paper *The Resource Management Act 1991 – Its Interface and Interplay with other legislation*³ which summarised the principles to apply to determine whether two (or more) statutes can apply to the same subject matter. The paper provides that the approach should:

- (a) Consider the stated purpose of the RMA, HSNO and the HSW;
- (b) Discern with precision what each statute was intended to address, and, having regard to the purpose and nature of controls in each, whether there is scope for both to operate. If it is reasonably possible to construe the provisions so as to give effect to both, that must be done. Only if one is so inconsistent with, or repugnant to, the other that the two are incapable of standing together, is it necessary to determine which is to prevail. As a general rule, express language will be required before the RMA is excluded.
- (c) Consider whether HSNO and HWA contain express language that was intended to expressly exclude the operation of the RMA or other legislation of general application; and
- (d) Consider whether the scheme of HSNO and HWA is such that different functionaries making decisions under separate statutes is tenable, particularly if it would negate or derogate from any existing right of licence.

19. Neither HSNO or HSW expressly refers to their relationship with the RMA in relation to the control of hazardous substances.⁴ Considering the above approach, we refer to the 2018 Environment Court decision *Taranaki Energy Watch v South Taranaki District Council* which

³ *The Resource Management Act 1991 – Its Interface and Interplay with other legislation*, Simon Berry, Maree Baker-Galloway, presented at NZLS CE LTD Environmental Law Intensive November 2019.

⁴ However section 230 HWA provides that nothing prescribed in regulations made under this Act for the safe use, handling, manufacture, or storage of hazardous substances applies in relation to any resource consent to which this subsection applies that is – (a) a land use consent relating to the use, handling, manufacture, or storage of any hazardous substances; or (b) a coastal permit to do something that would otherwise contravene s 15 of the RMA; or (c) a discharge permit; Section 142 of HSNO provides that nothing in this Act shall apply to any resource consent, being – (a) a land use consent relating to the storage, use, disposal, or transportation of any hazardous substance; or (b) a coastal permit to do something that would otherwise contravene [section 15](#) of the Resource Management Act 1991; or (c) a discharge permit, -

provides useful commentary regarding the interface between the RMA and HSW and regulations.⁵

Taranaki Energy Watch v South Taranaki District Council [2018] NZEnvC 227

20. This decision involved an appeal against a decision of South Taranaki District Council in relation to submissions on the proposed South Taranaki District Plan. The proposed District Plan as notified, included separation distances in the rules to address the risks associated with hazardous facilities (in particular petroleum exploration and production facilities). The Hearings Panel in its decision removed the separation distances from the rules in the proposed plan, holding that compliance with the WorkSafe legislation and regulations (HWA and regulations) internalised risk to within the subject site. The appeal subsequently required consideration of the separate legislative regimes to determine whether the Court had jurisdiction to consider and address human risk and safety issues through a district plan.
21. The Court provided useful commentary regarding the interface between the RMA and WorkSafe legislation and regulations. We set that out in full (footnotes omitted):

[42] With that said, we accept Ms Hanson-White's characterisation of the Health and Safety at Work Act 2015 ("HSWA") as being "**performance-based legislation**" insofar as the legislation does not generally prescribe how compliance must be achieved. In principle, "workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable" (s 3(2)). Section 36 of HSWA establishes the primary duty of care on all persons conducting a business or undertaking, which is to ensure, so far as reasonably practicable, the health and safety of workers and other persons who may be exposed to risks that arise from work activity (ss 36(1) and (2)). "Other persons" include persons who are not in the workplace; their identity is determined, inter alia, by the nature of the risks.

[43] Section 30 of the HSWA imposes a duty:

- (a) to eliminate risks to health and safety, so far as is reasonably practicable; and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

[44] The point being, where a risk is minimised, because it cannot be eliminated, there is "no absolute guarantee that incidents or accidents will be prevented or that harm will be prevented". Instead, **measures are to be implemented to minimise those risks so far as is reasonably practicable. Thus, it cannot be imputed that compliance with WorkSafe legislation and regulations means risk is eliminated.**

(Emphasis added)

22. Significantly, the Court further noted that the WorkSafe legislation and regulations do not control decisions made on the use of land near a workplace and do not require an assessment of risk carried out at the time of site selection:

[45] The second key point is this: WorkSafe legislation and regulations do not control decisions made on the use of land near a workplace.

⁵ Which largely subsumed reporting, certification, and enforcement in relation to Petroleum exploration and production facilities previously under HSNO.

[46] The final key point is that WorkSafe legislation and regulations do not require an assessment of risk carried out at the time of site selection. Mr Cobden and Ms Hanson-White's view, together with the planning and risk experts, **is that decisions on the use of land – in particular, the location of petroleum exploration and petroleum production activities and the location of sensitive receptors – are to be addressed under the District Plan.**

23. The Court concluded that there is a distinction between the scope and functions of the WorkSafe legislation and regulations and the RMA. This being, that there is scope for them both to operate.⁶ In that regard, we take from the Court's commentary in *Taranaki Energy Watch Inc v South Taranaki District Council*, which was post RLAA, that while the WorkSafe legislation and regulations provide 'performance based' controls in relation to hazardous substances, it does not necessarily follow that compliance with the WorkSafe legislation and regulations will mean that risk is eliminated.
24. As such, additional controls to address any risk relating to hazardous substances will necessarily be appropriate under a district plan.
25. Since the *Taranaki Energy Watch* decision in 2018, there has been a number of consent orders where the Environment Court has approved the inclusion of hazardous substances provisions in district plans. These orders have been approved by consent and have not gone to contested hearings.⁷

District plan guidance

26. It is noted that the National Planning Standards, published 1 November 2019, refers to the potential for district plans to contain hazardous substances provisions as a district-wide matter:
 12. If provisions relating to hazardous substances are addressed, they must be located in a chapter titled Hazardous substances under the Hazards and risks heading.
 13. If the following matters are addressed, they must be located in a Hazardous substances chapter:
 - a. any provision required to manage the land use aspects of hazardous substances
 - b. provisions relating to the use, storage and disposal of hazardous substances on land that presents a specific risk to human or ecological health, safety and property
 - c. provisions required to manage land use in close proximity to major hazard facilities to manage risk and reverse sensitivity issues.
27. Given the National Planning Standards postdate the RLAA amendments to the functions of regional and territorial councils, reference to the potential for a hazardous substances chapter illustrates that there is still a role for district councils to regulate hazardous substances/hazardous facilities in their district plans.

