Section 32 Report

Part 2

Hazardous Substances

Prepared for the

Proposed Kaipara District Plan

Prior to Notification

28 April 2025

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ATTACHMENTS (TO THIS DOCUMENT)

A. Resources Consulting, Hazardous Substances Management – Hazardous substances provisions in the Kaipara District Plan – explanation of issues and options

ABBREVIATIONS USED IN THIS REPORT

Hazardous Substance and New Organism 1996	HSNO
Health and Safety at Work Act 2015	HSW
Kaipara District Council Operative District Plan	KDP
Kaipara District Spatial Plan	KDSP
Local Government Act 2002	LGA
Long Term Plan	LTP
Major Hazard Facilities	MHF
National Environmental Standards	NES
National Policy Statements	NPS
New Zealand Coastal Policy Statement	NZCPS
Northland Regional Council	NRC
Northland Regional Policy Statement	NRPS
National Policy Statement on Urban Development	NPS:UD
Proposed Kaipara District Plan	PDP
Proposed Regional Plan	PRP
Regional Water and Soil Plan	RWSP
Resource Management Act 1991	RMA
Section 32 of the RMA	s32
Section 42A of the RMA	s42A
Structure Plan	SP

1. INTRODUCTION

1.1 Overview

1. This report details the pre-notification evaluation undertaken by Kaipara District Council (**KDC**) in relation to Hazardous Substances for the Proposed Kaipara District Plan (**PDP**). The report has been prepared in accordance with the requirements of section 32 of the RMA (**s32**).

1.2 Topic Description

2. "Hazardous substance" is defined to include substances with any of these intrinsic properties: explosiveness, flammability, a capacity to oxidise, corrosiveness, toxicity (including chronic toxicity), ecotoxicity, with or without bioaccumulation; and substances which on contact with air or water generate a substance with any of those properties.[1] That list is not exhaustive, and substances with radioactive properties or high biological oxygen demand are also considered to be hazardous substances.

3. 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 petrol to household cleaners and cosmetics.

4. Hazardous substances are an important component in many industrial and commercial processes and make a significant positive contribution to the economy and people's wellbeing. As well as industry, hazardous substances are used in workshops, agricultural and horticultural activities, and some home occupations. Sites where hazardous substances are used or stored are referred to as "hazardous facilities."

5. As well as positive effects, hazardous substances also may have adverse effects on human health and safety, ecosystems, and quality of the environment.

6. Several Acts and Regulations address the risks by managing the use, storage and disposal of hazardous substances. Principal legislation is the Hazardous Substances and New Organisms Act (HSNO) 1996, the Health and Safety at Work Act (HSWA) 2015, Health and Safety at Work (Major Hazard Facilities) Regulations 2016, and Safety at Work (Hazardous Substances) Regulations 2017. Radioactive and ozone depleting substances are regulated separately.[2]

7. HSNO and Worksafe controls focus on on-site management of hazardous substances. The PDP recognises that HSNO and Worksafe controls are generally adequate to avoid, remedy or mitigate adverse effects from hazardous substances within the sites where they are stored and used.

8. Beyond the sites where hazardous substances are present, there is a residual risk of harm, caused by accidental release or spill, unintended chemical reaction, fire, or explosion. HSNO and Worksafe do not fully address the risks around the wider locality. The residual risks vary according to the quantities and

[1] PDP incorporates the RMA s2 definition, referencing Hazardous Substances and New Organisms Act 1996, s2.
[2] Radiation Safety Act 2016 and Ozone Layer Protection Act 1996.

properties of hazardous substances held on each site. The location of an activity and the characteristics of its surrounding environment are also important factors in assessing the possible harm due to an accident. For example, hazardous facilities located near residential areas, or in areas subject to natural hazards, may result in a greater risk.

9. The PDP addresses the most significant locational risks by controlling the establishment of "significant hazardous facilities." Significant hazardous facilities are identified by reference to quantities and properties of hazardous substances on a site and the sensitivity of the zone they are in. Larger quantities are permitted in industrial and commercial zones than in more sensitive zones such as residential zones. Cumulative effects where multiple hazardous facilities are located within proximity to each other are also considered.

10. The PDP also controls the location of hazardous substances in identified flood risk areas. This gives effect to the Northland Regional Policy Statement (NRPS) 7.1.2, which requires district plan controls on new development in identified flood hazard areas to ensure hazardous substances will not be inundated during a 100-year flood event. The Natural Hazards chapter contains the relevant objectives, policies, and rules. See separate s32 evaluation report for Natural Hazards in relation to those plan provisions.

11. Reverse sensitivity effects are also addressed in the PDP. Objectives and policies in the Hazardous Substances chapter refer to reverse sensitivity. Relevant rules are in zone chapters and control the establishment of sensitive activities near Industrial Zones and existing significant hazardous facilities. See the zone s32 reports for evaluation of those rules.

12. The PDP deals with Hazardous substances in a separate district-wide chapter, as required by the National Planning Standards. While the formatting is different from the KDC ODP, the substantive approach and outcomes are largely unchanged.

13. In summary, the issues addressed by the PDP relate to the adverse effects on human health and safety, the natural environment, and property arising from the location of significant hazardous facilities:

    a. In areas zoned for sensitive activities (e.g., residential activities, schools, places of assembly).
    b. In relation to water bodies, including risks posed by substances that have high oxygen demand in water.
    c. Cumulative effects where multiple hazardous facilities are located within proximity to each other.
    d. In areas prone to natural hazards (see Natural Hazards chapter for further detail) .
    e. Reverse sensitivity effects.

14. The Quality Planning website lists where RMA rules justify areas where RMA controls may be necessary. These include:

    a. Where land uses are incompatible
    b. Major hazard facilities (MHF)

c. Where there are sensitive receiving environments
d. Reverse sensitivity issues
e. Cumulative risks of multiple hazardous facilities
f. Areas prone to natural hazards
g. Substances outside HSNO (oxygen demand, smothering)

15. These provisions are a land use planning tool under the RMA and are designed to manage issues around the location of significant hazardous facilities, in addition to requirements of other legislation.

1.3 Scale and Significance of the Effects

16. The s32 evaluation must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. To determine the scale and significance, the following criteria have been used:

TABLE 1: ASSESSMENT OF SCALE AND SIGNIFICANCE OF EFFECTS		
Criteria	**Summary of effects**	**Evaluation** (1 is low and 5 is high)
Reason for change	• The KDP is being comprehensively reviewed. Hazardous substances are a topic included within this review. • It is necessary to update the KDP to implement the Planning Standards, which seek to standardise the structure and definitions of district plans across New Zealand. • The PDP must give effect to the NRPS (7.1.2), which requires district plan controls on new development in identified flood hazard areas to ensure hazardous substances will not be inundated during a 100-year flood event. • Legislative requirements for the control and management of hazardous substances (i.e. RMA s31, HSNO and HSWA) have changed, and the need for district plan provisions needs to be re-evaluated.	2

Degree of shift from status quo	• The PDP is not fundamentally different from the KDP in its approach to hazardous substances. Policy settings and anticipated outcomes are similar. Most activities will see little change in the extent of regulation. • Controls on hazardous substances in flood risk areas are new but affect few activities. • Wording improvements and reformatting to follow the National Planning Standards are positive shifts from the KDP.	1
Who and how many will be affected, geographic scale of effects	• NRPS states that hazardous substances are not a regionally significant issue. NRPS allocates responsibility to district councils to specify objectives, policies, and rules controlling land use to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances. (NRPS 1.6 and fn3 p9). • Communities throughout the district will be positively affected by reduced risks to their health and safety and environmental quality. The majority will never be involved in resource consent processes around hazardous substances. • Industrial and commercial activities, the most common users and storers of hazardous substances in large quantities, will be affected. The effects on them will vary, but on occasions they will need to assess the need for resource consents and apply if needed. Resource consents may impose requirements in addition to their HSNO and Worksafe obligations.	3
Degree of impact on or interest from Māori	• The changes proposed will be of interest to all landowners including Māori. • Like other communities, many Māori will be positively affected by reduced risks to their health and safety and environmental quality. Some enterprises may need	3

	resource consent to store or use large qualities of hazardous substances. • Consideration has been given to the relevant iwi management plans. The proposed hazardous substances provisions seek to manage issues consistent with those raised within the iwi management plans. No direct feedback was received from iwi on this topic.	
Timing and duration of effects	• Ongoing into the future.	5
Type of effect:	• The probability of an accidental release or spill, unintended chemical reaction, fire, or explosion at a hazardous facility where HSNO and Worksafe requirements are met is low. • The consequences of an accidental release or spill, unintended chemical reaction, fire, or explosion could vary significantly depending on the quantities and properties of the substances involved. In the worst case, the consequences could be disastrous to the community and the environment. In many cases, a separation distance between the hazardous facility where an accident occurs and vulnerable activities will mitigate the harm to those vulnerable activities.	3
Degree of risk or uncertainty:	• The PDP largely continues the established approach of the PDP, of managing residual risks around hazardous substances. As with any risk management strategy, the possible projected harm may or may not materialise. However, the PDP approach does reduce some possible impacts of an accidental release by ensuring the location of significant hazardous facilities is assessed prior to their establishment. • Engagement feedback from some commercial and industrial entities argued that all the relevant risks were covered by HSNO and Worksafe. They said that	3

	district plan intervention was unnecessary, and the costs imposed outweighed the benefits. That viewpoint was not accepted by council.	
Total (out of 35):		**20**

17. The level of detail in this evaluation report is appropriate for the level of effects anticipated.

2. Summary of Advice Received from Iwi

18. S32 requires evaluation reports to summarise all advice concerning the proposal received from iwi authorities under Clauses 3(1)(d) and 4A of Schedule 1 of the RMA. The s32 evaluation reports must summarise the response to the advice received, including any provisions of the proposal that are intended to give effect to the advice. The table below summarises the consultation undertaken and advice received from iwi authorities in relation to Hazardous substances.

TABLE 2: SUMMARY OF ADVICE RECEIVED FROM IWI		
Details of the consultation process	**Summary of advice concerning the proposal received from iwi authorities**	**Summary of the response to the advice received**
Engagement with Tangata Whenua 2021 about content of new district pan	• Align objectives, policies, and methods with the respective Iwi Management Plans and the Te Ao Māori/Māori world view. • Support the development of Māori landholdings to ensure economically sustainable and resilient outcomes for landowners. • Include mechanisms to ensure consultation and/or a cultural assessment is undertaken with Tangata	Council considered these points and agreed to include provisions addressing these issues in the Exposure Draft district plan published 2022.

	Whenua to protect sites and areas of significance to Māori.	
Feedback received on Exposure Draft	No specific advice received on hazardous substances specifically, but raised concerns in respect to other topics, such as natural hazards.	Council considered that given no specific feedback was received on hazardous substances, there were no issues of concern to iwi that needed to be specifically addressed.

3. Evaluation of Objectives

3.1 Appropriateness in Terms of Purpose of RMA

19. This report must evaluate the extent to which each objective proposed in the PDP is the most appropriate to achieve the purpose of the RMA.

20. Table 3 contains the objectives proposed for Hazardous substances:

TABLE 3: S32 ASSESSMENT OF PROPOSED HAZARDOUS SUBSTANCES OBJECTIVES
Proposed Hazardous substances Objectives
HS-O1 Risks associated with hazardous substances Hazardous substance use, storage, transport and disposal activities are located, designed and managed, so that risk to people, property and the environment is acceptable, while recognising the benefits of those activities.
HS-O2 New sensitive activities Established activities using, storing or disposing of hazardous substances are not compromised by sensitive activities.

Part 2 of the RMA outlines the purpose and principles of the RMA, and Table 4 identifies the relevant sections of Part 2 of the RMA for each of the objectives in Hazardous substances.

TABLE 4: RELEVANCE OF PROPOSED HAZARDOUS SUBSTANCES OBJECTIVES TO PART 2 OF THE RMA		
RMA Part 2 Sections	**HS-O1**	**HS-O2**
5(2)	✓	✓
5(2)(a)	✓	✓
5(2)(c)	✓	✓
6(a)	✓	
6(e)	✓	
6(h)	✓	
7(b)		✓
7(d)	✓	
7(f)	✓	
7(h)	✓	

Section 5 RMA

21. Hazardous substance objective HS-O1 achieves a range of the Part 2 purpose and principles. Regarding the purpose (s5), the objective contributes to sustainable management by safeguarding long-term social, economic and cultural wellbeing and health and safety. Wellbeing is supported by recognising the important economic and social benefits of hazardous substances. Health and safety are addressed by controlling location of significant hazardous facilities, where risks are highest. Section 5(a) is supported to the extent that risks to property are covered. Adverse effects on the environment, s5(c), are addressed by this objective and by natural hazards and zone objectives.

22. Objective HS-O2 achieves the purpose of the RMA through its goal to protect hazardous facilities from the adverse effects of reverse sensitivity, which could compromise the economic and social wellbeing benefits of hazardous substances. Objective HS-O2 supports section 5(a), sustaining the potential of physical resources to meet the reasonably foreseeable needs of future generations and 5(c) in relation to avoiding and mitigating reverse sensitivity effects on the environment.

Section 6 RMA

23. Objective HS-O1 applies section 6 principles (6a, e and h) by setting goals for the effects of hazardous facilities near waterbodies and the coast and managing natural hazard risks, which contribute to Tangata Whenua resource management aspirations.

Section 7 RMA

24. Under section 7, objective HS-O1 applies principles (7d, f and h) by setting goals that encompass the intrinsic values of ecosystems, the quality of the environment and the protection of fish habitat.

25. Objective HS-O2 applies principle 7b by setting a goal that reverse sensitivity effects should not compromise the efficient use and development of natural and physical resources, supporting economic wellbeing.

Section 8 RMA

26. Given that no specific feedback was received from iwi on the Exposure draft, Council considered that there were no specific issues that needed to be addressed. For this reason, it is considered that the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) have been appropriately taken into account.

3.2 Conclusion

27. Having assessed the proposed objectives against Part 2 of the RMA it is considered that they are the most appropriate way to achieve the purpose of the RMA. The objectives are reasonable and achievable. The focus of the provisions is on locational effects and avoiding any overlaps with HSNO and WorkSafe controls.

4. Evaluation of the Provisions

28. S32 assessments must determine whether the proposed provisions are the most appropriate way to achieve the proposed objectives. In this instance, the Hazardous substances chapter proposes two objectives and this s32 assessment must assess whether the proposed provisions are the most appropriate to achieve those proposed objectives. This must include the identification of alternatives, and cost benefit analysis of the economic, social, environmental, and cultural effects of the provisions including whether opportunities for economic growth and employment are reduced or increased. The risk of acting or not acting where uncertain information exists must also be considered.

29. Hazardous Substances proposes policies, rules, standards, and matters of discretion. The following sections of this report identify the range of options available, and the efficiency and effectiveness of the preferred provisions.

