

BEFORE A HEARINGS PANEL APPOINTED BY THE KAIPARA DISTRICT COUNCIL

IN THE MATTER OF the Resource Management Act 1991 (“the Act” or “the RMA”)

AND

IN THE MATTER OF the submissions of bp Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited on the Proposed Kaipara District Plan (“the PDP”)

**JOINT STATEMENT OF EVIDENCE GEORGINA MCPHERSON AND THOMAS
TREVILLA ON BEHALF OF**

**BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED AND Z
ENERGY LIMITED (“THE FUEL COMPANIES”) (SUBMITTER S311 AND FURTHER
SUBMITTER FS98)**

HEARING 6 (HAZARDOUS SUBSTANCES)

17 FEBRUARY 2026

1. EXECUTIVE SUMMARY

- 1.1 Our names are Georgina McPherson and Thomas Trevilla. We have prepared this joint statement of planning evidence for the Fuel Companies. Our evidence relates to the Fuel Companies' submissions on the PDP's hazardous substances provisions, particularly in the context of activities at their retail fuel outlets (service stations and truck stops) and other commercial refuelling facilities in the District.
- 1.2 The Fuel Companies operate an essential network of fuel outlets and distribution activities, and their submission seeks that the PDP does not impose unjustified regulatory barriers on the storage and use of hazardous substances already comprehensively governed by existing legislation, industry codes of practice, and robust engineering and operational standards. Their overarching concern is that the PDP introduces an unduly restrictive and duplicative regulatory framework without demonstrating a need for additional RMA controls.
- 1.3 A central issue is that the PDP rolls over the Operative Kaipara District Plan's ("the ODP") hazardous substances thresholds that trigger consent for routine volumes of fuel at service stations, despite these facilities being extensively regulated by the Hazardous Substances and New Organisms Act 1996 ("HSNO"), Health and Safety at Work Act 2015 ("HSWA"), and relevant codes of practice. The HS-S1 activity threshold table is essentially a roll over from the Operative Kaipara District Plan 2013 ("the ODP"), even though the Resource Legislation Amendment Act 2017 ("the RLAA") removed the Council's explicit function to regulate hazardous substances and guidance directs them to avoid duplication where risks are already managed under other legislation. This results in a proposed framework that imposes additional consenting costs and compliance obligations without any clearly demonstrated environmental benefit or analysis justifying the need for new RMA controls.
- 1.4 The Fuel Companies also oppose the PDP's definition of "significant hazardous facility" ("SHF"), which is tied directly to whether a site exceeds HS-S1's thresholds. This method conflates activity status with activity characteristics and, in practical terms, would categorise nearly all service stations as SHFs solely due to their typical underground storage volumes. This approach is inconsistent with planning best practice and with all other post-RLAA district plans, which have specific significant or major hazard facility definitions and also exclude underground fuel storage at service stations. We consider that the notified definition lacks clarity,

creates unnecessary inconsistency with neighbouring districts, and post-RLAA district plans around the country, and fails to reflect the well-established risk profile of service stations where hazards are contained on-site and controlled through HSNO and HSWA requirements.

- 1.5 A key focus of our evidence is also HS-R5, which places blanket resource consent requirements for the storage and retail sale of fuel at service stations in all zones, irrespective of location, scale, or compliance with regulations. We note that there are proposed blanket consent requirements in the Rural, Commercial and Industrial Zones, despite there being a permitted activity pathway in those zones of the ODP. While the Reporting Officer asserts that service stations may pose locational risks in proximity to sensitive activities, the design, construction and operation of service stations are subject to stringent controls, and that service stations have demonstrated resilience after significant natural hazard events.
- 1.6 The Council has not provided any analysis demonstrating that service stations pose greater risks than other hazardous substance users, that additional consenting processes are needed, and that consent conditions would have any value beyond simply requiring compliance with HSNO and HSWA requirements. We conclude that the PDP's rule framework is inconsistent with Ministry for the Environment guidance, lacks risk-based justification, introduces unnecessary consent requirements, and diverges from national planning practice.
- 1.7 For these reasons, we recommend that the Hearings Panel reject the Council's proposal to roll over the existing hazardous substances regulatory framework. We recommend that the Panel to direct the Council to adopt a risk-based approach that aligns with other post-RLAA district plans and focuses the rules on SHF, as per the requested amended definition. The relief includes a replacement SHF definition, deleting HS-R1 to HS-R5 and HS-S1, and adopting a new rule framework that focuses on the management of SHF.
- 1.8 Should the Panel be minded to retain the PDP's threshold-based framework, we recommend amendments to HS-R1 to permit underground fuel storage at service stations, above ground storage of petrol, diesel and LPG within thresholds, and deleting HS-R5. These amendments are essential to producing an efficient, effective and appropriate hazardous substances framework for the District.

2. INTRODUCTION

Georgina McPherson

- 2.1 My full name is Georgina Beth McPherson. I have been engaged by the Fuel Companies to provide expert planning evidence in relation to their submissions on the Kaipara Proposed District Plan (PDP). In this hearing, my evidence relates to the Hazardous Substances provisions of the PDP.
- 2.2 My current role is Technical Director – Planning at SLR Consulting New Zealand Limited (“SLR”). I have been at SLR and predecessor companies, 4Sight Consultants Limited and Burton Planning Consultants Limited,¹ since August 2011. I have over 20 years’ experience in the field of resource management and planning in New Zealand and overseas. I hold a Bachelor of Resource and Environmental Planning degree from Massey University, and I am a Full Member of the New Zealand Planning Institute.
- 2.3 My principal role at SLR has been to provide planning and resource management consenting and policy advice to a range of clients in relation to various projects and planning instruments. This has included preparation of applications for resource consent (including AEEs), policy analysis, provision of strategic policy advice and preparation of submissions and evidence, including on behalf of the Fuel Companies. I have provided planning services to a range of infrastructure, council, commercial and private clients.
- 2.4 I have been involved in a wide range of matters affecting clients at both regional and district council level across much of the country. This includes a broad range of residential, commercial, infrastructure and industrial developments, and participation in the full range of policy processes.
- 2.5 Relevant experience in relation to hazardous substances provisions in district plans includes the preparation of submissions, hearing statements and/or presentation of evidence on hazardous substances provisions in the Auckland Unitary Plan as well as the district plans of the following: Hamilton, Thames-Coromandel, Napier, Hastings, Rotorua, Palmerston North, New Plymouth, South Taranaki, Waikato and Dunedin. Key issues addressed through each of these planning processes include the role and need for councils to manage hazardous substances in their district

¹ Burton Planning Consultants Limited was acquired by 4Sight Consulting Limited in September 2018. 4Sight was subsequently acquired by SLR in September 2022.

plans; the relationship between the primary legislation managing the storage and use of hazardous substances (Hazardous Substances and New Organisms Act 1996 and the Health and Safety at Work Act 2015) and the RMA, and the threshold at which district plan controls on hazardous substances may be appropriate and necessary.

Thomas Trevilla

- 2.6 My full name is Thomas Gabriel Dela Cruz Trevilla. I have over five years of experience in the field of resource management planning. I hold the degree of Bachelor of Urban Planning (Honours) from the University of Auckland. I am an Intermediate Member of the New Zealand Planning Institute.
- 2.7 I am employed as a Senior Planner at SLR. I have been employed by SLR since October 2022. Prior to SLR, I was a Planning Assistant at Barker & Associates Limited from January 2019 to October 2020 and Planner at Babbage Consultants Limited from October 2020 to October 2022.
- 2.8 My principal role at SLR is to provide planning services with a particular focus on the industrial, commercial and infrastructure sectors (fuel, electricity, stormwater and telecommunications). This includes preparing or processing resource consent applications, providing consenting and policy advice, and preparing submissions, hearing statements and evidence. At SLR, I have provided planning services to private, commercial, council and infrastructure clients, including the Fuel Companies, both collectively and separately.
- 2.9 I have provided submissions and hearings services to the Fuel Companies on proposed plans or plan changes in the Far North, Whangārei, Auckland, Waitomo, Wairarapa (Masterton, Carterton and South Wairarapa), Napier and Timaru districts with a focus, among other topics, on hazardous substances.

3. CODE OF CONDUCT FOR EXPERT WITNESSES

- 3.1 We have read the Environment Court's Practice Note January 2023 as it relates to expert witnesses. Our brief of evidence is prepared in compliance with the Code of Conduct, and we agree to comply with it in appearing before the Hearings Panel. We are not, and will not behave as, advocates for our client. We are engaged by the Fuel Companies as independent experts and SLR provides planning services

to the Fuel Companies along with a range of other corporate, public agency and private sector clients. We have no other interest in the outcome of the proceedings.

- 3.2 We confirm that our evidence is within our area of expertise and that we have not omitted to consider material facts known to us that might alter or detract from our expressed opinion. We have not relied on the evidence or opinion of any other person in preparing our evidence.
- 3.3 We acknowledge that other planners of SLR are the reporting officers for the Kaipara District Council (“the Council”) on other hearing topics of the PDP and the Council has been made aware of this. In accordance with its standard processes, SLR is carefully managing any conflict of interest issues as they arise for specific topics at each hearing. SLR is not involved in the s 42A reporting and recommendations for this hearing. As such, we consider that there are no conflict of interest issues in relation to our evidence.

4. SCOPE OF EVIDENCE

- 4.1 This is a joint statement of evidence. We agree on the analyses, conclusions and recommendations of our evidence.
- 4.2 The Fuel Companies are submitter S311 and further submitter FS98 on the PDP. Our evidence relates to the Fuel Companies’ submissions on the PDP’s hazardous substances provisions, particularly in the context of activities at their retail fuel outlets in the District.
- 4.3 In preparing our evidence, we have reviewed the relevant parts of the following:
- (a) Hazardous Substances s 42A report² prepared by Sarah Horton (“the Reporting Officer”) on behalf of the Council, together with the supporting appendices;
 - (b) Notified version and supporting documents of the PDP, including the Hazardous Substances s 32 evaluation report;³
 - (c) Submission and further submission points made by the Fuel Companies and other submitters;

² Titled “Section 42A Report Hazardous Substances Prepared for the Proposed Kaipara District Plan” and dated 30 January 2026.

³ Titled “Section 32 Report Part 2 Hazardous Substances Prepared for the Proposed Kaipara District Plan” and dated 28 April 2025.

- (d) Kaipara District Plan (Operative 2013) (“the ODP”);
- (e) Regional Policy Statement for Northland (Operative 2016) (“the NRPS”);
- (f) Proposed Regional Plan for Northland (Operative in Part 2023) (“the NRP”);
- (g) Hazardous Substances and New Organisms Act 1996 (“the HSNO”) and associated regulations and codes of practice including: HSNOCOP 44 (Below ground stationary container systems for petroleum - design and installation); HSNOCOP 45 (Below ground stationary container systems for petroleum - operation); HSNOCOP 47 (Secondary containment systems);
- (h) Health and Safety at Work Act 2015, including the Health and Safety at Work (Hazardous Substances) Regulations 2017 (“the HSWA”);
- (i) Ministry for the Environment (2002) Land Use Planning Guide for Hazardous Facilities;
- (j) Ministry for the Environment (1998) Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand; and
- (k) Ministry for the Environment guidance on hazardous substances management under the RMA, revised in 2019, to include amendments under the Resource Legislation Amendment Act 2017 (“the RLAA”).

4.4 The Fuel Companies have accepted the Reporting Officer’s recommendations on their submission points relating to hazardous substances provisions that are not analysed by our evidence. These are addressed in the table in Appendix B. The Fuel Companies also made, and received, further submissions on the hazardous substances provisions. As these matters are not material to the scope or analysis of our evidence, they are not discussed. However, we note that the Fuel Companies support the intent of submissions that seek to ensure provisions are within the scope of the Council’s functions and are necessary, effective and efficient.

5. THE FUEL COMPANIES’ INTEREST IN THE DISTRICT AND HAZARDOUS SUBSTANCES PROVISIONS

5.1 The Fuel Companies receive, store and distribute refined petroleum products around New Zealand. In the Kaipara District, the Fuel Companies’ core business relates to retail fuel outlets including service stations and truck stops, as well as provision of fuel to third party commercial sites and airfields. The retail fuel activities include the storage and use of hazardous substances (petroleum fuels), vehicle

refuelling, including by way of electric charging, other vehicle services (air pump, car wash, etc.) and retail activities. Delivery of fuel to service stations and truck stops is undertaken by way of tanker trucks, which typically travel from the truck loading facility at Ruakaka adjacent to the Channel import terminal.

- 5.2 The Fuel Companies' networks are important to the social and economic success of the District. It is critical that the management of these networks is appropriately addressed in the PDP to ensure fuel supply for the District and beyond. The Fuel Companies' submission and further submission points seek to ensure that the hazardous substances provisions do not impose unreasonable restrictions on establishing, operating, or upgrading service stations, truck stops or other refuelling facilities.

6. THE FUEL COMPANIES' SUBMISSION AND RECOMMENDATIONS OF THE REPORTING OFFICER

- 6.1 The fundamental concerns of the Fuel Companies' submission are:
- (a) the low thresholds at which resource consent is required under the PDP for the storage and use of hazardous substances, particularly at retail service stations and truck stops;
 - (b) the lack of risk-based justification for the setting of resource consenting thresholds at the specific levels proposed or evidence that the controls proposed will address issues not already appropriately managed by HSNO and HSWA legislation;
 - (c) the approach and implications of linking the definition of Significant Hazardous Facilities ("SHF") to the permitted activity quantity thresholds set out in HS-S1 Hazardous substances permitted activity thresholds, rather than providing a stand-alone definition of the term SHF;
 - (d) the lack of clarity and certainty in the policy and rules framework generated by the inconsistent use of the terms SHF and hazardous facilities as well as the use of undefined terms such as "sensitive land use" and "sensitive environments";
 - (e) HS-R5's blanket requirement for resource consent for the storage and retail sale of fuels at service stations, irrespective of their scale or location; and

(f) the misalignment between the provisions and the approach taken in other post-RLAA district plans to managing hazardous substances.