⁶ *Taranaki Energy Watch v South Taranaki District Council* [2018] NZEnvC 227 at [32] and [62].

⁷ See *Genesis Energy Ltd v Waikato District Council* [2023] NZEnvC 131; *Liquigas Ltd v Dunedin City Council* [2023] NZEnvC 170; *University of Otago v Dunedin City Council* [2023] NZEnvC 171.

28. In 2020, the Ministry for the Environment published further guidance on the district plan structure and chapter standards in the National Planning Standards. Under the heading Hazards and risks, the guidance states:⁸

Hazardous substances has not been included in the 4. District Plan Structure Standard as this chapter should only be included when you are addressing a gap in legislation or regulation.

29. This aligns with our reading of the Court's commentary in *Taranaki Energy Watch Inc* that compliance with WorkSafe legislation and regulations does not necessarily mean that risk is eliminated and thus additional controls to address any risk relating to hazardous substances will be appropriate under a district plan.

Conclusion on whether district plans can manage hazardous substances

30. Considering the approach outlined at paragraph 18, the *Taranaki Energy Watch* decision and the other guidance discussed above, we consider that there is still a role for district councils to regulate hazardous substances/hazardous facilities in their district plans. Neither HSNO or HWA and regulations contain express provisions excluding the operation of the RMA, and as determined by the Court in *Taranaki Energy Watch*, the two legislative regimes have distinct functions which work together to minimise risk to workers and to the wider environment.

OTHER DISTRICT PLANS

31. In relation to paragraph 3(b) above, we have looked at 12 other recent district plans which were notified post the RLAA, including the neighbouring district councils of Whangarei and Far North. All of these plans contain a hazardous substances chapter however the introduction/overview of these chapters makes it clear that they are not duplicating the controls in HSNO, HSW and other legislation and only seek to control matters which fall within the scope of the RMA. These matters are similar to the list of matters we have identified in paragraph 32 below. Summaries of these plans are included with this letter as **Attachment 1**.

ADDITIONAL CONTROLS IN DISTRICT PLANS

32. As demonstrated above, we have determined that there is still a role for Council to regulate hazardous substances/hazardous facilities in the PDP. We have identified the following areas where RMA controls may be necessary:
- (a) Where local circumstances generate a need for additional management of hazardous substances/hazardous facilities than is already provided for under HSNO and HSW:
 - (i) Effects of hazardous facilities on the environment;
 - (ii) Incompatible land uses;
 - (iii) Sensitive receiving environments;
 - (iv) Reverse sensitivity issues;

⁸ Ministry for the Environment "Guidance for District Plans Structure and Chapter Standards" (2020) < <https://environment.govt.nz/assets/publications/Files/mfe-guidance-district-plan-structure-and-chapter-standards-2020.pdf> > at page 9.

- (v) Cumulative effects risk;
 - (vi) Discharges; and
 - (vii) Substances not listed in HSNO.
33. We note that previously the RMA did contain express provision for the Governor-General to, by Order in Council made on the recommendation of the Minister, make regulations to prohibit or remove specified rules or types of rules that would *duplicate, overlap with, or deal with the same subject matter that is included in other legislation*. However, this provision was repealed by section 102 of the Resource Management Amendment Act 2020, in order to reduce complexity, increase certainty and restore public participation.⁹
34. In the following section, we address the submissions on the PDP regarding the definitions of “significant hazardous facility” and “hazardous facility”, and whether the PDP should include a definition for “residual risk”.

DEFINITIONS OF “SIGNIFICANT HAZARDOUS FACILITY” AND “HAZARDOUS FACILITY” IN THE PDP

35. The PDP currently contains definitions for both “Significant Hazardous Facilities” and “Hazardous Facility”. Council received several submissions on the PDP seeking to remove the definition of “Hazardous Facility”¹⁰ from the PDP and amend or replace the definition of “Significant Hazardous Facility” in the PDP.¹¹
36. You have asked us to comment on whether the district plan should include a definition for only “Significant Hazardous Facility” rather than “Hazardous Facility”, with reference to any case law on the matter and the approach taken by other recent proposed district plans.

Use of terms in other recent district plans

37. Our review found there is no consistent approach. Out of the 12 district plans we reviewed, five contain definitions of “Significant Hazardous Facility/ies”.¹² These plans all seem to use a similar definition of the term however we are not sure where this has originated. There are two district plans which do not define either term as their hazardous substances chapters contain only objectives and policies and do not contain any rules.¹³ Finally, it is noted that two district plans define the term “Major Hazard Facility”¹⁴ and three others define both “Major Hazard Facility” and “Hazardous Facility”.¹⁵ We do not recommend adopting the term “Major Hazard Facility” as it is used in HSWA regulations¹⁶ and therefore it would be harder to defend that the PDP was not duplicating controls in other legislation.

⁹ [Resource Management Amendment Bill 180-1 \(2019\), Explanatory Note](#).

¹⁰ See submissions of NZ Agricultural Aviation Association, Ravensdown Ltd, Silver Fern Farms, Clarus and BP New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Ltd (the “Fuel Companies”).

¹¹ See submission of BP New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Ltd (the “Fuel Companies”).

¹² New Plymouth District Council, Waitomo District Council, Napier District Council, Lower Hutt District Council and Far North District Council.

¹³ Whangarei District Council and Porirua District Council.

