

TIMARU



DISTRICT COUNCIL  
Te Kaunihera ā-Rohe  
o Te Tihi o Maru



YOUR PLAN OUR FUTURE  
TIMARU DISTRICT PLAN REVIEW

## Hazardous Substances S.32

May 2022



**YOUR PLAN OUR FUTURE**  
**TIMARU DISTRICT PLAN REVIEW**  
LAND USE PLAN

## **Timaru District Council**

### **Section 32 Report** **Hazardous Substances Chapter**

**May 2022**

# Contents

<b>1</b>	<b>Hazardous substances.....</b>	<b>4</b>
1.1	Introduction.....	4
1.2	Community / Stakeholder / Iwi Engagement .....	5
1.3	Strategic directions .....	5
1.5	Statutory and Planning Context.....	12
<b>2</b>	<b>Approach to Evaluation.....</b>	<b>16</b>
2.1	Scale and significance.....	16
2.2	Approach to Managing Hazardous Substances.....	17
2.3	Choice of Evaluation Method(s) .....	18
3.1	Proposed objectives .....	18
3.2	Evaluation of proposed objectives .....	18
<b>4</b>	<b>Identification of Options .....</b>	<b>19</b>
<b>5</b>	<b>Evaluation of Options .....</b>	<b>21</b>
5.1	Evaluation table .....	21
5.2	Risk of Acting or Not Acting.....	23
<b>6</b>	<b>Preferred Option .....</b>	<b>24</b>

# 1 Hazardous substances

## 1.1 Introduction

Hazardous substances pose potential threats to the health and safety of people and can have significant adverse effects on the environment. At the same time, it is recognised that their use, storage, manufacture and disposal allow people to provide for their social and economic wellbeing, and their health and safety.

The Hazardous Substances and New Organisms Act 1996 (HSNO) aims to protect the environment and the health and safety of people from the adverse effects of hazardous substances. HSNO is largely implemented by the Environmental Protection Authority. The Health and Safety at Work Act 2015 (HSWA) aims to protect people against harm to their health, safety and welfare caused by risks arising from work. The HSWA is primarily implemented and enforced by WorkSafe. Currently, both Acts govern the management of hazardous substances, with the HSNO Act providing the general framework that controls hazardous substances during their entire life cycle - from manufacturing or importing a substance, through to its use and disposal.

Some existing resource management controls such as those found in older District Plans on hazardous substances duplicate or add additional controls to those in place under HSNO and HSW, which can be confusing for users of hazardous substances.

Sections 30 and 31 of the Resource Management Act 1991 (RMA) were amended in 2017 to remove the control of hazardous substances as an explicit function of councils. This means councils no longer have a specific obligation to regulate the use of hazardous substances in RMA plans.

Legislation	Hazardous Substances and New Organisms Act 1996 (HSNO)	Health and Safety at Work Act 2015 (HSW)
<b>Purpose</b>	<p>The HSNO Act is the primary legislation designed to manage hazardous substances across their life cycle (import/manufacture, classification, packaging, transport, storage, use and disposal).</p> <p>The purpose of the HSNO Act as set out in section 4 RMA is to 'protect the environment, and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances and new organisms.</p>	<p>The HSW Act gives Worksafe New Zealand the responsibility for establishing workplace controls for hazardous substances and is the principal enforcement and guidance agency in workplaces. The main purpose of the HSW Act is to provide for a balanced framework to secure the health and safety of workers and workplaces.</p> <p>WorkSafe enforces controls for environmental hazards and disposal requirements for all hazardous substances in the workplace.</p>
<b>Substances not controlled by HSNO &amp; HSW Acts</b>	Food (Food Act 2014), Medicines (Medicines Act 1981), Hazardous biological substances, Radioactive substances (Radiation Safety Act 2016), Ozone depleting substances (Ozone Layer Protection Act 1996)	

However, there is scope within the RMA to address the following matters relating to the management of hazardous substances and facilities:

Areas where RMA controls may be necessary:

- i. Substances not included in HSNO
- ii. Facility in relation to incompatible and sensitive land uses
- iii. Facility in relation to sensitive natural environment/ecosystems
- iv. Reverse sensitivity issues in relation to risk
- v. Cumulative risks
- vi. Interaction with identified natural hazards

Addressing the above matters in the District Plan will ensure any gaps between legislative frameworks are covered to and any adverse environmental effects are comprehensively managed in accordance with Part II of the RMA.

Given the level of regulation controlling hazardous substances, the District Plan need only address the matters that are not addressed by the other legislation. It also means the District Plan can focus on adverse effects that, while they may have a low probability of occurring, can have a potential significant adverse effect on the environment or human health and safety if they do occur. Accordingly, the proposed provisions focus on Major Hazard facilities, instead of hazardous substances.

## 1.2 Community / Stakeholder / Iwi Engagement

The Draft District Plan was released for public feedback in November 2020. The feedback gathered on this has been used to shape and guide the provisions of the Plan. The feedback of relevance to this chapter is summarised below:

- The term 'residual risk' within the plan was questioned as it was not defined.
- There was opposition to including hazardous substances provisions within the District Plan, as it was put forward other legislation outside the RMA now controls the use, storage and management of hazardous substances.
- The inclusion of some sites as Major Hazard Facilities was opposed.
- There was recognition that there are 'major hazard facilities' at the Port but given the location of the Port on the Coast and therefore a sensitive and Coastal Environment, the provision would make almost all activities proposed 'non-complying', without recognition of the existing nature of some of these facilities.
- A new zone was suggested to cover uses such as large 'rural' industrial facilities such as those operated within the district already, being Fonterra's Clandeboye Site, Ravensdown and Silver Fern farms, which would exclude this use from the proposed Significant Hazard Facility provisions, with a more bespoke approach proposed.
- There was support for the DDP approach to focus on significant hazardous facilities.
- Support for the requirement to setback sensitive activities from significant hazard facilities.
- Support for the intent of Policy HS-P2 which provides for the alteration of existing significant hazard facilities, providing the emphasis is on mitigating effects to an acceptable level.
- Significant Hazard Facilities should be provided for within the Rural Zone, due to linkages with primary production.
- The Sports and Recreation Zone should be considered a 'sensitive environment' given the location so close to hazardous facilities in and around the Port.
- New hazardous facilities should not be located in the drinking water protection overlay.
- The classification of several service stations as significant hazardous facilities was opposed.

