

OFFICER'S REPORT FOR:

Independent Hearing Commissioners:

Robert Schofield (Chair)

Loretta Lovell

Roger Maaka

Tim Aitken

Kate Taylor

Pip Burne

TOPIC:

Contaminated Land & Hazardous Substances

PREPARED BY:

Rowena Macdonald

REPORT DATED:

8 August 2022

DATE OF HEARING:

7 to 9 September 2022

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Appendix A – Recommended Amendments to Plan Provisions

Appendix B – Summary of Recommended Responses to Submissions and Further Submissions

Appendix C – Schedule 2 to the Health & Safety at Work (Major Hazard Facilities) Regulations 2016

List of Submitters and Further Submitters addressed in this Report

Submitter Name	Submitter Number
Federated Farmers of New Zealand (Federated Farmers)	S121
Fire and Emergency New Zealand (FENZ)	S57
Hawke's Bay Regional Council (HBRC)	S11
Horticulture New Zealand (Hort NZ)	S81
New Zealand Defence Force (NZ Defence Force)	S29
Silver Fern Farms Limited (Silver Fern Farms)	S116
Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	S110

Further submitter Name	Further submitter number
First Gas Limited (First Gas)	FS3
Horticulture New Zealand (Hort NZ)	FS17
New Zealand Defence Force (NZ Defence Force)	FS12
Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird)	FS9
Silver Fern Farms Limited (Silver Fern Farms)	FS8

1.0 Introduction

1.1 Qualifications and Experience

- 1.1.1 My full name is Rowena Clare Macdonald. I am a Principal Planner and Director of Sage Planning (HB) Limited, a planning consultancy comprising three Principal Planners/Directors established in 2015.
- 1.1.2 I hold a Bachelors degree in Resource and Environmental Planning (Honours) and am a full member of the New Zealand Planning Institute.
- 1.1.3 I have been a practicing planner for the past 25+ years. Prior to establishing Sage Planning, I was a planner with Works Consultancy Services/Opus International Consultants.
- 1.1.4 Sage Planning has been engaged by Central Hawke's Bay District Council as the lead planning consultants to assist with the full District Plan Review since August 2017.

1.2 Code of Conduct

- 1.2.1 I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014, and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.2.2 I am authorised to give this evidence on the Council's behalf to the Proposed District Plan Hearings Commissioners.

1.3 Conflict of Interest

- 1.3.1 I confirm that I have no real or perceived conflict of interest.

1.4 Involvement with the Proposed Plan

- 1.4.1 I was involved in scoping issues and preparing discussion documents for Council's District Plan Review Committee, engagement with the community, preparation of the Draft District Plan (notified in April 2019), reporting on informal submissions to the Committee and recommending amendments to the Draft Plan, and subsequent completion of the Proposed District Plan including preparation of the accompanying Section 32 Evaluation Reports.
- 1.4.2 I was the lead author of draft plan provisions relating to contaminated land and hazardous substances, the reporting officer on informal submissions to the Draft District Plan on these topics, and contributed to the associated Section 32 Remaining District Wide Chapters etc Topic Report accompanying notification of the Proposed District Plan (PDP).

1.5 Preparation of this Report

- 1.5.1 My role in the preparation of this report has been to review, provide analysis on, and make recommendations on the submissions and further submissions received in relation to the contents of District-Wide Matters – Hazards and Risks – Contaminated Land and Hazardous Substances chapters.
- 1.5.2 The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2.0 Scope of Report

2.1 Matters addressed by this Report

- 2.1.1 This report is prepared in accordance with section 42A of the Resource Management Act 1991 (RMA). This report considers submissions that were received by the Council in relation to the provisions on the Contaminated Land and Hazardous Substances provisions of the PDP.

2.2 Overview of the Topic

Contaminated Land

- 2.2.1 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) came into effect in 2011 – some 10 years after the current District Plan was made operative – hence contaminated land is not addressed in the Operative District Plan.
- 2.2.2 The NES-CS contains a set of planning controls that direct the requirement for consent or otherwise for activities on contaminated or potentially contaminated land and requires that land affected by contaminants is identified and assessed before it is developed and, if necessary, the land is remediated, or the contaminants contained, to make it safe for human use.
- 2.2.3 In most cases the responsibility for the management of effects on the environment arising from contaminated land sits with the Hawke's Bay Regional Council (e.g. leaching of contaminants to waterbodies or groundwater from land development or disturbance activities). District Councils are responsible for applying and enforcing the provisions of National Environmental Standards.
- 2.2.4 In addressing contaminated land, the PDP contains no rules (as the planning controls are contained within the NES-CS itself), but does include one objective and two policies to assist Council when assessing resource consent applications under the NES-CS.

Hazardous Substances

- 2.2.5 The Operative District Plan contains fairly complex rules, largely revolving around classifying hazardous substances and applying a consent status depending on volume or quantity of the substances which are different for each zone, utilising the Hazardous Substances Screening Procedure (which is a process of assigning a 'Total Effects Ratio' for discretionary activities involving use and/or storage of hazardous substances). The result of the screening procedure is then a consideration when determining whether an application will be granted or declined and in determining the conditions required for any consent granted. This approach was deemed markedly out-of-date and is not in line with the approach of more recent legislation.
- 2.2.6 The overarching approach in the PDP was to simplify the hazardous substances provisions to avoid unnecessary duplication with the Hazardous Substances and New Organisms Act 1996 (HSNO), the Health and Safety at Work Act 2015 (HSW Act) and the Regional Plan, and to align more with the approach in the Napier and Hastings District Plans – ie. focusing on 'Major Hazardous Facilities' and removing the current complex Hazardous Substances Classification, Consent Status and Screening Procedure rules.
- 2.2.7 The PDP provides a Discretionary Activity pathway for all new 'Major Hazardous Facilities' (including adopting a simple workable definition, similar to that in the Hastings District Plan), and the assessment has been broadened to consider additional risks and effects than currently contained in the Operative District Plan.

2.3 Statutory Considerations

- 2.3.1 The PDP has been prepared in accordance with the RMA and in particular the requirements of section 74 (Matters to be considered by territorial authority) and section 75 (Contents of district plans).
- 2.3.2 As set out in the Section 32 Remaining District Wide Chapters and Relocated Building Provisions Topic Report, there are a number of higher order planning documents that provide direction and guidance for the preparation and content of the PDP, including the New Zealand Coastal Policy Statement (2010), the Hawke's Bay Regional Resource Management Plan including the Regional Policy Statement (2006), and the Hawke's Bay Regional Coastal Environment Plan (2014). These documents are discussed in detail within the Section 32 Topic Report.

2.4 Procedural Matters

- 2.4.1 There were no pre-hearing meetings or meetings undertaken in accordance with clause 8AA of Schedule 1, undertaken on the submissions relating to the Contaminated Land & Hazardous Substances topic prior to the finalisation of this section 42A report.
- 2.4.2 No further consultation with any parties regarding the Contaminated Land & Hazardous Substances topic has been undertaken since notification of the provisions.

3.0 Consideration of Submissions Received

3.1 Overview of Submissions

3.1.1 As stated, this topic report addresses submissions received on the 'CL – Contaminated Land' and 'HAZS – Hazardous Substances' in Part 2 District-Wide Matters 'Hazards & Risks' section of the PDP.

Contaminated Land

3.1.2 There are two (2) submitters and one (1) further submitter across the whole 'Contaminated Land' topic.

3.1.3 Six (6) original submission points and 1 further submission point were received on the provisions relating to this topic.

3.1.4 Of the 6 original submission points, 4 submission points are in support. The 2 submission points seeking amendments relate to Objective CL-O1 and Method CL-M1.

Hazardous Substances

3.1.5 There are six (6) submitters and five (5) further submitters across the whole 'Hazardous Substances' topic.

3.1.6 Forty (40) original submission points and 12 further submission points were received on the provisions relating to this topic.

3.1.7 Of the 40 original submission points, 24 submission points are in support. The 16 submission points seeking amendments or opposing provisions relate to the definitions of 'Major Hazardous Facility' & 'Offensive Process' in the PDP, the wording of the Introduction, Issue HAZS-I1, Objective HAZS-O2, Policies HAZS-P2 & HAZS-P4 and seeking addition of a new policy, Rules HAZS-R1 & HAZS-R3, and Method HAZS-M2.

3.2 Structure of this Report

3.2.1 I have structured the section 42A report into three parts, as follows:

- Key Issue 1: Contaminated Land
- Key Issue 2: Hazardous Substances – Introduction, Issues, Objectives & Policies
- Key Issue 3: Hazardous Substances – Rules, Methods & Assessment Matters

4.0 Key Issue 1 – Contaminated Land

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Summary Recommendation
S11.013	Hawke's Bay Regional Council	CL-Contaminated Land	Support	No changes	Accept
.					
S110.012	the Oil Companies	CL-Introduction	Support	Retain 'CL-Introduction' as notified	Accept
.					
S110.013	the Oil Companies	CL-O1	Amend	Amend CL-O1 as follows: ' Land containing elevated levels of contaminants Contaminated land is managed to protect human health and the environment and to enable land to be used in the future.'	Accept
FS17.32	Hort NZ		Support		Accept
S110.014	the Oil Companies	CL-P1	Support	Retain CL-P1 as notified	Accept
.					
S110.015	the Oil Companies	CL-P2	Support	Retain CL-P2 as notified.	Accept
.					
S81.060	Hort NZ	CL-M1	Amend	Add a new sentence in CL-M1 as follows: The NES-CS contains specific controls applying to potentially contaminated soils, including rules, as well as associated matters over which control is reserved or over which discretion is restricted, where applicable. <u>The NES-CS does not apply to primary production land where the land continues to be used for production purposes. Only when the land use changes will the NES-CS apply.</u>	Accept in part
.					

4.1.1 In summary, there are 6 submission points and 1 further submission on the CL – Contaminated Land chapter of the PDP.

4.2 Matters Raised by Submitters

4.2.1 HBRC (S11.013) supports the Contaminated Land chapter as notified.

4.2.2 The Oil Companies (S110.012) support the 'Introduction' to the Contaminated Land chapter as notified. In their view *'the proposed plan acknowledges the need to avoid duplication with the NESCS. The Oil Companies support reliance on the NESCS to provide the rule framework with objectives and policies provided in the proposed plan.'*

4.2.3 The Oil Companies (S110.013) seek an amendment to Objective CL-O1 as follows:

CL-O1 ~~Land containing elevated levels of contaminants~~**Contaminated land** is managed to protect human health and the environment and to enable land to be used in the future.'

4.2.4 Whilst they support the intent of the objective, they consider that *'for consistency with the balance of provisions and the defined terms consider that the reference in the objective should be to contaminated land, not 'land containing elevated levels of contaminants'.*

4.2.5 Hort NZ (FS17.32) supports the amendment sought, as being appropriate.

4.2.6 The Oil Companies (S110.014, S110.015) support Policies CL-P1 and CL-P2 as notified.

4.2.7 Hort NZ (S81.060) seeks an amendment to Method CL-M1 as follows:

CL-M1 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

The NES-CS contains specific controls applying to potentially contaminated soils, including rules, as well as associated matters over which control is reserved or over which discretion is restricted, where applicable. **The NES-CS does not apply to primary production land where the land continues to be used for production purposes. Only when the land use changes will the NES-CS apply.**

4.2.8 In their view *'The plan should make clear that the NES-CS does not apply to production land if the [?] continues to be used for production purposes – refer Clause 5 (8). It is only when a change of land use occurs that the NES-CS provisions apply to production land'*.