4.1 Options

30. To identify reasonably practicable options, the Council has undertaken the following:

    a. Commissioned an expert report (Attachment A) from Norbert Schaffoener (Resources Consulting) to provide an analysis of issues relevant to, and options for the review of, the provisions in the KDP

for the management of hazardous substances (hazardous facilities).[3] Four options were identified in the report. The report recommended that the general approach of the KDP for the management of hazardous facilities be retained, controlling the use, storage, and disposal of generally the same type of hazardous substances which are covered by the operative provisions. Updated wording of objectives, policies, and methods to reflect the current statutory environment, provide greater accuracy and clarity, and improve user-friendliness, was also recommended.

b. Published a fact sheet in 2021 on Hazardous Substances and Contaminated land, for public comment as part of the district plan review. This outlined the approach now proposed in the PDP, indicating that there would be no significant changes to the management of hazardous substances in the Draft District Plan. The fact sheet said the draft plan would not duplicate the requirements of legislation but would focus on the location of significant hazardous facilities, particularly within sensitive environments at greater risk. Public feedback supported the intention not to duplicate existing regulations under HSNO and Health and Safety at Work as well as a risk-based approach to the management of land use within risk overlays. Feedback also identified concerns about use and storage of fertilisers and agrichemicals, reverse sensitivity issues around the Maungaturoto dairy factory, and the need for upgrading and maintenance of fuel retail facilities.

c. Published a draft district plan including a fully drafted Hazardous substances chapter in 2022 for public feedback, containing the approach adopted in the PDP. Feedback was received from 18 people and organisations. A variety of views were expressed, including support and opposition for the draft approach. Feedback suggested wording amendments, some of which were adopted in the PDP.

31. The following broad options were identified and assessed regarding hazardous substances:

a. **Option 1 – Do nothing:** leave management of hazardous substances to processes outside the district plan under HSNO and other relevant legislation. An argument for this approach is based on the Resource Management Amendment Act 2017, which deleted from s31(1)(b) the specific function of territorial authorities to control land use for "the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances." It has been suggested that the repeal of this item means that territorial authorities should no longer set out to manage the effects of hazardous substances. However, since 2017 most district plans have continued to include hazardous substances provisions. Typically, these are based on the unchanged more general s31 function to control effects of land use, and evidence that plan provisions are needed to fill gaps in the HSNO and Worksafe controls. Additionally, District Plans are required to meet section 5 of Part 2 in the RMA.

[3] Resources Consulting (2021) "Kaipara District Council – District Plan Review - Hazardous Substances Management"

b. **Option 2 – Status Quo:** carry forward the provisions of the Operative Kaipara District Plan (KDP) (reformatted to comply with the National Planning Standards).

c. **Option 3 – Develop New Provisions:** develop completely new provisions that do not rely on established practices and the approaches of other local authorities. For example, align with workplace safety legislation in terms of definitions, thresholds and other details, particularly in relation to Major Hazardous Facilities (MHF) defined in health and safety legislation.

d. **Option 4** – Retain main provisions of KDP with appropriate amendments to objectives and policies. Retain the concept of "significant hazardous facility" determined by hazardous substance quantity thresholds. This approach would retain most hazardous facilities as permitted. This would require few land use consents, which would only be triggered by significant hazardous facilities.

32. The preferred option is Option 4, to retain the current framework with improvements to wording of objectives and policies and retain the methodology to determine what constitutes significant hazardous facilities. This provides for desirable consistency and avoids unnecessary regulation, while minimising the liability risk to Council and environmental risks to eco-systems and communities. The provisions are based on, and are consistent with:

a. The existing approach of the KDP permitting the majority of hazardous facilities and requiring some assessment of more significant facilities with potentially more than minor off-site risks;
b. The approach taken by the neighbouring Auckland Council;
c. The NRPS;
d. Addressing gaps in the current law without duplicating provisions, and
e. National Planning Standards.

33. Option 1 is not the most appropriate option because it does not provide for the protection of people, local communities or environmental features from risks associated with specific hazardous facilities, beyond the legal minimum of other legislation. It is not an approach that has been favoured by most local authorities in New Zealand since the RMA and HSNO have been in operation together. This approach would potentially expose the Kaipara District Council to environmental, legal and consequently financial risks if incidents occur with adverse off-site effects which could be prevented. Option 1 would not give effect to NRPS 7.1.2, which requires district plan controls on new development in identified flood hazard areas to ensure hazardous substances will not be inundated during a 100-year flood event.

34. Option 2 is not the most appropriate option as the KDC objectives and policies require improvement and alignment with neighbouring council approaches. Option 2 would not give effect to NRPS 7.1.2, considering the new mapped flood hazard areas contained in PDP.

35. Option 3 is not the most appropriate option as development of new provisions would require detailed analysis and development work with associated time and funding which is not available in this current

review. It would also be more the role of Government to develop such provisions if desired on a national level. This option is inappropriate for a district the size of Kaipara.

Table 5A and 5B indicate the Provisions Cascades for preferred option to be evaluated in Table 6A and 6B below:

TABLE 5A: PREFERRED OPTION EVALUATION – OBJECTIVE HS-O1	
Option 4	**Objective:** HS-O1 Risks associated with hazardous substances
	Policies: HS-P1 Hazardous facilities HS-P2 Assessment of risk of hazardous substances
	Rules: HS-R1 The use storage or disposal of any hazardous substances HS-R2 Radioactive material HS-R3 Fertiliser storage HS-R4 Use, storage and disposal of hazardous substance subclasses 1.4, 1.5,1.6, 6.1D, 6.1E, 9.1D and 9.2D HS-R5 The storage of fuel for retail sale within a service station

TABLE 5B: PREFERRED OPTION EVALUATION – OBJECTIVE HS-O2	
Option 4	**Objective:** HS-O2 New sensitive activities
	Policy: HS-P3 Reverse sensitivity effects
	Rules: No specific rules in Hazardous substances chapter – see related setback rules in zone chapters to manage effects from sensitive land use activities on significant hazardous facilities.

TABLE 6A: EVALUATION OF PROVISIONS	
Option(s) & Package of Proposed Provisions	**Option 4** – Retain main provisions of KDP with appropriate amendments
Benefits	Economic: The provisions benefit a wide range of hazardous facilities by enabling these as permitted activities. Higher risk significant hazardous facilities are facilitated through restricted discretionary resource consents. The provisions provide benefits in continuing the approach of the KDC, avoiding educational costs involved in significant changes to policy. Social: The provisions benefit social activities and resources (e.g., homes and schools) by managing risk to sensitive activities. Environmental: Benefits to the environment relate to separating hazardous facilities from water bodies and the coast. Cultural: The provisions benefit cultural activities and resources (e.g., marae, kura and papakainga) by managing risk to sensitive activities.
Costs	Economic: Resource consenting and time costs to developers of significant hazardous facilities and developers of encroaching sensitive activities will arise, with possible loss of economic and employment opportunities. Where risk assessment is required for a development proposal, this will need suitably qualified and experienced technical advice for report preparation, assessment, and peer review, with associated costs to parties. Cost to Council of consultation, processing and ongoing administration and monitoring in relation to significant hazard facilities (over costs met by applicant). Social: No social costs identified Environmental: No environmental costs identified Cultural: No cultural costs identified
Opportunities for economic growth	Opportunities for economic growth are enabled by the proposed provisions permitting hazardous facilities. Resource consents for significant hazardous facilities are given a simplified restricted discretionary activity status, which can result in additional economic growth opportunities.
Opportunities for employment	Opportunities for employment are enabled by the proposed provisions permitting many hazardous facilities. Resource consents for significant hazardous facilities are given a simplified restricted discretionary activity status, which can result in additional employment opportunities.
Certainty and sufficiency of information	There is sufficient information on hazardous substances to act. The wide variety of locations of significant hazardous facilities and sensitive activities, current and future, is well understood. The projected growth of the district inevitably will present issues around the value of keeping these activities separate and ensuring reverse sensitivity effects are well managed.

TABLE 6A: EVALUATION OF PROVISIONS	
Option(s) & Package of Proposed Provisions	**Option 4** – Retain main provisions of KDP with appropriate amendments
Risk of acting or not acting if there is uncertainty or insufficient information.	The risk of acting relates to any overlaps with the controls through other regulatory instruments, which could unnecessarily increase costs to industry. The risk of not acting is that the identified residual effects could increase the risk to people, to their health and safety, and to the quality of the environment. Not acting could lead to locations of significant hazardous facilities and sensitive activities that are too close.
Effectiveness in achieving the objective(s)	The rules are effective as they signal when resource consent would be required and the matters that need to be addressed as part of a risk assessment for a significant hazard facility proposal. The rules give certainty for the community on the possible location and safety of any new significant hazard facility.
Efficiency in achieving the objective(s)	It is efficient to have an integrated approach to the management of hazardous substances and to avoid duplication of regulation carried out by other agencies. The rules are efficient in that they clearly identify to all plan-users the matters that are to be controlled within the District Plan, when resource consent assessment will be required, and for restricted discretionary activities, the matters to which discretion will be restricted.

TABLE 6B: EVALUATION OF PROVISION FOR REVERSE SENSITIVITY	
Option(s) & Package of Proposed Provisions	**Option 4** – Retain main provisions of KDP with appropriate amendments
Benefits	Economic: The provisions benefit existing hazardous facilities from constraint due to reverse sensitivity effects by controlling the location of new sensitive activities nearby. Social: The provisions benefit social activities and resources (e.g. homes and schools) by managing risk to sensitive activities and associated amenity values. Environmental: None identified. Cultural: The provisions benefit cultural activities and resources (e.g. marae, kura and papakainga) by managing risk to sensitive activities and associated amenity values.
Costs	Economic: Resource consenting and time costs to developers of encroaching sensitive activities will arise, with possible loss of economic and employment opportunities. Where risk assessment is required for a development proposal, this will need suitably qualified and experienced technical advice for report preparation, assessment, and peer review, with associated costs to parties. Cost to Council of consultation, processing and ongoing administration and monitoring (over costs met by applicant). Social: No social costs identified Environmental: No environmental costs identified Cultural: No cultural costs identified.
Opportunities for economic growth	Opportunities for economic growth at hazardous facilities are enabled by avoiding reverse sensitivity effects from sensitive development in the vicinity.
Opportunities for employment	Opportunities for employment are enabled by avoiding reverse sensitivity effects from sensitive development in the vicinity.
Certainty and sufficiency of information	There is sufficient information on hazardous substances to act. The projected growth of the district inevitably will present issues around the value of keeping sensitive activities separate from hazardous facilities.
Risk of acting or not acting if there is uncertainty or insufficient information.	The risk of not acting is that it could lead to locations of significant hazardous facilities and sensitive activities that are too close and give rise to reverse sensitivity effects.
Effectiveness in achieving the objective(s)	The rules give certainty for existing significant hazard facilities, that reverse sensitivity effects will be constrained.
Efficiency in achieving the objective(s)	The provisions are efficient in that they clearly identify to all plan-users that reverse sensitivity effects on hazardous facilities will be included in the assessment of resource consents for sensitive activities when these are required.

4.2 Reasons for deciding on the provisions

36. The proposed policies and methods are the most efficient and effective and the most appropriate option to achieve the objectives for managing the residual (locational) effects of hazardous substances use, storage and disposal in the district.

37. The approach of the KDC is carried forward into the PDP, so that district plan controls on hazardous facilities are restricted to residual RMA issues around location. This is consistent with the approach of the Auckland Unitary Plan, in particular Table E31.4. 3, which states the same or very similar maximum permitted qualities of listed hazardous substances as the PDP.

38. The proposed provisions are the most efficient and effective means of achieving the objective as together they will:

    a. They give effect to the higher order documents such as the RPS, particularly NRPS 7.1.2;

    b. Enable the Council to fulfil its statutory obligations, including section 31 of the RMA generally, given that specific functions to manage hazardous substances have been removed;

    c. Gives effect to the relevant Part 2 Matters, namely sections 6(h), 7(a), 7(aa), 7(b), 7(c), 7(d), 7(f) and 8; and

    d. Enables the Council to effectively administer its District Plan and to monitor the outcomes of the proposed provisions in a clear and consistent manner.

5. CONCLUSION

39. Pursuant to s32 of the RMA, the proposed Hazardous substances objectives have been analysed against Part 2 of the RMA and are the most appropriate way to achieve the purpose of the RMA.

40. The proposed provisions have been compared against reasonably practicable options. The proposed provisions are considered to represent the most appropriate means of achieving the proposed objectives.

ATTACHMENT 1 – Resources Consulting – hazardous Substances Provisions in the Kaipara District Plan – Explanation of issues and options

29 November 2021

Kaipara District Council – District Plan Review - Hazardous Substances Management

HAZARDOUS SUBSTANCES PROVISIONS IN THE KAIPARA DISTRICT PLAN - EXPLANATION OF ISSUES AND OPTIONS

resources

Hazardous Substances Management

Hazardous Substances Provisions in the Kaipara District Plan – Issues and Options

Prepared for

Kaipara District Council

Prepared by

Norbert Schaffoener

MNZPI

resources consulting

Revision History

Revision	Revision Date	Details	Authorised	
			Name	Signature
1	29/10/2021	Draft	N Schaffoener	
2	29/11/2021	Final	N Schaffoener	

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1. SUMMARY

This report provides an analysis of issues relevant to, and discusses options for the review of, the provisions in the Operative Kaipara District Plan (**KDP**) for the management of hazardous substances (hazardous facilities). The report analyses the following matters:

- the wording of objectives, policies and methods in the operative KDP;
- the statutory framework;
- specific matters, such as cumulative effects, interaction with natural hazards or reverse sensitivity effects, in the resource management context;
- the relevant national and regional planning instruments;
- the approaches of neighbouring territorial authorities and other Councils on this matter;
- the method to determine the activity status of significant hazardous facilities.

The review of the hazardous substances provisions of the KDP has identified that providing appropriate, consistent and updated policies and rules which are in accordance with the National Planning Standards 2019 will be an improvement to current provisions.

The analysis shows that maintaining the status quo is not considered an appropriate option, as is doing nothing or developing completely new provisions from scratch. This will need to be further elaborated on in Council's section 32 analysis.

It is recommended that current provisions in the KDP for the management of hazardous facilities be replaced with an update which will contain provisions that:

1. Correct errors and omissions,
2. Continue to control the use, storage and disposal of generally the same type of hazardous substances which are covered by the operative provisions,
3. Update the wording of objectives, policies and methods to reflect the current statutory environment, provide greater accuracy and clarity, and improve user-friendliness,
4. Retain an Activity Status Table (AST) to determine the activity status of significant hazardous facilities, similar to what has been adopted in the Auckland Unitary Plan (AUP),
5. Include controls that are of a similar nature to current requirements with appropriate updates to better reflect the requirements of other legislative regimes, and established good planning practice.

2. STATUTORY FRAMEWORK

It is obvious that the control of hazardous facilities as land use activities under the RMA is linked to other statutory requirements for the management of hazardous substances. However, there is widespread confusion between, but also within, Councils, by hazardous substance users and others about the roles and scope of the various legislative instruments covering the management of hazardous substances. Issues include what exactly should be managed under each statute, what could and what ought to be managed, and whether some aspects beyond a specific statute are achieved by chance even where it is not specifically addressed within that statute.

2.1 Resource Management Act

The Resource Management Act 1991 (**RMA**) includes as a purpose in section 5 enabling 'people and communities to provide … for their health and safety'. Section 31 (1) (a) specifies as one of the functions of territorial authorities 'the establishment, implementation and review of objectives, policies and methods to achieve *integrated management'* of the effects of land use. Section 31 (1) (b) includes the specific control of effects of natural hazards; man-made hazards are not mentioned (with the specific exception of contaminated land, generally a result of the mismanagement of hazardous substances). The 4th Schedule includes (after many amendments of the Act) the assessment of adverse effects of hazardous installations as a relevant matter [it is noted that the term 'hazardous installation' is not defined.]