## 1.3 Strategic directions

The Strategic Directions Chapter sets out the overarching directions for the sustainable management of growth, land use and development of the Timaru District. The strategic directions are largely unrelated to the hazardous substances chapter given its distinct and narrow context.

## 1.4 Problem definition

### 1.4.1 The efficiency and effectiveness of the Operative District Plan

The operative District Plan addresses hazardous substances in General Rule, Part 6.9 in a standalone chapter. Additionally, objectives and policies relating to hazardous substances are listed in Part B5 (c). No plan changes relating to hazardous substances have been prepared since the District Plan became operative in 2005. The Operative District Plan objectives and policies to manage hazardous substances in the district are set out below:

#### *Objectives*

- 1) *Avoid, remedy or mitigate the use or disposal of hazardous substances in order to reduce the adverse effects of these substances on the environment.*
- 2) *Avoid, remedy or mitigate the risk to the environment from any adverse effects resulting from large volumes of non-hazardous goods.*

Objective (1) is generally agreeable but unspecific. The benefits of hazardous facilities are not reflected in the objective or acknowledged elsewhere in the Plan provisions. While risk is the primary adverse effect to be managed, this is also not reflected in the current wording. Therefore, while the principle expressed in Objective (1) is generally appropriate, it could be phrased clearer and more precisely. The combination of the words 'avoid', 'remedy' and 'mitigate' in the same sentence, have the effect of not making it clear what outcome is actually being sought and its effectiveness in guiding a decision would be relatively limited.

Objective (2) is vague, and somewhat confusing, as it refers to effects from non-hazardous goods. 'Large volumes' is not defined and the use of 'non-hazardous goods' is potentially a typographical error that has never been corrected.

#### *Policies*

- 1) *To promote the advantages of reducing the use of hazardous substances.*
- 2) *To provide for the use of the new Redruth Sanitary Landfill as a co-disposal site for hazardous substances which are considered appropriate for this location.*
- 3) *To promote the safe use, storage, or transportation of hazardous substances.*
- 4) *To promote reduced production, and on-site containment and treatment of hazardous wastes.*
- 5) *To advocate the exclusion of nuclear weaponry and facilities for nuclear weapons from this District.*
- 6) *To provide areas separate from residential and commercial areas where activities involved with major use or storage of hazardous substances can be encouraged to locate.*
- 7) *To control the storage, use and manufacture of hazardous substances to avoid, remedy or mitigate adverse environmental effects due to accidental spillages or poor management practices. When considering an application for a resource consent, the Council shall consider the extent to which the proposed activity and the proposed site poses a risk to the environment, and in particular:*
  - (a) *The sensitivity of the surrounding natural and physical environment. Depending on the scale of the proposal this may include separation distances from people-sensitive activities (particularly activities such as schools, rest*

- homes, hospitals, shopping centres etc) or to sensitive natural resources (e.g., aquifers, streams, wetlands, habitats).*
- (b) The number of people potentially at risk from the proposed activity.*
  - (c) The risk to adjacent properties and provision on the subject site for separation and isolation distances.*
  - (d) Cumulative effects of facilities using hazardous substances in the area.*
  - (e) Site drainage and on and off-site infrastructure (e.g., stormwater, sewer type and capacity, water capacity for firefighting).*
  - (f) Transportation safety, including method of transportation, quantities and types of hazardous substances transported and proposed transport routes.*
  - (g) Nature of the topography and the ability to disperse gas.*
  - (h) The extent to which the proposed activity can avoid or mitigate any undue risk.*
  - (i) The ability of the proposed activity to be established at an alternative location or for the activity to undertake alternative methods, when it is likely that an activity will result in any significant adverse effects on the environment.*
  - (j) The extent to which the proposed site is accessible from the major roading network to avoid heavy traffic volumes on local roads (particularly residential local roads); and the extent to which the proposed site's entry and exit points may pose a problem with existing intersections.*
  - (k) The extent to which the activity can comply with the rules for the relevant zone in question.*
  - (l) The extent to which the site is vulnerable to natural hazards e.g., flooding.*
  - (m) Any other matters that may need conditions to ensure that particular measures are undertaken so any risk in the proposal is avoided or satisfactorily mitigated.*
  - (n) The extent to which the proposed activity complies with any relevant code of practice or guideline.*

*The Council shall not exercise its discretion on any consent application over any effects on water quality in water bodies or coastal water.*

- 8) To control classes of hazardous substances which have the potential to cause adverse effects to the environment, recognising that the quantities of hazardous substances requiring control will vary depending on the proximity of residential use, on community expectation, and the sensitivity of the surrounding environment (this is not intended to apply to use of hazardous substances in temporary military training activities carried out by the New Zealand Defence Force).*
- 9) To recognise the use or storage of hazardous substances associated with specific activities that are anticipated in the residential areas or rural areas, may be allowed in quantities greater than specified in this Plan, provided the potential adverse effects on the residential environment, or areas identified as being of natural value, are avoided, remedied or mitigated.*
- 10) To require separation distances between activities storing hazardous substances and/or bulk storage of non-hazardous substances which can have adverse effects should spillage or explosion occur on adjacent sites.*
- 11) To promote the return to the manufacturer or supplier of unwanted hazardous substances or the appropriate use by others, in preference to disposal.*

The twelve policies relating to hazardous substances are quite extensive given the discrete nature of this activity. Policies (1)-(5) read like requests and do not specify a course of action. Policy (6) refers to the separation of major hazardous substance users from residential and commercial areas. This Policy is implemented through Rule 6.9.2.1(2) which allows for increased volumes of hazardous substances in the Industrial H Zone as a permitted activity.