¹⁴ Selwyn District Council, Hastings District Council and Wellington City Council.

¹⁵ Timaru District Council and Waitaki District Council.

¹⁶ Health and Safety at Work (Major Hazard Facilities) Regulations 2016.

38. Summaries of the district plans we reviewed are included with this letter as **Attachment 1**.

Recommendation for PDP

39. Council's section 32 report for the hazardous substances chapter sets out the framework adopted by the PDP:¹⁷

The PDP addresses the most significant locational risks by controlling the establishment of "significant hazardous facilities." Significant hazardous facilities are identified by reference to quantities and properties of hazardous substances on a site and the sensitivity of the zone they are in. Larger quantities are permitted in industrial and commercial zones than in more sensitive zones such as residential zones.

40. We assume that Council's hazardous substances expert has reviewed the quantities and properties of hazardous substances referred to in the hazardous substances chapter of the PDP and has confirmed that they are not governed by other legislative controls.
41. As mentioned, the PDP currently contains definitions for both "Significant Hazardous Facilities" and "Hazardous Facility". Our understanding is that these definitions essentially regulate the same thing, this being those activities outside of what is permitted in the hazardous substances chapter, which is likely to cause confusion. We note that both terms are only referenced in the objectives, policies and matters of control and discretion in the hazardous substances chapter and not the rules, and policy HS-P1 refers to both terms.
42. We can see how the framework for hazardous substances has caused some confusion for submitters. This is because there is no direct link between the definition of "Significant Hazardous Facilities" and the rules in the hazardous substances chapter. We have considered options to remedy this, however the architecture of the PDP is such that it is not efficient to add a rule referring back to the term "Significant Hazardous Facilities" as this would ultimately duplicate the existing rules. Our alternative suggestion is to amend the overview section of the hazardous substances chapter to highlight that "Significant Hazardous Facilities" is a defined term as well as adding additional wording to explain what the definition captures (i.e. activities that exceed the permitted activity thresholds in the hazardous substances chapter). This will alert plan users to the existence of the definition when looking at the provisions in the hazardous substances chapter.
43. Because the terms "Hazardous Facility" and "Significant Hazardous Facilities" are not included in the definitions list in the National Planning Standards and there is no caselaw on this matter, it is up to Council to make a planning decision on which definition they chose to adopt in the PDP.
44. On balance, we favour the use of the term "Significant Hazardous Facilities" as this is consistent with the overview of the hazardous substances chapter which refers to this term by reference to the activities the rules are designed to control.¹⁸ Use of this defined term is also consistent with the intent of avoiding duplication of the HSNO and HSWA controls in the PDP, and addresses some of the concerns raised by submitters with respect to the use of the

¹⁷ Section 32 Report: Part 2: Hazardous Substances, dated 28 April 2025 at [9].

¹⁸ [Proposed District Plan, Part 2 - District-wide matters, Hazards and Risks, Hazardous Substances, Overview](#).

definition of “Hazardous Facilities”.¹⁹ It is noted that the Far North District Council uses the term “Significant Hazardous Facilities” and so Council may wish to take a consistent approach.

45. Some submitters also seek that Council adopt an alternative definition of “Significant Hazardous Facilities” based on industry activity lists, similar to that proposed by Far North District Council.²⁰ If Council favoured adopting this alternative definition, it would require a change to the entire rule framework for the hazardous substances chapter of the PDP. Council would need to be justified that such a significant change is warranted. Council’s expert may not support such a change.

INCLUSION OF DEFINITION OF “RESIDUAL RISK” IN THE PDP

46. One submitter to the PDP seeks the addition of a definition of “residual risk” on the basis that the focus of the hazardous substances chapter should be on the residual risk when all other regulations are complied with.²¹
47. It is noted that currently the hazardous substances chapter of the PDP refers to the term “residual risk” only once in the matters of discretion concerning “risk” associated with the hazardous facility and transportation.²² However, the submitter does seek to amend the hazardous substances chapter to refer to “residual risk” as opposed to “risk”.
48. The definition proposed by the submitter is the same as that in the Whangarei District Plan:²³

Residual Risk

This definition only applies to the Hazardous Substances Chapter of the District Plan

means any risk of an adverse effect after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work Act (2015) and regional planning instruments, have been complied with.

49. We have looked at other recent proposed district plans and confirm that some contain definitions which are similar to that adopted by Whangarei District Council. These definitions are outlined in full in **Attachment 1**.
50. The National Planning Standards does not define the term “residual risk”. Therefore, should Council choose not to define the term in the PDP, the normal meaning of the words would apply in interpreting this term:

Residual: Of, relating to, or constituting a residue; leaving a residue that remains effective for some time.²⁴

¹⁹ See submissions of Horticulture New Zealand, NZ Agricultural Aviation Association, Ravensdown Ltd, Silver Fern Farms, Clarus and BP New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Ltd (the “Fuel Companies”).

²⁰ See submission of BP New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Ltd (the “Fuel Companies”).

²¹ See submission of NZ Agricultural Aviation Association.

²² HS-MAT2(g)(ii).

²³ [Whangarei District Plan - Part 1: Introduction and General Provisions, Interpretation, Definitions, Definitions N-R](#).

²⁴ [RESIDUAL Definition & Meaning - Merriam-Webster](#) accessed 5 December 2025.

Risk: Possibility of loss or injury; someone or something that creates or suggests a hazard.²⁵

51. In our view, the definition proposed by the submitter, and the definitions used in other district plans, provide no additional guidance on the term beyond the normal meaning of the words. Should Council adopt a definition of “residual risk” in the PDP then it may be argued that Council also needs to define further terms such as “inherent risk” and so on. We do not consider it necessary for Council to include a definition of “residual risk” in the PDP.