4.3 Analysis

Objective CL-O1

4.3.1 The amendment sought to Objective CL-O1 is a minor clarification. I agree the wording as amended is more consistent with how the remainder of this chapter has been written. I therefore recommend Objective CL-O1 be amended as follows:

CL-O1 ~~Land containing elevated levels of contaminants~~ **Contaminated land** is managed to protect human health and the environment and to enable land to be used in the future.

Method CL-M1

4.3.2 I concur with Hort NZ that it would be of assistance for the wording of Method CL-M1 to reflect that the NES-CS does not apply to production land in certain circumstances. Clause 5(8) of the NES-CS states:

If a piece of land described in subclause (7) is production land, these regulations apply if the person wants to—

(a) *remove a fuel storage system from the piece of land or replace a fuel storage system in or on the piece of land:*

(b) *sample or disturb—*

(i) *soil under existing residential buildings on the piece of land:*

(ii) *soil used for the farmhouse garden or other residential purposes in the immediate vicinity of existing residential buildings:*

(iii) *soil that would be under proposed residential buildings on the piece of land:*

(iv) *soil that would be used for the farmhouse garden or other residential purposes in the immediate vicinity of proposed residential buildings:*

(c) *subdivide land in a way that causes the piece of land to stop being production land:*

(d) *change the use of the piece of land in a way that causes the piece of land to stop being production land.*

4.3.3 In my view, the wording proposed by Hort NZ is not an accurate summary of clause 5(8) of the NES-CS in relation to production land as it does apply to production land where a fuel storage system is being removed, soil under residential buildings being disturbed etc. Therefore, I recommend a more general statement be added to Method CL-M1, as follows:

CL-M1 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

The NES-CS contains specific controls applying to potentially contaminated soils, including rules, as well as associated matters over which control is reserved or over which discretion is restricted, where applicable. **The NES-CS regulations do not apply in all scenarios. Reg 5 sets out the situations where the NES-CS applies.**

4.4 Recommendations

4.4.1 For the reasons outlined above, I recommend that the PDP section on Noise be amended (as outlined in Recommended Amendments below).

4.4.2 I recommend that the following submission(s) be **accepted**:

- HBRC, S11.013
- The Oil Companies, S110.012, S110.013, S110.014, S110.015

4.4.3 I recommend that the following submission(s) be **accepted in part**:

- Hort NZ, S81.060

4.4.4 My recommendation in relation to further submissions reflect the recommendation on the relevant primary submission.

4.5 Recommended Amendments

4.5.1 I recommend the following amendments are made:

CL-O1 ~~Land containing elevated levels of contaminants~~**Contaminated land** is managed to protect human health and the environment and to enable land to be used in the future.

CL-M1 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

The NES-CS contains specific controls applying to potentially contaminated soils, including rules, as well as associated matters over which control is reserved or over which discretion is restricted, where applicable. **The NES-CS regulations do not apply in all scenarios. Reg 5 sets out the situations where the NES-CS applies.**

4.6 Section 32AA Evaluation

4.6.1 The above recommendations are considered minor, where the changes would improve the effectiveness of provisions without changing the policy approach, therefore s32AA re-evaluation is not warranted.

5.0 Key Issue 2 – Hazardous Substances – Introduction, Issues, Objectives & Policies

5.1 Submissions / Further Submissions Addressed

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Summary Recommendation
S57.004	FENZ	Hazardous Substance	Support	Retain the definition of 'Hazardous Substance' as notified.	Accept
.					
S29.001	New Zealand Defence Force	Major Hazardous Facility	Support	Retain as notified	Accept in part
.					
S81.020	Hort NZ	Major Hazardous Facility	Support	Retain the definition of 'Major Hazardous Facility'.	Accept in part
.					
S121.240	Federated Farmers	Major Hazardous Facility	Support	Retain clause (b) in the definition of 'Major Hazardous Facility' as proposed.	Accept in part
FS9.240	Forest & Bird		Oppose	Disallow	Reject
S57.006	FENZ	Major Hazardous Facility	Amend	Amend the definition of 'Major Hazardous Facility' as follows: 'a. any facility which involves one or more of the following activities: ... <u>xvii. The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment.</u> <u>xviii. Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016</u> ... b. The following activities are not considered to be major hazardous facilities ... <u>x. Emergency service activities.</u> '	Accept in part
.					
S116.001	Silver Fern Farms Limited	Major Hazardous Facility	Oppose	Amend the definition of 'Major Hazardous Facility' as follows: 'a. any facility which involves one or more of the following activities: ... ix. meat processing freezing works and rendering plants ... b.'	Accept
.					
S110.018	the Oil Companies	Major Hazardous Facility	Amend	Reconsider the need for hazardous substance controls based on the broad definition of 'Major Hazardous Facilities'. If a broad definition can be justified, retain clauses to the effect of a(iii) and b(v) of the definition as notified.	Accept in part
.					

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Summary Recommendation
S116.002	Silver Fern Farms Limited	Offensive Process	Oppose	Amend the definition of 'Offensive Process' as follows: 'means one of the following processes: a. processes requiring offensive trade licenses under the Health Act 1956; b. the manufacture and processing of chemical fertilisers; c. meat processing or any associated processing of meat and meat by-products or co-products; ...'	Reject
S11.014	Hawke's Bay Regional Council	HAZS chapter	Support	No changes	Accept in part
S110.001	the Oil Companies	HAZS – Introduction	Oppose	Amend the final paragraph of 'HAZS - Introduction' as follows: 'Whilst the Resource Legislation Amendments 2017 changed the RMA so Councils no longer have this <u>the</u> explicit function to control hazardous substances, they <u>Councils</u> still have a broad function of achieving integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. <u>To avoid duplication, the Council seeks only to control matters that are not adequately covered by other more specific legislation or regulated by the Hawke's Bay Regional Council and proposes to do this by focused provisions targeting major hazardous facilities.</u> Council proposes to use this broad function to place extra controls on hazardous substance use under the RMA, where HSNQ or Worksafe controls are not adequate to address the environmental effects of hazardous substances in any particular case.'	Accept
FS17.33	Hort NZ		Support	Allow	Accept
S110.002	the Oil Companies	HAZS-I1	Oppose	Amend the explanation to HAZS-I1 as follows: 'While hazardous substances are largely controlled through other legislation, some hazardous facilities may create off site risks to people, property and the environment. the Council is still required by the RMA to achieve integrated management of effects, including control of any actual or potential effects associated with the storage, use, disposal, or transportation of hazardous substances. Two issues arise from the use of hazardous substances. The first concerns the safe day-to-day use of hazardous substances. The second is the possible effects on the health and safety of people and on the natural environment involving the establishment and operation of major hazardous facilities.'	Accept
FS17.34	Hort NZ		Support	Allow	Accept
S57.033	FENZ	HAZS-O1	Support	Retain HAZS-O1 as notified.	Accept

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Summary Recommendation
.					
S110.003	the Oil Companies	HAZS-O1	Support	Retain HAZS-O1 as notified	Accept
.					
S57.034	FENZ	HAZS-O2	Support	Retain HAZS-O2 as notified	Accept in part
.					
S81.061	Hort NZ	HAZS-O2	Support	Retain HAZS-O2 as notified	Accept in part
.					
S121.119	Federated Farmers	HAZS-O2	Support	Retain HAZS-O2 as proposed	Accept in part
FS9.119	Forest & Bird		Oppose		Reject
S110.004	the Oil Companies	HAZS-O2	Amend	Amend HAZS-O2 as follows: 'Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, Health and Safety at Work Act 2015, Regional Plan , and the District Plan.'	Accept
.					
S57.035	FENZ	HAZS-P1	Support	Retain HAZS-P1 as notified	Accept
.					
S81.062	Hort NZ	HAZS-P1	Support	Retain HAZS-P1 as notified	Accept
.					
S110.005	the Oil Companies	HAZS-P1	Support	Retain HAZS-P1 as notified	Accept
.					
S121.120	Federated Farmers	HAZS-P1	Support	Retain HAZS-P1 as notified	Accept
FS9.120	Forest and Bird				Reject
S57.036	FENZ	HAZS-P2	Support	Retain HAZS-P1 as notified	Accept
.					
S110.006	the Oil Companies	HAZS-P2	Oppose	Delete HAZS-P2	Accept
.					
S116.019	Silver Fern Farms Limited	HAZS-P2	Oppose	Amendments to the definition of 'Major Hazardous Facility' [refer submission point S116.001] and UFD-O2 [refer submission point S116.017], as sought.	Accept in part
.					
S57.037	FENZ	HAZS-P3	Support	Retain HAZS-P3 as notified	Accept
.					
S110.007	the Oil Companies	HAZS-P3	Support	Retain HAZS-P3 as notified	Accept
.					
S57.038	FENZ	HAZS-P4	Support	Retain HAZS-P4 as notified	Reject
.					
S110.008	the Oil Companies	HAZS-P4	Oppose	Delete HAZS-P4	Accept
.					
S121.253	Federated Farmers	New Policy	Amend	Add a new policy in the 'HAZS - Hazardous Substances' chapter in the Proposed Plan as follows: <u>'To not regulate the use, storage or transportation of hazardous substances, in the District Plan where adequate levels of community and</u>	Accept in part

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Summary Recommendation
				<u>environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996 or other legislation and regulation.'</u>	
FS17.35	Horticulture New Zealand		Support in part	Allow in part	Accept
FS9.253	Forest & Bird		Oppose	Disallow	Reject

5.1.1 In summary, these 29 submission and 6 further submissions are in support of the definitions, issues, objectives and policies in the HAZS – Hazardous Substances chapter in the PDP, and where they are not in support they seek amendments or oppose the definitions of 'Major Hazardous Facility' & 'Offensive Process' in the PDP, the wording of the Introduction, Issue HAZS-I1, Objective HAZS-O2, and Policies HAZS-P2 & HAZS-P4. One submitter seeks the addition of a new policy in this chapter.

5.2 Matters Raised by Submitters

Definition of 'Hazardous Substance'

- 5.2.1 FENZ (S57.004) supports retention of the definition of 'Hazardous Substance' as notified.
- 5.2.2 FENZ submit that '*The definition of 'Hazardous Substance' being consistent with Section 2 of the RMA and reference to other relevant legislation including the 'Hazardous Substances and New Organisms Act 1996' as a hazardous substance and the 'Hazardous Substances and New Organisms Act 1996' is supported.'*

Definition of 'Major Hazardous Facility'

- 5.2.3 The NZ Defence Force (S29.001) and Hort NZ (S81.020) support retention of the definition of 'Major Hazardous Facility' as notified.
- 5.2.4 The NZ Defence Force support this definition on the basis that: '*This definition excludes military training activities from major hazardous facilities. This is appropriate as military training activities are materially different from the other activities listed.'*
- 5.2.5 Federated Farmers (S121.240) supports retaining clause (b) in the definition of 'Major Hazardous Facility' as proposed. In particular Federated Farmers support the specific exclusion of farm storage and use of hazardous substances.
- 5.2.6 FENZ (S57.006) seeks the definition of 'Major Hazardous Facility' be amended as follows:

MAJOR HAZARDOUS FACILITY	<p>(a) any facility which involves one or more of the following activities:</p> <ul style="list-style-type: none"> (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply (iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) freezing works and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage (xvi) landfills <u>(xvii) The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment</u>
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	<p><u>(xviii) Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016</u></p> <p>(b) The following activities are not considered to be major hazardous facilities:</p> <ul style="list-style-type: none"> (i) the incidental use and storage of hazardous substances in minimal domestic-scale quantities (ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies) (iii) the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities. (iv) the mixing of fertilisers (v) service stations, truck stops and commercial refuelling activities (vi) pipelines used for the transfer of hazardous substances such as gas, oil, trade waste and sewage (vii) fuel in motor vehicles, boats, airplanes and small engines (viii) military training activities (ix) the transport of hazardous substances (e.g. in trucks or trains) <p><u>(x) Emergency service activities</u></p>
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5.2.7 FENZ seeks the amendments outlined for the following reasons:

- *Most businesses will have some hazardous substances on site and some small business activities may unreasonably require consent as a discretionary activity. Therefore suggest applying a quantity limit to (a)(i) and (b)(i) for greater clarity.*
- *The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling or treatment should be included as a ‘Major Hazardous Facility’. Where the business cannot process or dispose of materials, this can become a high fire risk and poses a risk to the health and safety of communities.*
- *Any facility deemed a ‘Major Hazardous Facility’ under the Health and Safety at Work Major Hazardous Facilities Regulations 2016 should also be included as a ‘Major Hazardous Facility’.*
- *There are circumstances where Fire and Emergency needs to temporarily store large quantities of product in an emergency e.g. stocks of fire retardant and foam product, stocks of petrol and diesel. Seek that facilities involving ‘Emergency response activities’ are excluded from being a ‘Major hazardous facility’ under the Proposed Plan.’*

5.2.8 Silver Fern Farms (S116.001) seeks amendment of the definition of 'Major Hazardous Facility', as follows:

<p>MAJOR HAZARDOUS FACILITY</p>	<p>(a) any facility which involves one or more of the following activities:</p> <ul style="list-style-type: none"> (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply (iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) meat processingfreezing works and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage (xvi) landfills <p>(b) The following activities are not considered to be major hazardous facilities:</p> <ul style="list-style-type: none"> (i) the incidental use and storage of hazardous substances in minimal domestic-scale quantities (ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies) (iii) the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities. (iv) the mixing of fertilisers
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	(v) service stations, truck stops and commercial refuelling activities (vi) pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage (vii) fuel in motor vehicles, boats, airplanes and small engines (viii) military training activities (ix) the transport of hazardous substances (e.g. in trucks or trains)
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5.2.9 Silver Fern Farms advises that *“freezing works’ is an outdated term. The term ‘meat processing’ would be preferable, to accurately reflect contemporary sector terminology.’*

5.2.10 The Oil Companies (S110.018) seek that Council *‘Reconsider the need for hazardous substance controls based on the broad definition of MHF’* but that *‘If a broad definition can be justified, retain clauses to the effect of a(iii) and b(v) of the definition as notified’.*

5.2.11 They give the following reasons:

‘Through feedback to the draft plan the Oil Companies sought that the provisions, including the proposed definition of MHF, be reconsidered and analysed from a risk-based perspective. In terms of a starting point for the definition of MHF, the Oil Companies sought that the definition from the Health and Safety at Work (MHF) Regulations (the MHF Regulations) be the starting point for a definition of MHF. That analysis does not appear to have been undertaken, with the options assessed in the s32 report focused on retention of the operative plan approach or adopting the proposed approach.

If a tailored definition (as opposed to the definition in the MHF Regulations) was retained, the Oil Companies sought that the volume thresholds for the storage of petrol or diesel be per the MHF Regulations. The notified definition of MHF no longer lists the storage/use of petrol and diesel above particular volumes as being MHF and specifically exempts service stations, truck stops and commercial refuelling activities. These changes are helpful and supported, if the broad definition of MHF is retained, but do not address the potentially significant duplication of controls and the challenges of the proposed activity based definition, including the omission of a range of facilities which could store and use hazardous substances with potentially significant off site risk. For instance, as defined, a transport depot could store hydrogen at volumes that would make it a MHF under the MHF Regulations but would not necessarily appear to be a MHF per the proposed plan. This is just one example but highlights the challenge of an activity based definition like that proposed. The Oil Companies seek that Council reconsiders the need for broad hazardous substance controls.’

Definition of ‘Offensive Process’

5.2.12 Silver Fern Farms (S116.002) opposes the definition of ‘Offensive Process’ and seeks it be amended as follows:

OFFENSIVE PROCESS	means one of the following processes: (a) processes requiring offensive trade licenses under the Health Act 1956; (b) the manufacture and processing of chemical fertilisers; (c) meat processing or any associated processing of meat and meat by-products or co-products; (d) fish curing, cleaning, treatment, preserving and storage; (e) cement and concrete products manufacture; (f) hot-mix asphalt paving manufacture; (g) glass or fibre-glass manufacture; (h) wood-pulp manufacture and processing; (i) foundry processes, electro-plating works, melting of metals, steel manufacture and galvanising; (j) natural gas, oil or petroleum distillation or refining; (k) manufacture of hardboard, chipboard or particle board; (l) timber treatment; (m) wool scouring; and (n) motor body building and auto dismantling.
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5.2.13 Silver Fern Farms submit that *‘This definition has been carried over from the Operative Plan. The defined term ‘offensive process’ appears in the General Industrial Zone but is not used in any other proposed zones. Therefore, while sub-clause (c) of ‘offensive process’ encompasses meat processing activities, given the Plant is not in the General Industrial Zone it is unclear if, and how, the definition is intended to be applied in relation to Silver Fern Farms Plant in the Rural Production Zone. As such, Silver Fern Farms opposes sub-clause (c) of the Proposed Plan definition’.*

Whole of Chapter, Introduction, and Issues

- 5.2.14 HBRC (S11.014) supports retention of the 'HAZS – Hazardous Substances' chapter of the PDP as notified.

Introduction to the Chapter

- 5.2.15 The Oil Companies (S110.001) seek amendment to the final paragraph of the Introduction to the Hazardous Substances chapter of the PDP, as follows:

~~Whilst the Resource Legislation Amendments 2017 changed the RMA so Councils no longer have this the explicit function to control hazardous substances, they. Councils still have a broad function of achieving integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. To avoid duplication, the Council seeks only to control matters that are not adequately covered by other more specific legislation or regulated by the Hawke's Bay Regional Council and proposes to do this by focused provisions targeting major hazardous facilities. Council proposes to use this broad function to place extra controls on hazardous substance use under the RMA, where HSNO or Worksafe controls are not adequate to address the environmental effects of hazardous substances in any particular case.~~

- 5.2.16 The Oil Companies give the following reasons:

'The Resource Legislation Amendment Act 2017 (RLAA) removed the explicit function of district and regional councils to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under sections 30 and 31 of the RMA. While councils can manage hazardous substances through their plans and policy statements to achieve the purpose of the RMA and to carry out the function of integrated management of natural and physical resources in their region/district, this should only be exercised where the potential environmental effects are not adequately addressed by other legislation, including the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Health and Safety at Work Act 2015 (HSWA).

HSNO and HSWA consider surrounding land uses generically by including different clearances with respect to substances (HSNO) or surrounding land uses (HSWA). Most of these controls apply regardless of where that substance is stored or used and apply a precautionary approach which provides for an acceptable level of safety in most circumstances. The Oil Companies consider that HSNO and HSWA controls are typically adequate to avoid, remedy or mitigate adverse environmental effects of hazardous substances. This position is supported by the Ministry for the Environment (MfE)23.

However, in particular circumstances it may be appropriate that RMA controls are used. To identify these instances, in light of the RLAA and controls under other legislation, robust section 32 analysis is fundamental to ensuring the proposed controls are both necessary and efficient. Additionally, the RLAA has emphasised the importance of avoiding the duplication of other legislation and the recent MfE Guidance has reinforced the position of central government in this regard. The Oil Companies support the greater efficiency of this approach.

Recognition of the need to avoid duplication of hazardous substances is reflected in several plans around the country. For instance, decisions by the Independent Hearing Panel (including both a High Court and Environment Court Judge) on the Christchurch District Plan rejected Christchurch City Council's hazardous substance controls, which were based on an activity status table approach, and only retained controls relating to hazardous substances in close proximity to the National Grid. The provisions were considered to give effect to the Canterbury Regional Policy Statement 2013. More importantly, the decisions adopted overlays around MHF. For example, the bulk fuel storage facilities of the Oil Companies at Lyttelton and Woolston to protect critical infrastructure from reverse sensitivity effects.

Introduction

The proposed plan acknowledges Council no longer has the explicit function to control hazardous substances but records that Council has a broad function of achieving integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district. It is this function which the proposed plan refers to as supporting the placement of additional controls on the use and storage of hazardous substances.

The plan purports to control hazardous substances where HSNO or WorkSafe controls are not adequate to address the environmental effects of hazardous substances in any particular case. The Oil Companies support the recognition of the role of other legislation but oppose the principle of broad controls without adequate section 32 analysis to demonstrate whether that is the most appropriate way to achieve the purpose of the RMA.'

5.2.17 Hort NZ (FS17.33) supports the amendment sought, as they consider it *'more clearly reflects the intent of the chapter'*.

Issue HAZS-I1

5.2.18 The Oil Companies (S110.002) similarly seek amendment of the explanation accompanying Issue HAZS-I1, as follows:

HAZS-I1 If not appropriately stored and used, hazardous substances pose potential threats to the health and safety of the District's people and natural environment.

Explanation

While hazardous substances are largely controlled through other legislation, **some hazardous facilities may create off site risks to people, property and the environment.** the Council is still required by the RMA to achieve integrated management of effects, including control of any actual or potential effects associated with the storage, use, disposal, or transportation of hazardous substances.

~~Two issues arise from the use of hazardous substances. The first concerns the safe day-to-day use of hazardous substances. The second is the possible effects on the health and safety of people and on the natural environment involving the establishment and operation of major hazardous facilities.~~

5.2.19 They give the following reasons:

'The corresponding explanation states that while hazardous substances are largely controlled through other legislation, the Council is still required to achieve integrated management, including controlling potential effects associated with hazardous substances. The Oil Companies agree, in so much as where an issue and intervention is necessary to manage the same, but do not consider this has been demonstrated, both in association to the 'safe day-to-day use' of hazardous substances and the possible effects on the environment involving the establishment and operation of Major Hazardous Facilities ('MHF') (as broadly defined in the proposed plan).'

5.2.20 Hort NZ (FS17.34) supports the amendment sought, as they consider *'the wording sought more clearly reflects the intent'*.

Objectives

Objective HAZS-O1

5.2.21 FENZ (S57.033) and the Oil Companies (S110.003) support retention of Objective HAZS-O1 as notified, below:

HAZS-O1 Protect the community and natural environment from the adverse effects associated with the manufacture, use, storage or transportation of hazardous substances.

Objective HAZS-O2

5.2.22 FENZ (S57.034), Hort NZ (S81.061) and Federated Farmers (S121.119) all support retention of Objective HAZS-O2 as notified.

5.2.23 The Oil Companies (S110.004) support the intent of Objective HAZS-O2 *'but consider it is appropriate at the objective level to seek to avoid duplication and not just in relation to HSNO, but also regional plans and HSWA, as recognised in the introductory section of the proposed plan and the accompanying s32 analysis'* and, therefore, seek the following amendment:

HAZS-O2 Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, **Health and Safety at Work Act 2015, Regional Plan**, and the District Plan.

Policies

Policy HAZS-P1

5.2.24 FENZ (S57.035), Hort NZ (S81.062), the Oil Companies (S110.005), and Federated Farmers (S121.120), all support retention of Policy HAZS-P1 as notified, below:

HAZS-P1 To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations.

5.2.25 FENZ support this policy on the basis that: *'Fire stations and associated firefighting activities involve the use and storage of hazardous substances at quantities that are considered minor. However, there are circumstances where Fire and Emergency need to temporarily store large quantities of product in an emergency. Therefore, Fire and Emergency require flexibility to utilise hazardous substances when and*

where necessary for their operations and most importantly to ensure an effective response to a fire or other emergency.'