Policy (7) gives a list of the assessment criteria that need to be applied to resource consents to control environmental effects due to spillage or poor management practices.

Policies (8) and (9) although relevant, do not directly relate to the objectives. Policy (10) promotes requiring separation distances between the storage of hazardous and non-hazardous substances. However, there are no separating distances specified in the rules or performance standards.

Policy (11), which promotes the return of unused hazardous substances to the supplier is unachievable and not a resource management matter.

General Rules, Part 6.9 – Hazardous Substances, contains Schedule 1, which classifies the various hazardous substances. The quantity limits for the hazardous substances are then classified as per the schedule and zones. Part 6.9 also contains performance standards relating mainly to the containment of hazardous substances.

There are no specific objectives, policies or rules in the Plan responding to the issue of new sensitive activities locating in proximity to existing significant hazardous facilities,, or reverse sensitivity issues. It is noted that the specific function of local authorities for managing hazardous substances under the RMA has been removed and the context that these objectives and policies were formulated has now significantly altered.

## 1.4.2 Issues identified

As part of the District Plan Review, discussion documents were completed on the issues for each major topic. There was no discussion document prepared for Hazardous Substances, as it is considered a relatively minor topic. Based on an analysis of the preceding objectives and policies, the following issues with the operative Plan have been identified:

*Issue 1: The Plan is outdated as it does not reflect the current hazardous substance’s legislation.*  
Need to update clarify Council’s role in managing hazardous substances under the RMA given the revised legislative context and to minimise overlap with other legislation/regulation.

*Issue 2: The Plan does not deal with major hazardous facilities in proximity to sensitive activities*  
Major hazardous facilities can have significant potential adverse effects on sensitive activities in event of an accident. Accordingly major hazardous facilities require an assessment of risks in relation to their proposed location. On this basis, specific management of these activities is required.

*Issue 3: New sensitive activities locating in proximity to existing major hazardous facilities.*  
The Operative District Plan currently does not manage new sensitive activities locating near major hazard facilities, potentially resulting in complaints and restrictions on the facility . Also, most significantly, it may place new sensitive activities at risk from a fire or explosion, or other adverse effects.

There is no geographic record of where existing major hazardous substance facilities are located.

## 1.4.3 Best practice / other council approaches

A review of second-generation Plan’s has been undertaken to evaluate best practice. These are documented as follows:

Plan	Description of Approach
Operative Christchurch District Plan, 2017	Hazardous substances are addressed under Chapter 4 – Hazardous Substances and Contaminated Land. This chapter seeks to manage the residual risks associated with the storage, use, or disposal of hazardous substances, this includes the minimisation of reverse sensitivity effects, and avoidance of sensitive activities being located within a defined Risk Management Area.



	<p>The objectives, policies and rules in this chapter provide for the storage, use, or disposal of hazardous substances as a permitted activity throughout the District, subject to provisions in other chapters. The exception to the permitted activity status is the inclusion of two non-complying activities. The first relates to new storage or use of hazardous substances with explosive or flammable properties within close proximity to National Grid transmission lines and some electricity distribution lines. The second is for sensitive activities locating within the defined Risk Management Area.</p> <p>Link: <a href="https://districtplan.ccc.govt.nz/pages/plan/book.aspx?exhibit=DistrictPlan">https://districtplan.ccc.govt.nz/pages/plan/book.aspx?exhibit=DistrictPlan</a></p>
<p>Proposed Second Generation Dunedin City District Plan (2GP), has legal effect since 7 November 2018. The rules of the operative District Plan (2006) still apply until all appeals are resolved.</p>	<p>Chapter 9 – Public Health and Safety of the 2GP recognises the existing legislation and regulations controlling hazardous substances while including land use controls for the prevention or mitigation of the adverse effects of storage, use, disposal and transport of hazardous substances where this is necessary to address a clear resource management issue, such as the location of hazardous substances and their potential impacts on other land uses and the natural environment.</p> <p>Link: <a href="https://2gp.dunedin.govt.nz/plan/pages/plan/book.aspx?exhibit=DCC2GP">https://2gp.dunedin.govt.nz/plan/pages/plan/book.aspx?exhibit=DCC2GP</a></p>
<p>Operative Hurunui District Plan, 2018</p>	<p>Hazardous substances are addressed in Chapter 17. The provisions seek to minimise the risk of adverse effects to the environment and the community resulting from hazardous substances. Control is limited to matters that are not covered by other more specific legislation or the functions of the Canterbury Regional Council. It does not seek to duplicate the provisions of existing legislation or HSNO approvals. As such, the controls seek to manage major hazardous facilities, ensuring the safety and amenity of the district's residents and the environment.</p> <p>Link: <a href="https://dp.hurunui.govt.nz/eplan/">https://dp.hurunui.govt.nz/eplan/</a></p>
<p>Invercargill City District Plan, operative since 30 August 2019</p>	<p>The Issues, Objectives and Policies relating to hazardous substances are addressed in Part 2 – HAZ. The remit of other legislation and regulations are acknowledged. However, the Council retains input into processes and approvals under these Acts and uses education, promotion and advocacy to influence the routes over which hazardous substances are transported.</p> <p>This plan is the first to mention contaminated land in the context of hazardous substances.</p> <p>In relation to the management of the transportation of hazardous substances, this is directly opposite to the exemption provided for under the Christchurch City Plan.</p> <p>Some of the policies, appear to go beyond the scope of what can be covered under a district plan, such as ensuring collaboration.</p> <p>Link: <a href="https://icc.govt.nz/wp-content/uploads/2019/09/2.-Part-Two-Issues-Objectives-and-Policies-September-2019.pdf">https://icc.govt.nz/wp-content/uploads/2019/09/2.-Part-Two-Issues-Objectives-and-Policies-September-2019.pdf</a></p>
<p>Proposed Porirua District</p>	<p>Part 2 – District Wide Matters contains a small section dedicated to hazardous substances. Given the level of regulation controlling hazardous substances, the</p>