6.2 The Fuel Companies' submission seeks to reorient the chapter to only manage hazardous facilities using or storing hazardous substances in substantial quantities and where additional land-use planning controls are warranted, over and above the management of hazardous substances risk and effects achieved by compliance with HSNO and HSWA legislation. The submission sought, *inter alia*:

(a) replacement of the SHF definition with one aligned to other new generation operative or proposed district plans (such as the Far North PDP), including an exclusion for underground petrol and diesel storage at service stations that comply with HSNOCOP 44 and HSNOCOP 45 (or updated WorkSafe guidance) [311.7];

(b) amendments to the chapter overview and objective and policy framework to focus only on the management of SHF [311.23–311.28]; and

(c) deletion of HS-R1, HS-R6, HS-S1, HS-MAT1 and HS-MAT2, with a request for a new suite of provisions that only manages SHF [311.29–311.34].

6.3 The Reporting Officer largely rejects the Fuel Companies' submission points and recommends instead that the overarching approach to management of hazardous substances is retained as notified. There are some recommended amendments to the definitions, overview and policies to clarify matters and refer to SHF only. Regarding the rules, the s 42A report recommends that HS-R1 is amended to permit hazardous substances associated with emergency services, and HS-R5 is amended to list the restricted discretionary activity requirements.

6.4 Our evidence focuses on HS-R5 and the Reporting Officer's recommendation to reject the Fuel Companies' submission.

7. ANALYSIS

Introduction

7.1 We oppose the Reporting Officer's recommendation. In forming our opinion, we turned our mind to these issues:

(a) the role of district plans in hazardous substances management;

(b) the proposed definition of "significant hazardous facility";

- (c) the management of hazardous substances at service stations; and
- (d) the PDP's treatment of hazardous substances at service stations.

7.2 The following analysis expresses our opinion and responds to these issues.

The role of district plans in managing hazardous substances

7.3 The Council's ss 32 and 42A reports, together with supporting documents, provide detailed analyses of the legislative framework for managing hazardous substances and the role of district plans post-RLAA. This includes discussions of the roles of the HSNO, HSWA and RMA, and concludes that councils maintain the ability and role in managing hazardous substances through their district plans. For example, in paras [19] and [71] of the s 42A report, the Reporting Officer recognises that the RLAA removed the function of councils to control the storage, use, disposal or transportation of hazardous substances. Specifically, para [19] reads:

As a result of [the HSNO and HSWA] many existing RMA controls on hazardous substances in the operative plan have potential to appear to duplicate those in place under the HSNO, and HSWA legislation. The hazardous substances provisions in the PDP propose to expressly remove any provisions from the Operative 2013 Kaipara District Plan where they do duplicate other regulations. The intent of the Hazardous Substances chapter in the PDP is to only place additional controls on hazardous substances if they are necessary to control effects under the RMA that are not covered by the HSNO and HSWA Acts.

7.4 In our opinion, there is no debate that councils retain broad powers under the RMA to manage hazardous substances through their plans and policy statements, in order to achieve the RMA's purpose and to carry out their function of integrated management of natural and physical resources within their region or district.

7.5 However, the issue is not only whether the Council has the ability to do so, but the extent to which it needs to. In any given circumstance, there remains a requirement to justify the basis for any intervention, particularly given that there is no explicit function relating to hazardous substances.

7.6 In this regard, the intent of statement in the s 42A report that the PDP seeks to avoid duplication of controls already addressed under HSNO and HSWA can be supported. In our opinion, however, there is a substantial disconnect between this stated intent and the regulatory provisions proposed.

- 7.7 As detailed in the Ministry for the Environment (“MfE”) guidance on the management of hazardous substances under the RMA (available on the Quality Planning website),⁴ the RLAA sent a clear message that councils should re-evaluate their current hazardous substances provisions to determine if they are necessary to deal with any potential environmental effects not covered by other legislation. Further, the guidance is clear that provisions that cannot be justified should be removed (refer to Appendix C for a copy of the MfE guidance with relevant excerpts highlighted (p.3)).
- 7.8 In contrast, the PDP’s provisions essentially roll over the existing activity threshold table contained in Appendix 25D of the ODP, while also introducing a default ‘controlled activity’ consent requirement for service stations in industrial and commercial areas where a permitted activity pathway is currently available under the ODP. We note that the ODP was drafted at a time when the council did have a specific function under s 31 to manage hazardous substances.
- 7.9 This, in our opinion, is contrary to the intent of RLAA and is not supported by empirical risk-based evidence or gap analysis to identify the thresholds at which additional RMA controls on hazardous facilities may be necessary and appropriate, over and above regulation of such facilities under HSNO and HSWA. Further, it will impose an additional layer of costs with no demonstrable environmental benefit.
- 7.10 Long-standing exemptions have been applied to the storage of petrol, diesel, and LPG at service stations in many district plans around the country, based on MfE’s Hazardous Facility Screening Procedure (“HFSP”) guidance. This includes the ODP, where the storage of up to 100,000 litres of petrol and 50,000 litres of diesel in underground tanks, as well as up to 6 tonnes of LPG, is specifically identified as a permitted activity in all business, commercial, and industrial zones.⁵ No risk-based evidence has been provided to demonstrate why an additional layer of regulation is now proposed for these activities in the PDP. This change is contrary to MfE guidance, which specifies that RMA controls on tanks already subject to HSNO regulations are generally not necessary.⁶
- 7.11 We accept that there is a role for councils in managing the risks associated with the use and storage of hazardous substances at Major Hazard Facilities (“MHF”). However, we do not agree that there is a need to manage all risks associated with hazardous substances storage through RMA land use controls, particularly where

⁴ <https://www.qualityplanning.org.nz/sites/default/files/2019-07/managing-hazardous-substances.pdf>.

⁵ ODP Rule 14.10.21.

⁶ Refer to MfE Guidance in Appendix C with relevant text highlighted in yellow on p.6.

compliance with HSNO and HSWA requirements ensures that risk is largely contained within the boundary of a site. Consistent with MfE guidance,⁷ we consider that, for petroleum products, the appropriate level of RMA intervention sits with MHF as defined in the MHF Regulations, where risk extends significantly beyond the site boundary. It does not sit at the level of service stations, where, consistent with the historic HFSP exemptions and numerous examples of existing service stations within residential environments, risk is adequately managed through compliance with HSNO and HSWA requirements.

- 7.12 Further, the Council has not demonstrated what value will be added through the consent processes required by the PDP's hazardous substances provisions, nor what types of consent conditions it expects to impose. In our experience, and that of our colleagues at SLR, consent conditions applied to service stations and truck stops in relation to hazardous substances management have simply required compliance with HSNO regulations and have provided no additional benefit in terms of managing risk or environmental effects.

The definition of “significant hazardous facility”

- 7.13 The Fuel Companies' submission [311.7] opposes the definition of “significant hazardous facility” (“SHF”) and sought to replace it with an alternative definition similar to that proposed in the Far North PDP, which would enable the removal of the threshold limits in HS-S1. The Reporting Officer recommends rejecting the submission point and retaining the SHF definition, with clarification by more explicitly linking it to the exceedance of HS-S1's permitted activity thresholds and highlighting SHF in the chapter overview. The Reporting Officer's amended SHF definition is below (insertions shown in **bold underline**):

*means a site where the aggregate quantity of any hazardous substances of any hazard classification on the site exceeds the quantity specified for the applicable zone in Standard HS-S1 **Hazardous substances permitted activity thresholds table** in the Hazardous Substances chapter of this plan.*

- 7.14 We have several concerns with the SHF definition, including that:
- (a) The mechanism of linking a definition to a permitted activity standard is contrary to planning best practice. Definitions are intended to provide clarity and support consistent plan interpretation and should describe an activity

⁷ Refer to MfE Guidance in Appendix C with relevant text highlighted in yellow on pp.7-8.

based on its characteristics rather than its activity status. Linking the definition to activity status undermines the ability to apply permitted activity standard in a coherent and predictable manner.

- (b) The definition would appear to apply to all service stations, as fuel storage volumes at such facilities will typically exceed the thresholds in HS-S1, and service stations are not excluded from the definition. This occurs despite HS-R5 establishing a specific pathway for fuel storage at service stations, which otherwise do not need to comply with HS-S1. Classifying service stations as SHF is not commensurate with the actual level of risk when these facilities operate in accordance with HSNO, HSWA and recognised industry best practice.
- (c) The approach conflates two distinct regulatory mechanisms: managing hazardous substances through quantitative thresholds, and the approach across post-RLAA district plans of managing only those activities classified as SHF or MHF. The terminology will create significant inconsistency across jurisdictional boundaries, and potentially elevated concern around the risk associated with activities, such as service stations, that are already tightly controlled by the HSNO and HSWA. For example, where a service station in the Far North or Whangarei Districts will be treated and managed as a service station, in the Kaipara District, the same service station would be classified as a SHF.

7.15 As outlined above, we consider that the thresholds set by HS-S1, together with the associated SHF definition, will result in many activities that use or store hazardous substances being required to obtain resource consent, despite the risks already being adequately managed and/or contained within site boundaries through compliance with HSNO and HSWA. We agree that district plans do have a role in managing risk and land-use compatibility issues for major hazard facilities, where hazardous substances are present in significantly larger quantities, such as those regulated under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016. For these types of facilities, it is appropriate for district plans to include a land use framework that manages both the encroachment of sensitive activities and the establishment or expansion of MHF.

- 7.16 In this regard, we consider the approach taken in all other post-RLAA district plans, which are helpfully identified and summarised in the Tompkins Wake legal advice,⁸ included as Appendix E to the s 42A report, provide a useful example. That is, each of these plans place controls on SHF or MHF only, where the definition of those terms focuses on specific land uses and exclude storage of petrol or diesel at service stations.
- 7.17 As such, we consider that further risk-based analysis and amendment to the hazardous substances provisions, including SHF definition, is necessary to ensure the focus is on managing risks associated with hazardous substance storage at much greater thresholds (e.g., the levels managed under the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016). One way of achieving this could be to adopt a “hazardous facility” definition that applies only to facilities that generate significant risk or adverse effects beyond the boundary of the site. For example, this could align with the definitions of SHF or MHF in post-RLAA district plans referenced in the Tompkins Wake legal advice. As seen in the approach taken by other district councils through their Schedule 1 RMA plan-making processes, the definition may need to be refined to reflect the relevant activities in the District.
- 7.18 The definition should also appropriately recognise that the risk associated with petrol storage is higher from a flammability perspective than diesel, and this distinction should be reflected in the applicable thresholds. Further, any definition should recognise that the risk associated with the storage of LPG in individual cylinders (e.g., a “swap-and-go” barbeque gas bottle facility) will be no greater than that associated with single-vessel storage, which is the limitation currently placed on LPG storage at service station sites by way of HS-R5.
- 7.19 On this basis, we support the adoption of the SHF definition requested in the Fuel Companies’ submission [311.7], as follows:

means the use of land and/or buildings (or any part of) for one or more of the following activities:

⁸ New Plymouth Part Operative District Plan (dated 29 August 2025); Proposed Waitomo District Plan – Appeals Version (dated 1 October 2025); Partially Operative Selwyn District Plan Appeals Version (dated 27 November 2023); Operative Porirua District Plan (dated 1 November 2025); Wellington City 2024 District Plan Appeals Version (dated 12 June 2025); Napier Proposed District Plan Decisions Version (dated 3 November 2025); Operative Hastings District Plan (dated 27 June 2024); Proposed Timaru District Plan (Dated 5 March 2024); Far North Proposed District Plan (Notified 27 July 2022).

- a. *Any Major Hazard Facility designated under the Health and Safety at work (Major Hazard Facilities) Regulations 2016;*
- b. *Manufacturing, including the associated storage, of hazardous substances (including agrichemicals, 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 (d) above does not include the underground storage at service stations and commercial refuelling facilities 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 (or more recent relevant WorkSafe guidance for underground fuel storage).

The management of hazardous substances at service stations

- 7.20 The design, construction and operation of service stations (including truck stops), and the management of hazardous substances on the site, are tightly controlled by a range of instruments, including:
- (a) the HSNO, HSWA, other associated regulations, and codes of practice;
 - (b) the Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand (MfE, 1998) which provides guidelines for

the design and implementation of oil and water interceptor systems, system maintenance, water quality monitoring and procedural management systems to support infrastructure; and

- (c) the site management plans for each site, which direct the procedures for general operations and maintenance, stormwater management, hazardous substances spill response and emergency response, as well as response to natural hazard incidents potentially affecting the site.

7.21 Some examples of controls relevant to the safety and resilience of hazardous substances storage at service stations include:

- (a) the location of storage tanks underground;
- (b) the requirement for new and replacement tanks to be double contained to reduce the risk of container failure; and
- (c) physical measures such as locating pumps on raised concrete islands with bollard protection and fitting nozzles with breakaway couplings that automatically cut off fuel supply in emergencies.

7.22 Additionally, in the context of natural hazard risks, we note that:

- (a) Regarding flood or coastal inundation risks, underground petroleum storage systems (“UPSSs”) are not generally at risk of damage. UPSSs can withstand inundation without liberating product, noting that, in many cases, the tanks sit partly below groundwater level under normal operating conditions. In any case, compliance with industry best practice would require the design of service stations to maintain their integrity and function during natural hazard events.
- (b) Regarding earthquake risks, the Christchurch earthquakes of September 2010 and February 2011 provide good examples of the resilience of service stations in maintaining their integrity and function during natural hazard events. It is significant to note that, while the UPSSs at several service stations were displaced by these earthquakes, there were no simultaneous compartment failures nor significant product losses. This again confirms the resilience of these structures when designed, installed and operated in accordance with HSNO regulations and industry standards.
- (c) Compliance with industry best practice would, in any case, require the design of facilities to maintain their integrity and function during natural

hazard events. In addition, service stations and truck stops do not attract large numbers of people at any one time, nor are they activities where people may be restricted from leaving the site in the event of a natural hazard emergency.