The Resource Legislation Amendment Act 2017 removed (among other changes to the RMA some of which have since been reversed) the specific function of territorial authorities in Section 31(1) (b) of the RMA with regard to the management of hazardous substances. The same applies to the equivalent in section 30 for the specific function of Regional Councils and the part of section 62 which provides for the split of functions within a region to be specified in a Regional Policy Statement. While that arrangement had generally worked well across the country for over 25 years, some people considered the possibility of duplication of controls under other legislation to be a problem at the time. However, there was little factual information or analysis provided in 2017 to support the removal of section 31 (1) (a) (and the equivalent in s. 30), apart from a perception of possible overlaps in the implementation with requirements of the Hazardous Substances and New Organisms (**HSNO**) Act 1996 and its regulations. No statutory restriction of land use controls for hazardous facilities have been proposed, or up-to-date guidance on this matter provided, by the Minister or the Ministry for the Environment (**MfE**). Note the prompt removal of RMA s.360 D providing for the prohibition of controls by the Minister in the 2020 RMA amendments.

Note: The COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 in Appendix 8 on the Ohinewai foam factory in clause 6(1)(a) lists information on the management of hazardous substances as the first item; the further information requirements in Appendix 14 on the Kapuni Green Hydrogen project refers specifically to the hazardous substances risk assessment report as required per the South Taranaki District Plan. This is a clear indication that the Minister and central government consider hazardous substance management to be a land use planning issue.

2.2 Health and Safety at Work Legislation

2017 also saw the Health and Safety at Work (Hazardous Substances) Regulations 2017 under the Health and Safety at Work (**HSW**) Act 2015 starting to come into effect. The majority of the minimum substance-specific and lifecycle requirements for hazardous substances were moved at the time from the HSNO regime to the workplace safety legislation, in particular – in somewhat abbreviated form - to the HSW (Hazardous Substances) Regulations. It must be recognised that accordingly all respective HSNO Regulations were repealed and are therfore not in force anymore.

The purpose of the HSW Act 2015 is the protection of workers and workplaces. It is important to note that WorkSafe NZ as the lead agency for workplace safety does not have a land use safety planning role and has no general involvement in public health and safety. This is different to the resource management regime, the role of local government under that regime and the processes of public participation and scrutiny provided for in the RMA.

There is in fact no control mechanism in the HSW legislation to influence land use beyond the boundary of a hazardous facility (being a workplace). This includes the types of land use activities, the number of people around a facility at any given time, the susceptibility to risk of the public or the environment in those areas, the comprehension of people outside the workplace of the risks originating from that workplace or a number of other matters relevant to land use safety planning. While a 'Person conducting a business or undertaking' (**PCBU**) under the HSW legislation have a somewhat ill-defined - or sometimes misinterpreted - duty of care (under s. 36 HSWA), this cannot practically extend beyond the boundary of the facility. Apart from that the duty extends only 'as far as reasonably practicable' in any case, a requirement to provide any information, training, instruction or supervision, for example, is by its very definition limited to people within a workplace and cannot include the general public. There cannot be language, comprehension, physical ability or any other relevant type of test undertaken under the HSW legislation to establish compliance for any member of the public potentially affected by a hazardous substance incident.

WorkSafe NZ in its *Introduction to the Health and Safety at Work Act 2015* specifies that:

"The type of training, instruction or supervision required will depend on the nature of the work carried out and the experience of the workers, and the risk that workers and others, such as clients and customers, are exposed to."

Clients and customers would generally be visitors to a workplace, not the general public outside of the workplace over which a PCBU has no control. There is also no reference to the protection of the natural environment or of eco-systems which is important from a resource management perspective.

Details of the relevant HSW Regulations are provided in various sections throughout this report.

2.3 HSNO Legislation

Relevant controls remaining in place under the HSNO legislation in some form relate to minimum requirements for disposal, pesticide application and some miscellaneous provisions which are included in a number of EPA Notices. The HSNO legislation, in relation to hazardous substances, now deals primarily with the overall approval process of substances to be newly imported into, or manufactured in, New Zealand, or the re-assessment of existing substances where that is deemed necessary. While the amendments to the HSNO legislation have reduced its overall scope significantly with regard to the management of hazardous substances, it is important to remember that the HSNO legislation is not, has actually never been, and wasn't designed to be, a land use planning statute concerned with public health and safety. Contrary to what is stated in some recent land use plans, the HSNO Act itself does not provide, and has never included, hazardous property performance standards for hazardous substances.

The enforcement of HSNO requirements with regard to hazardous substances is somewhat unclear as the Environmental Protection Authority (**EPA**) has no enforcement staff under the HSNO legislation. MfE and the EPA commissioned a review of the hazardous substances compliance system in 2018. The terms of reference for the Technical Working Group states as context that the system comprises "*a complex framework of legislation*" - this specifically lists the RMA – and operations and processes that are managed by a variety of agencies, including territorial authorities. The review in 2019 identified the HSNO Act, HSWA and the RMA as "*the core of the hazardous substances compliance system*". It found that the entire CME (Compliance/Monitoring/Enforcement) system "*is not fit for purpose*". The report further states: "*There is very little regulation of volumes used and oversight of the disposal of hazardous waste is weak…the performance of the CME system has been adversely affected by the lack of well-trained, technically competent and available staff in the field... Two emergency incidents at Concours Electroplating (Timaru) and in Northland point to some shortcomings in the suite of tools the law gives the agencies, and also to a failure at a central and local government agency level to use those available to best effect. The shortcomings here may not relate solely to the provisions of HSNO but to the RMA also... We consider the essential elements of a fit for purpose hazardous substances CME would include:*

- *giving management of hazardous substances, their benefits and risks, a higher national priority strategically...*
- *reviewing the regulatory interventions tool kit to ensure each agency has access to the full suite of measures to enable timely, proportionate, equitable, risk-based and cost-effective interventions*

• *using financial assurance instruments and applying the polluter pays principle to assign financial accountability...*"

The report emphasises the lack of national leadership on this matter, in particular by the EPA.

There is no information on either the MfE or EPA websites whether any of the recommendations of the report have been, or are being, implemented. The identified failings in the CME system do not support opinions that the HSNO regime somehow by default achieves any relevant land use planning outcomes.

There are other statutes that include aspects of the management of hazardous substances throughout, or applying to part of, their lifecycle such as land transport and building legislation, or substance-specific legislation such as the Medicines Act. To be clear, none of these statutes have a specific land use planning role in the way that the RMA does.

2.4 The Interface between RMA Controls and Others

Certain aspects of the management of hazardous substances are considered to be sufficiently controlled through regulatory regimes other than the RMA and should not be duplicated in resource management plans. This applies particularly to specific matters such as details on packaging and containers for hazardous substances, labelling/presentation of safety data, the suitability of vehicles or competency of users. Matters such as facility signage can have additional controls applied but this has proven generally not to be necessary as well. However, the HSNO and HSW regimes are generally limited to specific technical aspects, providing minimum requirements based on legacy legislation (Dangerous Goods, Explosives, Toxic Substances Acts etc.). While workplace safety requirements (and what remains in the HSNO legislation), if implemented fully and correctly, can provide some safety beyond the actual workplace they are located in, they generally do not:

- take into account in any detail land use patterns, or potential adverse effects on sensitive environments or sensitive activities, or
- have regard to local natural hazard issues, or
- provide for a process of local consultation with other land users in the area, or
- require any kind of involvement by the local land use planning agency/local government, or
- address cumulative risks from different sites or provide for co-operation taking into account off-site risks, or
- provide for a rigorous and systematic risk assessment process.

These limitations are acknowledged by most local authorities in New Zealand which continue to include provisions for the land use management aspects of hazardous substance use, storage, disposal and, as necessary, transport in their planning documents under the RMA as part of an integrated management approach.

[**Note**: The Health and Safety at Work (Major Hazard Facilities) Regulations 2016 can be interpreted as including some generic land use planning aspects, however, the majority of bullet points above apply to those type of facilities as well, particularly the lower tier facilities. Interestingly, even specific industry proponents acknowledge the need for planning requirements for MHF. However, in the Kaipara District there is no MHF - either tier - listed on the WorkSafe database.]

In 2020, as part of the hearing process, the Waikato District Council commissioned an **analysis of gaps and potential overlaps** of their proposed District Plan provisions with the key legislative instruments identified at the hearing other than the RMA, which include specific requirements for the management of hazardous substances. These were the Health and Safety at Work (Hazardous Substances) Regulations 2017 and the Hazardous Substances (Hazardous Property Controls) Notice 2017 which apply to specific matters for particular circumstances for specified Classes or sub-Classes of hazardous substances above minimum quantities, primarily within workplaces. Council did not consider it relevant to cover the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 as there are no Major Hazard Facilities in the District listed on the WorkSafe NZ public database, and controls under those regulations are not applied to any other facility. The same applies to the Kaipara District.

The Waikato District Council gap analysis is the only publicly available document of its type at present which reviews the instruments Part-by-Part (relevant clauses were examined in detail). It found that the legislative instruments analysed do not include any requirements (which represents gaps) with regard to:

- A differentiation in sensitivity of land use activities within the area of influence of a hazardous facility
- A differentiation in sensitivity of natural environments/eco-systems within the area of influence of a hazardous facility
- Carrying out a facility- and location-specific risk assessment (apart from the specific case of calculating some separation distances for mega-storage facilities (>500 tonnes) of highly hazardous Class 3.2, 4 and 6.1 substances)
- Potential natural hazards relevant to the location
- Cumulative effects of hazardous facilities within the area of influence of each other

- Reverse sensitivity effects of new land uses in relation to existing hazardous facilities.

In addition the legislative instruments do not address substances outside the HSNO scope, such as radioactive substances or environmentally harmful substances (such as high biochemical oxygen demand) other than in relation to defined eco-toxicity. These are also considered gaps.

There are further areas which were covered in the report such as:

- secondary containment in addition to minimum requirements (e.g., to allow for rainwater or a remote location with limited emergency response capability at some distance),
- separation distances (or other risk management measures) in addition to the minimum workplace safety requirements,
- site-specific emergency management, or
- communication and information sharing issues,

where site-specific characteristics in the land use planning context (including surrounding land uses and natural environments) are not taken into account. These are gaps which can only be addressed through land use Plan provisions.

Some **examples** of required **secondary containment** under these Regulations:

Ten 1000 l ISO tanks of a flammable liquid are stored in a workplace – the requirement for secondary containment is 50 % of that storage capacity.

The permanent storage of four 209 (44 gallon) drums of petrol – there is no secondary containment required.

Five hundred 50 litre containers of Class 6.1B toxic substances (which are not also explosive, flammable or oxidising) located together in a workplace require secondary containment of 5000 litre capacity (20 % of total pooling potential, unless a lesser capacity has been approved by WorkSafe).

Two hundred 209 litre drums of Class 6.1B toxic substances (which are not also explosive, flammable or oxidising) located together require secondary containment of 5,000 litre capacity (about 12 % of total pooling potential, unless a lesser capacity has been approved by WorkSafe).

Thirty 1,000 litre IBC of Class 8 corrosive substances (which are not also explosive, flammable or oxidising) located together in a workplace require secondary containment of 5000 litre capacity (13,34 % of total pooling potential, unless a lesser capacity has been approved by WorkSafe).

Four 5,000 litre tanks of a Class 3.1A/B flammable or 6.1B toxic substance located together in a workplace require secondary containment of 5500 litre capacity (27.5 % of total pooling potential).

Four 10,000,000 litre bulk storage tank of a Class 3.1 substance located together require secondary containment of 11,000,000 litre capacity (27.5 % of total pooling potential, unless a lesser capacity has been approved by WorkSafe) with two bulk storage tanks each separated by the other two by an intermediate secondary containment system of at least 5,000,000 litres capacity (25 % of the total pooling potential within the intermediate secondary containment system, unless WorkSafe has on application increased the capacity for groups of stationary tanks – in this instance the total 40,000,000 litres could be within one containment system under s17.104(3)).

A 2,000 litre farm tank for diesel on a farm – no secondary containment required.

The following paragraphs provide some analysis of a number of other generic gaps in the HSW and HSNO legislation which only land use planning under the RMA can address.

2.4.1 Cumulative Risks

Most controls under the HSNO and HSW Acts do not specifically take into account the additional risk that may result from the accumulation and concentration of a range of different hazardous substances present on different, not even necessarily adjacent, sites. For example, two facilities which store bulk flammable liquids on one site and other reactive substances (such as oxidisers) at another site may present a combined cumulative off-site fire risk which may be significant and would therefore require an

additional degree of risk management. Similarly, numerous minor hazardous substance spills from different sites within a catchment may be deemed tolerable individually but cumulatively may result in potentially more significant cumulative adverse effects in the receiving environment. Only assessment on a case-by-case basis can establish whether this may become significant or not. This is generally only possible through Council's consenting process under the RMA.

2.4.2 Interaction with Natural Hazards

The issue of interaction between natural hazards (such as land instability, coastal hazards, seismic events, flooding etc.) and hazardous facilities has been recognised for some time in the resource management context. In particular a natural event may damage a hazardous facility and trigger the release or reaction of one or more hazardous substances with adverse effects on the surrounding environment. This is a location (and natural hazard) specific risk which is not addressed by HSNO or HSW requirements.

It is understood that flooding hazards (and potentially associated land instability) are relevant to the Kaipara District. These matters are best addressed in a Natural Hazards Chapter of the KDP in relation to structures, infrastructure and facilities in flood prone areas. Therefore these matters would not need to be addressed in specific controls in the provisions for the management of hazardous facilities, apart from assessment matters (information requirements) for significant facilities, but appropriate cross-references between the two Chapters should be included in the Plan.

2.4.3 Reverse sensitivity issues (risks)

Reverse sensitivity effects in relation to hazardous substance risk can occur where more sensitive land uses are proposed or established near an existing, lawfully established and operating significant hazardous facility. This is of specific relevance if the existing facility involves hazardous substances with hazardous properties potentially damaging to human health and property. This matter has proven to be significant for a number of major facilities in other parts of the country. It has been acknowledged that this issue requires specific planning scrutiny in particular as risk (being an adverse environmental effect) is harder to manage, and even understand, than amenity issues more often associated with reverse sensitivity.

Major hazardous facilities have an associated risk profile which can be shown on the basis of a quantitative risk assessment (**QRA**). Such an assessment may be undertaken in relation to providing assurance of the ability to continuously operate a facility if changes are proposed to the facility or to the land use surrounding the facility (within the established risk profile).

However, there are currently no facilities located in the Kaipara District that could be described as major facilities which would have carried out a QRA as a matter of course. While smaller facilities may also have risk profiles which extend beyond their sites, the effects are likely to be less than significant and/or localised.

It is noted that the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 do not control neighbouring land use effects with regard to risk which could affect the operation of a major hazardous facility, for example the locating of sensitivities activities (i.e. a residential development).

2.4.4 External Codes and Standards

I note that the current Plan provisions refer to, and rely in a couple of cases, on compliance with specific external codes or standards. This is generally not supported, specifically for the rules, due to problems such as:

- the need for specific references to relevant aspects of an external document rather than the document as a whole;
- the need to refer always to specific versions/editions of external documents;

- the need for, at times, very frequent expensive and lengthy Plan changes due to changes in the external documents
- the problem that discretion provided for in an external document such as a standard or code of practice may give unreasonable discretion to a council (or unacceptable means to 'dodge' sensible requirements to users)
- the issue of inconsistencies of details of external documents with objectives in a plan.