- 5.2.26 Hort NZ supports that 'activities are enabled to utilise hazardous substances where necessary for their operations'.

Policy HAZS-P2

- 5.2.27 FENZ (S57.036) supports retention of Policy HAZS-P2 as notified, below:

HAZS-P2	To ensure Major Hazardous Facilities avoid or are adequately set back from:
	1. residential activities;
	2. vulnerable activities;
	3. the coast, historic heritage and scheduled features;
	4. scheduled wāhi tapu, wāhi taonga and sites of significance;
	5. priority waterbodies, including sources of potable water; and
	6. identified natural hazard areas.

- 5.2.28 The Oil Companies (S110.006) seek that Policy HAZS-P2 be deleted, as they consider 'HAZS-P2 addresses a range of matters which will be appropriately controlled through other provisions at both the district (for instance zoning and earthworks controls) and regional level (discharges), and through HAZS-P3 in relation to potential risks associated with the storage and use of hazardous substances.'

- 5.2.29 Silver Fern Farms (S116.019) opposes Policy HAZS-P2 in part. They consider that because the definition of 'Major Hazardous Facilities' includes 'xi. freezing works and rendering plants', their Plant would be defined as such and are concerned that:

'Policy HAZS-P2 does not appear to contemplate the implications of setback requirements for legally established Major Hazardous Facilities, in cases where incompatible activities have been allowed to encroach into the surrounding environment.'

Silver Fern Farms considers that the Proposed Plan allowance for 'lifestyle site' subdivision in the Rural Production Zone, and the proposed Rural Lifestyle zoning of land near the Plant, will give rise to encroachment into the rural environment by incompatible land uses. In that situation, this policy would burden Silver Fern Farms with the duty to avoid adverse effects, if it seeks to upgrade or expand the Plant in the future.'

To that end, Silver Fern Farms proposes that [Objective UFD-02?] be amended to recognise the need to 'protect' Major Hazardous Facilities from urban encroachment.'

Policy HAZS-P3

- 5.2.30 FENZ (S57.037) and the Oil Companies (S110.007) support retention of Policy HAZS-P3 as notified, below:

HAZS-P3	To require new or expanded Major Hazardous Facilities to demonstrate that the activity is located appropriately, having regard to the effects of the activity, the risks to the health and safety of the community, and:
	1. the type, scale, duration, intensity or frequency of the activity's effects;
	2. the design and site layout of the activity and its ability to internalise effects;
	3. effective management and disposal of wastes containing hazardous substances;
	4. any potential adverse cumulative or synergistic effects; and
	5. avoidance or management of risks associated with natural hazards.

- 5.2.31 FENZ supports this Policy 'subject to the acceptance of the amendments sought to the definition of 'Major Hazardous Facility', HAZS-P3 is supported to the extent that the policy requires new or expanded Major Hazardous Facilities to demonstrate that the activity is located appropriately, having regard to the effects of the activity, the risks to the health and safety of the community. This policy achieves the purpose of the RMA by providing for the health and safety of people and communities'.

Policy HAZS-P4

- 5.2.32 FENZ (S57.038) supports retention of Policy HAZS-P4 as notified, below:

HAZS-P4	To avoid any unnecessary duplication of regulation with other statutory processes for hazardous substance activities.
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- 5.2.33 FENZ supports this Policy on the basis that it 'considers that the Health and Safety at Work Act 2015 and Hazardous Substances and New Organisms Act 1996 regulations are adequate to manage risks, for the

most part. Where they are not, local authorities can place additional controls on hazardous substance use through RMA plans to address specific or potential environmental effects, if justified.

This policy gives effect to the April 2018 amendments to sections 30 and 31 of the RMA which removed the control of hazardous substances as an explicit function of local authorities.'

- 5.2.34 The Oil Companies (S110.008) seek the deletion of Policy HAZS-P4 as they consider 'HAZS-P4 essentially repeats HAZS-O2'.

New Policy

- 5.2.35 Federated Farmers (S121.253) seeks inclusion of an additional policy in the Hazardous Substances chapter of the PDP, as follows:

HAZS-PX To not regulate the use, storage or transportation of hazardous substances, in the District Plan where adequate levels of community and environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996 or other legislation and regulation.

- 5.2.36 Federated Farmers consider that activities that already comply with the Hazardous Substances and New Organisms Act should be not regulated by the District Plan and in their view '*This would achieve objective HAZS-O2 better by avoiding any duplication.*'
- 5.2.37 Hort NZ (FS17.35) supports the amendment sought in Federated Farmers' submission in part, on the basis that '*The submitter seeks wording similar to HAZS-P4 but there are submissions to delete HAZS-P4. The wording sought by the submitter may better implement HAZS-O2*'.

Forest & Bird

- 5.2.38 Forest & Bird (FS9.119, FS9.120, FS9.240, FS9.253) opposes all the submissions of Federated Farmers, as '*The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA*'.

5.3 Analysis

Whole Chapter, Definition of 'Hazardous Substances', Objective HAZS-O1, and Policies HAZS-P1 & HAZS-P3

- 5.3.1 Submissions in support of the chapter generally, and in relation to the definition of 'Hazardous Substances', Objective HAZS-O1 and Policies HAZS-P1 & HAZS-P3 are all in support, and no further analysis is considered necessary.

Definition of 'Major Hazardous Facility'

- 5.3.2 There is a level of support for retention of the definition of 'Major Hazardous Facility' in the PDP, or parts thereof. However, FENZ, Silver Fern Farms, and the Oil Companies either seek amendments to include/exclude various activities from the definition or, in the case of the Oil Companies, question whether there should be any broad hazardous substance controls in the PDP at all.
- 5.3.3 The Quality Planning website provides guidance around managing hazardous substances under the RMA, and where RMA controls may be necessary, stating '*The HSNO Act and HSW Act have a generic consideration of surrounding land uses, by including different clearances with respect to specific substances (HSNO Act) or hazardous facilities according to surrounding land uses (HSW Act). Most of these controls apply regardless of where that substance is stored or used and apply a precautionary approach, which provides an acceptable level of safety, including in respect of separation distances, in most circumstances. Generally, the HSNO and HSW Acts will be adequate to ensure risks, including cumulative effects, associated with hazardous facilities (activities that use, store, manufacture and/or dispose of hazardous substances) are contained on a site. However, some hazardous facilities, may have potential for off-site effects, despite compliance with HSNO and the HSW Act, for instance some Major Hazardous Facilities (MHF)*¹.
- 5.3.4 Similarly, the Ministry for the Environment's 'Resource Legislation Amendments 2017 Fact Sheet 2'² states: '*The intent of this change is to remove the perception that councils must always place controls on hazardous substances under the RMA, and to ensure councils only place additional controls on*

¹ <https://www.qualityplanning.org.nz/index.php/node/1148>

² <https://environment.govt.nz/assets/Publications/Files/Fact-Sheet-2-Revised-functions-for-RMA-decision-makers-amended.pdf>

hazardous substances if they are necessary to control effects under the RMA that are not covered by the HSNO or HSW Acts. In most cases HSNO and Worksafe controls will be adequate to avoid, remedy or mitigate adverse environmental effects (including potential effects) of hazardous substances' (pg 5/6).

- 5.3.5 The approach in the PDP provides some ability to control land use activities involving particularly volatile or significant volumes of hazardous substances (i.e. Major Hazardous Facilities) in a way that provides the ability to assess them in terms of their risk to the community, and also allows for consideration of amenity and cultural effects, which are not the purview of the HSNO and HSW legislation.
- 5.3.6 In aligning with the approach to hazardous substances in the neighbouring Hastings District Plan, the definition of 'Major Hazardous Facilities' in that Plan (refer below) was the starting point for the equivalent definition in the PDP. As a result of the submissions on the Draft Plan (including submissions from the Oil Companies, Hort NZ and NZ Defence Force) a number of changes were made including deleting reference to the storage/use of petrol and diesel above particular volumes as being a 'Major Hazardous Facility'.

MAJOR HAZARDOUS FACILITIES

DEFINITION

means any facility which involves one or more following activities:

- Manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints)
- Oil and gas exploration and extraction facilities
- Purpose built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale or restricted commercial supply
- The storage/use of more than 100,000L of petrol
- The storage/use of more than 50,000L of diesel
- The storage/use of more than 6 tonnes of LPG
- Galvanising plants
- Electroplating and metal treatment facilities
- Tanneries
- Timber treatment
- Freezing works and rendering plants
- Wastewater treatment plants
- Metal smelting and refining (including battery refining or re-cycling)
- Milk treatment plants
- Fibreglass manufacturing
- Polymer foam manufacturing
- Asphalt/bitumen manufacture or storage
- Landfills

For the avoidance of doubt, the following activities are not considered to be major hazardous facilities:

- The incidental use and storage of hazardous substances in minimal domestic scale quantities
- Retail outlets for hazardous substances intended for domestic usage (e.g supermarkets, hardware stores and pharmacies)
- The incidental storage and use of agrichemicals, fertilisers and fuel for land based primary production activities.
- Pipelines used for the transfer of hazardous substances such as gas, oil, trade waste and sewage
- Fuel in motor vehicles, boats, airplanes and small engines
- Military training activities
- The transport of hazardous substances (e.g in trucks or trains)

- 5.3.7 Whilst these changes have some support from the Oil Companies, their preference is for the 'Health and Safety at Work (Major Hazard Facilities) Regulations 2016' (MHF Regulations) to be the starting point for a definition of Major Hazardous Facilities', which is defined as '*means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20*':

Regulation 19

Mandatory designation as major hazard facility

1. If WorkSafe decides under regulation 15 that a facility or proposed facility is a lower tier major hazard facility, WorkSafe must designate that facility as a lower tier major hazard facility.
2. If WorkSafe decides under regulation 15 that a facility or proposed facility is an upper tier major hazard facility, WorkSafe must designate that facility as an upper tier major hazard facility.

Regulation 20***Discretionary designation of lower tier major hazard facility as upper tier major hazard facility***

WorkSafe may designate a facility or a proposed facility as an upper tier major hazard facility if WorkSafe—

- (a) decides to conduct a review under regulation 16; and*
- (b) on completion of the review (conducted having regard to the matters specified in regulation 16(1)(b)), considers that there is increased potential for a major incident to occur at that facility.*