- 7.23 Overall, a suite of regulatory, design and operational controls already provide a comprehensive and effective framework for managing fuel storage at service stations. Additionally, the demonstrated resilience of these systems, including in significant natural hazard events, highlights that risks are well contained.

The PDP's treatment of hazardous substances at service stations

- 7.24 The PDP essentially rolls over the existing hazardous substances thresholds of ODP Appendix 25D into PDP HS-S1. Moreover, hazardous substances storage at service stations are singled out and subject to existing, and in some zones, new, consent requirements:

- (a) Under the ODP, at service stations in the Rural, Commercial and Industrial Zones, the storage and sale of up to 100,000 litres of petrol and 50,000 litres of diesel in underground storage tanks, and up to 6 tonnes of LPG in single vessel storage is permitted.⁹
- (b) Under the PDP, at service stations in the General Rural, Commercial and Industrial Zones, the storage and sale of any petrol, diesel and LPG is now a controlled, or, restricted discretionary activity if the thresholds are exceeded (which are the same as the ODP's permitted thresholds).¹⁰
- (c) Under the ODP, a service station in the Residential Zone is a discretionary activity.¹¹ The PDP maintains a consent requirement, being a restricted discretionary or discretionary activity, in the General Residential Zone and all other zones not already stated above.¹²

- 7.25 The Reporting Officer recommends that HS-R5 is retained subject to the addition of the restricted discretionary activity requirements. Responding to the Fuel Companies' [311.31] opposition to HS-R5 and their request for its deletion, the Reporting Officer states at paras [194]-[196] of the s 42A report:

⁹ ODP Rules 12.10.21 and 14.10.21. An exceedance of the quantities is a discretionary activity. It is also noted that the Māori Purpose Land and Treaty Settlement Land chapters contain similar rules.

¹⁰ PDP Rule HS-R5(1).

¹¹ ODP Rule 13.10.21.

¹² PDP Rule HS-R5(2).

194. [...] Fuel storage at service stations often involves quantities that exceed permitted thresholds and can generate significant off-site effects, including fire risk, explosion risk, and contamination of land and water. Fuel is classified as a flammable liquid under HSNO hazard classes. Large volumes stored at service stations create a higher potential for fire or explosion compared to ordinary activities. These risks are not fully addressed by workplace safety regulations because they focus on on-site management, not locational effects beyond the site boundary, cumulative effects, or proximity to sensitive activities.

195. Service stations are often located near sensitive activities such as residential areas, schools, childcare centres or commercial centers and this is reflected in the more stringent activity status for General residential zone, Rural lifestyle zone, Open space zone, Natural open space zone, Sport and active recreation zone, Māori purpose zone, and Hospital zone. In the event of an accident, the consequences could be severe for people and property nearby. HSNO and Health and Safety at Work regulations do not require consideration of cumulative effects, reverse sensitivity, or proximity to sensitive environments. The PDP fills this gap by requiring resource consent for all fuel retail storage. The PDP provisions ensure that these facilities are appropriately located and assessed for risk.

196. Given the risk from storing fuel on site, I consider it is appropriate that a resource consent is required for all volumes, with the activity status then reflecting the volume and the sensitivity of the surrounding environment. I note that the activity status for lesser volumes of fuel is controlled in the less sensitive zones, for which a resource consent must be granted.

- 7.26 The Reporting Officer considers that HS-R5 and its consenting requirements are appropriate simply based on the presence of a higher volume of fuel stored at service stations and where these sites might be in the District. In our view, this position overlooks the tightly controlled design and operational requirements of these sites, as analysed in this evidence. The Reporting Officer also does not explain how the risks of these hazardous substances at a service station site differ from other sites, such as industrial or commercial facilities, that require similar or larger quantities of hazardous substances, may store these substances in more exposed locations (e.g., above-ground) and may not be subject to the same level of controls that service stations adhere to.
- 7.27 We also note that the s 32 report does not discuss or provide any justification for HS-R5 and its specific service station controls. The Reporting Officer's s 32AA

further evaluation is limited to the clarification of the restricted discretionary activity requirements, being the only change they recommend.

7.28 Hence, we agree with the Fuel Companies' concerns over HS-R5 and consider the Council's rules and analyses:

- (a) demonstrate a lack of understanding of risk issues associated with hazardous substances storage at service stations and the level of regulation that applies to these activities outside the RMA;
- (b) disregards the historic and ongoing context in which these activities are, and have long been, managed in district plans around the country;
- (c) disregards the RLAA's intent to avoid unnecessary regulation of activities that are adequately managed through compliance with HSNO and HSW, including the direct advice of MfE¹³ that RMA controls on tanks for hazardous substance storage are generally not necessary and simply seeks to justify the roll-over of an approach adopted under the ODP rather than examine the need for additional RMA controls on hazardous substances storage and use and the thresholds at which a resource consent process for such activities will add value to the management of risk and environmental effects;
- (d) does not demonstrate why fuel storage at service stations should be subject to new consent requirements in the Commercial, Rural and Industrial Zones, where there is currently a permitted pathway under the ODP, a plan that became operative nearly 13 years ago, pre-RLAA;
- (e) does not justify why fuel storage at service stations should continue to be subject to consent requirements in Residential Zones (and other zones) as currently exists under the ODP; and
- (f) does not demonstrate why service stations should be singled out and treated differently from all other sites and activities, which are captured by HS-R1 to HS-R4 as permitted or restricted discretionary activities, even if those sites or activities may present greater risks due to the quantity, combination and management of hazardous substances and their proximity to "sensitive environments" (a term used in the chapter).

¹³ Refer to MfE Guidance in Appendix C with relevant text highlighted in yellow on p.6.

- 7.29 Lastly, the Council has not demonstrated what value will be added through the consenting process and what type of consent conditions they expect to impose. As noted above, our experience, and that of our colleagues at SLR, has been that consent conditions applied to service station and truck stop facilities regarding hazardous substances management have simply required compliance with HSNO regulations and provide no additional benefit in terms of risk management. We are not aware of any council imposing any substantive conditions on hazardous substances storage at service stations. We have also encountered instances where council draft conditions have been problematic due to requirements that are *ultra vires* or encroach on other regulatory authority functions, such as WorkSafe.
- 7.30 As such, we consider that HS-R5 is not appropriate as it is contrary to the RLAA's intent, and its consenting requirements will impose additional time and cost that is not supported by empirical risk-based evidence and analysis.
- 7.31 We note that the Fuel Companies' concern with the hazardous substances provisions include the departure from the approach adopted by almost all other post-RLAA district plans and the potential for the provisions to generate a precedent effect around the approach taken to managing hazardous substances in district plans, particularly at service station sites, and in the absence of a robust justification or evidence base.
- 7.32 These concerns are not driven by an intention to establish large numbers of new service stations in the District. Rather, the key focus is on ensuring the ability to undertake retanking works at existing service stations under the proposed framework. Retanking typically provides an opportunity to install larger tanks, which supports more efficient site operations, for example, by enabling a full tanker load to be delivered at once instead of requiring more frequent deliveries. It also allows outdated equipment to be replaced with modern systems and supports continued compliance with technical standards and best practice for hazardous substances management at service stations.

Summary and recommendations

- 7.33 Based on our analysis, we recommend the Panel reject the Council's proposal to roll-over the existing hazardous substances provisions from the ODP and instead directs the Council to develop a risk-based approach that focuses on managing risk associated with hazardous substances storage at much greater thresholds.

- 7.34 The other post-RLAA district plans referenced in the Council's own legal advice provide a useful example of the types of SHF and MHF where additional RMA controls of hazardous substances storage have been accepted as appropriate. Notably, all post-RLAA plans with legal effect that contain a definition of SHF or MHF exclude the underground storage of petrol or diesel at service stations from the definition, with the implication that no district plan rules apply.
- 7.35 This could be achieved by adopting the relief sought in the Fuel Companies' submission, including the following:
- (a) Delete the "hazardous facility" definition.
 - (b) Delete the "significant hazardous facility" definition and replace it with the definition requested in their submission.
 - (c) Amend the chapter overview to reflect the shift in focus proposed by the Fuel Companies to managing SHF, as per their requested definition, and delete the activity threshold table approach in HS-S1.
 - (d) Amend HS-P1 and HS-P2 to clearly focus on managing the effects of SHF only.
 - (e) Delete HS-R1 to HS-R5 and SH-S1, and introduce a rules framework similar to that adopted in other post-RLAA district plans, which:
 - (i) permit the storage, handling or use of hazardous substances below the thresholds set by the SHF definition;
 - (ii) provide for operation, maintenance and upgrade of existing SHF that does not increase the existing risk profile of the facility as a permitted activity;
 - (iii) provide for new SHF and expansion of existing SHF in Industrial Zones as a permitted activity;
 - (iv) provide for new SHF and expansion of existing SHF in all other zones as a discretionary activity;
 - (v) consider setting a more restrictive activity status for new SHF and expansion of existing SHF in close proximity to sensitive activities and environments, where these are appropriately defined and understood; and

- (vi) set a non-complying activity status for new SHF or expansion of existing SHF near National Grid Transmission Lines.

- 7.36 A marked up copy of the Hazardous Substances chapter overview and objectives and policies is included as Appendix D, setting out these changes. It is acknowledged that an appropriate rules framework should be developed with the input of the Council and other submitters. However, to provide an example of the types of provisions that we anticipate could address the concerns raised in the Fuel Companies' submission and this evidence, we have included a copy of the hazardous substances rules from both the Far North PDP and Operative Waikato District Plan in Appendix E.
- 7.37 If the Panel disagrees and considers it appropriate to roll-over the activity threshold table approach, as proposed by the Council, appropriate changes should be made to clearly exclude underground fuel storage at service stations and refuelling facilities from the provisions. The potential risks of below ground storage are considered to be adequately addressed by compliance with HSNO. We would support applying a threshold to above ground storage, which is frequently used at truck stops, and consider this would need to recognise that the potential risks associated with petrol storage, from a flammability perspective, are greater than those of diesel. Further, we consider any such definition or rule should recognise that LPG storage at service stations is frequently in the form of swap a bottle type facility, which is not recognised by a restriction to single vessel storage.
- 7.38 If the Panel is minded retaining the general rules framework of the chapter, whereby consent is triggered based on an exceedance of the thresholds, we consider the SHF definition should be deleted entirely, as it is inappropriate and unnecessary for the reasons set out above.
- 7.39 We recommend that:
- (a) The definition of "significant hazardous facility" is deleted.
 - (b) HS-R5 is deleted; and
 - (c) HS-R1 is amended as set out below. The Reporting Officer's recommended insertions are shown in underline and deletions in ~~strikethrough~~. Our additional recommended insertions are shown in **bold double underline** and deletions in **~~bold double strikethrough~~**.

[...]

1. Activity status: Permitted

Where:

- a. The aggregate quantity of any hazardous substance of any hazard classification on a site does not exceed the ~~quantity~~ applicable threshold specified for the ~~applicable~~ zone in the HS-S1 Hazardous substances permitted activity thresholds table in HS-S1; or
- b. The hazardous substances are at an emergency services facility or activity associated with emergency services; or
- c. The hazardous substances are petrol and diesel stored underground at service stations and commercial refuelling facilities; or
- d. The hazardous substances are petrol and diesel stored above-ground at service stations and commercial refuelling facilities with a maximum volume of 100,000L; or
- e. The hazardous substances are no more than 6 tonnes of LPG stored at service stations and commercial refuelling facilities.

7.40 We consider it appropriate that our recommended cl (1)(c) is based on the exclusion in the SHF definition requested by the Fuel Companies [311.7]. The wording of this clause also aligns with the Reporting Officer's recommended cl (1)(b). Hazardous substances at service stations and commercial refuelling facilities that are not permitted under cl (1)(c) are subject to cl (1)(a) and HS-S1.

7.41 Appendix A provides a further evaluation pursuant to s 32AA of the RMA. The evaluation concludes that our recommended amendments are the most efficient and effective option. As such, this option is the most appropriate option in accordance with s 32AA.

8. OTHER MATTERS

8.1 While not central to the analysis and recommendations in this evidence, we wish to highlight to the Panel some issues with the clarity and usability of the chapter:

- (a) The Reporting Officer's amendment to the chapter overview introduces the terms "residual land-use effects" and "residual effects", neither of which are defined in the PDP. It is unclear whether these terms are intended to carry the same meaning as "residual risks", which is used in the chapter.

- (b) The Reporting Officer has not addressed the Fuel Companies' concerns regarding the meaning of the terms "sensitive land use and infrastructure" and "sensitive environments" in HS-P1 and HS-P3. These terms are undefined and not used elsewhere in the PDP. By contrast, the term "sensitive activities" is used in the chapter and is defined by the PDP.

8.2 The Panel may wish to ask the Reporting Officer and Council to clarify the meaning of the above terms and consider whether further clarification and/or consistency should be provided for plan users.

Georgina McPherson and Thomas Trevilla

17 February 2026

- Appendices**
- Appendix A: Section 32AA further evaluation
 - Appendix B: Summary of the Fuel Companies' submission points, s 42A report recommendations and the Fuel Companies' position
 - Appendix C: Ministry for the Environment's guidance on managing hazardous substances
 - Appendix D: Compiled amendments to the Hazardous Substances chapter requested in the Fuel Companies' submission
 - Appendix E: Hazardous Substances chapters of the Proposed Far North District Plan and Operative Waikato District Plan

Appendix A

Section 32AA further evaluation

Section 32AA further evaluation: Recommendation to amend HS-R1 and delete HS-R5

Objective of the proposal

To provide a permitted activity pathway for the underground storage of petrol and diesel at service stations (and other commercial refuelling facilities) while ensuring that risks to human health, property, and the environment are appropriately managed.