CONCLUSION

52. In conclusion, while the explicit function of local authorities to control the storage, use, disposal, or transportation of hazardous substances was removed from sections 30 and 31 RMA in 2017, it is still appropriate for district plans to include provisions relating to hazardous substances/hazardous facilities. HSNO, HSW and the RMA all play a complementary role in managing risk to human life and health from hazardous facilities. The regimes have similar yet distinct functions which can work together to minimise the risk to those within the hazardous facility and the wider environment.
53. We conclude that, subject to an evaluation under section 32 or 32AA, the PDP can provide rules in relation to the control of hazardous substances to ensure that land use effects associated with the storage, use, transportation and disposal of hazardous substances are being appropriately managed in the district. Provisions in the PDP, particularly in regards to those matters set out in paragraph 32 of this letter, will ensure appropriate control of matters that are not covered by the functions of HSNO and HWA.
54. In terms of the supporting definitions, we have reviewed a number of recent district plans and confirm there is no set theme that is followed. Ultimately which definition is adopted is a planning decision for Council. We favour the use of the term “Significant Hazardous Facilities” over “Hazardous Facility” as this is consistent with the overview of the hazardous substances chapter, consistent with the intent of not avoiding duplication of the HSNO and HSWA controls in the PDP and addresses some of the concerns raised by submitters. In order to establish the link between the “Significant Hazardous Facilities” definition and the hazardous substances rules, we have also suggested some edits to the overview of the hazardous substances chapter.
55. Lastly, we do not consider it necessary for Council to include a definition of “residual risk” as currently the PDP only refers to the term once and the proposed definition based on the Whangarei District Plan provides no additional guidance on the term beyond the normal meaning of the words.

²⁵ [RISK Definition & Meaning - Merriam-Webster](#) accessed 5 December 2025.

56. We are happy to meet with you to discuss this advice.

TOMPKINS WAKE

Babulan 

Bridget Parham / Kahlia Goss
Partner / Associate

Attachment 1

District plan definitions of “residual risk”

District Plan	Date	Definition of “residual risk”
Partially Operative Selwyn District Plan (Appeals Version)	Partially Operative (Appeals Version) went live on 27 November 2023	in relation to the HASZ-Hazardous Substances Chapter, means any risk of an adverse effect that remains after other industry controls and legislation, such as the Hazardous Substances and New Organisms Act 1996 and regional planning instruments, have been complied with.
Operative Porirua District Plan 2025	Operative on 1 November 2025	means, in relation to the Hazardous Substances chapter, any risk of an adverse effect after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work (Hazardous Substances) Regulations 2017, and regional planning instruments have been complied with.
Proposed Waitaki District Plan	Notified 1 March 2025	in relation to hazardous substances, means any risk of an adverse effect that remains after other industry controls and legislation and regional planning instruments have been complied with.
Proposed Lower Hutt District Plan	Notified on 6 February 2025	means, in relation to the Hazardous Substances chapter, the level of any remaining risk of an adverse effect after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work (Hazardous Substances) Regulations 2017 and any other subordinate instruments, and regional plans have been complied with.

Approach taken by district plans with respect to the management of hazardous substances

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
New Plymouth Part Operative District Plan Part Operative District Plan on 29 August 2025	This definition is subject to an appeal Significant Hazardous Facilities means the use of land and building (or any part of) for one or more of the following activities: 1. Manufacturing and associated storage of hazardous substances (including manufacture of agrichemicals, fertilisers, acids/alkalis or paints). 2. Petroleum exploration and petroleum production. 3. The storage/use of more than 100,000L of petrol. 4. The storage/use of more than 100,000L of diesel. 5. The storage/use of more than 6 tonnes of LPG. 6. Purpose built bulk storage facilities for the storage of hazardous	Objectives - HAZS-O1: Benefits associated with activities recognised while ensuring unacceptable levels of risk are avoided - HAZS-O2: Safe and efficient operation, maintenance, repair or additions and alterations of significant hazardous facilities - HAZS-O3: Sensitive activities location Policies - HAZS-P1: Areas subject to unacceptable levels of risk around existing significant hazardous facilities - HAZS-P2: Maintenance and repair of significant hazardous facilities - HAZS-P3 & P4: Additions/alterations to existing hazardous facilities - HAZS-P5: Manage significant hazardous facilities to internalise adverse effects - HAZS-P6: Manage additions/alterations to existing significant hazardous facilities where existing sensitive activities - HAZS-P7: Manage location of new sensitive activities where existing significant hazardous facilities have no risk management contour	Overview HSNO provides the general framework and is the primary mechanism for controlling and managing the use and storage of hazardous substances, but the following matters fall within the scope of the Resource Management Act 1991: 1. effects on sensitive activities and areas, the coastal environment, historic heritage and other identified features; 2. reverse sensitivity issues between existing lawfully established hazardous facilities and new sensitive activities; 3. the risk to public safety, e.g. risks to the general public beyond a site boundary and from natural hazards that could affect hazardous facilities; and