<p>Plan notified 5 September 2019, a hearing on Hazardous Substances was held in December 2021. No decision has been issued at this date.</p>	<p>District Plan only addresses the residual adverse risk to people’s health and to the environment after other industry controls and legislation have been complied with. There are also policies and objectives relating to protecting hazardous substance facilities from sensitive activities. These objectives and policies are succinct, it is noted there are no specific rules linked to the policies. Link: <a href="https://eplan.porirua.govt.nz/districtplan/#Rules/0/0/0/0">https://eplan.porirua.govt.nz/districtplan/#Rules/0/0/0/0</a></p>
<p>Proposed Waikato District Plan, 'Decisions Version January 2022</p>	<p>Part 2, District Wide HAZ deals with the objective and policies for hazardous substances and contaminated land. In relation to hazardous substances the objective seeks to manage the adverse effects associated with the manufacture, storage and use, of hazardous substances. The Policies address the location of new hazardous facilities, risks, reverse sensitivity and aim to avoid duplication with other legislation.</p> <p>The rules relating to hazardous substances are also located in this chapter.. The chapters on Infrastructure and Energy, Business Zone(s), Residential Zones, Business Town Centre Zone, Industrial Zone(s), Rural Zone, and other specific zones contain rules regarding hazardous substances. Most zones provide for an aggregate quantity of hazardous substances of any hazard classification on a site, provided it is less than the quantity specified for that zone. This provides a specific baseline for hazardous substances in different areas, similar to the methodology applied through the first-generation plans. There is no obvious link between the objective and policies and corresponding rules, which puts into question their practicability and enforceability. Link: <a href="http://districtplan.waic.govt.nz/pages/plan/book.aspx?exhibit=PDP01">http://districtplan.waic.govt.nz/pages/plan/book.aspx?exhibit=PDP01</a></p>
<p>South Taranaki District Plan 2015, (operative on 22 January 2021)</p>	<p>The Hazardous Substance provisions of the ST District Plan have been through an Environment Court process, after the STDC decisions on submissions was appealed by South Taranaki Energy Watch Inc. The EC decision from 2018 is helpful to read in conjunction with the STDC. The appeal and decision focused heavily on the effects and management of the petroleum exploration and production facilities which are located in the area. However, the decision highlights several key points which are relevant. The decision determines that compliance with WorkSafe legislation and regulations’ <u>does not mean ‘risk is eliminated’</u>; it also highlights that those regulations to <u>not control decisions on land uses near the hazardous facility and that the ‘location of petroleum exploration and petroleum production activities and the location of sensitive receptors – are to be addressed under the District Plan’</u>.</p> <p>The objectives of the plan recognised that the risks of significant hazardous facilities can never fully be avoided so it focuses on ‘managing’ such facilities and avoiding conflicts of land uses. The approach focuses both on environmental effects and risks to people by avoiding conflicting land uses and avoiding sensitive locations such as flood hazard areas, the coastal protection area, SSM etc.</p>

	<p>The Rules relating to Hazardous Substances are contained in Section 12. They provide for significant hazardous facilities as Permitted Activities in the Rural Industrial Zone, providing there are no sensitive activities within <math>1 \times 10^{-6}</math> individual fatality risk contour. In the Rural Zone, Residential Zone, Township Zone, Commercial Zone and Industrial Zone, significant hazardous facilities are Discretionary Activities provided they comply with the performance standards, and as Non-Complying Activities if they do not comply.</p> <p>The performance standards relate to the setback from water catchments and historic sites or sites of significance to Tangata Whenua, and exclusion from Significant Natural Areas, Flood Hazard Areas, and Coastal Protection Areas. This plan achieved legal effect prior to the 2017 changes to the RMA.</p> <p>Links:  <a href="https://www.southtaranaki.com/repository/libraries/id:27mlbegko1cxbyf94es5/hierarchy/Documents/District%20Plan/District%20Plan%202015/Sections/Section%202%20Objectives%20and%20Policies.pdf">https://www.southtaranaki.com/repository/libraries/id:27mlbegko1cxbyf94es5/hierarchy/Documents/District%20Plan/District%20Plan%202015/Sections/Section%202%20Objectives%20and%20Policies.pdf</a>   <a href="https://www.southtaranaki.com/repository/libraries/id:27mlbegko1cxbyf94es5/hierarchy/Documents/District%20Plan/District%20Plan%202015/Sections/Section%2012%20Hazardous%20Substances%20Rules.pdf">https://www.southtaranaki.com/repository/libraries/id:27mlbegko1cxbyf94es5/hierarchy/Documents/District%20Plan/District%20Plan%202015/Sections/Section%2012%20Hazardous%20Substances%20Rules.pdf</a></p>
<p>Proposed New Plymouth District Plan</p>	<p>At the time of writing this S.32, the Proposed District Plan is going through the plan making process, with hearings having taken place on the Hazardous Substances Chapter. Therefore, as well as the PDP itself, we have been privy to the S.42A prepared by Council staff and other experts on Hazardous Substances. The recommendations made within this S.42A have been useful as they have further refined the PDP approach, including the case law on the matter.</p> <p>Within New Plymouth District there are a variety of hazardous facilities, a lot of which are the ‘more hazardous’ Tier 1 facilities as defined in the HSNO Act and relevant regulations. Like Timaru, New Plymouth has a Port, a similar setting to it being near the town centre and there being existing MHF within it.</p> <p>New Plymouth District Council (NPDC) within the refined approach as outlined and published in the S.42A report recommends an objective recognising the benefits of using, storing, disposing and transporting hazardous substances but the takes the approach of seeking to avoid unacceptable risks and minimising lesser risks. The other objectives seek to protect hazardous facilities from other activities (reverse sensitivity).</p> <p>The policy framework seeks the identification of areas of the level of risks around hazardous facilities. This involves the development of Risk Management Contours and mapping of these in the District Plan. A policy also seeks to internalise an adverse environmental effects or effects on human health to the site boundary where the facility is located. Avoiding locating significant hazard facilities where the risk from natural hazards is also included in the policies. New sensitive activities within risk management contours should be avoided.</p> <p>The approach of rules is too detailed to list here, but it relies heavily on the quantification of risk using the <math>1 \times 10^{-6}</math> as the risk threshold. Within that risk, sensitive activities should be avoided, and risks should be contained within the</p>