Objective's alignment with ss 5-8 of the RMA

Section	Alignment
Purpose (s 5)	The objective aligns with the RMA's purpose by enabling the efficient installation, operation and maintenance of fuel systems at service stations that are subject to a range of controls and codes of practice to ensure that risks to human health, property and the environment are appropriately managed. A permitted pathway reduces unnecessary regulatory duplication, supports the operation of an essential service to communities and the economy, and is consistent with the sustainable management of natural and physical resources.
Matters of national importance (s 6)	There are no s 6 matters relevant to the objective.
Other matters (s 7)	There are no s 7 matters relevant to the objective.
Treaty of Waitangi (s 8)	The objective does not raise any issues with the principles of the Treaty of Waitangi.

Reasonably practicable options to achieve the objective

Description	Preference
Option 1 (status quo) Retain HS-R1 and HS-R5 as notified. Resource consent would be required for any underground storage of petrol and diesel at a service station in any zone.	Not preferred The notified rules are contrary to the RLAA's intent, and its consent requirements will impose additional time and cost that are not supported by empirical risk-based evidence and analysis.
Option 2 (delete HS-R5) Delete HS-R5 only. The underground storage of petrol and diesel would be subject to HS-R1 and HS-S1.	Not preferred While the activity would be subject to a permitted activity pathway, the typical quantities of petrol and diesel stored at service stations exceed the low thresholds of HS-S1, and restricted discretionary activity consent would still be required in any case.
Option 3 (delete HS-R5, amend HS-R1) Delete HS-R5 and amend HS-R1 to permit underground fuel storage at service stations that is in accordance with relevant HSNOCOPs or more recent relevant WorkSafe guidance.	Preferred It permits the underground storage and sale of petrol and diesel at service stations where the activity is in accordance with HSNOCOPs or WorkSafe guidance. This option will best achieve the objective.

Evaluation of the preferred option

	Costs	Benefits
Environmental	Some reduction in the Council's scope to assess hazardous substances activities under the RMA and, as with any activity, a risk of environmental effects will remain, however, such risks are managed by regulatory, design and operational controls.	The option facilitates timely installation, operation, and maintenance of underground fuel storage systems, supporting the replacement of older tanks with modern and safer tanks. Tank replacements also typically involve increased storage capacity, thereby reducing the amount of tanker deliveries.
Economic	No direct or indirect costs have been identified.	The option avoids unnecessary consenting delays and costs, thereby supporting the efficient operation of service stations. This contributes to broader economic benefits for local communities and businesses that rely on dependable fuel supply.
Social	No direct or indirect costs have been identified.	No direct or indirect benefits have been identified.
Cultural	No direct or indirect costs have been identified.	No direct or indirect benefits have been identified.
Economic growth	The option can support economic growth by reducing regulatory barriers to installing or upgrading underground fuel storage systems at service stations. Removing the need for resource consent in these circumstances shortens project timeframes and increases investment certainty for operators, while lower compliance costs improve the viability of refurbishment or expansion. More efficient upgrade processes also encourage the replacement of older infrastructure with modern, safer systems, strengthening the resilience of the fuel supply network which communities and businesses depend on.	
Employment opportunities	The option can contribute to employment opportunities by supporting the timely installation and upgrade works that require specialised contractors and personnel. Avoiding consenting delays helps maintain steady workflow for these sectors, and construction-related trades may also benefit. While the option does not necessarily create new employment sectors, it supports continued investment that can help sustain existing jobs associated with fuel infrastructure and service station operations.	
Uncertain or insufficient information	The design and operation of service stations, including underground fuel storage systems, are already subject to a comprehensive and well-established regulatory framework, and the potential effects of hazardous substances and their required management practices are well understood. The option is consistent with the approach taken in other new-generation district plans, where hazardous substances provisions focus on SHF and expressly exempt underground fuel storage at service stations in the same manner as proposed. The information available to support the option is sufficient.	

<p>Risk of acting or not acting</p>	<p>The primary risk of acting is reduced ability to undertake a site-specific assessment where localised environmental sensitivities may exist (e.g., high groundwater vulnerability). If not accompanied by appropriate exclusions or reliance on other relevant plan provisions, there is a risk that installations could proceed in unsuitable locations. This risk is addressed by the comprehensive technical controls within HSNOCOPs and WorkSafe guidance, which already manage the principal environmental and safety risks.</p> <p>The risk of not acting is the failure to introduce a permitted pathway can delay the upgrading of ageing fuel infrastructure because of the cost and delay associated with consents. This increases the potential of environmental contamination from older tanks that are not replaced. It also creates avoidable economic inefficiencies and regulatory duplication. The risk of not acting is greater, as it could lead to poorer environmental and economic outcomes over time.</p>
<p>Effectiveness</p>	<p>The option is effective because it directly targets the regulatory issue it seeks to address: the unnecessary duplication of environmental and safety assessment already undertaken under hazardous substances regulation. The permitted activity pathway reduces barriers to upgrading infrastructure while maintaining appropriate environmental safeguards. It is also flexible and future-proofed, as it references “the most recent relevant WorkSafe guidance,” allowing the standard to adapt to national regulatory updates without further plan changes.</p>
<p>Efficiency</p>	<p>The option is efficient because it reduces costs for operators and the Council by avoiding consent processes that provide minimal additional environmental benefit beyond existing regulatory requirements. It allocates regulatory effort to where it is most effective rather than duplicating processes under the RMA. This efficiency reduces delays, improves resource allocation within Council planning teams, and avoids unnecessary financial burden on operators.</p>

For the reasons set out above, Option 3 is the most efficient and effective option for achieving the objective of the proposal. As such, this option is the most appropriate option in accordance with s 32AA of the RMA.

Appendix B

Summary of the Fuel Companies' submission points, s 42A report recommendations and the Fuel Companies' position

Ref #	Provision	Submission Reason	Submission Position and Relief Sought (additions <u>underlined</u> and deletions strike through)	Officer Recommendation	Evidence Position
Definitions					
311.1	Cumulative Risk definition	Consistent with the Fuel Companies submission seeking the deletion of the definition of "hazardous facility" and the amendment to the definition on "Significant Hazardous Facility", the definition of "cumulative risk" (which is only referenced once in a hazardous substance policy) should be amended to only apply to significant hazardous facilities.	<p>Oppose in part Cumulative Risk definition.</p> <p>Amend the Risk definition as follows:</p> <p>Means in the context of hazardous substances, the risk posed by a <u>significant</u> hazardous facility added to or multiplied, or otherwise accumulated by risk from other <u>significant</u> hazardous facilities in the vicinity where risks of one facility can influence the risk of the other.</p>	Reject	
311.3	Hazardous Facility definition	<p>The Resource Legislation Amendment Act 2017 (RLAA) removed the explicit function of district and regional councils to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under sections 30 and 31 of the RMA. While councils do retain a broad power under the RMA to manage hazardous substances through their plans and policy statements to achieve the purpose of the RMA and to carry out the function of integrated management of natural and physical resources in their region/district, this should only be exercised where the potential environmental effects are not adequately addressed by other legislation, including by the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Health and Safety at Work Act 2015 (HSWA).</p> <p>HSNO and HSWA consider surrounding land uses generically, by including different clearances with respect to substances (HSNO) or surrounding land uses (HSWA). Most of these controls apply regardless of where that substance is stored or used and apply a precautionary approach which provides for an acceptable level of safety in most circumstances. Generally, the HSNO and HSWA controls are adequate to avoid, remedy or mitigate adverse environmental effects of hazardous substances. In particular circumstances, it may be appropriate that RMA controls are used. However, only where robust section 32 analysis is able to demonstrate that such controls are both necessary and efficient. The expectation is that controls on hazardous substances in RMA plans will be the exception rather than the norm.</p> <p>The provisions in the PDP essentially roll-over the existing permitted quantity thresholds contained in Appendix 25D of the Operative District Plan and apply controls to a broad range of facilities storing hazardous substances including service stations. No risk-based evidence is provided to demonstrate why there is a need to manage all risk associated with hazardous substances storage through RMA land-use controls, particularly where compliance with HSNO and HSWA requirements mean risk is largely contained within the boundary of a site. This is contrary to the intent of the MfE guidance¹⁴ produced in response to RLAA 2017, which is clear that hazardous substances provisions in district plans that are not necessary to deal with potential environmental</p>	<p>Oppose Hazardous Facility definition.</p> <p>Delete Hazardous Facility definition.</p>	Reject	

¹⁴ <https://www.qualityplanning.org.nz/sites/default/files/2019-07/managing-hazardous-substances.pdf>

		<p>effects not already covered by other legislation should be removed. Also, that RMA controls on tanks that are subject to HSNO regulations are generally not necessary.</p> <p>One area where the Fuel Companies recognise there is a potential land use planning gap is in relation to Major Hazard Facilities (as designated under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016) and the potential interface with adjoining land uses. This is because these facilities are usually of such a scale that even when managed in accordance with HSNO and HSWA requirements and industry best practice, residual risk will likely extend beyond the property boundary. In these situations, the acceptability of that residual risk in the context of surrounding land uses will be a relevant land use planning consideration.</p> <p>In some instances, councils adopt a broader definition of 'Significant Hazardous Facility' (SHF) which includes Major Hazard Facilities (see point below relating to SHF definition).</p> <p>Where effects from a SHF are not fully addressed by compliance with HSNO and HSWA, measures such as location specific risk overlays or separation distances (using risk contours based on a risk analysis) may be appropriate. Depending on the risk, it may be appropriate to consider land use restrictions on land in the vicinity of a SHF to enable the SHF to carry out operations, including maintenance and upgrades, without being unreasonably constrained by encroachment of sensitive activities.</p> <p>In light of the RLAA and controls under other legislation, district plan hazardous substance controls are largely considered to be unnecessary in most circumstances, unless intervention is clearly justified by robust section 32 analysis. This level of analysis has not been undertaken by the Council's section 32 evaluation report. There is no justification for the 'hazardous facility' definition or for the level of intervention and restriction that appears in the hazardous substances chapter of the PDP, i.e. where the storage and use of hazardous substances is below the threshold applied to a SHF.</p> <p>Refer to other Fuel Companies submission points on the SHF definition and provisions in the hazardous substances chapter.</p>			
311.4	Hazardous Substance definition	The Fuel Companies support that the definition of Hazardous Substance is the same as that in Section 2 of the RMA.	<p>Support Hazardous Substance definition as notified.</p> <p>Retain Hazardous Substance definition as notified.</p>	Accept in part	
311.7	Significant Hazardous Facility definition	<p>Refer to detailed comments in relation to the submission on the definition for hazardous facility.</p> <p>The Fuel Companies oppose the table contained in HS-S1 and the reliance on this table within the definition for Significant Hazardous Facilities (SHF). A definition is to provide clarity and to ensure consistent application across a District Plan, e.g. the type of buildings or activities that constitute a SHF, and in general, any thresholds should be stated in rules and standards, and not the definition.</p> <p>As notified, the definition would capture all service stations by virtue of the HS-S1 table, and in combination with the restrictive rule regime within the hazardous substances chapter, presents a major concern to the Fuel Companies in terms of the development and operation of service</p>	<p>Oppose Significant Hazardous Facility definition.</p> <p>Delete Significant Hazardous Facility definition and replace as follows: means a site where the aggregate quantity of any hazardous substance of any hazard classification on the site exceeds the quantity specified for</p>	Reject	

		<p>stations. The Fuel Companies do not consider that such an approach has been justified, particularly in light of the RLAA 2017 and removal of the explicit function of councils to control the storage, use, disposal or transportation of hazardous substances under sections 30 and 31 of the RMA.</p> <p>While the Fuel Companies generally support the PDP to include a definition for SHF, it is considered that the current proposed definition is flawed. In addition, the rules in the hazardous substances chapter are not specific to SHF's. This requires a rethink to the SHF definition and its application through the hazardous substance chapters and other parts of the PDP to ensure that it is the most efficient or effective way of controlling Hazardous Substances in the District. The Fuel Companies consider that if their suggested definition of SHF and associated proposed hazardous substances rule framework is adopted, then the threshold limits in HS-S1 would no longer be necessary, and would result in a more efficient and effective way to appropriately manage the risk associated with locating SHF within sensitive environments. To achieve this outcome, the Fuel Companies suggest that a definition similar to that proposed by Far North District Council could be adopted in conjunction with the other changes sought by the Fuel Companies to the Hazardous Substances chapter. This would prevent duplication with other legislation and make the definition and associated provisions more efficient and effective for Plan Users.</p> <p>Refer also to the Fuel Companies submissions on the hazardous substances chapter.</p>	<p>the applicable zone in Standard HS-S1 in the Hazardous Substances chapter of this plan.</p> <p><u>means the use of land and/or buildings (or any part of) for one or more of the following activities:</u></p> <ul style="list-style-type: none"> a) <u>Any Major Hazard Facility designated under the Health and Safety at work (Major Hazard Facilities) Regulations 2016;</u> b) <u>Manufacturing, including the associated storage, of hazardous substances (including agrichemicals, fertilisers, acids/alkalis or paints);</u> c) <u>Petroleum exploration and petroleum production facility;</u> d) <u>The storage/use of more than 100,000L of petrol or diesel;</u> e) <u>The storage/use of more than 6 tonnes of LPG;</u> f) <u>Galvanising plants;</u> g) <u>Electroplating and metal treatment;</u> h) <u>Tanneries;</u> i) <u>Timber treatment;</u> j) <u>Freezing works and rendering plants;</u> k) <u>Wastewater treatment plants;</u> l) <u>Metal smelting and refining (including battery refining or recycling);</u> m) <u>Milk processing plants; or</u> n) <u>Polymer foam manufacturing.</u> <p><u>The storage of petrol and diesel in (d) above does not include the underground storage at service stations and commercial refuelling facilities 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 (or more recent relevant WorkSafe guidance for underground fuel storage.)</u></p>		
Hazardous Substances					
311.23	Hazardous Substances overview	<p>Refer to detailed submission reasons provided for the deletion of the definition on "hazardous facility" and the amendment to the definition on "Significant Hazardous Facility" (SHF).</p> <p>The Resource Legislation Amendment Act 2017 (RLAA) removed the explicit function of district and regional councils to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under sections 30 and 31 of the RMA. The Fuel Companies consider the chapter overview needs to better reflect the functions of Council under the RMA and the need to avoid duplication of controls under the HSNO and HSWA legislation, and to refocus the chapter towards controlling the risks associated with SHF. These matters are reflected in the changes/deletions to the 1st and 2nd paragraphs.</p> <p>The 3rd and 4th paragraph both deal with the risks associated with hazardous substances. The 4th paragraph relates to the location of the hazardous substances activities and uses an example that implies that such activities are at greater risk in areas subject to natural hazards. This</p>	<p>Oppose Hazardous Substances overview.</p> <p>Amend Hazardous Substances overview as follows:</p> <p>Hazardous substances include explosives, pesticides, industrial chemicals, paints, fertilisers and petrol, household cleaners, cosmetics and many other substances. Hazardous Substances are regulated under the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Health and Safety at Work Act 2015 (HSWA). The district plan has the supporting role of controlling the land use activities including man-made hazards of a chemical nature; <u>provided these do not duplicate controls in HSNO, HSWA or other legislation.</u></p> <p>Land use activities controls involving hazardous substances have the potential to result in an increased risk of adverse environmental effects to those members of the public who could be exposed to the substances,</p>	Accept in part	