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	substances (other than petrol, diesel, or LPG). 7. Galvanising plants. 8. Electroplating and metal treatment. 9. Tanneries. 10. Timber treatment. 11. Freezing works and rendering plants. 12. Wastewater treatment plants. 13. Metal smelting and refining. 14. Milk processing plants. 15. Fibreglass manufacturing. 16. Polymer foam manufacturing. This definition does not apply to: 1. The underground storage of petrol and diesel at service stations and underground storage of jet fuel at airports that is undertaken in accordance with HSNO COP 44 Below Ground Stationary Container Systems for Petroleum – Design and Installation and HSNO COP	- HAZS-P8, P9, P10: Avoid adverse effects of new significant hazardous facilities or additions/alterations to existing significant hazardous facilities on values of scheduled features or natural hazard areas, values of scheduled features/natural hazard areas, values of non-scheduled features - HAZS-P11: Avoid new sensitive activities locating within risk management contour to ensure not exposed to unacceptable level of risk from existing significant hazardous activities - HAZS-P12: Manage location of new sensitive activities near existing significant hazardous facility, where no risk management contour - HAZS-P13: Manage additions to existing sensitive activities within Risk Management Contours and within the separation distances for existing significant hazardous facilities - HAZS-P14: New or expanded significant hazardous facilities located appropriately - HAZS-P15: Efficient processes by avoiding duplication with other statutory processes for hazardous substance activities	4. management of cumulative effects of multiple hazardous facilities near each other. The provisions in this chapter address the above matters as they relate to <u>significant hazardous facilities</u>. Some <u>significant hazardous facilities</u> may pose risks beyond the <u>site boundary</u> which relate to very low probability, high potential impact emergency events. These activities include <u>petroleum exploration</u>, <u>petroleum production</u>, bulk storage of petroleum products and other significant <u>hazardous substances</u> which pose a fire or explosion risk or exposure to toxic vapour. For these activities, risks cannot be fully eliminated, only reduced. Therefore, a level of risk of human fatality is used to consider unacceptability.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	45 Below Ground Stationary Containers Systems for Petroleum – Operation. 2. the distribution or transmission by pipelines of petroleum products.	- HAZS-P16: Avoid locating hazardous facilities within National Grid Yard and National Grid Substation Corridor - HAZS-P17: Location of new petroleum activities - HAZS-P18: New petroleum activities internalise unacceptable level of risk within site of activity - HAZS-P19: Avoid establishment of petroleum exploration and production activities in Residential Zone - HAZS-P20: Risk management contours Rules - HAZS-R1: Maintenance and repair of existing significant hazardous facilities - HAZS-R2: Alterations/additions to existing significant hazardous facilities - HAZS-R3 & R4: Additions to/of habitable rooms to existing sensitive activities - HAZS-R5: New significant hazardous facilities - HAZS-R6 – R12: Additions/alterations to significant hazardous facilities near waterbodies, significant natural areas,	

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
		natural hazard areas, scheduled Māori sites, Coastal Environment Area, Public Access Corridor - HAZS-R13: Additions/alterations to significant hazardous facilities within National Grid Yard and National Grid Substation Corridor - HAZS-R14 – R20: New significant hazardous facilities near waterbodies, significant natural areas, hazard areas, scheduled Māori sites, Coastal Environment Area, Public Access Corridor - HAZS-R21: New significant hazardous facilities within National Grid Yard and National Grid Substation Corridor - HAZS-R22: New sensitive activities within risk management contours - HAZS-R23: New sensitive activities near existing significant hazardous facility or existing petroleum production station	

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
Proposed Waitomo District Plan - Appeals Version Appeals version dated 1 October 2025	Significant Hazardous Facility means any facility which involves one or more of the following activities: (a) Manufacturing or associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (b) Oil and gas exploration or extraction facilities (c) Purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale or restricted commercial supply (d) The above-ground storage of more than 50,000 L of petrol (e) The above-ground storage of more than 100,000 L of diesel (f) The storage or use of more than 6 tonnes of LPG (g) Galvanising plants (h) Electroplating and metal treatment facilities (i) Tanneries	Objective: - HS-O1: Reduce risk to people, property and the environment from significant hazardous facilities Policies: - HS-P1: Ensure significant hazardous facilities proposing to significantly increase use, storage, handling have appropriately located/designed/constructed on-site facilities to internalise adverse effects - HS-P2: New significant hazardous facilities outside of industrial / rural production zones and aerodrome precinct only considered where certain criteria met - HS-P3: Ensure new significant hazardous facilities avoid certain locations - HS-P4: Where location of new significant hazardous facilities is considered appropriate ensure robust design and containment Rules: - HS-R1: Significant hazardous facilities existing as at 20 October 2022 which	The rules in this chapter seek to avoid any duplication of regulation with HSNO and HSW and only apply to significant hazardous facilities which are defined in this plan. Most existing significant hazardous facilities are located in the industrial and rural production zones and the aerodrome precinct (PREC3). The rules in this chapter provide an allowance for existing significant hazardous facilities, recognising both the role of HSNO and HSW in managing effects, and the significance of these industries to the district’s economic and social wellbeing. Facilities which exceed this allowance will need to demonstrate through a resource consent process, that the expanded facility is appropriately located, designed and constructed. The increased sensitivity of the receiving environments in some zones means that no allowance has been made for the expansion of significant hazardous facilities in these locations.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	(j) Timber treatment (k) Freezing works and rendering plants (l) Wastewater treatment plants (m) Metal smelting and refining (including battery refining or recycling) (n) Milk treatment plants (o) Fibreglass manufacturing (p) Polymer foam manufacturing (q) Asphalt/bitumen manufacture or storage (r) Landfills (s) The storage or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment (t) Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016. For the avoidance of doubt, the following activities are not significant hazardous facilities’:	propose to increase use, storage or handling - HS-R2: New significant hazardous facilities	

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	(i) The incidental use and storage of hazardous substances in minimal domestic scale quantities; (ii) Retail outlets for hazardous substances intended for domestic usage (eg supermarkets, hardware stores, and pharmacies); (iii) The incidental storage and use of agrichemicals, fertilisers and fuel for land based primary production activities; (iv) Pipelines used for the transfer of hazardous substances such as gas, oil, trade waste and sewage; (v) Fuel in motor vehicles, boats, airplanes and small engines; (vi) Temporary Military training activities; (vii) The transport of hazardous substances; (viii) Emergency management activities; and (ix) The underground storage of petrol and diesel at service stations and underground		