	site. New significant hazardous facilities are discretionary in some zones and non-complying in others which contain sensitive activities or environments.
Proposed Waimakariri District Plan	The Plan recognises the role of other legislation. The objectives and policies focus on the new major hazard facilities, ensuring sensitive activities are separated from major hazardous facilities and avoiding new major hazard facilities in a flood hazard areas. This approach is clear and straightforward, although it is unclear how the District Plan manages existing major hazard facilities through the use of risk management contours. The Plan also requires the submission of a Qualitative Risk Assessment to develop such contours and to determine the appropriateness of a facility within a particular location.
Proposed Selwyn District Plan (notified October 2020)	<p>Selwyn has a simple approach whereby the objective focusses on the benefits of such facilities are recognised while the environmental and human health effects are minimised.</p> <p>The policies are focused on managing residual risk to people, property and the environment to acceptable levels, a quantitative risk assessment is required to demonstrate the risks are not unacceptable. The rules support this approach by giving Major Hazard Facilities a fully discretionary status and sensitive activities are managed as discretionary activities if they are within a quantitative risk assessment.</p>

The above summary makes it clear that Councils have taken different approaches to the management of Hazardous Facilities and such approaches have been impacted upon by the legislative change in 2017 and the release of the National Planning Standards in 2019.

The approach taken most recently in Christchurch (given this is subject to the same regional setting as Timaru District) and New Plymouth, Porirua and Waimakariri Councils who have relatively recently adopted Proposed District Plans have been helpful context for the preparation of the Hazardous Substances Chapter.

## 1.5 Statutory and Planning Context

District plans are part of a hierarchy of RMA policy and planning instruments. The RMA prescribes how district plans are to align with other instruments, and this is summarised in the table below:

Statutory document	Alignment requirement for Proposed District Plan	Comment
NZCPS	Give effect to	Implement according to the applicable policy statement's intentions.
NPS/NES		
CRPS		
Regional Coastal Environment Plan	Not be inconsistent with	Are the provisions of the Proposed DP compatible with the provisions of these higher order documents? Do the provisions alter the essential nature or character of what the higher order documents allow or provide for?
Canterbury Land and Water Plan		
Specific management plans and strategies prepared under other legislation	Have regard to	Give genuine attention and thought to the matter As above.
Adjoining district plans: <ul style="list-style-type: none"> <li>• Ashburton District Plan</li> <li>• Waimate District Plan</li> <li>• Westland District Plan</li> <li>• Mackenzie District Plan</li> </ul>	Have regard to the extent to which there is a need for consistency	
Iwi Management Plan of Kati Huirapa Te Whakatau Kaupapa Ngai Tahu Resource Management Strategy for the Canterbury Region	Take into account	Address the matter and record.

### 1.5.1 Resource Management Act 1991 (RMA)

The key provisions of the RMA of direct relevance to this topic include:

#### Section 5 – Purpose

Section 5 of the RMA states the purpose the RMA is the sustainable management of natural and physical resources. It goes to explain that this means the use, development and protection of natural and physical resource in a way or at a rate that enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety. This is relevant as hazardous substances are needed for social, cultural and economic wellbeing. However, hazardous substances can adversely affect the health and safety of people and communities if not properly managed.

Section 5 of the RMA also includes the needs to avoid, remedy or mitigate the adverse effects of activities on the environment. Also relevant is the need to sustain the potential of natural and physical resources to meet the reasonable needs of future generations and safeguard the life supporting capacity of air, water, soil and ecosystems. All these matters apply generally to this chapter.

#### Section 6 – Matters of national importance

Section 6 of the RMA requires that a district council recognise and provide for a number of matters of national importance, including:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights:
- (h) the management of significant risks from natural hazards.

Almost of all of these matters listed in s.6 RMA are relevant in terms of they are key aspects of the environment that hazardous substances could potentially effect. Accordingly, this chapter will need protect or provide for the matters provided under s.6.

#### **Section 7 – Other matters**

Section 7 of the RMA sets out “other matters” for which particular regard shall be had. It is considered that the most relevant matters to the issue of hazardous substances are:

*(d) intrinsic values of ecosystems.*

*(f) Maintenance and enhancement of the quality of the environment.*

Any provisions relating to hazardous substances in the District Plan review should demonstrate particular regard to these matters.