		<p>inference is opposed by the Fuel Companies as their hazardous substances activities are generally resilient to the risks of natural hazards. For example, underground fuel storage systems are unaffected by the effects of flooding, and in many instances are situated in or below the watertable where they are inundated on a daily basis. The 3rd paragraph already comments on the location of the environment that is affected. The 4th paragraph is also unnecessary as the objectives, policies and rules of the chapter are not specific to the location of the activity.</p> <p>Changes are proposed to the 5th paragraph to reflect the Fuel Companies proposed shift in focus to SHF and address reverse sensitivity effects. The paragraph, as notified, also relates to adverse effects in relation to 'areas' of natural hazards, and it is considered that this should be changed to the adverse effects in relation to the 'risks' of natural hazards.</p> <p>The final paragraph is considered unnecessary and addressed by the other changes proposed to the chapter overview.</p>	<p>and the surrounding environment may be necessary to manage the risks associated with Significant Hazardous Facilities and their potential impacts on other sensitive activities, incompatible land uses and the environment.</p> <p>Risks are influenced by the nature of the hazardous substances, the quantity of the substances, the effects the substance may have, the likelihood of an event occurring and which parts of the environment may be affected. An event may be an accidental release, spill, unintended chemical reaction, fire or explosion.</p> <p>Risks are influenced by the location of an activity and the surrounding environment. For example, hazardous facilities located in areas subject to natural hazards may be exposed to greater risks of damage or failure resulting in an event involving a hazardous substance.</p> <p>The provisions of this chapter acknowledge the benefits of hazardous substances, while aiming to minimise the adverse effects of hazardous substances Significant Hazardous Facilities in relation to sensitive activities (i.e. residential activities, schools, places of assembly) and sensitive environments (i.e. wetlands, waterways), areas of identified the risks of natural hazards and cumulative effects where multiple hazardous facilities are located within proximity to each other. It also seeks to minimise reverse sensitivity effects on Significant Hazardous Facilities. Hazardous substances stored or used in identified natural hazards areas are separately addressed in the Natural Hazards chapter.</p> <p>The rules control quantities of defined hazardous substances classes that are significant enough to potentially pose a significant risk to public safety and the environment with respect to the various zones across the Kaipara District. The sites where such activities take place are defined as significant hazardous facilities. These provisions assist other legislation in the management of hazardous substances in significant quantities, taking location into account.</p>		
311.24	HS-O1	The objective relating to the risk and benefits of hazardous substances use, storage, transport and disposal is supported by the Fuel Companies.	<p>Support</p> <p>Retain HS-O1 as notified.</p>	Accept in part	Agree
311.25	HS-O2	The Fuel Companies support the objective to ensure that existing activities using, storing or disposing of hazardous substances are not compromised by new sensitive activities.	<p>Support</p> <p>Retain HS-O2 as notified.</p>	Accept in part	Agree
311.26	HS-P1	<p>Refer to detailed submission reasons provided for the deletion of the definition of "hazardous facility" and the amendment to the definition of "Significant Hazardous Facility" (SHF). Refer also to the submission reasons above on the hazardous substances chapter overview.</p> <p>The Fuel Companies support the general intent of the policy but consider that it should be refocussed on the risks associated with SHF.</p> <p>The Fuel Companies support the general intent of clause 1 that a SHF is to be separated from incompatible activities, but are concerned that the phrase "sensitive land use and infrastructure, and sensitive environments" is ambiguous and could lead to situations where a SHF is unreasonably restricted in its location. The problems with the phrase include:</p>	<p>Support in part</p> <p>Amend HS-P1 as follows</p> <p>Significant hazardous facilities</p> <p>Significant Hazardous facilities must minimise the risk to the environment (including people and property) by:</p> <ol style="list-style-type: none"> 1. Siting new significant hazardous facilities in appropriate locations that are separated from incompatible activities, such as including sensitive activities land use and infrastructure, and sensitive environments; 	Accept in part	

		<ul style="list-style-type: none"> - “Sensitive land use” is an undefined term (cf. term “sensitive activities”); - In reference to “infrastructure” it is unclear if this is intended to mean all infrastructure or “sensitive infrastructure”. The latter is undefined, but in either case, infrastructure is not a sensitive activity such that it would be incompatible with a SHF. - Reference to “sensitive environments” is also undefined. It is assumed that a sensitive environment could mean, for example, a wetland, but a wetland environment is not an “incompatible activity”. <p>It will not be possible, in most situations, to contain the adverse effects of an accidental event within the boundaries of a site. This will be the case for an incident at any facility whether or not hazardous substances are stored at the site. For example, a fire at any commercial building will have the potential to generate off-site effects such as smoke, escalation of the event to nearby property and contaminated runoff. The relevant issue is that the risks associated with a SHF are appropriately managed taking into the nature of substances stored and the sensitivity of the surrounding environment.</p>	<p>2. Designing, constructing and operating <u>significant</u> hazardous facilities in a manner that <u>avoids or adequately mitigates</u> ensures the adverse effects, <u>including risks, to people, property and the environment</u> of the operation or an accidental event involving hazardous substances can be contained within the site; and</p> <p>Disposing hazardous wastes to authorised disposal or treatment facilities that have appropriate management systems in place and avoiding the storage, processing or disposal of hazardous wastes in sensitive environments.</p>		
311.27	HS-P2	<p>The Fuel Companies are concerned that the policy is vague and ambiguous, for example, reference to “significant quantities” of hazardous substances and the point at which an identification and assessment of the risks are necessary. The Fuel Companies consider that Policy HS-P2 should be refocused on the risks associated with SHF, similar to the reasons above on HS-P1, as well as the new definition submitted by the Fuel Companies for SHF. This approach is considered to be clearer as to when an activity involving the use, storage or disposal of hazardous substance is a SHF, for which an identification and assessment of the risks will need to be undertaken, and without needing to rely on complex hazardous substances quantity thresholds set out in Standard HS-S1.</p> <p>In addition, hazardous substances quantity thresholds in HS-S1 appear likely to duplicate the controls that already apply to the storage and management of these substances under the Health & Safety at Work regulations. No justification has been provided to demonstrate the need for these matters to be controlled through the PDP.</p>	<p>Oppose</p> <p>Amend HS-P2 as follows: Ensure <u>Significant Hazardous Facilities for the use, storage or disposal of hazardous substances in significant quantities</u> identify and assess potential adverse effects (including cumulative risk and potential effects of identified natural hazards) to prevent unacceptable levels of risk to human health, safety, property and the natural environment.</p>	Reject	
311.28	HS-P3	<p>The Fuel Companies support the inclusion of a policy that recognises the potential for reverse sensitivity effects in relation to lawfully established significant hazardous facilities and directly supports objectives HS-O2. A minor terminology change is required to match the definition for “sensitive activities”.</p>	<p>Support</p> <p>Amend HAZS-P3 as follows: Avoid as far as practicable reverse sensitivity effects from sensitive land use activities on lawfully-established significant hazardous facilities.</p>	Reject	
311.29	HS-R1	<p>For the reasons noted on policy HS-P2 and standard HS-S1, the rule permitting hazardous substance use, storage and disposal, subject to the hazardous substances quantity thresholds in HS-S1, is opposed. This duplicates the controls through the Health & Safety at Work regulations and the reasons for this duplication have not been justified through the Council’s s32 analysis.</p> <p>The Fuel Companies consider that the Hazardous Substances chapter should only seek to manage Significant Hazardous Facilities where there</p>	<p>Oppose</p> <p>Delete HS-R1.</p>	Reject	

		are potential risks beyond the boundaries of a site, and therefore, HS-R1 should be deleted.			
311.30	HS-R4	As detailed in the Fuel Companies' other submission points on the hazardous substances' provisions, the approach proposed to the management of hazardous substances as a whole is opposed.	Oppose Delete Rule HS-R4.	Reject	
311.31	HS-R5	<p>Refer to detailed submission reasons provided for the deletion of the definition on "hazardous facility" and the amendment to the definition on "Significant Hazardous Facility" (SHF). Refer also to the submission reasons above on the hazardous substances chapter overview.</p> <p>Within the hazardous substances chapter, service stations is the only hazardous substance activity that is specifically listed as needing a resource consent. In all other circumstances, hazardous substances exceeding the thresholds in HS-S1 fall under the generic restricted discretionary Rule HS-R1.2. In light of the Resource Legislation Amendment Act 2017 (RLAA) and Health & Safety at Work regulations, the proposed rule framework applying to service stations is not risk based and has not been justified through the Council's s32 analysis.</p> <p>The approach in the hazardous substances chapter is inconsistent with the majority of other district plans (or proposed plans) across NZ that have been notified/developed since the RLAA. In the Northland region, the Whangarei District Plan has a hazardous substances chapter but no rules (as developed through PC 91 – hazardous substances, operative October 2023), while in the Far North Proposed District Plan the hazardous substances chapter seeks to manage only SHF's.</p> <p>Under rule HS-R5, all services stations would require a resource consent, as a controlled or restricted discretionary activity, subject to the volume of underground fuel stage in General Rural, Commercial and Industrial Zones, and a restricted discretionary activity in all other zones.</p> <p>The Fuel Companies oppose the control of underground storage of fuel for retail sale within a service station, as not being risk based and the restrictive approach has not been justified through a robust section 32 analysis. The retail petroleum industry has shifted towards larger underground storage volumes to increase efficiencies, enabled by large capacity, modern double-skinned fibreglass tanks. The petroleum industry is required to comply with Health and Safety at Work Act legislation and regulations, and these are considered to be sufficient to manage on and off-site risk for most hazardous storage and use activities, including the underground storage of fuel at service stations. It is therefore, not considered effective, efficient or appropriate to require resource consent for storage and use of these products which are already well controlled and are not known to generate issues that specifically require control under the RMA.</p> <p>The Fuel Companies seek that the HS-R5 is deleted. The Fuel Companies consider that the rule framework should apply specifically to SHF's, subject to the SHF definition being amended, as sought by the Fuel Companies (refer to amended definition on "Significant Hazardous Facility"), which would exclude the underground storage of petrol and diesel at service stations and commercial refuelling facilities undertaken</p>	Oppose (1) Delete HS-R5 AND (2) Add a new suite of rules for Significant Hazardous Facilities, subject to the zone or overlay in which it occurs.	Reject	

		<p>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.</p> <p>Any rules relating to SHF's to replace rule HS-R1, HS-R4 and HS-R5 may be similar to those in the Far North Proposed District Plan, including a permissive rule for the maintenance and repair of an existing SHF, or a new SHF in an industrial zone, and restrictive rule for SHF in other zones or overlays.</p>			
311.32	HS-MAT1	<p>Refer to reasons given in the submission points for the deletion of the definition on "hazardous facility", the amendment to the definition on "Significant Hazardous Facility" (SHF), the other submissions of the Fuel Companies on the provisions of the hazardous substances chapter.</p> <p>The matters of discretion HS-MAT1 and HS-MAT2 are generally opposed as many of the clauses relate to facility design and management matters that are already addressed by way of compliance with HSNO and HSWA.</p> <p>HS-MAT1.c. infers a requirement for hazardous facilities to have an operational or functional need to be in the location proposed. That may be relevant in some limited circumstances, but not all and will not necessarily be related to the acceptability of risk.</p> <p>HS-MAT2.b. seeks to control hazardous substances transport routes. The transport of hazardous substances is tightly controlled by the HSNO Act and the Land Transport Act and there is no need for further regulation under the PDP.</p> <p>Should a 'restricted discretionary' activity status remain following the development of a new set of rules (per the Fuel Companies broader submission points on the hazardous substances provisions) the matters of discretion should also be redrafted accordingly.</p>	<p>Oppose in part</p> <p>Delete HS-MAT1 and HS-MAT2 and redraft as appropriate to the new suite of significant hazardous facility rules sought in the Fuel Companies broader submissions on the hazardous substances' provisions.</p>	Reject	
311.33	HS-MAT2	Same as the HS-MAT1 submission.	Same as the HS-MAT1 submission.	Reject	
311.34	HS-S1	<p>Consistent with the reasons given by the Fuel Companies in relation to the definition for "Significant Hazardous Facility" (SHF), and the above provisions HS-P2, HS-R1 and HS-R5, the hazardous substances quantity thresholds in HS-S1 are opposed as they duplicate the controls through the Health & Safety at Work regulations. HS-S1 is essentially a rollover of the Operative District Plan, and the continuation of this approach has not been justified through the Council's section 32 analysis as the most efficient or effective way of controlling Hazardous Substances in the District. The Fuel Companies consider that if their suggested definition of Significant Hazardous Facility and associated proposed rule framework is adopted, HS-S1 would no longer be necessary.</p> <p>The Fuel Companies' proposed approach still achieves the intent sought by the Council but in a more efficient and effective way that appropriately manages risk associated with the establishment of SHF's in the District.</p>	<p>Oppose</p> <p>(1) Delete HS-S1 AND (2) Amend Significant Hazardous Facility definition as requested in the submission.</p>	Reject	

Appendix C

Ministry for the Environment's guidance on managing hazardous substances

2019

Plan Topics

Hazardous Substances under the RMA

This guidance has been revised to include changes to the RMA as a result of the Resource Legislation Amendment Act 2017 (RLAA17). The changes relating to hazardous substances came into effect on 19 April 2017. For more information about the amendments refer to the RLAA17 - Fact Sheets on the [Ministry's website](#). Fact sheet 2 addresses changes in relation to hazardous substances.