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	storage of jet fuel at airports that is undertaken in accordance with HSNOCOP 44 Below Ground Stationary Container Systems for Petroleum – Design and Installation and HSNOCOP 45 Below Ground Stationary Containers Systems for Petroleum – Operation.		
Partially Operative Selwyn District Plan (Appeals Version) Partially Operative (Appeals Version) went live on 27 Nov 2023	Major hazard facility Has.the.same.meaning.as.the. Health.and.Safety.at.Work.(Major. Hazard.Facilities).Regulations.867 means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20	Objective - HAZS-O1: Recognise benefits associated while ensuring risks to environment and human health minimised to acceptable levels Policies - HAZS-P1: Enable hazardous substance activities while managing residual risks - HAZS-P2: Major hazard facilities demonstrate extent of area which has potential to cause unacceptable level of risk - HAZS-P3: New or expanding major hazard facilities appropriately located to mitigate cumulative effects and	Overview To avoid duplication, the Plan seeks only to control matters that are not covered by other more specific legislation (such as those outlined above) or regulated by the Canterbury Regional Council. The Plan considers the effects of a low probability but a high impact, and relies on the identification of these facilities through the Major Hazard Facility threshold, outlined in Health and Safety at work (Major Hazard Facilities) Regulations 2016.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
		protect health and safety by internalising effects - HAZS-P4: Manage location of sensitive activities within area identified through risk assessment of major hazard facility Rules - HAZS-R1: Use and/or storage of hazardous substances (excluding major hazard facility) - HAZS-R2: Major Hazard Facility - HAZS-R3: Sensitive activity	
Operative District Plan - Porirua District Plan 2025 Operative on 1 November 2025	Only defines Hazardous Substance – no reference in District Plan to hazardous facility (no rules in HAZS chapter)	Objectives: - HAZ-O1: Protection from residual risk - HAZ-O2: Protection of activities involving hazardous substances Policies - HAZ-P1: Roles and responsibilities for managing hazardous substances - HAZ-P2: Residual risk to people and communities - HAZ-P3: Residual risk in Overlays - HAZ-P4: Protection of activities involving hazardous substances	Given the level of regulation controlling hazardous substances, the District Plan only addresses the residual adverse risk to people’s health, risks to the environment and reverse sensitivity risks after other industry controls and legislation have been complied with.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
		Rules - None.in.chapter	
Wellington City 2024 District Plan: Appeals Version Decisions notified 12 June 2025	Hazardous Facility means land or buildings where hazardous substances are manufactured, used, stored, or disposed of. Excludes: (a) fuel stored in mobile plants, motor vehicles, boats or small engines; (b) the incidental use and storage of hazardous substances in domestic scale quantities. Major Hazard Facility has the same meaning as the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 - means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20.	Objectives - HS-O1: Protect from unacceptable risk - HS-O2: Protection from established facilities Policies - HS-P1: Residual risk to people and communities - HS-P2: Residual risk to sensitive environments - HS-P3: Location of hazardous facilities and activities - HS-P4: Sensitive activities Rules - HS-R1: Manufacture, use, storage, transportation or disposal of hazardous substances - HS-R2: Existing major hazard facility - HS-R3: New major hazard facility	Introduction The District Plan manages only the residual risk and cumulative risk to the health and wellbeing of people and communities, and adverse effects on identified areas and their values after statutory rules and controls, including any subordinate hazardous substances instruments that are in place are complied with.
Napier Proposed District Plan Decisions Version 2025	Significant Hazardous Facilities means any facility which involves one or more of the following activities:	Issues Objectives	Introduction The purpose of this chapter is to manage the effects of the use and

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
Decisions version live on 3 November 2025	• Manufacturing of hazardous substances (including industries; manufacturing agrochemicals, fertilisers, acids/alkalis or paints); • Oil and gas exploration and extraction facilities; • The storage/use of more than 50,000l of petrol; • The storage/use of more than 100,000l of diesel; • The storage/use of more than 6 tonnes of LPG; • Galvanising plants; • Electroplating and metal treatment facilities; • Tanneries; • Freezing works and rendering plants; • Wastewater treatment plants; • Metal smelting and refining (including battery refining or recycling); • Milk treatment plants; • Fibreglass manufacturing; • Polymer foam manufacturing;	- HAZS-O1: Adverse effects on sensitive natural environments and the community - HAZS-O2: Enable activities that use and store hazardous substances in appropriate locations - HAZS-O3: Risk and reverse sensitivity effects - HAZS-O4: Cumulative effects Policies - HAZS-P1: Adverse effects of hazardous substances on sensitive natural environments - HAZS-P2: Enable activities that utilise hazardous substances in appropriate locations - HAZS-P3: Risk and reverse sensitivity effects - HAZS-P4: Cumulative effects Rules - HASZ-R1: Storage, handling, or use of hazardous substances (excepting arsenic and significant hazardous facilities) within the Natural Open Space Zone	storage of hazardous substances and significant hazardous facilities that fall outside of the scope of the Hazardous Substances and New Organisms Act 1996. HSNO provides the general framework and is the primary mechanism for controlling and managing the use and storage of hazardous substances, but the following matters fall within the scope of the RMA: - Effects on sensitive areas, such as the coastal and estuarine environment; - Reverse sensitivity issues between existing lawfully established significant hazardous facilities and new or intensified sensitive activities; - Any residual risk to public safety, including risks to the public beyond the site boundary and from the storage of hazardous substances that could be