In particular compliance with external codes or standards is not to be linked with variations in the activity status, or applicable performance standards and controls. This can create confusion, discretion or inconsistencies in terms of activity status or applicable requirements. Many management options in standards are not necessarily mandatory but discretionary and often ambiguous.

It is my professional opinion providing for compliance with external documents as a means of compliance with District Plan requirements for hazardous substances is often inconsistent with objectives and policies of the Plan, as well as occasionally the purpose of the external document itself. It generally does not provide for ease of use or administration of the District Plan and is also often not transparent and should be avoided.

2.4.5 Transport of Hazardous Substances

Matters such as hazardous substance transport containers, marking/labelling of containers and vehicles, or driver competency, are all part of the HSNO, workplace safety or land transport regimes, and are consequently not required to be controlled as a land use issue. However, there are land use aspects of the transport of hazardous substances which are not subject to requirements of other legislation. They include:

- transport routes,
- transport times and
- transport frequencies,

associated with the transport of hazardous substances to and from hazardous facilities. This can be particularly important with regard to adverse effects on the roading network and surrounding land uses if transport is a significant part of activities. If a significant hazardous facility triggers a land use consent, the aspect of transporting hazardous substances to or from that facility may be relevant to be assessed.

It should be recognised that hazardous substances while transported on roads (or by rail or other mode of transport on land) are not subject to the thresholds of the AST, as no clear location can be specified to which the threshold is meant to be applied. This is established convention and is not recommended to be changed in any proposed provisions. The same applies to underground pipelines. Methods other than the AST would need to be used to establish the activity status if such activities are meant to be managed in the land use context although that is generally not considered necessary.

2.4.6 Emergency Management Plans

It is sometimes claimed, particularly in submissions, that land use planning requirements for hazardous facilities are unnecessary as the HSNO and HSW legislation, and in particular its Regulations, provide a maximum level of control on all hazardous substances. That is not the case and land use controls may be necessary to address public safety. As an example of limitations of HSW Regulations in managing hazardous substance risks to acceptable levels in all circumstances, below is a brief review of one aspect of the HSW (Hazardous Substances) Regulations 2017. The example shows what the HSW Regulations do not require with regard to emergency management planning and what is sensibly a resource management matter. This can be repeated for other matters in relation to the Regulations.

Example:

The provision in the HSW (Hazardous Substances) Regulations 2017 specifying the circumstances and content of emergency response plans are in Regulations 5.6 to 5.13. They do only apply for reasonably foreseeable emergencies (Regulations5.7 (2) and 5.7 (3)), less likely events are not necessarily covered. This is particularly important where an adverse effect of an emergency in a particular location may fall within the definition of RMA s.3(f) as one of low probability which has a high potential impact. The ability to provide for such emergencies, in addition to the minimum HSW requirements, is location specific and hence a resource management matter. Also, some of the thresholds in the Regulations are relatively high before controls apply. The higher thresholds for emergency response planning are as high as five or ten tonnes. These represent significant quantities in sensitive environments or zones which consequently rely on land use controls for emergency management if stored in quantities below these thresholds in those areas.

In addition the HSW (Hazardous Substances) Regulations do NOT provide for any of the following:

1. Any involvement of the Council, local communities or even affected parties to be involved in the development, testing/review or implementation of emergency response plans, be it in the form of consultation about off-site effects and the appropriate response to those, or even being informed about the existence or content of such plans;
2. Any response in terms of buildings, structures or environmental features off-site potentially affected by an emergency (specific reference in Regulation 5.7 (3) (iii) is limited to injury to persons);
3. Any response to hazardous substance emergencies off-site to manage potential cumulative effects;
4. Any information to be provided to potentially affected off-site parties BEFORE an emergency, even just to inform about the nature and scale of emergency likely or possible;
5. Any meaningful differentiation in controls for more sensitive land use activities or environments reflecting variable risks (this applies in fact to most HSW Regulations and EPA (HS) Notices).

It can be concluded that only land use planning under the RMA takes adequately into account in any detail land use patterns, or potential adverse effects on sensitive environments or sensitive activities in deciding where new hazardous facilities can be located. Only plan requirements or specific consent conditions can request site-specific issues to be included in emergency management plans. Only they can provide for a rigorous and systematic risk assessment process in the land use context. Other statutes do not have regard to local natural hazard issues, address cumulative risks from different sites, provide for co-operation taking into account off-site risks or address reverse sensitivity. Only the RMA provides for the appropriate involvement by the local land use planning agency/local government and offers a process of local consultation with other land users in the area. The issue of transporting hazardous substances to or from a site is solely a land use matter.

It is my professional opinion that all these matters identified above are important enough to warrant an ability to add to the minimum controls under other legislation, and that they are necessary in the resource management context.

2.5 The Randerson Report and the NBE Bill

As the life of the next District Plan provisions is expected to last for a decade or so it may be worthwhile to consider the anticipated RMA replacement. The exposure draft of the Natural and Built Environments (**NBE**) Bill contains no details as yet on how hazardous substances are to be managed under future legislation. The purpose statement of the Bill has been widely criticised as being deficient, particularly in respect to the wording on wellbeing. The definition of well-being defines the term by itself and inappropriately includes public health and safety (considered separately in the RMA context). There are also issues identified with regard to the scope and definition of environmental limits. Substantial changes are anticipated in the final Bill.

The 2020 Report of the Resource Management Review Panel (Randerson Report) itself sets out in Chapter 8 Policy and Planning Framework its recommended approach to functions under the proposed Natural and Built Environment legislation. It list the 'main responsibilities' of territorial authorities as:

- *setting policies on matters of district significance to achieve the purpose of the Act and to promote integrated management*
- *setting policies for, and the control of, land use (in urban and rural areas), subdivision, noise, contaminated land,* ***hazardous substances****, and heritage. (s 67, p 238)*

Therefore this is a clear indication that the management of hazardous substances is intended to remain a primary responsibility of land use planning by territorial authorities in the future. It is recommended that Kaipara District future-proof plan provisions in this context.

3. CASE LAW

Case law in relation to what matters can be addressed in resource management plans which are not specifically included in the RMA as a local authority function covers multiple fields of activity. The issue of whether, or the extent to which, the RMA can apply in specific fields that are also controlled by other legislation has arisen frequently. Applicable activities range from mining, forestry, genetically modified organisms, fishing to workplace safety. In the majority of cases they had to address, the courts have held that RMA requirements co-exist with, and operate alongside, the more specialist legislation.

Control of fishing in the Bay of Plenty Regional Coastal Plan

A specific example is the interface between the RMA and the Fisheries Act 1996 which was addressed following the grounding of the 'Rena' on the Astrolabe Reef near Tauranga in 2011. The event caused significant damage to the surrounding marine environment. This example is of particular interest since it has been pursued by opposing sides through various courts up to the Court of Appeal. Initially the Motiti Rohe Moana Trust requested for marine spatial planning and controls on fishing in its submission and subsequent appeal on the proposed Bay of Plenty Regional Coastal Plan (**BPRCP**). The Bay of Plenty Regional Council (**BOPRC**) took the position that it did not have jurisdiction to impose controls on fishing. In response, the Trust applied to the Environment Court for a declaration that it is lawful for BOPRC to include objectives, policies and methods (including rules) in the BPRCP in spatially defined parts of the coastal marine area that avoid, limit or discourage fishing techniques or methods with the purpose to protect biodiversity, significant habitat, natural character, or the relationship of Māori with waters and taonga species.

In various court proceedings involving the Environment Court, the Court of Appeal and the High Court the latter found initially that complimentary management of fishing activities exists between the Fisheries Act and the RMA, and regional councils are not prevented by the Fisheries Act to exercise controls under the RMA in certain circumstances (*Attorney-General v Trustees of the Motiti Rohe Moana Trust* [2017] NZHC 1429). In 2018 the Environment Court issued a decision on the Trust's appeal concluding there were areas within the wider Motiti Natural Environment Management Area in which a prohibition on fishing was necessary to ensure particular adverse effects were avoided (*Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2018] NZEnvC 67). Appeals and interim decisions by the Environment Court followed. The Court of Appeal held that the RMA and Fisheries Act pursue different objectives and that the RMA and Fisheries Act are intended to complement one another. The Court held that a prohibition on fishing in the three areas around Motiti would align with Māori cultural norms and interests by having the effect of a rāhui and would be an expression of kaitiakitanga. The Appeal Court disagreed with the High Court's position that RMA requirements need to be *"strictly necessary"*. The Court concluded that the RMA does not specify that the function of maintaining indigenous biodiversity in s 30(1)(ga) is subject to s 30(2). It is not the case that a regional council may exercise this function only when strictly necessary when dealing with fisheries resources controlled under the Fisheries Act (*Attorney-General v Trustees of the Motiti Rohe Moana Trust* [2019] NZCA 532). The Environment Court issued a final decision on the provisions to be included in the BPRCP in relation to marine spatial provisions for Motiti (*Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2020] NZEnvC 50)**.**

Genetically Modified Organisms in Northland

The issue of disputes on requirements for genetically modified organisms (**GMO**) in resource management plans and policy documents is well documented. It is of interest in the context of hazardous substances as it concerns the relationship between the RMA and the HSNO Act 1996. The initial case concerned an appeal by Federated Farmers against the decision by the Northland Regional Council to identify GMO as a matter of regional significance in the Proposed Northland Regional Policy Statement, and state that a precautionary approach should be taken toward them. Federated Farmers argued that the HSNO Act constituted an exclusive statute for the control of GMO in New Zealand, and that it is therefore not appropriate to regulate them under the RMA. In support of this proposition, Federated Farmers pointed to the absence of reference to GMO in either the RMA or the provisions of HSNO relating to persons exercising functions under the RMA.

Without going into too much detail it is of interest that the Environment Court concluded that there is a readily identifiable policy reason for that absence in these pieces of legislation, read together. Regional

authorities can provide for use and protection of GMO together with other resources in an integrated fashion, taking into account regional needs for spatial management that might differ around the country for many reasons. The RMA and HSNO offer significantly different functional approaches to the regulation of GMO (*Federated Farmers of New Zealand v Northland Regional Council* [2015] NZEnvC 89). The decision was upheld in the High Court in 2016 (*Federated Farmers v Northland Regional Council* [2016] NZHC 2036). A legal challenge by Federated Farmers against the GMO provisions of the Far North, Whangarei and Auckland Plans was withdrawn in 2018. That might have been in response to Judge Newhook's scathing comments on the position taken by Federated Farmers on Whangarei District Council's appeal to some detail in the wording of the Northland RPS on GMO. The appeal was upheld in full (*Whangarei District Council v Northland Regional Council* [2018] NZEnvC 44). The Environment Court has since upheld the appeal by the Whangarei District and Far North District Councils and others on the management of GMO in the coastal Marine Area (CMA) in Northland on the Proposed Regional Plan. The Court decision came after notification from the Northland Regional Council that they had reconsidered the previous decision to omit GMO policies from the Regional Plan and they would now place precautionary objectives, rules, and policies regarding the CMA in their plan. This was confirmed by Consent Order.

RMA versus workplace legislation in Taranaki

Concerning the **management of hazardous facilities** there is little specific case law. However, the Environment Court in 2018 considered the interface between the Health and Safety at Work Act 2015 (HSWA) and relevant HSW Regulations on the one hand, and the RMA on the other. Relevant courts have previously confirmed that the existence of legislation addressing safety issues in respect of a particular activity does not exempt RMA decision-makers from addressing safety as an effect on people and communities. In this case an environmental organisation, Taranaki Energy Watch, challenged the lack of specific controls on petroleum exploration/production facilities in proposed provisions of the South Taranaki District Plan. The South Taranaki District Council (**STDC**), other district councils in Taranaki and the then Petroleum Exploration and Production Association of New Zealand (**PEPANZ**) took the position that STDC's decision not to include controls was correct and that risks could be managed entirely under the WorkSafe regime and by regional plans. During the hearing STDC and PEPANZ re-evaluated and changed their position in respect of separation distances for the purposes managing risk of human fatality due to a fire or explosion, and accepted that management of these risks under the RMA did not give rise to unnecessary duplication with requirements of the HSW legislation.

The Principal Specialist Hazardous Substances at WorkSafe NZ stated in his evidence at the hearing that it is "WorkSafe's position that it is only under the RMA that a regulatory authority has the ability to control and manage site selection/location in relation to exposure of off-site receptors." He further sets out that "no level of assurance can be derived from the fact that an entity is within the jurisdiction of WorkSafe, in terms of whether or not it is safe for those persons, buildings or waterways in the vicinity." As a case in point he explains that "It would be possible under the HSW (Hazardous Substances) Regulations 2017 as an example to locate a hazardous substance storage facility containing reasonably large volumes of Class 3.1A (e.g. petrol) in a Type D building (Type D = a fire resistance rating of 240/240/240) in volumes of 200,000 litres at a distance of 5 metres or greater from protected places. If the requirements of the RMA were not applied such quantities for example could be located in urban or residential areas. From a risk management perspective this would be unacceptable, but it is not governed by the HSW and related regulations." He concludes that "From WorkSafe's perspective, land use planning controls under the RMA should deal with locational considerations and risk to off-site receptors. This includes the appropriate location of such a facility."

In its interim decision, the Court concluded - and all parties agreed - that there is a distinction between the scope and function of the HSW legislation and regulations and that of the RMA. There is scope for them both to operate and it is appropriate to include in the district plan provision for separation distances to address risk to human life from fire or explosion. The Court concluded that it is inappropriate for the district plan to require only mitigation and that public safety risks from the hazardous facilities in question are required to be avoided. While duties under the HSW legislation assist in managing some elements of this risk, they will not necessarily, in and of themselves, achieve resource management goals (*Taranaki Energy Watch v South Taranaki District Council* [2018] NZEnvC 227).

Hazardous substance provisions in the Invercargill District Plan

The Invercargill District Plan adopted a **threshold list for hazardous substances** somewhat more complex than the 'standard' AST. The hazardous substances provisions were appealed by i.a. the oil companies. The appeals were dismissed by consent order in November 2017 (*The Oil companies, Powernet NZ, Southport NZ Ltd., Invercargill Airport Ltd., Transpower NZ Ltd. v Invercargill City Council* [2017] NZEnvC ?). The District Plan became operative in 2019 with the threshold list in place.

Summary of cases

In conclusion it is clear that case law confirms the appropriateness of provisions proposed for the management of hazardous substances or hazardous facilities by local authorities. There is also case law which requires additional controls not initially considered (or even opposed) by a local authority. I am not aware of any case law where a court has ruled proposed provisions for hazardous substances either generally to be unnecessary, or of duplicating requirements of specialist legislation. If such case law existed, it is certain that industry interest groups and individual companies would have raised it in submissions and feedback on various district plan provisions across the country.

4. RELEVANT NATIONAL AND REGIONAL POLICIES AND PLANS

In addition to the relevant sections of the RMA, the provisions in the District Plan:

- must give effect to relevant national policy statements, planning standards and the regional (Northland) policy statement,
- shall be prepared in accordance with any applicable regulations,
- must not be inconsistent with the relevant regional plan, and
- must take into account relevant recognised iwi planning documents.

These matters are addressed in the following sections.