- 5.3.8 Regulation 15 of the MHF Regulations provides for this determination to be made applying threshold quantities set out in Schedule 2 to the Regulations. Schedule 2 to the MHF Regulations sets out a detailed list of hazard categories, HSNO classifications, global chemical classifications, and threshold quantities (refer Appendix C attached to this report).
- 5.3.9 As can be seen, there is no simple definition of 'Major Hazard Facility' in the Health & Safety at Work Act or Hazardous Organisms Act that lends itself to adoption in a district plan. In my view, the definition in the MHF Regulations is complex for a District Plan user to interpret, and also relies on a third party (Worksafe) to determine whether a facility meets this definition, and for this reason I remain of the view that the list of 'Major Hazardous Facilities' in the definition in the PDP is simpler and easier to administer, given that it acts as a trigger for resource consent.
- 5.3.10 The Oil Companies main concern is that the broad definition of Major Hazardous Facility as notified '*does not address the potentially significant duplication of controls and the challenges of the proposed activity-based definition, including the omission of a range of facilities which could store and use hazardous substances with potentially significant off-site risk*' and therefore, could result in some activities being excluded.
- 5.3.11 I consider that inserting the additional clause referencing '*Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016*' is inserted in the definition (as sought by FENZ), would address the issue highlighted by the Oil Companies (i.e. a transport depot that stores hydrogen at volumes that would make it a Major Hazard Facility under the MHF Regulations). It may be useful if the Oil Companies could provide information as to when in the process the MHF Regulations apply.
- 5.3.12 In summary I remain of the view that the definition (with amendments made in response to other submissions) is a practical and workable method for scrutinising new facilities using or storing hazardous substances that could have potentially significant off-site risks to people, property, and the environment.
- 5.3.13 FENZ have also sought that '*The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling or treatment*' be included within the definition of 'Major Hazardous Facility'. They consider that where the business cannot process or dispose of materials, this can become a high fire risk and poses a risk to the health and safety of communities. In my view, storage and/or treatment of hazardous waste would clearly pose potentially significant off-site risks to people, property, and the environment. Therefore, I recommend this be added to the definition of 'Major Hazardous Facility'.
- 5.3.14 FENZ have also sought a quantity limit be applied to facilities involving the '*manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints*' (definition a.(i)); and '*the incidental use and storage of hazardous substances in minimal domestic-scale quantities*' (definition b.(i)).
- 5.3.15 The first facility relates to manufacturing and the associated storage of hazardous substance rather than small amounts of storage for use by a small business and for this reason I do not support including a limit on this type of facility.
- 5.3.16 The second activity excludes incidental use and storage of hazardous substances '*in minimal domestic scale quantities*'. FENZ have not recommended any particular threshold. I suggest that a common-sense approach would apply. In the absence of any evidence to support a threshold for domestic scale activities, I do not support including one.
- 5.3.17 With regard to excluding 'Emergency Service Activities' from the definition of Major Hazardous Facility, as sought by FENZ, I note from their submission that on occasions they are temporarily required to store large quantities of fire retardant and foam product, and stocks of petrol and diesel. It is unclear whether such use and temporary storage of hazardous substances poses potential for significant off-site risks to the environment. It would be helpful if FENZ could advise if such use and storage of hazardous substances would fall within the definition of 'Major Hazard Facility' ('lower tier' or 'upper tier') under the MHF Regulations. If 'use and storage of hazardous substances for emergency service activities' is

deemed not to be a 'Major Hazard Facility' under the MHF Regulations, then I would be comfortable excluding this from the definition in the PDP.

- 5.3.18 In response to the submission of Silver Fern Farms, I accept that the term 'freezing works' is an outdated term and should be updated to reflect the current sector terminology, being 'meat processing'.
- 5.3.19 Having considered the submissions on the definition of 'Major Hazard Facility' and for the reasons outlined above, I recommend the following amendments to the definition:

MAJOR HAZARDOUS FACILITY	<p>(a) any facility which involves one or more of the following activities:</p> <ul style="list-style-type: none"> (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply (iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) meat processing, freezing works and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage (xvi) landfills <u>(xvii) the storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment</u> <u>(xviii) any facility designated a Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016</u> <p>(b) The following activities are not considered to be major hazardous facilities:</p> <ul style="list-style-type: none"> (i) the incidental use and storage of hazardous substances in minimal domestic-scale quantities (ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies) (iii) the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities (iv) the mixing of fertilisers (v) service stations, truck stops and commercial refuelling activities (vi) pipelines used for the transfer of hazardous substances such as gas, oil, trade waste and sewage (vii) fuel in motor vehicles, boats, airplanes and small engines (viii) military training activities (ix) the transport of hazardous substances (e.g. in trucks or trains) <u>(x) the incidental storage and use of hazardous substances for emergency service activities</u>
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Definition of 'Offensive Process'

- 5.3.20 Silver Fern Farms seeks deletion of '*meat processing or any associated processing of meat and meat by-products or co-products*' from the definition of 'Offensive Process' in the PDP. This is on the basis that the activity of 'offensive processes' is only provided for in the General Industrial Zone, and Silver Ferns Farm is not located in this zone.
- 5.3.21 'Offensive processes' are an aspect of 'industrial activity' that are specifically excluded from the range of industrial activities permitted in the Settlement Zone (Rule SETZ-R12 Extension of existing industrial activities, and Rule SETZ-R13 New industrial activities and post-harvest facilities) and the General Industrial Zone (Rule GIZ-R1 Industrial activities and post-harvest facilities)³.

³ Rules SETZ-R12, SETZ-R13 and GIZ-R1 in the PDP were not subject to any opposing submissions seeking amendment or deletion (receiving only submissions in support).

- 5.3.22 In the case of the Settlement Zone, a new or expanded industrial activity involving an 'offensive process' would fall to consideration as a Non-Complying Activity which, in my opinion, reasonably reflects that industrial activities involving offensive processes are generally not anticipated within the small rural settlements of the District – largely due to the mixed, but predominantly residential, nature of land use in these settlements, where offensive processes could have significant adverse environmental effects on a relatively sensitive receiving environment.
- 5.3.23 In the General Industrial Zone, where industrial activities are fully anticipated and provided for as a Permitted Activity subject to compliance with general zone standards, it is the 'offensive process' aspect that would trigger the requirement for resource consent as a Discretionary Activity. Again, this reflects that offensive processes associated with a new industrial activity could have adverse effects on the environment that warrant greater scrutiny via a resource consent process. Again, this is appropriate in my view. This means that Council can scrutinise the full range of effects of any proposal and may, where appropriate, decline an application.
- 5.3.24 In the remaining General Residential & Large Lot Residential Zones, and in the Rural Lifestyle, General Rural & Rural Production Zones, new industrial activities already fall to being a Non-Complying Activity – in Rules GRZ-R15, LLRZ-R14, GRUZ- R19, RPROZ-R19, RLZ-R14, respectively – and as such, the need to separately identify 'offensive processes' is unnecessary.
- 5.3.25 In terms of how the definition would be applied in relation to Silver Fern Farms existing Plant near Takapau in the Rural Production Zone, the answer is that it would not be applied – in the Rural Production Zone, industrial activities are not Permitted Activities, therefore there is no need to differentiate between industrial activities involving offensive processes and those that do not, as both would be a Non-Complying Activity.
- 5.3.26 However, if Silver Fern Farms sought to establish a new Plant in the General Industrial Zone or the Settlement Zone, then the definition would be applied. In that situation, as an 'offensive process', such a Plant would not comply with the respective Permitted Activity Rule conditions, and therefore would be assessed as a Discretionary or Non-Complying Activity, respectively.
- 5.3.27 Given the above, and that there has been no evidence provided by the submitter that '*meat processing or any associated processing of meat and meat by-products or co-products*' does not warrant defining as an 'offensive process' along with the other processes listed in the definition, I do not support deleting it from the definition in the PDP.

Introduction & Issue HAZS-I1

- 5.3.28 The Oil Companies have sought amendments to the Introduction to the Hazardous Substances chapter and to Issue HAZS-I1 of the PDP as they consider there needs to be greater clarity around the role of Council in the management of hazardous substances under the RMA, and in avoiding duplication with Regional Council functions and HSNO and Worksafe legislative controls. Hort NZ supports the amendments sought by the Oil Companies, as they consider they more clearly reflect the intent of the chapter.
- 5.3.29 I note that the Hawke's Bay Regional Resource Management Plan outlines the respective responsibilities of the Hawke's Bay Regional Council and territorial authorities as follows (from section 8.4 'Cross Boundary Issues' of the Regional Plan):

'Local Authority Responsibilities for Natural Hazards & Hazardous Substances

Section 62 (1) (b) (h) of the RMA enables regional policy statements to set out the respective responsibilities of the regional council, and territorial authorities within the region concerned, for developing objectives, policies, and rules relating to the control of the use of land for:

- (a) the avoidance or mitigation of natural hazards, and
- (b) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.

If no responsibilities are identified in accordance with this provision of the Act, the regional council retains primary responsibility for natural hazards and hazardous substances.

...

It is important that the HBRC and territorial authorities work together in the management of natural hazards and hazardous substances. To this end, the HBRC and territorial authorities have, through discussions and refinement of earlier arrangements set out in the former Hawke's Bay Regional Policy Statement (HBRC, 1995), reached the following agreements on their respective responsibilities.

...

Hazardous Substances

With respect to the management of hazardous substances, the respective responsibilities of the HBRC and territorial authorities will be as follows:

(a) *HBRC – The HBRC will have responsibility for hazardous substances as they relate to the discharge of contaminants to air, water and land as defined by section 15 of the RMA. The HBRC will also have responsibility for the use, storage, and transportation of hazardous substances where these are associated with the control of the use of land of any river or lake under section 13 of the RMA.*

(b) *Territorial authorities - The territorial authorities will have responsibility for the use, storage, disposal, and transportation of hazardous substances where these are associated with the control of the use of land under section 9 of the RMA.*

This split in functions is based on the wider functions of regional councils and territorial authorities under the Act. Notwithstanding the functional split set out above, several integrated systems need to be developed or maintained, including:

(a) *The ongoing receipt and storage by the HBRC of unwanted agricultural chemicals.*

(b) *Encouragement and support for the inclusion of district plan provisions to give effect to this functional split, and*

(c) *Establishment of agreed procedures and facilities in relation to the collection, storage and disposal of hazardous substances (especially from urban areas).*

The HBRC will work closely with territorial authorities with regard to this functional split and the process issues outlined above in order to resolve these outstanding issues. This resolution will provide certainty for the community about what they can do to dispose of unwanted hazardous substances in an environmentally sound manner.'

5.3.30 For completeness, I note that this section of the Regional Plan no longer reflects the current content of the RMA, as reference in s 62(1)(i) to the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances was removed by the Resource Legislation Amendment Act 2017.

5.3.31 I consider the amendments sought by the submitters are appropriate and agree that they more accurately reflect the intent of the chapter, which is to avoid duplication covered by other specific legislation or regulated by the Regional Council, and to focus controls in the PDP on the use, storage, disposal, and transportation of hazardous substances where these are associated with the control of the use of land under section 9 of the RMA. In this sense, the PDP takes a similar approach to the Hastings District Plan in targeting major hazardous facilities⁴, which are seen as having potentially significant off-site risks to people, property and the environment.

5.3.32 Therefore, I recommend that the Introduction and Issue HAZS-I1 be amended, as follows:

Introduction

Hazardous substances include substances such as industrial, agricultural, horticultural and household chemicals, medical wastes, petroleum products including LPG and lubricating oils, explosives and radioactive substances. Given the potential risk to the health and safety of people, hazardous substances must be managed to ensure they are located, stored and used in a safe and secure manner.

Previously regional and district councils had an explicit function to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under the RMA. Since this function was first included in the RMA in 1991, the following Acts have been passed:

- Hazardous Substances and New Organisms Act 1996 (HSNO), which regulates the management, disposal, classification, packaging and transport of hazardous substances
- Health and Safety at Work Act 2015 (HSW Act), under which Worksafe New Zealand is responsible for establishing workplace controls for hazardous substances, and is the principal enforcement and guidance agency in workplaces.

Whilst the Resource Legislation Amendments 2017 changed the RMA so Councils no longer have ~~the~~ explicit function to control hazardous substances, ~~they~~ Councils still have a broad function of achieving integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. To avoid duplication, the Council seeks only to control matters that are not adequately covered by other more specific legislation or regulated by the Hawke's Bay Regional Council and proposes to do this by focused provisions targeting major hazardous facilities ~~Council proposes to use this broad function to place extra controls on hazardous substance use under the RMA, where HSNO or Worksafe controls are not adequate to address the environmental effects of hazardous substances in any particular case.~~

HAZS-I1 If not appropriately stored and used, hazardous substances pose potential threats to the health and safety of the District's people and natural environment.

Explanation

While hazardous substances are largely controlled through other legislation, some hazardous facilities may create off site risks to people, property and the environment ~~the Council is still required by the RMA to~~

⁴ Note: the Hastings District Plan does also address the storage, handling or use of hazardous substances over the Heretaunga Plains Unconfined Aquifer, as a particularly sensitive environment within that District, and has also taken the step of prohibiting the outdoor release and outdoor field trials of genetically modified organisms.