Introduction

Hazardous substances have the potential to benefit New Zealand's communities, the environment and the economy. They are found in our homes, at work, businesses, industry, horticulture and agriculture. However, hazardous substances can have adverse effects on the environment, including people and communities, if not managed appropriately.

This guidance note is intended to help RMA practitioners understand the role of the Resource Management Act 1991 (RMA) in relation to hazardous substances. To do so it is necessary to understand the roles of the Hazardous Substances and New Organisms Act 1996 (HSNO Act) and the Health and Safety at Work Act 2015 (HSW Act).

Historically, due to an explicit requirement in the RMA for councils to control the adverse effects of the storage, use, transportation and disposal of hazardous substances, RMA plans have contained controls on hazardous substances, including in relation to the nature of the hazardous substances themselves. For example, many RMA plans contained (and many still contain) a threshold approach (volume triggers) or the use of the Hazardous Facility Screening Procedure (HFSP), to determine whether resource consent is required for the use, storage, disposal or transportation of a particular hazardous substance. However, these approaches often duplicate the HSNO Act and/or the HSW Act controls. These approaches also generally fail to recognise that the storage, use and handling of hazardous substances is usually a subset of the risks and effects associated with an activity and the extent to which these are typically addressed by zoning provisions in the first instance.

The Resource Legislation Amendment Act 2017 (RLAA) removed the explicit function of regional and territorial authorities under section 30 and 31 to control the adverse effects of the storage, use, disposal and transportation of hazardous substances to ensure RMA controls do not duplicate controls in the HSNO Act and HSW Act. RLAA also introduced a procedural principle to ensure that council plans and policy statements include only matters relevant to the purpose of the RMA (ss18A). While councils do retain a broad power under the RMA to manage hazardous substances through their plans and policy statements to achieve the purpose of the RMA and to carry out the function of integrated management of natural and physical resources in their region/district, this should only be exercised where the potential environmental effects are not adequately addressed by other legislation.

In most cases, the HSNO Act and the HSW Act controls are adequate to avoid, remedy or mitigate adverse environmental effects of hazardous substances. However, in particular circumstances it may be appropriate that RMA controls are used, subject to robust s32 analysis to ensure that such controls are effective and efficient (refer to *Areas where RMA controls may be necessary*). The expectation is that controls on hazardous substances in RMA plans will be the exception rather than the norm.

The RLAA sent a clear message that councils should re-evaluate their current hazardous substances provisions to determine if they are necessary to deal with any potential environmental effects not covered by other legislation. Provisions that cannot be justified should be removed.

Despite controls under relevant legislation there will always remain a risk of loss of containment of hazardous substances. Legislation such as the HSNO Act and HSW Act is designed to address risk. Where hazardous substances are split into the environment councils can consider the appropriateness of enforcement action under the RMA. Section 17 of the RMA also states that every person carrying out an activity has a duty to avoid, remedy, or mitigate any adverse effects on the environment, whether or not an activity has resource consent or is permitted by a rule in a plan. This provision provides a 'back stop' where there are unanticipated effects arising from the use of hazardous substances. Even if permitted by a rule or a resource consent, actions can be taken against persons that use hazardous substances where this is resulting in adverse effects on the environment. Regional councils may also need to manage any residual contaminants within the environment in accordance with their functions of managing contaminated land and/or discharges, rather than to the management of hazardous substances per se.

Understanding how hazardous substances are managed

Hazardous Activities/Facilities

The term 'hazardous activity (or facility)' is not defined in the HSNO Act, the HSW Act or the RMA. However, the term has commonly been used in district and regional plans to refer to activities that involve the use, storage, manufacturing and disposal of hazardous substances. However, there is wide variation on what is included as a hazardous facility in Plans. For example, RMA have included the following as hazard activities/facilities:

- Industrial operations such as chemical warehouses, manufacturing plants or bulk storage facilities;
- Engineering businesses;
- Transport operations;
- Food production and processing facilities;
- Manufacturing plants of household appliances, industrial machinery or other products;
- Small workshops;
- Agricultural or horticultural activities;
- Activities associated with oil or gas production or storage; and
- Structures such as pipelines used for the transfer of hazardous substances like gas, oil and fuel.

If councils manage certain aspects of hazardous substances at a hazardous facility and councils plan to use the term 'hazardous facility (or activity)', it is important to understand how it is defined and the scope of activities it may capture. Being clear on the definition and scope of the term will help to ensure that a range of other activities involving the use of hazardous substances are not accidentally captured.

Hazardous Substances and New Organisms Act 1996 (HSNO Act)

The HSNO Act is the primary legislation designed to manage hazardous substances across their life cycle (import/manufacture, classification, packaging, transport, storage, use and disposal). The purpose of the HSNO Act as set out in section 4 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'*.

The HSNO Act is administered by the Ministry for the Environment, and implemented and enforced by the [Environmental Protection Authority](#) (EPA), which regulates the introduction and use of any hazardous substances, and also enforces any hazardous substance controls.

Every hazardous substance must have an approval under the HSNO Act. It is an offence to knowingly use, import or manufacture hazardous substances in contravention of the HSNO Act. The EPA oversees applications made under the HSNO Act to import and manufacture hazardous substances. The EPA assesses the risks to people and the environment of each hazardous substance and decides whether they should be approved for use in New Zealand. The EPA also determines what controls should be in place for approved substances to ensure any risks to people and the environment are mitigated (such as in relation to labelling, packaging, safety data sheets, content of the hazardous substances, ecotoxic and human health controls, and their disposal). The EPA is also an enforcement agency with respect to these controls and is responsible for ensuring that importers and manufacturers comply with them. The controls under the HSNO Act are substance specific and are based on the particular hazardous properties of the substance. The controls apply anywhere, anytime to a given substance classified as hazardous and do not take into account the sensitivity of the receiving environment. T

There are over 100,000 different types of hazardous substances approved for use in New Zealand ranging from explosives, pesticides, industrial chemicals, paints, fertilisers and petroleum products to household cleaners and cosmetics.

A substance is only classed as hazardous for the purposes of the HSNO Act if it meets the threshold for determining whether a substance has any one of the intrinsic hazardous properties. A threshold is the amount or concentration of a substance that is likely to cause an adverse effect on people or the environment. It is a trigger level for an effect that may require controls on the substance to meet the purpose of the HSNO Act. The thresholds for the HSNO Act hazardous properties are set out in Schedules 1 to 6 of the Hazardous Substances (Minimum Degrees of Hazard) Notice 2017. Clause 4 of the Notice states that a substance is not hazardous for the purposes of the HSNO Act unless data indicates it meets the minimum degrees of hazard for at least one of the intrinsic hazardous substance properties specified. The intrinsic properties are given classifications i.e. explosives are designated as Class 1 substances and flammable substances are classes 2 to 4. Details of these classifications can be found [here](#).

Health and Safety at Work Act 2015 (The HSW Act)

The HSW Act gives [Worksafe New Zealand](#) the responsibility for establishing workplace controls for hazardous substances, and is the principal enforcement and guidance agency in workplaces. The main purpose of the HSW Act is to provide for a balanced framework to secure the health and safety of workers and workplaces. This legislation is supported by a range of other regulation and guidance. See the [Health and Safety at Work Act 2015](#) for more detail.

WorkSafe's functions include monitoring and enforcing compliance with work health and safety legislation, and providing guidance, advice and information. WorkSafe enforces controls for environmental hazards and disposal requirements for all hazardous substances in the workplace.

WorkSafe also enforces the [Health and Safety at Work \(Hazardous Substances\) Regulations 2017](#) (HSW HS Regulations), and the [Health and Safety at Work \(Major Hazardous Facilities\) Regulations 2016](#) (MHF Regulations) under the HSW Act.

The HSW HS Regulations apply to the 'downstream' manufacture, use, handling and storage of hazardous substances in the workplace. WorkSafe's role also includes providing guidance, managing the compliance certification regime, and developing [safe work instruments](#) to set more detailed and technical rules for hazardous substances.

The MHF Regulations which came into force on 4 April 2016, mandate specific duties relating to process safety for existing and potential Major Hazardous Facilities (MHF).

MHF are defined under regulation 19 and 20 of the MHF Regulations as "*workplaces that have significant inherent hazards due to the storage and use of large quantities of specified hazardous substances.*" Failure to control risks associated with these facilities could result in catastrophic consequences.

For further information relation to Major Hazard Facilities in relation to the MHF Regulations, refer to the Worksafe website: <https://worksafe.govt.nz/topic-and-industry/major-hazard-facilities/>. For further information relation to MHF in the resource management context refer to *Where land uses are incompatible* below.

Substances not controlled by the HSNO Act, the HSW Act or associated Regulations:

Food - Food additives are regulated under the HSNO Act before they are incorporated into food. Food is covered by food standards and the [Food Act 2014](#)

Medicines - In finished dose form. Medicines are covered by the [Medicines Act 1981](#)

Hazardous biological substances - Infectious material includes material containing micro-organisms (unless the micro-organisms are new to New Zealand).

Radioactive substances - radioactive substances are covered by the [Radiation Safety Act 2016](#)

Ozone depleting substances - the impact on the ozone layer by ozone depleting substances and their phase out are covered by [the Ozone Layer Protection Act 1996](#). Note that any other hazardous aspects of ozone depleting substances are controlled by the HSNO Act.

Areas where RMA controls are generally not necessary:

Use of 1080 - The aerial application of 1080 is regulated under HSNO and its application is specifically allowed for under the Resource Management (Exemption) Regulations 2017. There is therefore very little value in RMA plans including controls on the use and application of 1080. Further guidance and information regarding these regulations can be found on the [MfE website](#).

Signage - The HSNO Act includes specific requirements for signage, and what specifications this signage should meet. Signage required by other legislation and regulation should be enabled through district plans.

Tank Standards - The HSNO regulations include controls on tanks for every classification of hazardous substance used in New Zealand. These standards are designed to provide an appropriate level of protection in normal circumstances. In most cases, there is little value in RMA plans specifying tank controls.

In some locations with unusual site-specific characteristics, there may be added value in specifying additional controls. An example of this could include additional containment or leak detection measures for substances which are likely to travel extensively and are persistent in the environment (noting that petroleum plumes have been shown to seldom exceed 100m and also break down naturally) **and** where tanks are located on an unconfined aquifer used for drinking water supplies.

Where these additional controls are considered necessary, the plan should clearly identify what is covered by HSNO, and what the plan requires in addition to HSNO, and what locations these additional controls apply to.

Disposal and waste management of hazardous substances - Disposal of hazardous substances is covered by the disposal regulations under HSNO, which set controls on the disposal of substances based on their HSNO classification. In addition, discharge provisions in regional plans also restrict inappropriate disposal of hazardous substances. Those with roles in the waste disposal process (i.e. waste collectors, landfill operators etc) are ultimately responsible for ensuring waste they accept is disposed of appropriately in accordance with these discharge controls.

Areas regulated under HSNO Act - e.g. explosive substances, flammable substances, oxidising substances, toxic substances, corrosive substances, eco-toxic substances and compressed gases.

Areas where RMA controls may be necessary

In most circumstances, the HSNO Act and HSW Act provide an appropriate level of management of hazardous substances. However, there will be some situations where RMA controls may be justified.

The need to place controls in RMA plans to manage the effects of use of hazardous substances will differ according to local circumstances and is generally only warranted when hazardous substances are located within sensitive environments and/or incompatible activities. The need for any controls must be justified through a robust section 32 evaluation that demonstrates why a degree of environmental protection over and above

that provided for under other legislation, such as the HSNO Act or the HSW Act, is necessary within that particular local context. The following guidance provides information on circumstances where it might be justified and appropriate to include controls in RMA plans and policy statements to manage specific and local environmental effects of managing, handling and storing hazardous substances. The focus of any such provisions should be on ensuring the risk of adverse effects is acceptable, rather than on risk avoidance.

Where land uses are incompatible

The use and handling of hazardous substances is usually a subset of the risks and effects associated with a particular land use activity and, as such, the anticipated adverse effects of the activity is typically addressed by zone provisions it is located in.

The HSNO Act and HSW Act have a generic consideration of surrounding land uses, by including different clearances with respect to specific substances (HSNO Act) or hazardous facilities according to surrounding land uses (HSW Act). Most of these controls apply regardless of where that substance is stored or used and apply a precautionary approach, which provides an acceptable level of safety, including in respect of separation distances, in most circumstances. Generally, the HSNO and HSW Acts will be adequate to ensure risks, including cumulative effects, associated with hazardous facilities (activities that use, store, manufacture and/or dispose of hazardous substances) are contained on a site. However, some hazardous facilities, may have potential for off-site effects, despite compliance with HSNO and the HSW Act, for instance some Major Hazardous Facilities (MHF).