4.1 National Environmental Standards

The first set of National Planning Standards (**NPS**) was published in April 2019. It addresses nationally consistent plan structure and format, definitions, noise and vibration metrics, and electronic functionality and accessibility.

Of relevance to the topic matter of this report is *Section 7. District-wide Matters Standard*. It provides the following mandatory direction under the heading 'Hazards and risks':

*"12. If provisions relating to hazardous substances are addressed, they must be located in a chapter titled Hazardous substances under the **Hazards and risks** heading.*

13. If the following matters are addressed they must be located in a Hazardous substances chapter:

a. any provision required to manage the land use aspects of hazardous substances

b. provisions relating to the use, storage and disposal of hazardous substances on land that presents a specific risk to human or ecological health, safety and property

c. provisions required to manage land use in close proximity to major hazard facilities to manage risk and reverse sensitivity issues."

Provisions for the management of contaminated land are to be included in a separate chapter under the Hazards and risks heading.

Not specific to the topic matter of this report but potentially applicable is *Section 6. Introduction and General Provisions Standard*. It provides the following mandatory direction with regard to information requirements and assessment criteria:

*"6. If the following matters are addressed, they must be located in the **General approach** chapter:*

…

e. information to be submitted with a resource consent application

f. how controlled and restricted discretionary activities will be assessed in addition to the specific requirements in individual rules…."

Section 14. Definitions Standard contains the mandatory definition of 'hazardous substance' (but no other definitions relevant to this subject matter).

There are no other relevant national policy statements or National Environmental Standards (**NES**) for the management of hazardous substances under the RMA. NES for the management of contaminated land are not applicable for this specific matter.

There are no regulations promulgated under the RMA relevant to the management of hazardous substances and facilities.

4.2 Northland Regional Policy Statement

The current Northland Regional Policy Statement (**NRPS**) became operative on 9 May 2016 (with the exception of provisions relating to GMOs – although the appeal by Federated Farmers to those has since been withdrawn). Section 1.6 of the NRPS sets out the responsibilities for controlling the use of

land to prevent or mitigate the adverse effects of the storage, use, disposal, or transport of hazardous substances. The regional responsibility for specifying objectives, policies and methods including rules is delegated to the District Councils in relation to land outside of the coastal marine area and beds of rivers, lakes and other water bodies.

There are no express policies or methods relating to hazardous substances in the NRPS as hazardous substances are not considered a regionally significant issue for the Northland Region. The NRPS refers to the companion document "Regional Policy Statement for Northland – Issues assessed not to be regionally significant" for further details in relation to the decision not to include hazardous substances policies and methods in the NRPS.

4.3 Operative Northland Regional Plans

The Operative Regional Water and Soil Plan for Northland (**RWSP)** and the Regional Air Quality Plan for Northland (**RAQP**) contains issues, objective and policies relating to a number of matters within the region. The interface with hazardous substances is in relation to the discharge of hazardous substances to water and soil and air (i.e., contaminants). The Regional Coastal Plan (**RCP**) is relevant to the management of hazardous substances in the coastal environment within the Northland region.

4.3.1 Regional Water and Soil Plan for Northland (RWSP)

Section 8.5 of the RWSP (operative 2004) identifies issues related to agricultural discharges, stormwater discharges and solid waste discharges. Objectives are identified in section 8.6 as follows:

> *1. The effective treatment and/or disposal of contaminants from new and existing discharges in ways which avoid, remedy or minimise adverse effects on the environment and on cultural values.*
>
> *2. The reduction and minimisation of the quantities of contaminants entering water bodies, particularly those that are potentially toxic, persistent or bio-accumulative.*

Corresponding policies refer to the need to manage the pre-disposal and disposal of hazardous substances.

The RWSP includes specific provisions for the discharge of agrichemicals (s 18). These provisions refer to the application of vertebrate control chemicals and herbicides and manage the use of agrichemicals used for animal dips. Discharges to land and water are provided for as permitted, controlled, discretionary and prohibited and are generally subject to standards. The RWSP refers in these standards to the need to comply with other industry regulations and best practice.

4.3.2 Regional Air Quality Plan for Northland (RAQP)

The RAQP (operative 2005) contains provisions for discharges to air which include in section 6.6 three key objectives:

> *1. The sustainable management of Northland's air resource including its physical, amenity and aesthetic qualities by avoiding, remedying or mitigating adverse effects on the environment from the discharge of contaminants to air.*
>
> *2. The maintenance and, where necessary, enhancement of the quality of the environment so that it is free from noxious, dangerous, offensive or objectionable adverse effects associated with discharges to air, such as odour, dust, smoke and poor visibility.*
>
> *3. The reduction and minimisation of adverse effects from discharges of contaminants to air of global significance, such as greenhouse gases or ozone depleting substances, in agreement with government policy.*

In terms of rules, the RAQP prohibits discharges to air from the burning of hazardous waste materials. The rules also provide for the discharge of agrichemicals to air (as a result of their application) provided certain standards are met.

The RAQP was notified in 1995 with the last documented plan changes in 2008.

4.3.3 The Regional Coastal Plan

The Regional Coastal Plan (**RCP**) is applicable to the coastal environment within the Northland region. The RCP defines hazardous substances and identified the discharge of contaminates into air from the open burning of hazardous substances as prohibited within certain management areas. The RCP also includes rules in relation to the discharge of contaminates from the application of agrichemicals, providing for this as a discretionary activity.

The RCP was notified in 1994 and became operative in 2004.

4.4 Proposed Northland Regional Plan

The Proposed Regional Plan for Northland was notified by the Northland Regional Council in June 2020. It is a combined regional air, land, water and coastal plan. An Appeals Version was published in July 2021. Policy D.4.6 refers to the discharge of hazardous substances to land or water (and incorrectly implies that the HSNO Act provides approvals for discharges). However, there are more detailed requirements on the discharge of contaminants – which generally consist of, or contain, hazardous substances. There are no specific objectives, policies or methods for managing hazardous substances in relation to land use in general, or in relation to land in the coastal marine area or to beds of rivers, lakes and other water bodies in the Proposed Plan.

4.5 Iwi Management Plans

There are two Iwi Management Plans covering areas within the Kaipara District: the Te Uri o Hau Kaitiakitanga o te Taiao Plan and the Nga Ture Mo Te Taiao O Te Roroa Plan (Te Roroa Iwi Environmental Policy Document 2019). While the Plans do not make specific reference to the management of hazardous substances, the District Plan needs to enable appropriate involvement of any hapu or iwi represented by Te Uri o Hau and Te Roroa. This applies in particular in terms of risks to the natural environment from the use of land for any significant hazardous facilities.

Council is expected to address this matter in more detail in the section 32 analysis.

5. CURRENT PROVISIONS IN THE OPERATIVE KAIPARA DISTRICT PLAN

The second-generation Operative Kaipara District Plan (**KDP**) 2013 includes in Part A District Wide Strategy – Chapter 8 Hazardous Facilities and Contaminated Sites provisions providing for the management of hazardous facilities (the widely used term to describe the land use in relation to the management of hazardous substances). Appendix 25D lists the permitted quantities by zone and conditions for permitted activities.

The applicable performance standards/rules are included in various parts throughout the Plan. Part B Land Use Chapters 12, 13, 14, 15A and 15B, and 16 (for the Estuary Estates) repeat the rules for the rural, residential, commercial/industrial and Maori land/Treaty Settlement land zones, and corresponding sub-zones in the Estuary Estates. Chapter 24 contains relevant Definitions.

5.1 Analysis of KDP Provisions

The following provides an analysis of the provisions of Chapter 8 with regard to hazardous substances, Appendix 25D and relevant rules in Part B in more detail, referring to the section headings in the Plan.

8.1 Introduction

The Introduction combines matters relevant to hazardous substances and contaminated land. It refers to the pre-2017 legislative status. While a number of principles haven't changed, this section is not up to date.

8.2 Resource Management Act Requirements and Relevant Legislation

The assessment of the Introduction applies to this section as well. A correct description of the current legislative framework would be useful. It is not clear why this section is not part of the Introduction.

8.3 How to use this Chapter of the District Plan

This section provides an explanation which, unlike other explanations, has limited merit.

8.4 Significant Issues...

The issues with regards to hazardous substances are phrased in a very generic manner. The issues are not specific in the land use context and, in the current wording, have limited merit.

8.5 Objectives

Two relevant objectives are stated in section 8.5. The first (Objective 8.5.1) is a generic objective of protecting the human environment (including property) from adverse effects of hazardous substances. The second objective 8.5.2 is also rather generic referring to protecting the natural environment from adverse effects of hazardous substances.

The objectives are phrased in a rather non-specific manner and are not precise enough to reflect the resource management context (rather than workplace safety or the like), specifics of the Kaipara District (rural character, coastal environments etc.) and matters such as natural hazards (referred to in 8.1), the climate emergency or public safety.

8.6 Policies

Four policies are listed in section 8.6 in reference to Objectives 8.5.1 and 8.5.2. These deal with the design, construction and management of hazardous facilities, disposal and risk assessment. Overall the policies have merit and are consistent with what other local authorities provide but there is some overlap between Policies 8.6.1 and 8.6.2. The "Explanations" are useful in principle. There are no policies on the actual location of hazardous facilities or on the interaction with natural hazards or on reverse sensitivity. The links to the specific Objectives is useful.

8.7 Methods

The Methods are divided into District Plan and Other Methods. For District Plan Methods, Methods 8.7.1.2 and 8.7.1.3 appear correct in principle although a control of the design of hazardous facilities is not specifically included in the Plan provisions. Method 8.7.1.1 only applies to those facilities significant enough to trigger resource consent.

Other Methods alternate between the management of hazardous substances and contaminated land. Of those methods relevant to hazardous substances the methods referring to communication/co-ordination, assisting the HSTLC and promotion of good practices could generally be considered appropriate. Method 8.7.2.3 on transport is completely unnecessary in the District Plan. Method 8.7.2.7 on monitoring is actually a District Plan Method, not 'Other'.

8.8 Outcomes

The relevant (expected) outcomes in relation to hazardous substance management, although linked to specific issues, are phrased very broadly and could be interpreted as straying into other legislative requirements. No reference is made to public health, specific location issues for significant hazardous facilities, identified natural hazard areas, and identified natural features and eco-systems in the District that ought to be protected.

8.9 Rules

The Rules basically refer to the rules/'performance standards' in Part B for the various zones – see below. A 'Note' is included stating that Appendix 25D 'contains guidance' on permitted quantities. This is badly phrased as the Appendix is not guidance but contains binding thresholds. Reference is also made to Part C – Sites, Features and Units although there does not appear to be any provisions relevant to the management of hazardous substances or even cross-references to Chapter 8 in any of Chapter 17 to 21 in Part C.

Part B

Part B includes the rules/'performance standards' repeated throughout various zone provisions. This includes the Rural Chapter 12, the Residential Chapter 13, Business: Commercial and Industrial Chapter 14, Maori Land Chapter 15A and Treaty Settlement Land Chapter 15B. The corresponding requirements also apply to the equivalent sub-zones of the Estuary Estates Chapter 16. While generally covering relevant matters, some details in the rules do not make sense. For example, if "an activity is not a service station" being permitted in the Residential zones does not refer to fuel storage but, as written, permits any activity with hazardous substances, regardless of quantity – as long as it is not a service station.

In the rules a number of activities are deemed to be permitted, i.e., effectively exempt from scrutiny. This can become a problem for example if the permitted 'storage' of agrichemicals (in some zones) is the bulk storage of highly hazardous substances. It is further noted that the rules permit the 'application of agrichemicals and pesticides'. Firstly, pesticides are agrichemicals and secondly, the application is a discharge into the environment. That is a Regional Council matter.

Road materials (the term does not appear to be defined) within a road reserve are permitted. However, the storage of hazardous substances for roading work adjacent to more sensitive land uses has associated risks and the potential to result in adverse effects. The current exemption would permit potentially the storage of large quantities of hazardous substances, regardless of the sensitivity of adjoining land uses.

Note 2 in some of the zone provisions appears unnecessary as there are no relevant consent requirements in any Regional Plan.

A Rule on radioactive material repeated throughout the zone provisions is out of date. The same applies to the Assessment Criteria for activities involving radioactive material which are not designed for such activities.

Chapter 24

Chapter 24 Definitions includes the terms 'hazardous substances' and 'hazardous facility'. The definitions are not up to date (including the definition of 'hazardous substance' itself – see comments on the National Planning Standard in section 2.1 of this report). It is noted that the terms 'use' or 'storage' of hazardous substances are not defined in the Plan (or the RMA itself).

Appendix 25D

Appendix 25D lists the permitted hazardous substance quantities by zone and conditions for permitted activities. The quantity list has been calibrated and is widely used, including in the Auckland Unitary Plan. It is the most appropriate method to differentiate between permitted smaller and larger, significant hazardous facilities which need to be assessed. The HSNO classification has changed and the table

does not reflect the current, more descriptive categories [GHS7]. The grouping of zones, particularly with respect to Maori Purposes zones, appears somewhat arbitrary although a relative similarity to rural zones is evident. However, it is unclear why a marae or papakainga should be provided lesser protection than other residential activities as they are potentially quite different to rural dwellings, i.e., accommodating more people.

The conditions for permitted activities are based on older guidance and are in part out of date, unspecific and not all clear in the resource management context. It is unclear why the conditions are in an Appendix rather than the main text of the Plan.

Note 1: On 30 May 2019 Council adopted a plan correction which included conditions attached to Designation D63 by the Refining NZ Company Limited for the part of the existing Petroleum Product Transmission Line crossing part of the Kaipara District. The conditions do not include specific hazardous substance conditions or any specific provisions for reverse sensitivity in the vicinity of the pipeline. In July 2021 a similar update was undertaken for Designation D62 by First Gas Limited for the gas pipeline (primarily) alongside the oil pipeline, including updated maps.

5.2 CME of KDP Provisions

I am not aware of any specific information Council holds on the compliance/monitoring/enforcement (**CME**) of the KDC provisions with regard to hazardous substances. I understand that few, if any, land use consents for hazardous facilities were issued during the life of the Operative KDP. This does indicate that there is no inappropriate overregulation caused by the Plan provisions.

5.3 Status of KDP in Relation to National and Regional Policy

The current provisions of the KDC with regard to hazardous substances are consistent with the RPS and operative Regional Plans, although the latter are between 15 and 20 years old and are of limited value. There is no overlap or repetition of rules. The same applies to the Proposed Regional Plan for Northland.

The KDC provisions are not consistent with the National Planning Standards 2019 in terms of formatting.

6. NEIGHBOURING DISTRICT COUNCIL POLICIES AND PLANS

When deciding on the preferred management approach, it is important to consider that provisions shall have regard to the extent the district plan needs to be consistent with the regime applied by neighbouring districts under RMA section 74(2)(c). Kaipara District has three neighbouring districts, the Far North District, Whangarei District and Auckland. The approaches taken by these Councils are explained below.

6.1 Far North Operative District Plan

The use of land associated with the use, storage, and disposal of hazardous substances, otherwise termed hazardous facilities, are controlled through the provisions of Chapter 12.8 of the Operative Far North District Plan (**FNDP**). The current provisions in the Operative FNDP apply in all zones across the District and use the Hazardous Facilities Screening Procedure (**HFSP**) to identify whether resource consent is required for the storage or use of a substance. Details of the HFSP are set out in Appendix 2 of the Operative District Plan.