~~achieve integrated management of effects, including control of any actual or potential effects associated with the storage, use, disposal, or transportation of hazardous substances.~~

~~Two issues arise from the use of hazardous substances. The first concerns the safe day-to-day use of hazardous substances. The second is the possible effects on the health and safety of people and on the natural environment involving the establishment and operation of major hazardous facilities.~~

Objective HAZS-O2

- 5.3.33 There is general support for retaining Objective HAZS-O2, however the Oil Companies seek an amendment to expand the objective to include reference to the Health and Safety at Work Act 2015 and the Regional Plan.
- 5.3.34 As the Health and Safety Work Act 2015 is a key piece of legislation governing the management of hazardous substances in the workplace and is specifically identified in the Introduction to the Hazardous Substances chapter of the PDP, I consider it appropriate to also reference this piece of legislation in Objective HAZS-O2 that seeks to avoid unnecessary regulatory duplication.
- 5.3.35 With respect to the Regional Plan, I similarly consider it appropriate to reference this within the objective, as the Hawke's Bay Regional Resource Management Plan contains provisions around the discharge of contaminants to air, water, and land as defined by section 15 of the RMA, and the use, storage, and transportation of hazardous substances where these are associated with the control of the use of land of any river or lake under section 13 of the RMA.
- 5.3.36 Therefore, I recommend that Objective HAZS-O2 be amended as follows:

HAZS-O2 Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, **Health and Safety at Work Act 2015, Regional Plan**, and the District Plan.

Policy HAZS-P2

- 5.3.37 There is some support for retention of Policy HAZS-P2, however the Oil Companies seeks that the policy be deleted entirely. Silver Fern Farms is concerned that the policy could land them with an insurmountable burden of having to avoid adverse effects if they seek to upgrade or expand their existing facility at Takapau in the future (which would fall within the definition of 'Major Hazardous Facility' in the PDP).
- 5.3.38 I concur with the Oil Companies that Policy HAZS-P2 addresses a range of matters appropriately controlled through other provisions at both the district (e.g. zone activity rules, zone setback standards, earthworks controls, and rules managing risk from natural hazards) and regional level (e.g. discharges to land, air and water). I also agree that Policy HAZS-P3 sufficiently addresses potential risks associated with the storage and use of hazardous substances – which is more pertinent to achieving Objective HAZS-O1. I also concur that the policy to avoid various sensitive activities/items/areas would be overly onerous when contemplating the upgrade or expansion of any existing major hazardous facilities in the District.
- 5.3.39 In my view, Policy HAZS-P2 is inappropriate, and I recommend that it be deleted.

~~**HAZS-P2 To ensure Major Hazardous Facilities avoid or are adequately set back from:**~~

- ~~1. residential activities;~~
- ~~2. vulnerable activities;~~
- ~~3. the coast, historic heritage and scheduled features;~~
- ~~4. scheduled wāhi tapu, wāhi taonga and sites of significance;~~
- ~~5. priority waterbodies, including sources of potable water; and~~
- ~~6. identified natural hazard areas.~~

Policy HAZS-P4 & New Policy

- 5.3.40 The Oil Companies seek policy HAZS-P4 be deleted as in their view is essentially a repeat of Objective HAZS-O2 (refer amended version recommended above). I concur - the wording of Objective HAZS-O2 and Policy HAZS-P4 is unnecessary duplication, and the content is more of an objective than a policy.
- 5.3.41 Federated Farmers seeks inclusion of an additional policy which they consider would implement Objective HAZS-O2. I concur with Hort NZ (in support of Federated Farmers' submission) that the additional policy sought is similar to Policy HAZS-P4, but is better focused in terms of achieving Objective HAZS-O2. I consider this would align closely with the Hastings District Plan – the policy sought by Federated Farmers is the same as Policy HSP3 in the Hastings District Plan, which relates to Objective HSO3 in the Hastings District Plan – Objective HSO3 is the same as the notified version of Objective HAZS-O2 in the PDP. Therefore, adopting this policy would reinforce alignment with the approach in the neighbouring Hastings District Plan.

5.3.42 Therefore, on the basis that Objective HAZS-O2 is retained, I recommend replacing Policy HAZS-P4 with wording similar to the new policy sought by Federated Farmers, as follows:

HAZS-P4 **To not regulate the use, storage, or transportation of hazardous substances in the District Plan where adequate levels of community and environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996, Health and Safety at Work Act 2015, or the Regional Plan**~~To avoid any unnecessary duplication of regulation with other statutory processes for hazardous substance activities.~~

5.4 Recommendations

5.4.1 For the reasons outlined above, I recommend that the definitions of ‘Hazardous Substances’ and ‘Offensive Process’, Objective HAZS-O1, and Policies HAZS-P1 & HAZS-P3 be retained, that the definition of ‘Major Hazardous Facility’, Introduction, Issue HAZS-I1, Objective HAZS-O2 and Policy HAZS-P4 be amended, and that Policy HAZS-P2 be deleted (as outlined in Recommended Amendments below).

5.4.2 I recommend that the following submission(s) be **accepted**:

- FENZ, S57.004, S57.033, S57.035, S57.036, S57.037
- Hort NZ, S81.062
- Oil Companies, S110.001, S110.002, S110.003, S110.004, S110.005, S110.006, S110.007, S110.008
- Silver Fern Farms, S116.001
- Federated Farmers, S121.120

5.4.3 I recommend that the following submission(s) be **accepted in part**:

- HBRC, S11.014
- NZ Defence Force, S29.001
- FENZ, S57.006, S57.034
- Hort NZ, S81.020, S81.061
- Oil Companies, S110.018
- Silver Fern Farms, S116.019
- Federated Farmers, S121.119, S121.240, S121.253

5.4.4 I recommend that the following submission(s) be **rejected**:

- FENZ, S57.038
- Silver Fern Farms, S116.002

5.4.5 My recommendation in relation to further submissions reflect the recommendation on the relevant primary submission.

5.5 Recommended Amendments

5.5.1 I recommend the following amendments are made:

MAJOR HAZARDOUS FACILITY	<p>(a) any facility which involves one or more of the following activities:</p> <ul style="list-style-type: none"> (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply (iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) meat processing, freezing works and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage
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	<p>(xvi) landfills</p> <p><u>(xvii) the storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment</u></p> <p><u>(xviii) any facility designated a Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016</u></p> <p>(b) The following activities are not considered to be major hazardous facilities:</p> <p>(i) the incidental use and storage of hazardous substances in minimal domestic-scale quantities</p> <p>(ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies)</p> <p>(iii) the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities.</p> <p>(iv) the mixing of fertilisers</p> <p>(v) service stations, truck stops and commercial refuelling activities</p> <p>(vi) pipelines used for the transfer of hazardous substances such as gas, oil, trade waste and sewage</p> <p>(vii) fuel in motor vehicles, boats, airplanes and small engines</p> <p>(viii) military training activities</p> <p>(ix) the transport of hazardous substances (e.g. in trucks or trains)</p> <p><u>(x) the incidental storage and use of hazardous substances for emergency service activities</u></p>
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Introduction

Hazardous substances include substances such as industrial, agricultural, horticultural and household chemicals, medical wastes, petroleum products including LPG and lubricating oils, explosives and radioactive substances. Given the potential risk to the health and safety of people, hazardous substances must be managed to ensure they are located, stored and used in a safe and secure manner.

Previously regional and district councils had an explicit function to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under the RMA. Since this function was first included in the RMA in 1991, the following Acts have been passed:

- Hazardous Substances and New Organisms Act 1996 (HSNO), which regulates the management, disposal, classification, packaging and transport of hazardous substances
- Health and Safety at Work Act 2015 (HSW Act), under which Worksafe New Zealand is responsible for establishing workplace controls for hazardous substances, and is the principal enforcement and guidance agency in workplaces.

~~Whilst the Resource Legislation Amendments 2017 changed the RMA so Councils no longer have the explicit function to control hazardous substances, ~~they~~ **Councils** still have a broad function of achieving integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. **To avoid duplication, the Council seeks only to control matters that are not adequately covered by other more specific legislation or regulated by the Hawke’s Bay Regional Council and proposes to do this by focused provisions targeting major hazardous facilities**~~Council proposes to use this broad function to place extra controls on hazardous substance use under the RMA, where HSNO or Worksafe controls are not adequate to address the environmental effects of hazardous substances in any particular case.~~~~

HAZS-I1 If not appropriately stored and used, hazardous substances pose potential threats to the health and safety of the District's people and natural environment.

Explanation

While hazardous substances are largely controlled through other legislation, **some hazardous facilities may create off site risks to people, property and the environment**~~the Council is still required by the RMA to achieve integrated management of effects, including control of any actual or potential effects associated with the storage, use, disposal, or transportation of hazardous substances.~~

~~Two issues arise from the use of hazardous substances. The first concerns the safe day-to-day use of hazardous substances. The second is the possible effects on the health and safety of people and on the natural environment involving the establishment and operation of major hazardous facilities.~~

HAZS-O2 Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, **Health and Safety at Work Act 2015, Regional Plan**, and the District Plan.

~~HAZS-P2 To ensure Major Hazardous Facilities avoid or are adequately set back from:~~
~~1. residential activities;~~

- ~~2. vulnerable activities;~~
- ~~3. the coast, historic heritage and scheduled features;~~
- ~~4. scheduled wāhi tapu, wāhi taonga and sites of significance;~~
- ~~5. priority waterbodies, including sources of potable water; and~~
- ~~6. identified natural hazard areas.~~

HAZS-P4 To not regulate the use, storage, or transportation of hazardous substances in the District Plan where adequate levels of community and environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996 , Health and Safety at Work Act 2015, or the Regional Plan~~To avoid any unnecessary duplication of regulation with other statutory processes for hazardous substance activities.~~

5.6 Section 32AA Evaluation

- 5.6.1 The changes proposed, in isolation, are not considered to be a significant departure from the Proposed District Plan as notified.
- 5.6.2 6.6.2 The above recommendations are considered editorial and minor, where the changes would improve the effectiveness of provisions without changing the policy approach, therefore S32AA re-evaluation is not warranted.