#### **Section 8 – Treaty of Waitangi**

Section 8 of the RMA requires the Council to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). Tangata whenua, through iwi authorities, have been consulted as part of the District Plan review process with the inclusion of AECL (Te Runanga o Arowhenua) in Council’s Technical Working Group This feedback will inform the section 32 evaluation, and the obligation to make informed decisions based on that consultation is noted.

#### **Section 31 – Functions of territorial authorities**

Section 31 of the RMA was amended in 2017 by the Resource Legislation Amendment Act (RLAA) to remove the control of hazardous substances as an explicit function of councils, resulting in them no longer being obliged to manage hazardous substances in RMA policy statements or plans. However, councils still have a broad function of achieving integrated management and controlling any actual or potential effects of the use, development or protection of land and can use these functions to impose additional controls on hazardous substances under the RMA if existing HSNO or HSW Act controls inadequately address the environmental effects of hazardous substances.

As stated above, the District Plan provisions will focus on the caps in this legislation. This approach is supported by the Environment Court’s decision on the South Taranaki District plan.

## **1.5.2 National Policy Statements**

There are no National Policy Statements that are specific to the management of hazardous substances.

### **1.5.3 National Environmental Standards (NESs)**

There is no NESs that directly relate to the management of hazardous substances. The Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the NES) deals with land contaminated by hazardous substances. However, this is not directly relevant to this chapter that seeks to manage hazardous substances from contaminating the environment.

### **1.5.4 National Planning Standards**

Released in April 2019, the purpose of the National Planning Standards (planning standards) is to improve consistency in plan and policy statement structure, format and content. Section 75(3) RMA requires that a district plan must give effect to National Planning Standard. Chapter 7, clause 12 states that if provisions relating to hazardous substances are addressed, they must be located in a chapter titled Hazardous substances under the Hazards and risks heading.

### **1.5.5 Canterbury Regional Policy Statement 2013**

Section 75(3) RMA requires that a district plan must give effect to Regional Policy Statement. Of particular relevance to the Hazardous Substances topic, Chapter 18 – Hazardous Substances, of the Canterbury Regional Policy Statement (CRPS), recognises that despite risks to the environment, hazardous substances are vital to the social, cultural and economic well-being of people and communities, as well as the maintenance and enhancement of the quality of the environment. It is noted that the CRPS became operative prior to the 2017 RMA amendments, removing Council's functions pursuant to s31 in regard to hazardous substances.

The role of the Timaru District Council is specified as:

- Having joint responsibility for specifying the objectives, policies and methods for the control of the use of land for the purpose of preventing the adverse effects of hazardous substances entering land drainage systems.
- Having the responsibility for specifying the objectives, policies and methods for the control of the use of land for the purpose of preventing or mitigating the adverse effects of the storage, use, transport or disposal of hazardous substances on the environment.

The CRPS contains two objectives relating to hazardous substances. The first is to avoid, remedy or mitigate adverse effects on the environment from the storage, use, disposal and transportation of hazardous substances. The second objective seeks to avoid contamination of land. These objectives recognise that avoiding the future contamination of land is the most efficient way of safeguarding our land and soil resource, and our social, economic and cultural associations to these resources.

The policies seek the protection of sensitive areas and activities, such as high hazards areas, community drinking water protection zone, in areas of unconfined or semi-confined aquifer, within the coastal marine area and in the beds of lakes and rivers, sensitive areas such as wāhi tapu, urupā, institutions and residential areas.

It is Timaru District Council's responsibility to set out objectives and policies in its district plan to avoid actual or potential effects of the use, storage, transport or disposal of hazardous substances in the locations identified in the policies; and to engage with Ngāi Tahu as tāngata whenua and use iwi management plans to assist in determining areas that may be sensitive to the effects of the use, storage, transport or disposal of hazardous substances. This can be undertaken in the PDP to the extent that there is no overlap with other legislation.

## 1.5.6 Timaru District Consolidated Bylaw 2018

Chapter 15: Water Services prohibits the discharge of hazardous substances to a network infrastructure service unless permitted by a consent.

## 1.5.7 Iwi Management Plans

Neither the Iwi Management Plan of Kāti Huirapa nor the Te Whakatu Kaupapa Ngai Tahu Resource Management Strategy for the Canterbury Region contain any specific provisions relating to hazardous substances.

# 2 Approach to Evaluation

## 2.1 Scale and significance

The table below sets out the scale and significance of managing hazardous substances in the district in terms of Council's statutory obligations, who may be affected by any proposed changes to the management regime, the type of effects that may occur and where in the district is mostly likely to be affected by the proposed changes to the District Plan. This will inform the nature and extent of the analysis of the proposed changes to the hazardous substance provisions. For example, proposed provisions that will result in an overall high level of scale and significance will require a more in-depth analysis of proposed objectives, policies and rules including, potentially, an economic analysis, compared to changes that will have a low-level significance.