Other key features of the management of hazardous substances in the Operative FNDP are the exemption of certain activities storing or using hazardous substances and the absence of 'performance' standards for relevant activities.

The following provides a brief analysis of the provisions of Chapter 12.8 and Appendix 12 of the Operative FNDP, using the section headings in the Plan.

Context

This section provides an introduction to the issues and explains the statutory context for the management of hazardous substances. It is out of date.

Issues

Three issues are identified, one of which is more a discharge than land use matter (spray drift) and as such considered a Regional Council responsibility. One deals with the management of contaminated land which is different to managing hazardous facilities. It also is not addressed in this Chapter in terms of applicable DP methods/rules.

Environmental Outcomes Expected

There are six outcomes specified one of which relates to contaminated sites. The others are relevant in principle.

Objectives

Two objectives are stated in the operative provisions which are similar in intent and wording. The primary purpose of the management of land use in respect of hazardous facilities is the minimisation of risk. This is a process which can still result in some residual risk (i.e., an environmental effect) being present after mitigation. The avoidance of adverse effects appears to be an absolute – potentially reference to 'significant' or major adverse effects (or 'acceptable risk' – see policies) would be more correct.

Policies

There are six policies specified one of which relates to contaminated sites. The others stray into methods (spill response plans – Policy 12.8.4.2) or suffer from the same inconsistency (avoidance vs minimisation of effects) with the objectives. Reference is made to disposal but not to the transport of hazardous substances in the district.

Methods

Five DP methods are listed in the Plan, one of which, again, refers to the management of contaminated sites. The other provisions range from correct in principle (reference to method to establish activity status – 12.8.5.1) over potentially too specific (12.8.5.2, 12.8.5.4 – the method appears to be the imposition of conditions on certain – selected - matters) to not being a method altogether (12.8.5.3, phrased more like a policy).

There are a number of other, non-statutory methods specified some of which are useful in principle. However, it is understood that these methods have not been developed in any detail or actively implemented during the life of the current plan.

Rules

The rules provide for permitted and discretionary activities, largely based on the result of HFSP calculations. In addition it provides for controlled activity status for service stations, subject to a number of specified standards, and a number of activities listed as deemed to be permitted, i.e., essentially exempt from the HFSP (or any controls).

The wording of Rule 12.8.6.1.1 (b) implies ("provided that…") compliance with the Indices for permitted activities but Table 12.8.6.1 exempts certain activities, regardless of quantities of hazardous substances involved (and therefore likely HFSP Indices). This appears to introduce the potential for inconsistency and unfairness into the provisions.

While controlled activity status for service stations (with regard to the storage of hazardous substances) is widely used in many District Plans in the country, I consider that the standards as specified are of limited use and potentially overlap in part with requirements of the HSNO legislation.

I note that this section does not specify any (performance) standards for permitted activities which is somewhat unusual, compared to other District Plans.

Assessment Criteria

The Assessment Criteria are largely based on previous national guidance and established practice. One of the matters listed refers to natural hazards, however, there is no corresponding policy.

Appendix 12

Appendix 12 contains details of the HFSP, the method to determine whether land use consent is required. It is the second version of the HFSP. While this version represented 15 years ago an update to the original it is by now also dated, specifically in some of the technical details linked to the HSNO classification system. It is also considered difficult to understand, particularly in the way it is presented in the Plan. It does not contain any reference to calculation spreadsheets or software, or any manual calculation sheets, hence it is difficult to apply.

With regard to the definition of terms relevant to the management of hazardous substances it is noted that the terms 'hazardous substance' and 'hazardous facility' are currently defined in the general Definitions section of the FNDP. Some terms in relation to the HFSP are defined in Appendix 2. Other terms such as 'use' or 'storage' of a hazardous substance are not defined. Some other terms specific to this issue, particularly in relation to 'risk' (in the context of hazardous facilities) are also not defined.

6.2 Far North Draft District Plan

The Far North District Council released a **Draft District Plan** in March 2021. While it contains simpler provisions for the management of hazardous substances, replacing the HFSP methodology, the general approach of requiring consent for various hazardous facilities remains. The provisions rely on applying permitted activity status to Significant Hazardous Facilities in the Heavy Industrial Zone (unless located within a sensitive environment or near a sensitive activity), discretionary activity status in the Light Industrial and Rural Production zones (unless located within a sensitive environment or near a sensitive activity) and non-complying in all other zones. New sensitive activities located within 250m of a Significant Hazardous Facility are non-complying.

The approach relies on what constitutes a 'significant hazardous facility'. That definition is essentially an industry activity list, generally without any indication of scale of that activity (and hence the corresponding risk). This means that a chemical bulk storage facility for example for compressed and toxic gases, or oxidisers (if not associated with manufacturing) could be permitted anywhere; large hydrogen tanks as part of hydrogen infrastructure could be permitted anywhere; the storage of explosives could be permitted anywhere. Meat and milk processing is included in some form in the list as an applicable industrial activity, wine or seafood processing is not. On the other hand a new dwelling or marae near a small tannery or near an artisan cheese maker processing goats' milk would now be non-complying. This reflects the immense problem of incompleteness of, and inconsistencies within, such lists.

6.3 Whangarei District Plan

The Whangarei District Plan provisions for hazardous substances are similar in approach and scope to those of the Operative Far North District Plan. It also uses the HFSP as the method to determine the activity status. Due to the similarity with the Far North provisions, a number of comments made on those apply and are not repeated here.

Whangarei District Council notified a significant Urban and Services Plan Change in May 2019. Some reformatting of the Plan provisions for hazardous substances was undertaken to comply with the requirements of the National Planning Standards. However, the content was effectively rolled over, including retaining the HFSP methodology to determine the requirement for consent for hazardous facilities across the district. The council planner stated in her s42a Hearings Report that "*a full review of the hazardous substances provisions is intended to occur as part of a separate plan change in the rolling review, which will enable the provisions to be reviewed comprehensively. The current restructuring is proposed as an interim measure to simplify and streamline the district plan and achieve consistency with the Standards*". Based on the recommendation in the planner's report the Hazardous Substances Chapter as notified was retained, a submission by the oil companies not to roll over provisions was rejected and the provisions are unchanged in the Decisions Version of the Plan in June 2020. (I understand the Whangarei District Council approached the Ministry for the Environment for advice on the hazardous substances provisions in the first half of 2017, however, to my knowledge no useful guidance was forthcoming.)

It is noted that the Ruakaka solvent recycling facility currently requiring a massive clean-up operation was consented under the operative hazardous substances provisions. However, it is unclear whether meaningful consent conditions were applied. Certainly enforcement of any conditions or provisions of the RMA in general was clearly insufficient.

6.4 Auckland Unitary Plan

While the provisions for the management of hazardous substances in the **Auckland Unitary Plan** (**AUP**) are both regional and district objectives, policies and rules, they are similar in nature and scope to the current provisions in the KDP. Unlike some other matters of the AUP these provisions were not appealed and became operative on 15 November 2016. The consent status of most activities is determined by thresholds specified in an AST. Unlike the AST in the Operative KDP, the AST in the AUP provides for both Restricted Discretionary and Discretionary Status. Another difference in how the provisions are presented is that there are no appendices, and all controls and assessment matters are included in the main text of the AUP.

As a new approach at the time the AUP introduced a section on risk management areas to address reverse sensitivity to hazardous substance risks around identified large-scale hazardous facilities and infrastructure. The extent of such areas is defined on the basis of quantitative risk assessments that have been undertaken for the facilities specified in that part of the AUP. It also applies to the Marsden Point-Wiri oil pipeline which has a risk management corridor specified in addition to the general corridor applicable to the pipeline designation. That amendment to the plan provisions was sought by the pipeline operator at the time. It may be possible that they may request the same for the Kaipara section of the pipeline. Otherwise the Kaipara District does not have any facilities anywhere near the scale that were specified in the AUP.

6.5 Summary Evaluation of Approaches by Neighbouring Councils

All three Operative District Plans reviewed include provisions for the management of hazardous substances/hazardous facilities. There is a reasonable degree of compatibility in the overall level of risk/substance quantities above which land use safety controls apply. The current KDP provisions are most compatible with those of the AUP in terms of approach but vary somewhat in scope. This reflects the larger scale facilities in Auckland as well as the more urban environment there, including large industrial areas.

Only the AUP has specific provisions for reverse sensitivity with regards to hazardous facilities risks. However, they do apply only in relation to a few facilities and, considering Auckland represents the

largest industrial base of the country, it is not surprising that smaller, more rural Councils have no equivalent provisions.

The HFSP as a method to determine the activity status was first introduced more than 25 years ago but is by now widely perceived to be rather complex and potentially too technical as a planning tool. Updates and improvements to the HFSP have not occurred for almost 20 years. Consequently this methodology has been replaced by more than half the Councils that initially adopted it, with a majority opting for an AST (including Auckland and Kaipara District). More background on all methods is provided in section 8 of this report.

The approach of the Draft Far North District Plan is not recommended in its current form, particularly as it relies on an unsound and inconsistent definition of the term ‘significant hazardous facility’.

7. RECENT PROVISIONS OF OTHER DISTRICT PLANS

While Plan provisions shall have regard to the extent the district plan needs to be consistent with the regime applied by neighbouring districts under RMA section 74(2)(c), often some other Council's approaches are selectively brought up, particularly in submissions and feedback. This has become somewhat more prevalent in the field of hazardous substances since the amendments to RMA s31 were made. It can be observed that District Plan provisions for hazardous substances generally have become less consistent – both between neighbouring Councils and within a plan. This can be explained in part by the lack of detailed and thought-through national guidance in this field, in part by some misinformation which has become more widespread over time.

The following briefly introduces some recent Plan Changes, Draft Plans and Notified Plans, and an abandoned Plan Change. The examples are of small to medium sized Districts without dominating industries, rather than cities or specific plan provisions aimed at particular types of hazardous facilities.

7.1 The Waikato District Plan

The Waikato District Council notified amended provisions for hazardous substances as part of its Plan Review in 2018. The purpose was to update and consolidate varying provisions in the Waikato and Franklin sections of the Operative Waikato District Plan. As with most Plan reviews submissions in support and in opposition were received. Supportive were iwi organisations, the Waikato Area Health Board and the Waikato Regional Council. Opposed were various industry organisations and companies. The Hearing Panel rejected the provisions as notified and suggested some ad-hoc provisions. They include a generic activity list for which consent would be required. If applied as suggested the Council would face numerous applications for small scale facilities while some large facilities would suddenly become permitted. No expert input was obtained in replacing the provisions, no comments sought from those now facing consent not previously required, and no expert conferencing was requested or undertaken by the panel. At the time of writing this report, about 22 months after the hearing on this subject matter, no final decision on the matter has been provided by the Hearing Panel.

7.2 The Whanganui District Plan

Plan Change 54 was notified by the Whanganui District Council in July 2021 and includes amendments to the hazardous substances provisions. It proposes replacing the HFSP approach (similar to Far North, Whangarei, Hauraki – see below) with simpler provisions. They rely on applying discretionary activity status to Significant Hazardous Facilities in the General Industrial, Rural Production, Rural Lifestyle, General Rural and Rural Settlement zones. Those facilities are deemed non-complying in all other zones. Apart from the stricter activity status for many activities compared to the operative provisions, the approach relies on what constitutes a 'significant hazardous facility'. However, the provisions as notified do not include a definition for the term. A definition for 'hazardous facilities' is provided which is essentially an industry activity list without any indication of scale of that activity (and hence the corresponding risk) and reflecting the general problem of inconsistency and incompleteness of such lists.

7.3 The Hauraki District Plan

In 2020 the Hauraki District Council included as part of Plan Change 4 amended provisions for hazardous substances/hazardous facilities. While other changes included in PC4 were largely administrative, the amendments to the hazardous substances provisions were substantial. The HFSP approach (similar in principle to the Far North and Whangarei Districts) was to be abandoned and only the disposal of hazardous substances regulated. A number of submissions by the regional council and local residents were opposed to the change, including on the basis that it was not an administrative matter. A detailed staff report largely supported those submissions and recommended retaining the provisions with some amendments and updates. At the hearing in March 2021 the sections of PC4 relating to hazardous substances were altogether withdrawn by Council, and consequently no changes were made to the hazardous substances provisions in the District Plan.

7.4 The Selwyn District Plan

While generally district plans in the North Island can be considered more relevant to the Kaipara District, other Plan proposals are occasionally mentioned as examples of different approaches. One of those is

the Proposed Selwyn District Plan which was notified in October 2020 and includes amendments to its hazardous substances provisions. It proposes permitting hazardous substance activities in all zones unless the activity is a Major Hazard Facility (**MHF**), as defined in the HSW (Major Hazard Facilities) Regulations 2016. The approach is simple if problematic.

Firstly, many activities with the potential for adverse effects would be permitted in sensitive zones without any performance standards or location specific requirements. This could include, for example, the use of LPG up to 10 tonnes at a dwelling in a residential zone; the storage of unstable explosives up to 10 tonnes in a town centre (or anywhere else), or the storage of diesel up to about 5,500,000 litres anywhere, including care facilities (a standard petrol station stores about 50, 000 litres of diesel – 1/100th of this limit). Secondly, while a policy specifies that the location of sensitive activities is managed in the vicinity of a MHF, they could in fact locate anywhere without controls unless it is in an area identified in a quantitative risk assessment of an existing MHF. This is particularly problematic as NO (not one) MHF is located in the Selwyn District, according to the WokSafe NZ website, and hence such areas identified in a quantitative risk assessment also do not exist. This means thirdly, that the proposed requirements themselves only apply to something that does not exist in the Selwyn District. New MHF are also unlikely to be established any time soon as the northern part of the Selwyn District borders Christchurch which has, and provides for, MHF in nearby Hornby. In summary, the proposed requirements permit many activities which have the potential for significant adverse effects and controls activities that do not exist. This can be described as ineffective, bureaucratic and unnecessary.

It is worthwhile to note that Selwyn does not propose to adopt the provisions of neighbouring Christchurch which are still considered erroneously by some industry interests as a model.

7.5 Summary Evaluation of other Plans

It is noticeable that the approach to the management of hazardous substances in recent or draft district plans is highly variable. This variability is not a result of analysing the needs and requirements of different communities and environmental features but primarily due to a lack of specific and qualified guidance, or even increasing misinformation. The variability is also not the result of appropriate s32 evaluation or reflecting necessary expertise in the development of these challenging plan provisions.

If anything examples such as the above demonstrate that:

a) Many Councils struggle with the complexity and technical nature of the subject matter;
b) Necessary updates to dated Plan provisions are deferred by some Councils due to a lack of guidance and independent advice;
c) Some Councils either deliberately or accidentally (the latter again would be a lack of guidance/advice) adopt provisions which only apply to activities which do not exist, or are unlikely to be established, in their district;
d) Some Councils adopt a somewhat random ‘copy-and-paste’ approach of provisions without analysis;
e) Some Councils submit to the pressure of special interests in amending or deleting provisions probably due to a fear of lengthy and costly appeals;
f) On occasion ad-hoc provisions are proposed which can be confusing, unduly onerous or inconsistent. Such inconsistencies can apply to the provisions in themselves, how activities are to be managed regardless of the risk they represent (including their activity status), or in highly variable requirements between neighbouring Councils;
g) Some Councils have established complex risk assessment provisions, sometimes even for small facilities;
h) Some Councils have reverted to pre-RMA activity lists rather than managing effects, and
i) Some Councils have combined the disadvantages of several of these matters.