6.0 Key Issue 3 – Hazardous Substances – Rules, Methods & Assessment Matters

6.1 Submissions / Further Submissions Addressed

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Summary Recommendation
S57.039	FENZ	HAZS-R1	Support	Retain HAZS-R1 as notified	Accept in part
.					
S81.063	Hort NZ	HAZS-R1	Support	Retain HAZS-R1 as notified	Accept in part
FS3.013	First Gas Limited		Support	Allow	Accept
S110.009	the Oil Companies	HAZS-R1	Amend	Amend HAZS-R1 as follows: '1. Activity Status: PER Where the following conditions are met: a. All relevant standards in the underlying zone are complied with. b. ...'	Accept
FS12.4	New Zealand Defence Force		Support	Allow	Accept
S29.017	New Zealand Defence Force	HAZS-R1	Amend	Clarify what standards apply to the storage, handling or use of hazardous substances.	Accept <i>(insofar as condition 1(a) is recommended to be deleted and the zone standards no longer apply)</i>
.					
S121.121	Federated Farmers	HAZS-R1	Oppose	Delete HAZS-R1. And add a new policy [refer submission point S121.253].	Accept in part
FS3.014	First Gas Limited		Oppose	Disallow	Accept in part
FS9.121	Forest and Bird		Oppose	Disallow	Reject
S110.010	the Oil Companies	HAZS-R2	Support	Retain HAZS-R2 as notified	Accept
.					
S57.040	FENZ	HAZS-R3	Support	Retain HAZS-R3 as notified	Accept in part
.					
S110.011	the Oil Companies	HAZS-R3	Amend	Amend HAZS-R3 such that it only applies to new 'Major Hazardous Facilities' or existing 'Major Hazardous Facilities' which are increasing potential off site risk associated with the storage, use, or manufacture of hazardous substances.	Accept
FS8.026	Silver Fern Farms Limited		Support	Allow	Accept
S81.064	Hort NZ	HAZS-M3	Amend	Amend HAZS-M3[HAZS-M2?] as follows: '... Codes of Practice are an approved means of complying with HSNO and are designed to provide guidance on how to eliminate or minimise the risk associated with hazardous substances. A good example of this is the EPA approved code of practice "Management of Agrichemicals NZS 8409:20042021".'	Accept
.					
S57.041	FENZ	HAZS-AM1	Support	Retain HAZS-AM1 as notified	Accept

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Summary Recommendation
S57.042	FENZ	HAZS-AM2	Support	Retain HAZS-AM2 as notified	Accept

6.1.1 In summary, 11 submissions and 5 further submissions are in support of Rule HAZS-R2 and Assessment Matters HAZS-AM1 & HAZS-AM2, and seek amendments or oppose Rules HAZS-R1 & HAZS-R3 and Method HAZS-M2 in the Hazardous Substances chapter of the PDP.

6.2 Matters Raised by Submitters

Rules

Rule HAZS-R1 (The storage, handling or use of hazardous substances (except Major Hazardous Facilities))

6.2.1 FENZ (S57.039) supports Rule HAZS-R1 as notified, as they consider that *'Subject to the acceptance of the amendments sought to the definition of 'Major Hazardous Facility', HAZS-R1 is supported as it provides for the storage, handling or use of hazardous substances (except Major Hazardous Facilities) in all zones, subject to conditions. When compliance is not achieved, resource consent for the storage, handling or use of hazardous substances is required as a restricted discretionary activity. The matters over which discretion is restricted are considered appropriate.'*

6.2.2 Hort NZ (S81.063) supports retaining Rule HAZS-R1. First Gas Limited (FS3.013) supports this submission as it *'seeks to retain the permitted activity rule for hazardous substances as drafted, which includes the 60m setback standard from the Gas Transmission Network.'*

6.2.3 The Oil Companies (S110.009) seek an amendment to Rule HAZS-R1, as follows:

'1. Activity Status: PER
Where the following conditions are met:
a. All relevant standards in the underlying zone are complied with.
b. ...'

6.2.4 The Oil Companies give the following reasons:

'Proposed Rule HAZS-R1 permits the storage, handling or use of hazardous substances at non-Major Hazardous Facilities, subject to standards. There are two permitted standards, one of which requires that all relevant standards in the underlying zone are complied with. The effect of this would appear to be that any infringement of a zone provision, which could relate to a range of matters, for instance a height in relation to boundary infringement, would remove a permitted pathway for facilities storing, handling or using hazardous substances. The rationale for that approach is unclear and its implications potentially significant. In contrast, the standard relating to the use of explosives within 60m of the Gas Transmission Network is targeted and clear.'

6.2.5 The NZ Defence Force (FS12.4) *'agrees with the Oil Companies submission point relating to permitted activity condition a. The effect of the proposed condition a, which requires all underlying zones standards to be complied with, will be that resource consent will also be required for the storage, handling and use of hazardous substances under rule HAZS-R1 if there are unrelated breaches of zone standards (e.g. noise, lighting) on the same site.'*

6.2.6 The NZ Defence Force (S29.017) seeks an amendment to Rule HAZS-R1 to clarify what standards apply to the storage, handling, or use of hazardous substances, on the basis that *'Condition a. refers to compliance with relevant standards of the underlying zone. The zone chapters do not contain standards for the storage, handling and use of hazardous substances. They refer back to the HAZS – Hazardous Substances chapter. As such, its not clear what standards apply under rule HAZS-R1(a).'*

6.2.7 Federated Farmers (S121.121) seeks Rule HAZS-R1 be deleted (refer also submission point S121.153 seeking a new policy be included). In Federated Farmers view *'Although permitted status is preferable to consented status, this provision could go a step further and leave activities that already comply with the Hazardous Substances and New Organisms Act as unregulated by the District Plan. This would achieve objective HAZS-02 better by avoiding any duplication, and be similar to the Hastings approach. A permitted rule is still considered regulation and does not achieve the goal of no duplication'*.

6.2.8 First Gas Limited (FS3.014) opposes this submission point that seeks to delete HAZS-R1 and the 60m setback from the Gas Transmission Network. In their view *'the reverse sensitivity provisions as drafted are required to protect people and infrastructure from potential effects from the gas transmission network as opposed to restrict activities that may be compatible such as primary production activities.'*

6.2.9 Forest & Bird (FS9.121) opposes all the submissions of Federated Farmers, as *'The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA.'*

Rule HAZS-R2 (Maintenance of existing Major Hazardous Facilities)

6.2.10 The Oil Companies (S110.010) and FENZ (S57.040) support retention of Rule HAZS-R2 as notified.

Rule HAZS-R3 (New, or upgrading of existing, Major Hazardous Facilities)

6.2.11 The Oil Companies (S110.011) seek to amend Rule HAZS-R3 in such a way that *'it only applies to new 'Major Hazardous Facilities' or existing 'Major Hazardous Facilities' which are increasing potential off site risk associated with the storage, use, or manufacture of hazardous substances.'*

6.2.12 The Oil Companies support the discretionary pathway for new Major Hazardous Facilities ('MHF') but consider that in terms of upgrading existing 'MHF', *'the rule should only apply to activities increasing hazardous substance storage, or increasing off site risk associated with hazardous substance, not other development unrelated to hazardous substances at an existing 'MHF' which will be appropriately addressed by other provisions.'*

6.2.13 Silver Fern Farms Limited (FS8.026) supports this proposed amendment by the Oil Companies. Silver Fern Farms agrees that *'this rule should be refined to focus on activities that increase hazardous substance storage, or off-site risk associated with hazardous substance, and should not inadvertently apply to development undertaken at an existing Major Hazardous Facility but unrelated to hazardous substances.'*

Methods

6.2.14 Hort NZ (S81.064) seeks an amendment to Method HAZS-M2 [submission incorrectly refers to HAZS-M3] as follows:

'... Codes of Practice are an approved means of complying with HSNO and are designed to provide guidance on how to eliminate or minimise the risk associated with hazardous substances. A good example of this is the EPA approved code of practice "Management of Agrichemicals NZS 8409:2004~~2004~~2021".'

6.2.15 Hort NZ notes that *'There is a new version of NZS8409 to be released shortly so the plan may be better to reference the 2021 standard.'*

Assessment Matters

6.2.16 FENZ (S57.041, S57.042) supports retention of Assessment Matters HAZS-AM1 & HAZS-AM2 as notified.

6.3 Analysis

Rule HAZS-R2 and Assessment Matters HAZS-AM1 & HAZS-AM2

6.3.1 Submissions on Rule HAZS-R2 and Assessment Matters HAZS-AM1 & HAZS-AM2 are all in support, and no further analysis is considered necessary.

Rule HAZS-R1

6.3.2 There is support for retention of Rule HAZS-R1 on the basis that it provides for the storage, handling or use of hazardous substances (except for Major Hazardous Facilities) in all zones, subject to conditions.

6.3.3 However, the Oil Companies, the NZ Defence Force, and Federated Farmers raise concerns with the Permitted Activity condition (Rule HAZS-R1(1)(a)) requiring that all relevant standards in the underlying zone must be complied with, and non-compliance with those underlying zone standards could inadvertently trigger requirement for a separate resource consent for a completely unrelated breach of zone standards (e.g. noise, lighting) on the same site.

6.3.4 I concur that the way the rule is framed is problematic and does not follow the drafting norms applying to other district-wide rules in the PDP (e.g. Rule TRAN-R1, Rule LIGHT-R1, Rule NOISE-R1 etc). Triggering

a resource consent for storage, handling or use of hazardous substances based on a breach of the zone standards is not the intent of the rule, which was merely to provide a Permitted Activity pathway where not a 'Major Hazardous Facility' (which are subsequently addressed in Rule HAZS-R3) and subject to avoiding use of explosives within 60m of the Gas Transmission Network (condition (1)(b)). In my view, the intent of the rule should be clarified, and the rule should follow the drafting norms across the PDP.

6.3.5 Therefore, I recommend Rule HAZS-R1 be retained, but that condition (1)(a) be deleted, as follows:

HAZS-R1 The storage, handling or use of hazardous substances (except Major Hazardous Facilities)		
All Zones	1. Activity Status: PER Where the following conditions are met: a. All relevant Standards in the underlying zone are complied with. b. The activity does not involve the use of explosives within 60m of any part of the Gas Transmission Network.	2. Activity status where compliance not achieved: RDIS Matters over which discretion is restricted: a. The risk of hazards affecting public or individual safety, and the risk of property damage. b. Measures proposed to avoid or mitigate potential adverse effects on the Gas Transmission Network. c. Technical advice, including an assessment of the level of risk. d. The outcome of any consultation with the owner and operator of the Gas Transmission Network. e. Whether the use of explosives could be located a greater distance from the Gas Transmission Network.

Rule HAZS-R3

6.3.6 The Oil Companies, supported by Silver Fern Farms, support the Discretionary Activity pathway for new Major Hazardous Facilities' in Rule HAZS-R3, but seek that the rule is amended in such a way that when applying to existing facilities, it only applies to those which are increasing potential off-site risk associated with the storage, use, or manufacture of hazardous substances.

6.3.7 I concur that the rule should relate to hazardous substances, and therefore agree that it should focus on activities that increase hazardous substances storage, or off-site risk associated with hazardous substances, and should not inadvertently apply to development undertaken at an existing facility where unrelated to hazardous substances use or storage. Effects associated with such development will, if necessary, be addressed through the zone provisions.

6.3.8 I recommend that the rule be reworded as follows:

HAZS-R3 New Major Hazardous Facilities , or upgrading of existing, Major Hazardous Facilities where this results in an increase in the quantity of hazardous substances used or stored on-site or a change in the storage method		
All Zones	3. Activity Status: DIS	4. Activity status where compliance not achieved: N/A

Method HAZS-M2

6.3.9 I can confirm that 'Management of Agrichemicals NZS 8409:2004' has been superseded, with the current version dated 2021⁵. Therefore, I recommend amending Method HAZS-M2 to reflect the current version, as sought by Hort NZ, as follows:

HAZS-M2	Codes of Practice and New Zealand/Australian Standards
A variety of Codes of Practice and New Zealand/Australian Standards covering various aspects of the hazardous substance industry have been developed by the relevant industries, often in association with local authorities, the Department of Labour, the Environmental Protection Authority or the Ministry for the Environment. Codes of Practice are an approved means of complying with HSNO and are designed to provide guidance on how to eliminate or minimise the risk associated with hazardous substances. A good example of this is the EPA approved code of practice "Management of Agrichemicals NZS 8409: 2004 2021 ".	

⁵ <https://www.standards.govt.nz/shop/nzs-84092021/>

6.4 Recommendations

- 6.4.1 For the reasons outlined above, I recommend that Rule HAZS-R2 and Assessment Matters HAZS-AM1 & HAZS-AM2 be retained, and that Rules HAZS-R1 & HAZS-R3 and Method HAZS-M2 be amended (as outlined in Recommended Amendments below).
- 6.4.2 I recommend that the following submission(s) be **accepted**:
 - NZ Defence Force, S29.017
 - FENZ, S57.041, S57.042
 - Hort NZ, S81.064
 - Oil Companies, S110.009, S110.010, S110.011
- 6.4.3 I recommend that the following submission(s) be **accepted in part**:
 - FENZ, S57.039, S57.040
 - Hort NZ, S81.063
 - Federated Farmers, S121.121
- 6.4.4 My recommendation in relation to further submissions reflect the recommendation on the relevant primary submission.