<b>Issue:</b> <i>Management of hazardous substances</i>		
Reasons for change in policy	District Plan Review.  Updating approach to managing hazardous substances in the District Plan subsequent to the 2017 RMA amendments and other regulatory changes.	Low
Relevant Statutory Considerations / Drivers	RMA Sections 5, 6, 7 and 31	Low
Degree of shift from status quo required	The shift is one of substantially reductions in consent requirements moving from a regime that manages specific hazard substances in the ODP to one that focus on major hazardous facilities under the PDP. While new rules area proposed for sensitive activities, due to the location of most of the major hazard facilities in the Port, the new rules will unlikely be used.	Low



Who and how many will be affected?	Only major hazard facilities, hazard facilities in sensitive environments and sensitive activities. As stated above, there will unlikely be a need for sensitive activities to locate close to major hazard facilities.	Low
Degree of impact on, or interest from iwi / Māori	Sites of significance to Māori are included in the definition of sensitive environment, therefore the impact should be low. The provisions seek to protect sensitivity activities and sensitive environments from the impacts of hazardous substances.	Low
When will affects occur?	Effects will occur on an on-going and demand led basis.	Low
Geographic scale of impacts / issue	Mostly in the Special purpose zone Port zone	Low
Type of effect(s)	Potential adverse effects of low probability but high potential impact on the health and safety of people and the environment. Administrative adverse effects on hazardous facilities and major hazard facilities by the need to obtain consent for hazardous facilities.	Low to High
Degree of policy risk, implementation risk, or uncertainty	The proposed changes do not affect many people/stakeholders and therefore the policy risk is likely to be low.	Low
<b>Overall Assessment of Scale and Significance</b>		<b>Low</b>

## 2.2 Approach to Managing Hazardous Substances

The general approach is to recognise the benefits of hazardous substances and allow for their use and storage as permitted activity provided the use is not a 'major hazard facility' or a hazardous facility within a sensitive environment. The maintenance and repair of major hazard facilities is permitted, while the location of sensitive activities close to major hazardous facilities is also managed. The Plan recognises that other legislation manages the other effects of hazardous substances.

It is proposed to make any new major hazard facilities at the full discretion of the Council. By the nature of their use, risks to the environment and potentially human health could occur the location of such facilities needs to be carefully considered in respect of a range of variables including; natural hazards; sensitive activities such as residential and schools; sites of significance to Māori; the coastal environment; the proximity to other major hazardous facilities. The nature of the materials and substances being handled and sorted, the processes taking place and volume of material stored, also have such a varying degree of risk, that the potential to impact upon other land uses is extremely varied. For this reason, it is felt that any application for a new facility, within any zone in the district should be fully discretionary.

Since the release of the Draft District Plan, several noticeable changes to the provisions include the need for a Quantitative Risk Assessment for a new Major Hazard Facility or additions or alterations to an existing one; and the introduction of a 250m 'setback' line in the District Plan maps from the existing Major Hazard Facilities. These changes have sought to take on some best practice being adopted around New Zealand, particularly from other Districts where existing Major Hazard Facilities are located near existing built up areas. In relation to sensitive activities, one example of the matters these new introductions to the District Plan, are seeking to address, would be a new childcare facility near a hazard facility. The sensitive use, would undoubtedly increase the potential harm if an incident occurred at the facility. The 250m measurement is drawn on the planning maps from the existing Major Hazard Facilities, and sensitive use within this zone require resource consent.

## 2.3 Choice of Evaluation Method(s)

A qualitative evaluation method is proposed with descriptive ratings of the costs and benefits, effectiveness and efficiency.

# 3 Evaluation of Objectives

## 3.1 Proposed objectives

The proposed objectives for this topic are:

### HS-O1 Hazardous substances, use, storage and disposal

The use, storage, disposal and transportation of hazardous substances occurs where unacceptable risks to the environment and human health are avoided.

### HS-O2 Sensitive activities

New sensitive activities are located to minimise reserve sensitivity effects on major hazard facilities and to avoid unacceptable risks to the sensitive activity

## 3.2 Evaluation of proposed objectives

The table below provides an evaluation of the proposed objectives in accordance with section 32(1)(a) RMA.

Category	Criteria	Comments
Relevance	Directed to addressing a resource management issue	Achieves: As stated above, the Environment Court has confirmed the management of hazardous substances is a relevant resource management issue.
	Focused on achieving the purpose of the RMA	Achieves: These objectives achieve a number of key aspects of s.5 RMA, being providing for the economic and social

		wellbeing of the district, protecting natural resources, providing for health and safety, and avoiding or mitigating the adverse effects of activities on the environment.
	Assists a council to carry out its statutory functions	Achieves: These objectives will assist the Council to more effectively undertake its statutory functions under s.31 to provide for the integrated management of natural and physical resources.
	Within scope of higher-level documents	Achieves: The proposed objectives give effect to the specific direction in Chapter 18 of the CRPS relating to the storage, use, transport or disposal of hazardous substances for the purpose of preventing or mitigating unacceptable risks to the environment and human health.
Feasibility	Acceptable level of certainty and risk	Achieves: The objectives provide clear direction to plan users on the expected outcomes.
	Realistically able to be achieved within Council's powers, skills and resources	Achieves: The proposed objectives are able to be achieved within Council's powers to make and administer plan rules. While some external input will be required to provide Quantitative Risk Assessment, this can be provided externally.
Acceptability	Consistent with identified iwi/Māori and community outcomes	Uncertain: The management of major hazard facilities and hazardous facilities in sensitive environments, including sites of significance to Maori aligns with identified Maori outcomes.
	Will not result in unjustifiably high costs on the community or parts of the community	Achieves: Generally, the provisions remove costs on the community. The only costs will be on major hazard facilities but with the aim to avoid potential conflicts arising between land uses..

## 4 Identification of Options

### Option 1: Status quo

Retain existing hazardous substances provisions as they currently stand in the Operative Plan. Effects of hazardous substances managed with performance standards relating to storage volumes and activity standards.

**Option 2: Permissive non-regulatory approach**

This option would rely on the HSNO and HSW Acts and other regulations to regulate hazardous substances and activities.

**Option 3: New chapter specific to hazardous substances**

Create a framework to manage effects of major hazardous facilities as they relate to sensitive activities and environments. Manage reverse sensitivity effects.