Where necessary and appropriate, managing the effects of activities that use, store, manufacture and/or dispose of hazardous substances in relation to surrounding land uses may be achieved under the RMA by:

1. Managing the establishment of hazardous substances/facilities adjacent to and within sensitive environments to ensure acceptable levels of risk of off-site adverse effects; and
2. Preventing sensitive or incompatible activities establishing in areas where hazardous facilities/activities are located where these activities have the potential to constrain or curtail the operation of a lawfully established hazardous facility.

Major Hazard Facilities (MHF)

Particular attention should be given to potential land incompatibility issues associated with MHF. As noted above, MHF are defined under regulation 19 and 20 of the Health and Safety at Work Regulations 2016 (the MHF Regulations). They are workplaces that have significant inherent hazards due to the storage and use of large quantities of specified hazardous substances. Failure to control risks associated with these facilities could result in catastrophic consequences. The MHF Regulations mandate specific duties relating to process safety for existing and potential MHFs.

Specific requirements in the MHF regulations include:

- Operators of proposed MHFs are required to notify WorkSafe that their facility is likely to equal or exceed the threshold quantity for an MHF. The notification needs to include information about the land use and other activities in the area surrounding the facility or proposed facility (regulation 12)

- The operator of each MHF must prepare and test an emergency plan – which must include a map showing the site of the MHF and land use and occupancy, any MHF and any hazardous substance storage sites that are known to the operator, within a 2 km radius of any point on the perimeter of the MHF (regulations 31 and 32)
- Operators of an Upper Tier MHF are required to prepare safety cases and submit them to WorkSafe for acceptance. An Upper Tier MHF must have an accepted safety case to operate. A safety case is a document that summarises and describes process safety related systems and controls in sufficient detail to demonstrate their adequacy. The safety case must include demographic information about the local community, including authorised land uses, within a 2 km radius of any point on the perimeter of the UTMHF. (regulation 45 and schedule 7)
- The operator of a MHF has a duty to provide plain English information to the local community about their MHF including contact details, how they would inform the local community if a major incident occurs and what to do if there is a major incident (regulation 66).

For sites or operations that store or use particularly large volumes of hazardous substances (including MHF), councils may want to consider controls that extend beyond HSNO Act, whereby a wider assessment of the surrounding land uses and environment will be required. Any assessment matters or restriction of discretion in relation to these types of activities (e.g. bulk fuel storage, large scale chemical or explosive storage and manufacture etc), will need to consider what the risks are and what information council will need to assess these risks.

Where there are sensitive receiving environments

The HSNO Act and HSW Act have a generic consideration of surrounding land uses, by including different clearances with respect to specific substances or hazardous facilities according to surrounding land uses. Most of these controls apply regardless of where that substance is stored or used, which provides an acceptable level of safety in most circumstances.

However, to within or adjacent to particularly sensitive receiving environments, additional controls under the RMA may be justified to appropriately manage the adverse effects and risks associated with hazardous substances. For example, a rule might be imposed in a plan imposing permitted activity conditions or requiring resource consent for hazardous facilities within a certain setback distance from sensitive areas, such as wetlands or sources of reticulated potable water. This would allow site-specific requirements to be imposed to ensure the potential adverse effects on these receiving environments from hazardous substances are appropriately managed. Any such controls should only address matters not appropriately addressed under other legislation.

Reverse sensitivity issues

For the purposes of this guidance note, reverse sensitivity can be defined as the potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity. Under the RMA, new activities may be restricted where they have the potential to result in reverse sensitivity effects in order to protect established activities and their operations.

In relation to hazardous substances, this can occur where sensitive activities (such as residential activities or places of assembly) are allowed to locate in proximity to existing hazardous facilities. This can be of concern, because these activities are particularly sensitive to the operation of hazardous facilities, which can have adverse effects, or risks beyond the site boundary that may not be able to be completely avoided or mitigated. For most activities, this is often achieved through the underlying zone or overlay provisions, such as a non-complying status for sensitive activities within industrial zones.

Reverse sensitivity effects are not specifically addressed under the HSNO Act or HSW Act as these Acts do not provide regulatory powers or controls in relation to land use planning. The MHF Regulations only control the hazardous facility itself, not surrounding land uses. Therefore, it is important that land use planning minimises exposure to people close to a hazardous facility (particularly a MHF). Historically, the focus has been on the management of hazardous substances themselves, and not issues regarding encroachment around hazardous facilities.

MHF have requirements under the HSW Act (and associated regulations) to ensure the safety of workers on the site and those nearby. Encroachment of sensitive activities around MHF can therefore significantly impede their ability to meet their regulatory requirements. Any such constraints are potentially significant, noting that the list of MHF (found on the [Worksafe website](#)), includes infrastructure of national and regional significance. These facilities involve significant investment, and often have a functional need to be located in a particular location. In the worst case scenario, reverse sensitivity effects may result in MHF sites having to stop operating, which would have significant implications for communities and their well-being.

Councils need to be fully aware of the significance and potential risk from a MHF, when considering sensitive land uses or intensification of existing activities near an MHF. Depending on the risk, it may be appropriate to consider land use restrictions on land in the vicinity of a MHF, to enable the MHF to carry out its operations, including maintenance and upgrades, without being unreasonably constrained by sensitive activities subsequently locating near a MHF.

Cumulative risks of multiple hazardous facilities

The HSNO Act and the HSW Act controls are substance and location-specific and do not address cumulative risk in the case of an accident. Cumulative risks may result from similar types of risks presented by neighbouring facilities, or from potential multiple adverse events through time. For most small to medium hazardous facilities, cumulative risks are generally not a significant issue that warrant controls in RMA plans, but they may be for larger facilities to ensure risks are acceptable.

Areas prone to natural hazards

Many plans contain natural hazard risk overlays to control the development of land to avoid or reduce the risks of natural hazards. In these areas, risk assessments are often required to determine the potential risks of an activity and how it may be affected by, the relevant natural hazard event (including in respect of frequency and consequences). These risk assessments should also determine the effectiveness of mitigation, if any, to protect the environment and human health. The proximity of activities which use hazardous substances to areas subject to natural hazards can increase the likelihood of a release of a hazardous substance into the environment should a natural hazard event

occur. The location of hazardous facilities in relation to areas prone to natural hazards is therefore something which councils may consider addressing through RMA plan provisions if there is evidence that the existing regulatory controls are insufficient to adequately address risk in those areas. Consideration should also be given to climate change effects which have the potential to increase the frequency, magnitude, and consequences of natural hazard events.

Councils may find that the requirements within their RMA plans relating to buildings and development in areas identified as being subject to natural hazards, combined with the HSNO Act and HSW Act requirements and requirements under other legislation such as the Building (Earthquake-prone Buildings) Amendment Act 2016, are sufficient to protect the building or site in which a hazardous substance is used or stored from the natural hazard risk. Where the risk of a natural hazard is greater, councils may place additional controls on the location of certain activities (such as industrial activities) or hazardous substances within the specified natural hazard risk area. It is not warranted to impose blanket controls on all hazardous substances on land considered hazard prone as this would likely result in significant consenting requirements without adding significant benefits.

Discharges

The HSNO Act and HSW Act do not directly manage discharges of hazardous substances/contaminants to land, water and air. In controlling how these substances are stored and used, they do however have an important role to play in mitigating potential for discharges. For example, in relation to petroleum refuelling facilities, despite management in accordance with the HSNO Act, there remains potential for discharges to land, water and air from refuelling activities. It is therefore appropriate that the potential adverse effects of these discharges are managed by regional councils, for instance through industrial and trade activity provisions. Regional councils need to consider the HSNO Act and HSW Act controls and any relevant controls under the Agricultural Compounds and Veterinary Medicines Act 1997 (ACVM Act) when including controls on discharges from hazardous substances in their plans to avoid unnecessary duplication or confusion. Use and disposal of hazardous substances still must comply with the HSNO Act, HSW Act and where relevant the ACVM Act or any other relevant legislation.

For example, regional plans may require resource consent for the use and discharge of agrichemicals such as fertilisers and pesticides. However, fertilisers, agricultural herbicides and other pesticides have existing controls under HSWA and the HSNO Act, and the ACVM Act. Councils should review the controls imposed under the HSNO Act, HSW Act and ACVM Act and only include additional controls in their plans where these Acts are considered insufficient to avoid, remedy or mitigate adverse effects on the environmental and public health.

Substances outside HSNO

Under the RMA, the definition of hazardous substances¹ includes, *but is not limited to*, any substance defined in the HSNO Act as a hazardous substance. This means that under the RMA, hazardous substances can encompass a wider range of substances and hazardous properties, than under HSNO.

¹ Note that *hazardous substances* and *contaminants* are defined separately in the RMA,

RMA plans and policy statements may control substances which, due to particular properties, can have adverse effects on ecosystems and wildlife but are not considered eco-toxic under the HSNO Act. Such properties include the potential to cause high biochemical oxygen demand in natural waters when the substance enters such waters, leading to rapid oxygen depletion, for example some agrichemicals. Other environmentally damaging properties include the potential for smothering effects, for example those caused by certain oils.

Methods to managing effect of hazardous substances in RMA Plans

One of the key circumstances where councils may want to consider addressing hazardous substances in their RMA plans is where the risk to the receiving environment is of such significance that the risk of a hazardous facility in a specific location may not be acceptable without additional mitigation, taking into account controls under HSNO Act and the HSW Act. In order to understand this risk, a risk analysis needs to be undertaken.

There are no standard risk criteria for hazardous substances in New Zealand but there are international criteria which are widely referenced. In particular, the New South Wales Hazardous Industry Planning Advisory Papers no. 3 (Risk Assessment) and 4 (Risk Criteria for Land Use Safety Planning) has widely been used in the New Zealand context, and can be reflected in risk any management area overlays. These papers (and more) can be found here: <https://www.planning.nsw.gov.au/policy-and-legislation/hazards>.

As a first step, councils should focus on the following when they are reviewing their RMA hazardous substances plan provisions:

1. Identifying specific hazardous substance related activities that are occurring within their area that might pose a risk off site (such as [Major Hazard Facilities](#)), and
2. Identifying the probability of a particular risk event (such as a fire or explosion); and
3. Identifying specific sensitive land uses that may require additional protection (e.g. sites of ecological significance and areas prone to natural hazards).

Councils need to then determine whether there is appropriate environmental protection through the HSNO Act and/or HSW Act or any other relevant legislation. Consideration should then be given to whether adequate controls are provided through zoning/overlay controls and, if not, work out if it is necessary to provide additional protection for any of these areas or activities. This analysis should be undertaken in consultation with key stakeholders (i.e. operators of hazardous facilities that understand their HSW Act and the HSNO Act compliance requirements).

In most circumstances, this analysis is likely to show that the HSNO Act, the HSW Act and/or existing zoning controls and/or overlays in plans provide adequate protection to manage the risks of hazardous substances and it is unnecessary to place additional control on hazardous substances. For example, hazardous substances in non-domestic quantities are usually associated with industrial activities, which are generally undertaken in industrial zones. Industrial activities are less likely to experience reverse sensitivity effects from neighbouring land uses who would typically be undertaking similar activities. Conversely, activities that use hazardous substances in large quantities in more sensitive zones (i.e. within residential areas) have greater potential for adverse effects on surrounding land uses. In these areas, additional controls on the establishment of

hazardous facilities may be necessary to ensure that the effects/risks of these activities are addressed. Councils will also need to be satisfied that any controls around hazardous facilities (existing or anticipated) are sufficient to ensure sensitive activities cannot establish without appropriate consideration of risk, including reverse sensitivity effects.

Use of Risk Overlays and/or Separation Distances

Councils may include controls on hazardous substances to address effects not appropriately addressed by compliance with the HSNO Act and HSW Act through the use of location specific risk overlays or separation distances (using risk contours based on a risk analysis). For example, a risk overlay or a separation distance rule could be used to as a method to manage the risk around major hazard facilities to prevent the encroachment of sensitive activities within a certain contour/distance.

Overlays or separation distances could also be used in relation to a particularly sensitive receiving environment (e.g. unconfined aquifers used for drinking water purposes and/or particular natural hazard areas) to manage hazardous facilities near or within these areas.

These methods may be justifiable to enable the risk to be managed to an acceptable level, provide for the establishment of hazardous facilities in suitable locations, and protect people, property and the environment from unacceptable risks.

Appendix D

Compiled amendments to the Hazardous Substances chapter requested in the Fuel Companies' submission

HS – Hazardous Substances

Overview

Hazardous substances include explosives, pesticides, industrial chemicals, paints, fertilisers and petrol, household cleaners, cosmetics and many other substances. Hazardous Substances are regulated under the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Health and Safety at Work Act 2015 (HSWA). The district plan has the supporting role of controlling the land use activities including man-made hazards of a chemical nature provided these do not duplicate controls in HSNO, HSWA or other legislation.

Land use ~~activities controls~~ involving hazardous substances ~~have the potential to result in an increased risk of adverse environmental effects to those members of the public who could be exposed to the substances, and the surrounding environment may be necessary to manage the risks associated with Significant Hazardous Facilities and their potential impacts on other sensitive activities, incompatible land uses and the environment.~~

Risks are influenced by the nature of the hazardous substances, the quantity of the substances, the effects the substance may have, the likelihood of an event occurring and which parts of the environment may be affected. An event may be an accidental release, spill, unintended chemical reaction, fire or explosion.