8. THE METHOD TO DETERMINE THE ACTIVITY STATUS

Despite only being one specific tool in the planning framework, the method to determine the activity status of a hazardous facility is considered an important matter, not the least because of its relative complexity compared to other land use planning tools. Acceptable risk levels cannot be easily specified, measured and enforced, and systems combining quantities and hazard levels as an approximation of risk are generally applied. The following provides some more detailed background of the methods currently in use in New Zealand.

8.1 History and development of the Hazardous Facilities Screening Procedure (HFSP)

The method to determine the activity status of hazardous facilities became an important feature of relevant provisions in many 1st generation district plans. This is not necessarily justified but reflects the (perceived) complexity of such methods, particularly of the HFSP. Due to some misconceptions about the HFSP it is often perceived in the following ways which do not reflect its purpose:

- as a risk assessment method- rather it is generally part of the assessment criteria which may lead to a detailed risk assessment,
- a planning strategy – it is all but one tool within the planning strategy;
- a control mechanism - this is primarily the function of rules or performance requirements/standards.

The HFSP is in fact a screening procedure assisting in establishing the activity status, like other methods of this kind.

The HFSP was initially developed for the Auckland City Council (i.e., a large urban local authority with numerous industrial and commercial activities involving hazardous substances). For such Councils the HFSP proved to be an appropriate screening tool to establish the activity status of hazardous facilities at the time.

The HFSP is deemed to be a largely effects (risk) based screening tool. The HFSP, properly used, provides a mechanism to establish a rough approximation between the land use 'hazardous facility' and its particular environmental effect, 'risk'. It requires information on the substances involved and the activities proposed. This includes the quantities of individual substances and their specific hazards, the activities carried out with them, and the specific location. Identifying these matters provides some assistance in defining the issues that need to be addressed as part of a land use consent, or even if the activity is permitted.

A significant feature of the HFSP are (a number of) exemptions. Some activities are generally not required to carry out HFSP calculations to determine their activity status, but could be required to comply with specified standards. This may include activities involving the use or storage of radioactive materials, retail outlets for the sale of petrol, diesel and LPG, and sometimes research and teaching laboratories, or selected activities involving agrichemicals.

The updated version of the HFSP (1999/2000) is by now itself dated and not entirely consistent with HSNO. This means that, for example, substances are classified in hazard categories which somewhat differ from HSNO. Particularly in cases where the actual current hazard classification indicates a higher hazard than was assumed originally, this can lead to underestimating risks relevant to land use safety. There are also issues with the presentation and level of information required to achieve the necessary workability and user-friendliness.

Additional complexities have been introduced as part of the HFSP by some local authorities, such as buffer zones or hazardous 'sub-facilities'. The former may address the failure of zoning specifications allowing significant industrial size hazardous facilities in the immediate vicinity of sensitive land uses, rather than having a gradual transition. The latter can be used to address the problem of large sites or premises with activities involving hazardous substances occurring in areas (i.e., within one site) separated by potentially large distances. These matters add to the complexity of the HFSP.

8.2 The (Hazardous Facilities) Activity Status Table (AST)

The Activity Status Table (**AST**) has been in use since the early 2000s as a simpler and more user-friendly alternative to the HFSP. This method has now been adopted by about 12 to 15 TAs, in some cases (such as the Waikato District, Rotorua District, Ruapehu District, Thames-Coromandel District and Auckland) replacing the HFSP. The AST, unlike the HFSP, generally covers all relevant HSNO sub-classes for hazards. The permitted quantities in the AST are largely derived from the HFSP using standardised use and storage scenarios.

The main reasons for the investigation and adoption of the AST by District Councils were the problems some territorial authorities faced in applying the HFSP adopted in their District Plans correctly, as well as the increasing acceptance that a simpler alternative would lead to a higher level of compliance. By stating permitted quantities directly in the plan, there is no need for the plan to mention effects ratios, base thresholds or adjustment factors, and therefore it simplifies the task of identifying the activity status of hazardous facilities.

Another feature of the AST is that it refers directly, and only (with the exception of high BOD substances, if included), to the HSNO classifications of substances. This allows for much easier identification of the specific hazards of substances in the New Zealand context. Overall it can be expected that administration of this system is to be much simpler than under the HFSP. In many cases applicants will be able to decide for themselves if they need consent, instead of relying on Council staff or technical specialists to assist with identification and calculation procedures.

Further, the AST does not create artificial groupings, effects groups, combining different hazards, but links substance quantities directly to the HSNO hazard classification. This provides for the more accurate application of land use controls to the respective hazards, as and when considered necessary.

The system is also substantially briefer than the HFSP – generally the equivalent of about 2 to 3 pages (or up to 10 pages of tables, depending on its presentation) instead of 20 or more pages for provisions including the HFSP.

The definition of the substances classes and subclasses in the AST are generally based on those in the now repealed Hazardous Substances Classifications Regulations 2001. The advantage compared to substance lists is that only the quantities of substance categories and classes need to be stated, not those for individual substances. (The Globally Harmonised System (**GHS 7**) adopted in New Zealand in 2021 would require some updates to an AST in proposed plan provisions.)

The aggregate quantity thresholds defining the activity status in the AST within hazard classes are based on those developed for the HFSP for the storage of substances and consequently have been subject to analysis and scrutiny when proposed for inclusion in the planning process.

The AST uses the HSNO hazard classes and, unlike the HFSP, does not lump substances together in ‘Effects Groups’. This applies in particular to substances with eco-toxic properties where substance quantities are specifically lowered to ensure a consent and specific assessment of adverse effects where waters may be adversely affected by the storage of eco-toxic substances. These advantages are considered sufficient to alleviate the effect of not having adjustment factors applied as an approximation of adverse effects of a particular hazardous facility.

The ‘buffer’ provisions currently adopted by most Councils that have this method are unique for substances with specific hazardous properties, and consequently can be more precisely targeted than buffer zones sometimes adopted with the HFSP.

There are some challenges with regard to adopting an AST in a Plan. Being somewhat simpler in its approach, the methodology could be considered to be somewhat less effects based than the HFSP. This has to be balanced against user-friendliness and effectiveness.

Some minor refinement of threshold quantities may possibly need to be undertaken for specific plans to take into account the nature of hazardous facilities likely to be established newly in the area, and the specifics of the districts. This is generally not the case for a plan review where the AST has been adopted previously and is retained.

Possible exemptions of specified hazardous facilities from determining the consent status via the AST may be useful in individual cases. However, this is unlikely to apply to the same degree as for the HFSP as perceived complexity of determining the activity status is not an issue with this method.

8.3 Substance/Activity lists

Activity or substance lists are basically specific references to individual business or industry sectors or chemicals, and often represent a historical link to what was considered 'noxious industries'. They have the advantage of being relatively clear and simple but have numerous disadvantages. These include potential confusion about scope (e.g., the term 'milk processing' may include bulk storage of chemicals or apply equally to an artisan cheese maker, the term 'chemical storage' to a small warehouse or a bulk storage facility) and, by its very nature, the limitation to the listed activities or substances. The activity status of substances or activities/industries not listed is often unclear. If any quantity thresholds are listed for substances in particular industries they are often based on historical precedents or perceptions and do not necessarily reflect current thinking.

Generally controls in Plans that have activity and/or individual substance threshold lists are by their very nature activity rather than effects (risk) based. This can lead to inconsistencies between activities with cases of more significant adverse effects not being included, and consequently being treated more permissive than specified activities with lower risk. Assessment matters or information requirements are often not stated. These matters can often also lead to either gaps or overlaps in land use planning requirements between different parts/zones within one Plan where, for example, amenity issues or nuisance effects (e.g., smoke, dust, odour) are addressed with different activity status and requirements.

One particular type of 'activity list' is a reference to Major Hazard Facilities (**MHF**) made in Plans with regard to a specific activity status. This approach neglects other significant hazardous facilities and is, surprisingly or not (depending whether you consider it deliberate or more 'accidental'), applied or proposed by smaller, more rural Councils which do not have (and are unlikely to be a location to) any MHF within their district. In such instances such reference is as meaningful as providing for a major port in a land-locked district.

8.4 Comparison of different methods

The rationale for, and specific features and limitations of, the most common methods to determine the activity status of hazardous facilities can be summarised as follows:

Method / Feature	Hazardous Facilities Screening Procedure (HFSP)[1]	Activity Status Table (AST)[2]	Activity lists[3]
Technique	Provides mechanism to calculate dimensionless effects (or quantity) ratios which determines activity status	Provides quantity limits for substance aggregates (generally within HSNO sub-categories) below which activity is permitted	States activity status for specified activities (this can include MHF)
Principle	Largely effects-based calculation method; groups types of effects together	Comparison of proposed quantities with stated limits for each hazardous property	Provides relatively clear direction on activity status of those activities covered
Scope	Covers all HSNO classes but not necessarily all sub-classes (e.g., not those for chronic toxicity parameters)	Generally designed to cover relevant HSNO classes and relevant hazard levels; can include environmentally damaging substances (i.e., has the widest scope and is most closely aligned with HSNO classes)	Limited by its very nature, covers specified activities only (on occasion only theoretical as scope is limited to activities that do not exist in a district, such as MHF)
Advantages	More effects-based than other methods, adjustment factors allow for more precise reflection of risk, comprehensive	Comprehensive, user-friendly, brief, clear link between specific hazard and activity status can be provided	Clear (in theory), possibly consistent with historical approaches pre-RMA
Limitations	Some room for interpretation; 'artificial' grouping of different hazards together to generate 'Effects Groups'; no updates available	Not strictly effects based (aggregate quantities for specific hazard classes and sub-categories are used as an approximation for risk)	Does not provide for management of unspecified substances and activities; not effects-based
Challenges	Potential confusion about two (both dated) versions Requires some mathematical operations Ability of applicants and processing staff to use, understand (explain) procedures Not considered to be user-friendly by layperson	Relative simplicity may induce complacency in understanding necessary elements and details Potential for amendments by Councils that may not reflect philosophy and background (this may apply, to a degree, to all methods)	No flexibility in scope Potential confusion about what is covered and what is not Possible conflicts in activity status between different activities covered by other plan provisions Potential for significant gaps in activities not covered

1 Examples include: Whangarei, Operative Far North, Hauraki, Hamilton, Tauranga, Gisborne, Wellington
2 Examples include: Auckland, Operative Waikato, Thames-Coromandel, Rotorua, Otorohanga, Ruapehu, Combined Wairarapa
3 Examples include: Napier, Hastings Palmerston North

A judgement has to be made between complexity versus clarity of the different methods, being dated or current, more effects- or activity-based, comprehensive or somewhat disjointed and with gaps. While activity/substance lists were more common pre-RMA, they were often replaced by a number of local authorities by the other then available, more sophisticated, methods in their 1st generation Plans. For 2nd generation Plans many of the Councils that had initially adopted the HFSP replaced it with an AST. This was primarily based on user-friendliness and (perceived) complexity, probably lately also a lack of national guidance. On balance, although it is not strictly effects-based, I consider that the Activity Status Table (**AST**) is the best method currently available to determine the activity status of hazardous facilities/installations. There are many resource management methods that use an approximation for an effect to determine the activity status. In the case of the AST it is substance quantities for risk, a type of effect difficult to determine precisely in any case. It is noted that all relevant HSW Regulations and EPA Notices also use aggregate quantity thresholds.

Note: A fourth method has been adopted by a couple of local authorities in Taranaki, with requirements being linked to Quantitative Risks Assessments (**QRA**). This has a clear effects (risk) based foundation but can meaningfully be applied only to particular types of hazardous facilities with certain limited adverse effects on people (particularly due to fire/explosion risks). They are generally associated with the petrochemical industry and may not be as applicable to, for example, facilities with a risk of emitting toxic gases or facilities with a risk of significant adverse effects on the natural environment or eco-systems. There are some additional disadvantages, including:

- by their very nature QRA are risk models based on assumptions and not necessarily reflecting reality – making independent peer reviews essential;
- QRA are generally facility specific and do generally do not take into account cumulative risks with other sources;
- there are no statutory risk acceptance criteria available in New Zealand.

This is an approach not suitable for most local authorities in the country.

8.5 Buffer provisions

Established zoning or other (historical) grouping of land use activities are generally not specifically designed for the management of hazardous facilities risks but rather amenity (or sometimes nuisance) issues. For some areas existing land use patterns may result in land use environments or zones of a distinctly differing sensitivity being directly adjacent to each other, for example residential areas in proximity to a significant hazardous facility. For example, this has occurred with the establishment of correctional facilities.

Providing for a buffer between such zones can assist in providing a separation of potentially incompatible land uses. Such buffers would be specific to the hazardous facility. An example is to provide for the activity status of a hazardous facility within a defined distance of an area of more sensitive land use, to be the same as the status within that specific sensitive land use area.

Buffer provisions can also be applied for relevant hazard categories (eco-toxicity, high BOD) appropriate for the protection of the natural environment. This applies in particular to aquatic environments or eco-systems.

It is recommended to provide for buffer provisions to be included in the AST, specifying different thresholds depending on whether a proposed activity is within or outside a defined buffer area.

9. THRESHOLD VALUES IN THE AST

9.1 Background

The values widely adopted for the Activity Status Table (AST) such as in the Waikato Section of the WDP, in Auckland, Kaipara or Thames-Coromandel are based on the work carried out in the early 1990s for the HFSP, initially by the Auckland City Council, then the HFSP Review Group. The technical experts who provided risk expertise for the development of the HFSP at the time were Professor David Elms of Canterbury University, Paul Jarret of the University of Auckland, Dr. Derek Mullins of the NSW Dept. of Planning and Professor Mark Tweeddale of the University of Sydney.

The Base Thresholds of the HFSP were set in line with limits specified in the then used substance list by the then Auckland Regional Council, the Australian New South Wales State Environmental Planning Policy (SEPP) 33 and the UK CIMAH (Control of Industrial Major Accident Hazards).

The applicable factors between industrial, residential and other land uses are based on the respective land use risk acceptance criteria of the NSW Hazardous Industries Planning Advisory Paper (HIPAP) No. 4 which specify a variation of a factor of about 50 between industrial land use and residential/sensitive land use, with land uses of medium sensitivity in between. This is largely reflected in the respective thresholds of the AST for each hazard category (for example: a 1 tonne threshold for industrial zones compared with a 0.02 tonne threshold in residential zones for hazard classes 4.2, 4.3, 5.2). The development and application of the principles and relevant values/thresholds of both HFSP and AST have been subject to repeated rigorous analysis over several decades.

Example: Liquefied Petroleum Gas (LPG)

As an example the rationale specifically for the LPG threshold applicable to sensitive land uses is briefly explained. For liquefied gases the threshold values of the documents referred to in above paragraphs ranged from 1 tonne to 10 tonnes. The HFSP Base Threshold value adopted for LPG was 30 tonnes, with an Adjustment Factor (generally applicable to gases) of 0.1 resulting in an Adjusted Threshold of 3 tonnes (that compared well with nationally and internationally adopted thresholds). The model consent status matrix (as per the then Ministry for the Environment's Land Use Planning Guide) recommended an applicable ratio of 1 for industrial areas (which was the basis for setting the thresholds, for example, in NSW). This equates to the Adjusted Threshold of 3 tonnes of LPG before a land use consent was required. For residential areas a safety factor of 50 was adopted – based on international practice for calculating acceptable fatality risk parameters. This means the recommended ratio in the consent status matrix for residential land use was recommended at 0.02. For LPG this would result for most credible cases in an 'Effective Threshold' or 'Effective Quantity' of 3 tonnes x 0.02= **60 kg**.