## 5 Evaluation of Options

### 5.1 Evaluation table

OPTION 1 <i>Status Quo</i>			
<b>Benefits</b>			
<b>Environmental</b>	<b>Economic</b>	<b>Social</b>	<b>Cultural</b>
Ensures comprehensive protection of the environment	None	Plan users are familiar with current approach	None
<b>Costs</b>			
<b>Environmental</b>	<b>Economic</b>	<b>Social</b>	<b>Cultural</b>
Environmental: Potential risk to life of sensitive activities locating close to major hazardous facilities.	Higher administrative cost associated with resource consents, which is largely unnecessary and duplication of HSNO and HSW Act. Some low costs on major hazard facilities having to deal with reverse sensitivity issues.	None	Sites of significance to Maori not given prominence and therefore more at risk to effects from hazardous substances
<b>Efficiency</b>	MEDIUM - High consent costs and reverse sensitivity reduces efficiency		
<b>Effectiveness</b>	MEDIUM – High level of protection but no recognition of sensitive activities, areas, or reverse sensitivity. Difficulty of locating the relevant provisions as scattered through the District Plan and lack of recognition of requirements of the National Planning Standards do not make this approach effective.		
<b>Strategic Direction(s)</b>	The strategic directions are not relevant to the hazardous substances chapter.		
<b>Overall Appropriateness of Option 1</b>	LOW - the inefficiency and ineffectiveness of this option reduces its overall appropriateness.		

<b>OPTION 2</b> <i>Permissive non-regulatory approach</i>			
<b>Benefits</b>	<b>Economic</b>	<b>Social</b>	<b>Cultural</b>
<b>Environmental</b>	<b>Economic</b>	<b>Social</b>	<b>Cultural</b>
None	No administrative costs associated with resource consents	More certainty and greater flexibility for owners/operators of hazardous facilities to undertake their activities and development	None
<b>Costs</b>	<b>Economic</b>	<b>Social</b>	<b>Cultural</b>
<b>Environmental</b>	<b>Economic</b>	<b>Social</b>	<b>Cultural</b>
Potential risk to human health, safety, sensitive activities and sensitive environments	Potential costs to community and business in case of significant hazardous substance incidents.	Provides reduced certainty to landowners throughout the district as to the location, nature and scale of activities and/or development involving the use, storage or transport of hazardous substances or any associated environmental impact.	Potential risk to sites of significance to Maori and other culturally important.
<b>Efficiency</b>	MEDIUM - High consent costs and reverse sensitivity reduces efficiency		
<b>Effectiveness</b>	MEDIUM – High level of protection but no recognition of sensitive activities, areas, or reverse sensitivity. Difficulty of locating the relevant provisions as scattered through the District Plan and lack of recognition of requirements of the National Planning Standards do not make this approach effective.		
<b>Strategic Direction(s)</b>	The strategic directions are not relevant to the hazardous substances chapter.		
<b>Overall Appropriateness of Option 1</b>	LOW - the inefficiency and ineffectiveness of this option reduces its overall appropriateness.		

<b>OPTION 3</b> <i>New chapter specific to hazardous substances</i>			
<b>Benefits</b>	<b>Economic</b>	<b>Social</b>	<b>Cultural</b>
<b>Environmental</b>	<b>Economic</b>	<b>Social</b>	<b>Cultural</b>
Ensures sensitive environments and activities are protected from potential effects of	Enables most hazardous facilities to continue without resource consent and thereby contributes to	Provides piece of mind that major hazard facilities cannot be located close to sensitive	Protects sites of significance to Maori and other important cultural sites from hazardous substances

hazardous facilities and major hazardous facilities. Is in accordance with the expectations of the National Planning Standards.	the social and economic wellbeing of the community. Reduction of actual and potential reverse sensitivity effects increases investment confidence	activities or environments	
<b>Costs Environmental</b>	<b>Economic</b>	<b>Social</b>	<b>Cultural</b>
None	Rules could potentially limit the expansion of existing or the establishment of new significant hazard facilities and hazardous facilities. This could negatively affect investment confidence, economic growth and associated employment opportunities. However, this adverse effect is limited as consent can be sought to expand these activities	None	None
<b>Efficiency</b>	HIGH – benefits for outweigh the cost.		
<b>Effectiveness</b>	HIGH – this option effectively achieves the objective by enabling most use of hazardous substances, minimising reverse sensitivity effects, and managing effects on sensitive activities and environments		
<b>Strategic Direction(s)</b>	The strategic directions are not directly relevant to the hazardous substances chapter.		
<b>Overall Appropriateness of Option 3</b>	HIGH - this option removes the inefficiencies with the management of hazardous and has high effectiveness.		

## 5.2 Risk of Acting or Not Acting

Section 32(2)(c) RMA requires the evaluation report to assesses the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

There is uncertainty concerning how many hazardous facilities there are, which consequently affects the certainty of this report’s efficiency assessment. We welcome submissions on that matter and in particular the definition of hazardous facilities. There is certainty regarding how many major hazard facilities there are and the likely costs of resource consents. In general, there is a reasonable degree of certainty about the information and certainly enough to release the PDP.

## 6 Preferred Option

This evaluation has been undertaken in accordance with section 32 of the RMA. In doing so, the evaluation shows that Option 3 is the most appropriate option in that:

- effects on sensitive activities and environments are managed;
- reverse sensitivity issues between existing lawfully established hazardous facilities and new sensitive activities are managed;
- the risks to hazardous facilities from natural hazards and consequential risks to the environment are managed;
- cumulative effects of major hazardous facilities locating too close each other are considered.

Option 3 addresses the gaps in the HSNO and H&S Acts and deals with resource management matters, while of low probability of occurring have a high potential impact if they do occur. It is also the best option in terms of giving effect to the Canterbury Regional Policy Statement.