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	- Asphalt/bitumen manufacture or storage; - The storage or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment; or - Landfills.	- HAZS-R2: Storage, handling or use of hazardous substances in all other zones (excepting significant hazardous facilities) - HAZS-R2A: Additions and/or alterations to existing significant hazardous facilities within the mapped Significant Hazardous Facility Risk Management Overlay - HSZ-R3: New significant hazardous facilities, or additions and/or alterations of existing significant hazardous facilities (outside of the Significant Hazardous Facility Risk Management Overlay) where this results in an increase in the quantity of hazardous substances use or stored on-site or a change in the storage method - HSZ-R4: New sensitive activities, including additional residential units within the same site as established residential activities, located within the Significant Hazardous Facility Risk Management Overlay - HSZ-R5: Storage, handling or use of arsenic within the Natural Open Space Zone	affected during a natural hazard event, and Management of cumulative effects of multiple significant hazardous facilities near each other.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
		Assessment criteria	
Operative Hastings District Plan Fully operative on 27 June 2024	Major Hazardous Facility: Means any facility which involves one or more following activities: • Manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) • Oil and gas exploration and extraction facilities • Purpose built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale or restricted commercial supply • The storage/use of more than 100,000L of petrol • The storage/use of more than 50,000L of diesel • The storage/use of more than 6 tonnes of LPG • Galvanising plants	Anticipated outcomes (HSAO1 – HASO4) Issues Objectives - HS-O1: To protect the community and natural environment from the adverse effects associated with the manufacture, use, storage or transportation of hazardous substance - HS-O2: To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations - HS-O3: To avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996 and the District Plan - HS-O4: GMOs Policies - HS-P1: To ensure activities are able to utilise hazardous substances in	Introduction Based on Ministry for Environment advice the Hastings District Plan takes the approach that hazardous facilities are generally managed adequately through the HSNO Act. Compliance with this legislation will generally ensure that any adverse effects arising from an accident or incident will be internalised within the hazardous facility site. The District Plan therefore seeks to avoid any duplication of regulation with the HSNO Act. An extra layer of protection can however be applied appropriately under the RMA to particularly sensitive environments or in relation to major hazardous facilities, in order to further minimise the potential for adverse effects impacting on the environment or the community. In the case of the Hastings District, the Heretaunga Plains Unconfined

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	• Electroplating and metal treatment facilities • Tanneries • Timber treatment • Freezing works and rendering plants • Wastewater treatment plants • Metal smelting and refining (including battery refining or re-cycling) • Milk treatment plants • Fibreglass manufacturing • Polymer foam manufacturing • Asphalt/bitumen manufacture or storage • Landfills For the avoidance of doubt, the following activities are not considered to be major hazardous facilities: • The incidental use and storage of hazardous substances in minimal domestic scale quantities • Retail outlets for hazardous substances intended for domestic usage (e.g	compliance with relevant regulation as necessary to their operation, without being compromised by 'reverse sensitivity' - HS-P2: Ensure that major hazardous facilities are appropriately sited and managed in order to reduce risks to the environment and community - HS-P3: To not regulate the use, storage or transportation of hazardous substances, in the District Plan where adequate levels of community and environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996 or other legislation and regulation - HS-P4 & P5: GMOs Methods Rules - HS1: Storage, handling or use of hazardous substances in areas other than overlay - HS2: Activities involving GMOs - HS3: Major hazard facilities - HS4: Outdoor release of GMOs	Aquifer is considered to be a sensitive environment, while major hazardous facilities will be assessed as to their appropriateness via the resource consent process.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	supermarkets, hardware stores and pharmacies) • The incidental storage and use of agrichemicals, fertilisers and fuel for land based primary production activities. • Pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage • Fuel in motor vehicles, boats, airplanes and small engines • Military training activities • The transport of hazardous substances (e.g in trucks or trains)	- HS5: Outdoor field trials of GMOs Assessment criteria – discretionary activities	
Proposed Timaru District Plan Originally notified on 22 September 2022 Renotified on 5 March 2024	Major Hazard Facility means a facility or activity that has been designated by Worksafe as a lower tier major hazard facility or an upper tier major hazard facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016. Hazardous Facility	Objectives - HS-O1: Hazardous substances, use, storage and disposal - HS-O2: Sensitive activities Policies - HS-P1: New major hazard facilities and additions to existing major hazard facilities	Introduction These Acts provide the general framework for controlling hazardous substances during their life cycle. However, they do not take into account the sensitivity of the environment in which hazardous substances are located, or other

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	means a facility or activity that involves the use, storage or disposal of any hazardous substance, but excludes: 1. the incidental use and storage of hazardous substances in minimal domestic scale quantities; 2. retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies); 3. the incidental storage and use of agrichemicals, fertilisers and fuel for land based primary production activities and the incidental storage of agrichemicals, fertilisers and fuel for land based primary production activities which are not located in a drinking water; 4. pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage; 5. fuel in motor vehicles, boats, airplanes and small engines;	- HS-P2: Repair and maintenance of existing major hazard facilities - HS-P3: Sensitive activities in proximity to major hazard facilities - HS-P4: Hazardous facilities (other than major hazard facilities) Rules - HS-R1: Use and/or storage of hazardous substances in a hazardous facility (excluding major hazardous facilities) - HS-R2: Maintenance and repair of major hazard facilities - HS-R3: Sensitive activity in proximity to a major hazard facility - HS-R4: New major hazard facilities and additions to major hazard facilities	relevant resource management issues. Accordingly, the District Plan addresses the following resource management matters concerning hazardous substances: - potential adverse effects on sensitive activities and sensitive environments; - reverse sensitivity effects caused by sensitive activities locating too close to hazardous facilities; - the risks to hazardous facilities from natural hazards and consequential risks to the environment; - cumulative effects of major hazard facilities locating too close each other.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	6. the use, transportation, or storage of any hazardous substance for any temporary military training activity; 7. the transportation of hazardous substances (e.g. in trucks or trains); or 8. mixing and application of hazardous substances solely for the purpose of controlling plant and animal pests on site.		
Proposed Waitaki District Plan Notified on 1 March 2025	Major Hazard Facility has the same meaning as the Health and Safety at Work (Major Hazard Facilities) Regulations. 867(2), means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20. Hazardous facility means a facility or activity that involves the use, storage or disposal of any hazardous substance, but excludes: 1. the incidental use and storage of hazardous	Objectives - HAZS-O1: Hazardous facilities Policies - HAZS-P1: Residual risk of hazardous facilities - HAZS-P2: Quantitative risk assessment for major hazard facilities - HAZS-P3: Location of major hazard facilities - HAZS-P4: Location of sensitive activities - HAZS-P5: Residual risk to sensitive activities and environments Rules	Introduction This chapter, acknowledging that HSNO and the HSW Act manage most adverse effects associated with hazardous substances, only seeks to control the potential residual risks of major hazardous facilities and the use, storage and disposal of hazardous substances within other hazardous facilities. The District Plan is looking at effects of a low probability but a high impact, and relies on the identification of