~~Risks are influenced by the location of an activity and the surrounding environment. For example, hazardous facilities located in areas subject to natural hazards may be exposed to greater risks of damage or failure resulting in an event involving a hazardous substance.~~

The provisions of this chapter acknowledge the benefits of hazardous substances, while aiming to minimise the adverse effects of ~~hazardous substances~~ Significant Hazardous Facilities in relation to sensitive activities (i.e. residential activities, schools, places of assembly) and sensitive environments (i.e. wetlands, waterways), ~~areas of identified the risks of~~ natural hazards and cumulative effects where multiple hazardous facilities are located within proximity to each other. It also seeks to minimise reverse sensitivity effects on Significant Hazardous Facilities. Hazardous substances stored or used in identified natural hazards areas are separately addressed in the Natural Hazards chapter.

~~The rules control quantities of defined hazardous substances classes that are significant enough to potentially pose a significant risk to public safety and the environment with respect to the various zones across the Kaipara District. The sites where such activities take place are defined as significant hazardous facilities. These provisions assist other legislation in the management of hazardous substances in significant quantities, taking location into account.~~

Objectives

[HS-O1 retain as notified]

[HS-O2 retain as notified]

Policies

HS-P1 Significant Hazardous facilities

~~Hazardous facilities~~ **Significant Hazardous Facilities** must minimise the risk to the environment (including people and property) by:

1. Siting new significant hazardous facilities in appropriate locations that are separated from incompatible activities, ~~such as~~ **including** sensitive ~~activities land use and infrastructure, and sensitive environments~~;

2. Designing, constructing and operating **significant** hazardous facilities in a manner that ~~avoids or adequately mitigates ensures the~~ adverse effects, ~~including risks, to people, property and the environment of the operation or an accidental event involving hazardous substances can be contained within the site~~; and

3. Disposing hazardous wastes to authorised disposal or treatment facilities that have appropriate management systems in place and avoiding the storage, processing or disposal of hazardous wastes in sensitive environments.

HS-P2 Assessment of risk

Ensure ~~facilities~~ **Significant Hazardous Facilities for the use, storage or disposal of hazardous substances in significant quantities** identify and assess potential adverse effects (including cumulative risk and potential effects of identified natural hazards) to prevent unacceptable levels of risk to human health, safety, property and the natural environment.

HS-P3 Reverse sensitivity effects

Avoid as far as practicable reverse sensitivity effects from sensitive ~~land use~~ activities on lawfully-established significant hazardous facilities.

Rules

[Delete HS-R1]

[Delete HS-R2]

[Delete HS-R3]

[Delete HS-R4]

[Delete HS-R5]

Matters of discretion

[Delete HS-MAT1]

[Delete HS-MAT2]

Standards

[Delete HS-S1]

Appendix E

Hazardous Substances chapters of the Proposed Far North District Plan and Operative Waikato District Plan

Waikato District Plan – Operative in Part

Part 2: District-wide matters

Hazards and risks

HAZS - Hazardous substances

The relevant area specific zone chapter provisions apply in addition to this chapter.

Overview

The use of hazardous substances in New Zealand is primarily managed by the Hazardous Substances and New Organisms Act 1996 (HSNO Act), the Health and Safety at Work Act 2015 (HSW Act) and relevant regulations.

Because the District Plan seeks to avoid duplication of requirements and obligations that arise under other legislation and regulations, the provisions of this chapter are designed to manage the effects of use, storage, or disposal of hazardous substances, only to the extent that those effects are not within the ambit of existing legislation and regulations.

Objectives

HAZS-O1 - Manufacture, use and storage of hazardous substances.

To protect the community and natural environment from the adverse effects associated with the manufacture, use and storage of hazardous substances.

HAZS-O2 - Use of hazardous substances.

To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations.

Policies

HAZS-P1 - Reverse sensitivity.

Ensure that activities are able to utilise hazardous substances in compliance with relevant regulation as necessary to their operation, without being compromised by 'reverse sensitivity' (that is, by residential or other sensitive activities moving closer and seeking higher amenity levels, including reduced risks from hazardous substances).

HAZS-P2 - Significant hazardous facilities.

Ensure that significant hazardous facilities are appropriately sited and managed in order to reduce risks to the environment and community to acceptable levels.

HAZS-P3 - Duplication of regulation.

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.

Rules

Land use - activities (zones specified in first column)

HAZS-R1	The storage, handling or use of hazardous substances except where Rule HAZS-R2, HAZS-R3, HAZS-R4 or HAZS-R5 apply	
All zones	<p>(1) Activity status: PER</p> <p>Activity-specific standards:</p> <p>Nil.</p>	<p>(2) Activity status where compliance not achieved: n/a</p>
HAZS-R2	The storage, handling or use of hazardous substances in a Significant Hazard Facility	
All zones (except the HIZ at Huntly Power Station which is covered by HAZS-R5)	<p>(1) Activity status: DIS</p> <p>For discretionary activities, the following criteria identify those matters which Council may assess the activity against. However, for discretionary activities Council’s assessment is not restricted to these matters:</p> <ul style="list-style-type: none"> (a) Risk assessment comprising: <ul style="list-style-type: none"> (i) The probability and potential consequences of an accident leading to the release or loss of control of hazardous substances; (ii) Potential risks and effects on people and neighbouring activities, with an emphasis on sensitive activities such as residential activities, educational facilities and community facilities; (iii) Potential risks and effects on natural ecosystems and the life supporting capacity of land and water, waterbodies and sources of potable water; (iv) Potential risks and effects on sites of significance to tangata whenua, sites of historical or archaeological significance and Outstanding Natural Features and Landscapes; (v) The potential for natural hazards to impact on the operation of the hazardous facility; and (vi) The potential for cumulative adverse effects of hazardous substances. (b) Alternative locations: <ul style="list-style-type: none"> (i) An assessment of alternative locations, having particular regard to locations both within the site and outside the site; (c) Records for existing activity: <ul style="list-style-type: none"> (i) The record of compliance and acceptable risk management of any existing activity where expansion of an existing activity is proposed. <p><i>Note: Land use activities continue on the next page.</i></p>	

HAZS-R3	Significant hazard facility	
<ul style="list-style-type: none"> • LLRZ - Large lot residential zone; • GRZ - General residential zone; • MRZ 1 - Medium density residential zone 1; • MRZ 2 - Medium density residential zone 2; • RLZ - Rural lifestyle zone; • SETZ - Settlement zone; or • RPZ - Rangitahi Peninsula zone 	(1) Activity status: NC	
HAZS-R4	Any new storage or use of hazardous substances with explosive or flammable intrinsic properties within 12m of the centre line of a National Grid Transmission Line	
All zones	<i>Refer Part 2 Energy, infrastructure and transport_9 GRID - National Grid, Rule GRID-R14</i>	
HAZS-R5	The storage, handling or use of hazardous substances at Huntly Power Station	
HIZ - Heavy Industrial Zone at Huntly Power Station	<p>(1) Activity status: PER</p> <p>Activity-specific standards:</p> <p>(a) The aboveground storage of diesel does not exceed 1.2 million litres at any one time; and</p> <p>(b) The storage of LPG does not exceed 24 tonnes at any one time.</p>	<p>(2) Activity status where compliance not achieved: RDIS</p> <p>Council's discretion is restricted to the following matters:</p> <p>(a) Risk assessment comprising:</p> <p style="padding-left: 20px;">(i) The probability and potential consequences of an accident leading to the release or loss of control of diesel or LPG;</p> <p style="padding-left: 20px;">(ii) Potential risks and effects on people and neighbouring activities, with an emphasis on sensitive activities such as residential activities,</p> <p style="padding-left: 40px;">educational and community facilities; and</p> <p style="padding-left: 20px;">(iii) Potential risks and effects on natural ecosystems and the life supporting capacity of land and water, waterbodies and sources of</p> <p style="padding-left: 40px;">potable water.</p> <p>(b) An assessment of alternative locations for storage within the site.</p> <p>(c) The record of compliance and acceptable risk management of hazardous substances at the site.</p>

This section has rules that have legal effect. Please check the ePlan to see what the legal effect is or subject to appeal.

Appendix 1.1 – Officers Recommended Amendments to the Hazardous Substances Chapter

Note the below provisions represent the Section 42A Report Writing Officer’s recommended amendments to the provisions of the Proposed District Plan, in response to submissions (with underline used for new text and strikethrough for deleted text).

Overview

There are activities within the Far North District that use hazardous substances, these may pose a potential threat to the health and safety of communities and the natural environment. Hazardous substances are defined in the Hazardous Substances and New Organisms Act 1996 (HSNO Act) and include substances with radioactive properties or high biological oxygen demand. Substances fall within the definition if they have certain hazardous properties such as explosiveness, flammability or corrosiveness (among other factors) and must be managed, stored, used, transported and disposed of in a safe and secure manner. The HSNO Act regulates the introduction and use of hazardous substances and determines what controls should be in place to mitigate risks to people and the environment. However, the controls under the HSNO Act are substance specific and do not take into account the sensitivity of the receiving environment.

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 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.

Objectives	
HS-O1	The risks associated with the storage, use or disposal of hazardous substances to people, property and the environment are minimised to acceptable levels while recognising the benefits of activities that store, use and dispose of hazardous substances.
HS-O2	Significant hazardous facilities and sensitive activities are managed through separation distances and other methods to avoid to the extent practicable, or otherwise mitigate, reverse sensitivity effects.
Policies	
HS-P1	Manage the effects of hazardous substances by: <ol style="list-style-type: none"> a. locating, designing, constructing and managing significant hazardous facilities to avoid or mitigate adverse effects and risks to people, property and the environment, particularly sensitive environments and sensitive activities; b. identifying, assessing and managing risks and adverse effects, including cumulative effects, of significant hazardous facilities so they do not create unacceptable residual risks to people, property and the environment; and

	c. locating land use activities so that the adverse effects and risks of transporting hazardous substances on roading infrastructure and other land use activities are minimised.
HS-P2	Require appropriate separation distances between significant hazardous facilities and sensitive activities to avoid where practicable, or otherwise mitigate, reverse sensitivity effects and the risks to people and property.
HS-P3	Manage new or expanded significant hazardous facilities and sensitive activities to address the effects of the activity requiring resource consent, including (but not limited to) consideration of the following matters where relevant to the application: <ul style="list-style-type: none"> a. separation distances and other methods to avoid and mitigate risks and adverse effects of significant hazardous facilities on sensitive activities and sensitive environments; b. separation distances and other methods to avoid or mitigate reverse sensitivity effects between significant hazardous facilities and sensitive activities; c. the extent to which adverse effects and risks are adequately managed through other legislation and organisations; d. the type, scale, intensity, duration and frequency of the risks and effects on people, property and the environment; e. site design and layout of the activity and the ability to internalise effects within the site; f. any historical, spiritual or cultural association held by tangata whenua, with regards to the matters set out in Policy TW-P6; g. avoidance or management of risks associated with natural hazards; and h. any potential adverse cumulative effects.

Rules

Note:

1. There may be rules in other District-Wide Matters and the underlying zone in Part 3 - Area Specific Matters that apply to a proposed activity, in addition to the rules in this chapter. These other rules may be more stringent than the rules in this chapter. Ensure that the underlying zone chapter and other relevant District-Wide Matters chapters are also referred to, in addition to this chapter, to determine whether resource consent is required under other rules in the District Plan. Refer to the *how the plan works* chapter to determine the activity status of a proposed activity where resource consent is required under multiple rules.

HS-R1	Maintenance and repair and alteration of a significant hazardous facility¹	
All zones	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1 The volume of hazardous substances used by the significant hazardous facility does not increase;</p> <p>PER-2 The location of hazardous substances on the site will not be located closer to any sensitive activities.</p> <p>PER-3</p>	Activity status where compliance not achieved with PER-1, PER- 2, PER- 3, or PER-4: Discretionary

¹ S335.005) -Oil Companies

	<p>The type of hazardous substances on the site remains the same;</p> <p>PER-4 Alterations to the significant hazardous facility do not increase any residual risks.</p>	
HS-R2	Establishment of a new significant hazardous facility	
Heavy Industrial zone	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1 The new significant hazardous facility is not located within a sensitive environment;</p> <p>PER-2 The new significant hazardous facility is setback at least 250m from a sensitive activity.</p> <p>Note:</p> <ul style="list-style-type: none"> <i>This rule only has immediate legal effect for a new significant hazardous facility located within a scheduled site and area of significance to Māori, significant natural area or a scheduled heritage resource.</i> 	Activity status where compliance not achieved with PER-1 or PER-2: Discretionary
<p>Light Industrial zone</p> <p>Rural Production zone</p> <p>Ngawha Innovation and Enterprise Park zone</p>	<p>Activity status: Discretionary</p> <p>Where:</p> <p>DIS-1 The new significant hazardous facility is not located within a sensitive environment;</p> <p>DIS-2 The new significant hazardous facility is setback at least 250m from a sensitive activity;</p> <p>DIS-3 A new significant hazardous facility does not create any residual risk.</p> <p>Note:</p> <ul style="list-style-type: none"> <i>This rule only has immediate legal effect for a new significant hazardous facility located within a scheduled site and area of significance to Māori, significant natural area or a scheduled heritage resource.</i> 	Activity status where compliance not achieved with DIS-1, DIS-2, or DIS-3: Non-complying
All other zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R3	Significant hazardous facility within the coastal environment	

All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R4	Significant hazardous facility within an outstanding natural feature or landscape	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R5	Significant hazardous facility within a scheduled site and area of significance to Māori	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R6	Significant hazardous facility within a significant natural area	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R7	Significant hazardous facility within a flood hazard area	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R8	Significant hazardous facility within a coastal hazard area	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R9	Significant hazardous facility within a scheduled heritage resource	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R10	Significant hazardous facility within 100 metres of the edge of a surface water body	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R11	New sensitive activity	
All zones	<p>Activity status: Non-complying</p> <p>Where:</p> <p>NC-1 The new sensitive activity is located within 250m of a Significant Hazardous Facility.</p>	Activity status where compliance not achieved: Not applicable