On the basis of the above it has been widely accepted practice in NZ by those Councils using an AST that a threshold for LPG in residential areas should be in the range of 50 to 150 kg. To permit specifically – and pragmatically – on each site two 45 kg cylinders (plus a 9kg bottle, e.g. for a BBQ) a value of 100 kg is now widely adopted. [This is also comparable to the HSNO threshold in the applicable EPA Notice for LPG storage outside workplaces.]

Other values adopted in the generic AST are based on the same rationale as that explained for LPG above. If an AST was to be retained by Kaipara, it is recommended that thresholds which have been subject to rigorous analysis be used in updated district-wide provisions. Variations would need to be justified.

9.2 Sub Classes often not included in the AST

There are some HSNO subclasses for which specific land use controls are generally not considered to be necessary. This is either due to their lower hazard level compared to other substances or the

perception of other requirement being adequate.For example, some hazard categories for (particularly chronic) toxicity are not included as they are more likely to be a workplace health issue, or adverse effects are more likely caused by intended application or discharge (the control of which is a Regional Council function). In particular the numerous categories of toxic or eco-toxic substances are not fully reflected in the proposed provisions due to the main sub-classes of 6.1 (acute human toxicity) and 9.1 (aquatic toxicity) being the most important within their class.

Specificsub-classes often not included in the AST are 1.4, 1.5, 1.6, 6.1D, 6.1E, 6.3, 6.4, 6.5, 9.1D, 9.2D, and 9.3. Such an approach would both increase user friendliness and acceptance without adversely affecting the intent or effectiveness of land use planning controls.

Note: The previous numerical HSNO substance hazard classification system has been replaced by descriptive terms by GHS7.

10. VARIABLES, ADVANTAGES AND RISKS OF OPTIONS

Reasonably practicable options for the management of hazardous substances and facilities could be considered to include doing nothing, maintaining the status quo, adopting different approaches, in particular different methods to determine the activity status as discussed above, and/or or consolidating and amending existing provisions to achieve a meaningful set of controls. To assist with the s. 32 analysis, the following provides a brief comparison of the recommended approach for the management of hazardous substances and facilities with other possible options.

10.1 Doing Nothing

Doing nothing, while possible, is not considered a feasible option as it does not provide for the protection of people, local communities or environmental features from risks associated with specific hazardous facilities, beyond the legal minimum of other legislation. It is not an approach that has been favoured by the vast majority of local authorities in New Zealand in the more than two decades the RMA and HSNO legislation have been in operation together. Specifically, it is also not an approach taken by any of the Councils neighbouring the Kaipara District. This approach would potentially expose the Kaipara District Council to environmental, legal and consequently financial risks if incidents occur with adverse off-site effects which could be prevented. The approval of buildings which turned out to be leaky under previous building legislation, or of subdivisions of contaminated land which have proven to be costly to many local authorities are relatively recent examples of where 'doing nothing' (or doing little) has led to highly undesirable results. It is not without some irony that land contamination caused by the mismanagement of hazardous substances has become a more prominent matter in the RMA regime over time.

The inappropriateness of doing nothing also applies to monitoring and enforcement. This is of particular concern if monitoring and enforcement are included in District Plan methods but not implemented effectively in practice.

Examples:

An example of significant environmental and financial cost to ratepayers and taxpayers is the clean-up of the **Concours Electroplaters facility in Timaru**. Initially noticed as a major problem after a fire in 2015 (there does not appear to be a history of WorkSafe or council enforcement action despite operations on the site for over 50 years), removal of over 100,000 litres of hazardous substances from the abandoned site commenced in late 2016. By the end of 2019 a contract was awarded for site decontamination and removal of buildings. The first stage alone cost about $ 1,000,000, the cost of remediation is not known.

Another example is the **Ruakaka solvent recycling facility**. The site was owned by Sustainable Solvents Group and has been used to treat and recycle industrial solvents since 2009 – this is not a historical site. However, non-compliance occurred at least since 2015, with chemicals stored on site ever increasing and significantly exceeding what was consented. The storage conditions are not, and appear never to have ever been, appropriate for the type of chemicals on site. Drums and other containers were corroding and storage areas were not contained. Inevitably significant ground contamination occurred in an area of mainly loose and sandy soil, close to the coast. This requires ongoing and costly remediation after the initial stage of safeguarding and removing failing containers. The first stage alone is reported to have claimed about $ 3,000,000 in cost to ratepayers and taxpayers. The environmental costs cannot be estimated.

10.2 Status Quo

The status quo for the Kaipara District is to retain current provisions, including the repetition of requirements in the zone provisions. This option would consequently mean retaining some out-of-date provisions, and it would be inconsistent with the NPS 2019. Consequently this approach is not recommended.

10.3 Develop New Provisions

The Council may want to consider developing completely new provisions from scratch that do not rely on established practices and the approaches of many other, in particular neighbouring, local authorities. This could, for example, include a direct alignment with workplace safety legislation in terms of definitions, thresholds and other details, particularly in relation to MHF. However, there are no MHF listed in the Kaipara District, nor are they likely to be established. This approach also relies on an information exchange with WorkSafe NZ which currently has no statutory basis. This lack of corresponding scope between the two regulatory regimes would also not support this approach.

Development of new provisions would require detailed analysis and development work with associated time and funding which is not available in this current review. It would also be more the role of MfE to develop such provisions if desired on a national level. It is recommended not to pursue this option as it is inappropriate for a district the size of Kaipara.

10.4 Retain Main Provisions with Appropriate Amendments and Updates

Finally, Council can consider consolidating the majority of the current provisions into one chapter, appropriately updated, in compliance with the NPS 2019. This approach would retain the majority of hazardous facilities as permitted and would require few land use consents which would only be triggered by significant hazardous facilities. Appropriately defined terms applicable to those facilities should be adopted throughout the chapter.

The AST should be retained. This is the most appropriate method to provide for any type of activity involving hazardous substances based on their adverse effects. Only significant hazardous facilities as defined based on substance threshold limits would require further scrutiny. This would also be compatible with the approach by neighbouring Auckland, and not be incompatible with the provisions in the operative Far North and Whangarei District Plans. It would not be appropriate to adopt a definition of 'hazardous facility' or 'significant hazardous facility' based on industry activity lists. The disadvantages are explained in detail in this report. The plan should not be based on providing for sunset industries or transition technology but also enable the management of necessary and possible future technology, such as large scale battery storage or potentially hydrogen infrastructure (even if that may be considered transition technology, however, it is a viable option within the lifetime of this Plan).

10.5 Recommended Approach

It is recommended that Council adopt the fourth and final approach outlined above, i.e. to retain the current framework with some amendments to objectives and policies, and retain the AST as the methodology to determine what constitutes significant hazardous facilities. This would provide for desirable consistency and avoid unnecessary regulation, while minimising the liability risk to Council and environmental risks to eco-systems and communities.

The provisions should be based on, and be consistent with:

- the existing approach of the KDP permitting the vast majority of hazardous facilities and requiring some assessment of more significant facilities with potentially more than minor off-site risks;
- the approach taken by the neighbouring local Auckland Council;
- the current framework given by the Northland Regional Council;
- the current wording of the law and addressing any gaps in the law without duplicating provisions, and
- applicable planning standards.

The following provides some more detailed recommendations referring to the current provisions of Chapter 8, Appendix 25D and relevant rules in Part B, using the section headings in the Plan.

8.1 Introduction

This section – if retained – needs to be re-written to refer to hazardous substances matters only and be updated. It should be made clear that only significant hazardous facilities would trigger consent and lesser facilities are permitted. It is considered that an Introduction has merit but should be combined with the following section.

8.2 Resource Management Act Requirements and Relevant Legislation

The two sections should be combined and updated.

8.3 How to use this Chapter of the District Plan

This section is considered unnecessary once the provisions are all consolidated into one chapter.

8.4 Significant Issues...

If retained the issues should be re-phrased to be more specific in the land use context and the heading should refer to Hazardous Substances rather than facilities. I consider that specifying relevant issues has merit as a reasonable amount of ignorance and confusion exists with regard to the management of hazardous substances.

8.5 Objectives

The objectives could benefit from somewhat more precise wording to reflect the resource management context (rather than workplace safety or the like), specifics of the Kaipara District (rural character, coastal environments etc.) and matters such as natural hazards (referred to in 8.1), the climate emergency and public safety. The heading should refer to hazardous substances rather than facilities.

8.6 Policies

The policies generally are appropriate as far as they go. There are no policies on the actual location of hazardous facilities, on the interaction with natural hazards or on reverse sensitivity. These matters may need to be considered. However, the management of reverse sensitivity effects is only sensible if the adverse effects (risks) of a hazardous facility are appropriately minimised in the first place. To avoid future reverse sensitivity issues it is important to assess such effects in the land use planning context initially, when a significant hazardous facility with potential for adverse effects off-site is established.

Depending on how the climate emergency is addressed in other parts of the proposed Plan it may be appropriate to include a new Policy in this section: "*The establishment of new activities involving hazardous substances which release carbon dioxide, methane or other greenhouse gases are discouraged.*", or words to that effect.

The "Explanations" may need to be amended if retained. The links to the specific Objectives in the current provisions is useful.

I note that a number of local authorities have removed setting out reasons and explanations from their recently updated (or proposed) planning provisions and include only the statutory minimum text. However, considering the technical nature of the subject matter and widespread lack of understanding of it, I consider some explanations to be included in the District Plan provisions (rather than just in the s. 32 analysis) to have merit.

8.7 Methods

Of those methods relevant to hazardous substances the methods referring to communication/co-ordination, assisting the HSTLC and promotion of good practices are appropriate and useful, although Council would need to ascertain that these activities have actually been undertaken during the life of the Operative Plan. Method 8.7.2.3 on transport is unnecessary in the District Plan. Method 8.7.2.7 on monitoring is actually a District Plan Method, not 'Other'. If retained this section needs to be re-written.

8.8 Outcomes

If retained, the outcomes need to be re-written. In that case reference should be made to public health, specific location issues for significant hazardous facilities, identified natural hazard areas, and identified natural features and eco-systems in the District that ought to be protected.

8.9 Rules

The 'Note' included stating that Appendix 25D 'contains guidance' on permitted quantities is badly phrased as it is not guidance but binding thresholds. Reference to Part C – Sites, Features and Units although needs to be reviewed as there does not appear to be any provisions relevant to the management of hazardous substances or even cross-references to Chapter 8 in any of Chapter 17 to 21 in Part C. This section needs to be re-written – see below comments on Part B.

Part B

The rules/'performance standards' repeated throughout various zone provisions are similar in principle and can be consolidated and included in one chapter within the District-wide provisions, in accordance with the NZ Planning Standards 2019.

Some details in the rules need to be amended. For example, if "an activity is not a service station" being permitted in the Residential zones does not refer to fuel storage but, as written, permits any activity with hazardous substances, regardless of quantity – as long as it is not a service station. This does not make sense.

Road materials within a road reserve are permitted. Maintaining the current exemption would permit potentially the storage of large quantities of hazardous substances, regardless of the sensitivity of adjoining land uses. In terms of the likely activities being undertaken for roading work, their frequency and length of occurrence (is this a 'temporary activity'?) and the volumes of substances stored must be considered. Most commonly it would be fuel which may be stored in association with road improvement activities. Quantities of fuel may not necessarily exceed what can be stored as a permitted activity, depending on the actual zoning of the storage location. Where these quantities are exceeded, a consideration of the location of this storage and any potential mitigation would be appropriate in order to manage risks. On that basis a complete exemption is not recommended but options that can be considered are specified separation distances or performance standards (for example, to avoid soil contamination), or reflection of the sensitivity of applicable zoning of the applicable land and adjoining land in establishing the activity status.

There is considerable variation in District Plans across the country to an exemption of electrical equipment. This is due to the varying hazard levels of (particularly) transformer oils and the specified quantities exempt. For most transformer oils the specified 600 litres capacity specified in the operative rules would be well below thresholds established through the AST to trigger consent, i.e., they would be permitted in any case. As such the exemption would be unnecessary, however, if this exemption is considered to provide clarity for plan users and can avoid unnecessary submissions on proposed plan provisions, the exemption (with the current quantity limit) can be retained.

The wording on agrichemicals needs to be reviewed, including the associated Notes, to be specific to land use and not permit significant hazardous facilities for agrichemicals. The reference to NZS 8409 is problematic as it is unclear which particular requirement is referred to – most planners would be unfamiliar with the standard. The referred version is also not the latest, a common problem with reference to external standards and codes.

The Rule on radioactive material repeated throughout the zone provisions needs to be updated if retained. The same applies to the Assessment Criteria for activities involving radioactive material which are not designed for such activities. The reference to the Radiation Protection Regulations needs to be updated as the Regulations have been repealed and their content included (largely in similar scope) in the Radiation Safety Act 2016 and the Radiation Safety Regulations 2016.

Note: As stated above, there are currently no facilities which could be described as major facilities within the Kaipara District which would have carried out a QRA as a matter of course. Therefore I consider it unnecessary to include specific rules for this matter in the proposed Plan provisions, including for reverse sensitivity. If a major facility was to be established in the future in the district, the proponent could initiate a private plan change to address this issue if desired.

Chapter 24

(Chapter 24) Definitions for the terms ‘hazardous substances’ and ‘hazardous facility’ need to be amended (including the definition of ‘hazardous substance’ itself – see comments on the National Planning Standard in section 3.1 of this report). A relevant definition of ‘significant hazardous facility’ should be included for those large-scale facilities above specified quantity thresholds requiring consent. The term ‘major hazard(ous) facility’ should be avoided to prevent confusion with MHF under the HSW legislation. It is noted that the terms ‘use’ or ‘storage’ of hazardous substances are not defined in the Plan or the RMA itself. Equally the term ‘risk’ (in the context of hazardous facilities) is also not defined. It may be useful to define these terms.

Appendix 25D

It is recommended to retain the AST. The HSNO classification referred in Appendix 25D has changed and the wording for hazard categories will need to be updated to reflect the current, more descriptive terminology in the GHS 7. It may also be worthwhile to review the grouping of zones, particularly with respect to Maori Purposes zones. It is unclear why a marae or papakainga should be provided lesser protection than other residential activities.

The conditions for permitted activities will need to be updated if retained. It is recommended to do so, as well as including the conditions in the main text of the Plan rather than an Appendix. The conditions should be relevant in the resource management context and be as specific as possible. However, due to the variable nature of hazardous facilities they need to provide for the desired coverage rather than targeting specific activities and not addressing others. Permitted activity standards or conditions are particularly useful for applications to provide a Certificate of Compliance which could not be determined otherwise.

It is noted that the best Plan provisions are an exercise in futility if they are not implemented through a functioning CME system. This must be put in place to avoid cases such as the ongoing Ruakaka solvent recycling disaster. The remediation of this site is an example of significant environmental and financial cost to ratepayers of insufficient regulatory oversight of a hazardous facility - with Kaipara ratepayers also contributing to the clean-up through regional rates.

11. REFERENCES

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