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	substances in minimal domestic scale quantities; 2. retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies); 3. the incidental storage and use of agrichemicals, fertilisers and fuel for land based primary production activities; 4. pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage; 5. fuel in motor vehicles, boats, airplanes and small engines; 6. the use, transportation, or storage of any hazardous substance for any temporary military training activity; 7. the transportation of hazardous substances (e.g. in trucks or trains); or 8. mixing and application of hazardous substances solely for the purpose of controlling	- HAZS-R1: Use and/or storage of hazardous substances within a hazardous facility, excluding a major hazard facility - HAZS-R2: Major hazard facility	major hazardous facilities through the Major Hazard Facility threshold, which is outlined in the Health and Safety at Work (Major Hazard Facilities) Regulations 2016.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	plant and animal pests on site.		
Proposed Lower Hutt District Plan Notified on 6 February 2025	Significant Hazardous Facility - means any facility which involves one or more of the following activities: 1. Manufacturing of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints), 2. Oil and gas exploration and extraction facilities, 3. The storage/use of more than 50,000 litres of petrol, 4. The storage/use of more than 100,000 litres of diesel, 5. The storage/use of more than 6 tonnes of LPG, 6. Galvanising plants, 7. Electroplating and metal treatment facilities, 8. Tanneries, 9. Timber treatment, 10. Freezing works and rendering plants,	Objectives - HS-O1: Protection from residual risk - HS-O2: Protection of existing significant hazardous facilities Policies - HS-P1: Location of hazardous facilities - HS-P2: Identify areas of unacceptable residual risk - HS-P3: Location of activities sensitive to hazardous substance risks Rules - HS-R1: Additions or alterations to existing significant hazardous facilities - HS-R2: New significant hazardous facilities - HS-R3: New activities sensitive to hazardous substance risks within the overlay	The District Plan manages only the residual risk and cumulative risk to the health and wellbeing of people and communities, and adverse effects on sensitive environments after non-District Plan statutory rules and controls, including any subordinate instruments, in place with respect to hazardous substances have been complied with.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	11. Wastewater treatment plants, 12. Metal smelting and refining (including battery refining or recycling), 13. Milk treatment plants, 14. Fibreglass manufacturing, 15. Polymer foam manufacturing, and 16. Asphalt/bitumen manufacture or storage		
Neighbouring Areas			
Far North Proposed District Plan Notified on 27 July 2022	Significant Hazardous Facility - means the use of land and/or buildings (or any part of) for one or more of the following activities: a. Any Major Hazard Facility designated under the Health and Safety at work (Major Hazard Facilities) Regulations 2016, including the Ngawha Geothermal Plant; b. Manufacturing, including the associated storage, of hazardous substances (including agrichemicals,	Objectives - HS-O1: Risks associated minimised to acceptable levels recognising benefits of activities - HS-O2: Significant hazardous facilities and sensitive activities managed through separation distances Policies - HS-P1: Manage effects of hazardous substances - HS-P2: Require appropriate separation distances between	Overview The RMA enables district plans to manage the adverse effects of the storage, use, disposal and transport of hazardous substances, provided these do not duplicate controls in the HSNO Act or other legislation. Land use controls for hazardous substances in district plans may be necessary to manage the risks associated with significant hazardous facilities and their potential impacts on other sensitive

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
	fertilisers, acids/alkalis or paints); c. Petroleum exploration and petroleum production facility; d. The storage/use of more than 100,000L of petrol or diesel; e. The storage/use of more than 6 tonnes of LPG; f. Galvanising plants; g. Electroplating and metal treatment; h. Tanneries; i. Timber treatment; j. Freezing works and rendering plants; k. Wastewater treatment plants; l. Metal smelting and refining (including battery refining or recycling); m. Milk processing plants; or n. Polymer foam manufacturing. The storage of petrol and diesel in (c) above does not include the underground storage at service stations and commercial refuelling facilities undertaken in accordance with HSNOCOP 44	significant hazardous facilities and sensitive activities re reverse sensitivity - HS-P3: Manage new/expanded significant hazardous facilities and sensitive activities to address effects Rules - HS-R1: Maintenance and repair of existing significant hazardous facilities - HS-R2: Establishment of a new significant hazardous facility - HS-R3 – R10: Significant hazardous facility within coastal environment, outstanding natural feature or landscape, scheduled site and area of significance to Māori, significant natural area, flood hazard area, scheduled heritage resource, 100m of edge of a surface waterbody - HS-R11: New sensitive activity	activities, incompatible land uses and the natural environment. Council has responsibilities under the RMA to manage the adverse effects of the use and development of land. This includes the adverse effects that may arise from significant hazardous facilities on sensitive activities and sensitive environments, the risks of natural hazards, cumulative effects (agglomeration of significant hazardous facilities) and reverse sensitivity issues.

District Plan	Definitions of “Facility”	Provisions	Discussion regarding RMA & HSNO/HSWA relationship
Whangarei District Plan (See Plan Change 91: Hazardous Substances operative as of 4 October 2023)	Only defines Hazardous Substance – no reference in District Plan to hazardous facility (no rules in HAZS chapter)	Objectives - HSUB-O1: Residual Risks - HSUB-O2: Reverse Sensitivity Policies - HSUB-P1: Residual Risks First policy - HSUB-P2: People & Communities - HSUB-P3: Sensitive Environments and areas - HSUB-P4: Reverse Sensitivity	Issues In addition to the above controls, the District Plan manages adverse effects associated with hazardous substances and potential reverse sensitivity effects through spatial zoning and underlying zone rules. Given the level of regulation controlling hazardous substances, the Hazardous Substances Chapter seeks to avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the District Plan. The chapter will address the residual risk to people, property and the environment, and reverse sensitivity after other industry controls and legislation have been complied with, and where consent is required based on other district wide and area specific chapter rules