6.5 Recommended Amendments

6.5.1 I recommend the following amendment(s) is made:

HAZS-R1 The storage, handling or use of hazardous substances (except Major Hazardous Facilities)		
All Zones	1. Activity Status: PER Where the following conditions are met: a. All relevant Standards in the underlying zone are complied with. b. The activity does not involve the use of explosives within 60m of any part of the Gas Transmission Network.	2. Activity status where compliance not achieved: RDIS Matters over which discretion is restricted: a. The risk of hazards affecting public or individual safety, and the risk of property damage. b. Measures proposed to avoid or mitigate potential adverse effects on the Gas Transmission Network. c. Technical advice, including an assessment of the level of risk. d. The outcome of any consultation with the owner and operator of the Gas Transmission Network. e. Whether the use of explosives could be located a greater distance from the Gas Transmission Network.

HAZS-R3 New <u>Major Hazardous Facilities</u> , or upgrading of existing, Major Hazardous Facilities <u>where this results in an increase in the quantity of hazardous substances used or stored on-site or a change in the storage method</u>		
All Zones	1. Activity Status: DIS	2. Activity status where compliance not achieved: N/A

HAZS-M2 Codes of Practice and New Zealand/Australian Standards
 A variety of Codes of Practice and New Zealand/Australian Standards covering various aspects of the hazardous substance industry have been developed by the relevant industries, often in association with local authorities, the Department of Labour, the Environmental Protection Authority or the Ministry for the Environment. Codes of Practice are an approved means of complying with HSNO and are designed to provide guidance on how to eliminate or minimise the risk associated with hazardous substances. A good example of this is the EPA approved code of practice "Management of Agrichemicals NZS 8409:20042021".'

6.6 Section 32AA Evaluation

- 6.6.1 The changes proposed, in isolation, are not considered to be a significant departure from the Proposed District Plan as notified.
- 6.6.2 The above recommendations are considered editorial and minor, where the changes would improve the effectiveness of provisions without changing the policy approach, therefore S32AA re-evaluation is not warranted.

7.0 Conclusion

7.1 Topic Conclusions

- 7.1.1 Submissions have been received in support of, and in opposition to the Proposed District Plan.
- 7.1.2 Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, I recommend that the Proposed District Plan should be amended as set out in Appendix A of this report.
- 7.1.3 I consider that the proposed provisions will be the most appropriate means to achieve the purpose of the Resource Management Act 1991, and achieve the relevant objectives of the Proposed District Plan in respect to the proposed provisions.

7.2 Topic Recommendations

- 7.2.1 I recommend that:
 1. The Hearing Commissioners accept, accept in part, or reject submissions (and associated further submissions) as outlined in Appendix B of this report; and
 2. The Proposed Central Hawke's Bay District Plan is amended in accordance with the changes recommended in Appendix A of this report.

APPENDIX A

Recommended Amendments to Plan Provisions

HAZARDS AND RISKS

CL – Contaminated Land

Introduction

Land can become contaminated when hazardous substances are not used, stored or disposed of in an appropriate way. Contaminated land is commonly associated with past activities, such as the manufacture and use of pesticides, timber treatment and sheep dipping. People can be exposed to contaminated land by direct contact with contaminated soil, swallowing food or water from contaminated environments and breathing vapours or contaminated dust. As well as endangering health, contamination can limit the use of land or cause corrosion that may threaten buildings and property. It is important that sites in the district identified as being potentially contaminated are investigated further so people are not exposed to contaminants that may affect their health.

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) provide a national environmental standard for activities on pieces of land where soil may be contaminated in such a way as to be a risk to human health. Regional councils are required to investigate land for the purposes of identifying and monitoring contaminated land. District Councils are responsible for applying and enforcing the provisions of National Environmental Standards.

The NES-CS contains a set of planning controls that direct the requirement for consent or otherwise for activities on contaminated or potentially contaminated land. The methods to establish whether land is contaminated, include determining whether an activity or industry listed in the Hazardous Activities and Industries List (HAIL) has or is likely to have been undertaken on the land. The NES-CS requires that land affected by contaminants is identified and assessed before it is developed and, if necessary, the land is remediated or the contaminants are contained to make that land safe for human use.

In most cases the responsibility for the management of effects on the environment arising from contaminated land will sit with the Hawke's Bay Regional Council (e.g. leaching of contaminants to waterbodies or groundwater from land development or disturbance activities).

Objectives

CL-O1 ~~Land containing elevated levels of contaminants~~ **Contaminated land is managed to protect human health and the environment and to enable land to be used in the future.**

Commented [RM1]: S110.013 Oil Companies - Contaminated Land & Hazardous Substances Topic, Key Issue 1

Policies

CL-P1 **Identify sites that are known to contain, or may contain, contaminated soil as a result of land uses and activities, including current and historical land use and activities.**

CL-P2 **Require any proposal to subdivide, use or develop contaminated or potentially contaminated land to apply a best practice approach to investigate and manage risks to protect people and the environment.**

Rules

There are no rules in the District Plan with respect to contaminated land. The NES-CS manages subdivision, use and development of potentially contaminated land and may require resource consent for these activities separately. The Council holds information that may assist in establishing whether activities on the Hazardous Activities and Industries List, as defined by the NES-CS, currently or have previously operated on the land.

Methods

Methods, other than rules, for implementing the policy:

CL-M1 **Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011**

The NES-CS contains specific controls applying to potentially contaminated soils, including rules, as well as associated matters over which control is reserved or over which discretion is restricted, where applicable. [The NES-CS regulations do not apply in all scenarios. Reg 5 sets out the situations where the NES-CS applies.](#)

Commented [RM2]: S81.060 Hort NZ - Contaminated Land & Hazardous Substances Topic, Key Issue 1

CL-M2 **Hazardous Activities and Industries List (HAIL) / Land Use Register**

The Ministry for the environment has put together the HAIL to help identify sites where contamination may have occurred.

The Hawke's Bay Regional Council maintains a land use register of properties where information is held regarding current or past land-uses that have the potential to contaminate land – this is continually under development and should not be regarded as a complete record. Information on the register is shared with local district and city councils to ensure protection of people and the environment.

Information held on the register can be requested as a site contamination report which contains information such as previous land uses, resource consents, pollution incidents and any investigations undertaken at the site (for a nominal fee). Note: the absence of available information does not necessarily mean that the property is uncontaminated; rather that no information exists on the database.

HAZS – Hazardous Substances

Introduction

Hazardous substances include substances such as industrial, agricultural, horticultural and household chemicals, medical wastes, petroleum products including LPG and lubricating oils, explosives and radioactive substances. Given the potential risk to the health and safety of people, hazardous substances must be managed to ensure they are located, stored and used in a safe and secure manner.

Previously regional and district councils had an explicit function to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under the RMA. Since this function was first included in the RMA in 1991, the following Acts have been passed:

- Hazardous Substances and New Organisms Act 1996 (HSNO), which regulates the management, disposal, classification, packaging and transport of hazardous substances
- Health and Safety at Work Act 2015 (HSW Act), under which Worksafe New Zealand is responsible for establishing workplace controls for hazardous substances, and is the principal enforcement and guidance agency in workplaces.

~~Whilst the Resource Legislation Amendments 2017 changed the RMA so Councils no longer have this explicit function to control hazardous substances, they Councils still have a broad function of achieving integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. To avoid duplication, the Council seeks only to control matters that are not adequately covered by other more specific legislation or regulated by the Hawke's Bay Regional Council and proposes to do this by focused provisions targeting major hazardous facilities. Council proposes to use this broad function to place extra controls on hazardous substance use under the RMA, where HSNO or Worksafe controls are not adequate to address the environmental effects of hazardous substances in any particular case.~~

Commented [RM1]: S110.001 Oil Companies - Contaminated Land & Hazardous Substances Topic, Key Issue 2

Issues

HAZS-I1 **If not appropriately stored and used, hazardous substances pose potential threats to the health and safety of the District's people and natural environment.**

Explanation

~~While hazardous substances are largely controlled through other legislation, some hazardous facilities may create off-site risks to people, property and the environment. The Council is still required by the RMA to achieve integrated management of effects, including control of any actual or potential effects associated with the storage, use, disposal, or transportation of hazardous substances.~~

Two issues arise from the use of hazardous substances. The first concerns the safe day-to-day use of hazardous substances. The second is the possible effects on the health and safety of people and on the natural environment involving the establishment and operation of major hazardous facilities.

Commented [RM2]: S110.002 Oil Companies - Contaminated Land & Hazardous Substances Topic, Key Issue 2

Objectives

HAZS-O1 Protect the community and natural environment from the adverse effects associated with the manufacture, use, storage or transportation of hazardous substances.

HAZS-O2 Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, Health and Safety at Work Act 2015, Regional Plan, and the District Plan.

Commented [RM3]: S110.004 Oil Companies - Contaminated Land & Hazardous Substances Topic, Key Issue 2

Policies

HAZS-P1 To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations.

~~**HAZS-P2** To ensure Major Hazardous Facilities avoid or are adequately set back from:~~

- ~~1. residential activities;~~
- ~~2. vulnerable activities;~~
- ~~3. the coast, historic heritage and scheduled features;~~
- ~~4. scheduled wāhi tapu, wāhi taonga and sites of significance;~~
- ~~5. priority waterbodies, including sources of potable water; and~~
- ~~6. identified natural hazard areas.~~

Commented [RM4]: S110.006 Oil Companies - Contaminated Land & Hazardous Substances Topic, Key Issue 2

HAZS-P3 To require new or expanded Major Hazardous Facilities to demonstrate that the activity is located appropriately, having regard to the effects of the activity, the risks to the health and safety of the community, and:

1. the type, scale, duration, intensity or frequency of the activity's effects;
2. the design and site layout of the activity and its ability to internalise effects;
3. effective management and disposal of wastes containing hazardous substances;
4. any potential adverse cumulative or synergistic effects; and
5. avoidance or management of risks associated with natural hazards.

HAZS-P4 To not regulate the use, storage or transportation of hazardous substances in the District Plan where adequate levels of community and environmental protection is already provided by the Hazardous

Substances and New Organisms Act 1996 , Health and Safety at Work Act 2015, or the Regional Plan ~~To avoid any unnecessary duplication of regulation with other statutory processes for hazardous substance activities.~~

Commented [RM5]: S110.008 Oil Companies, S121.253 Fed Farmers - Contaminated Land & Hazardous Substances Topic, Key Issue 2

Rule Overview Table

Use/activity	Rule Number
The storage, handling or use of hazardous substances (except Major Hazardous Facilities)	HAZS-R1
Maintenance of existing Major Hazardous Facilities	HAZS-R2
New, or upgrading of existing, Major Hazardous Facilities	HAZS-R3

Rules

It is important to note that in addition to the provisions in this chapter, zone chapters and a number of other Part 2: District-Wide Matters chapters also contain provisions that may be relevant for activities involving the storage, handling or use of hazardous substances.

HAZS-R1 The storage, handling or use of hazardous substances (except Major Hazardous Facilities)

All Zones	1. Activity Status: PER	2. Activity status where compliance not achieved: RDIS
	<p>Where the following conditions are met:</p> <p>a. All relevant Standards in the underlying zone are complied with.</p> <p>b. The activity does not involve the use of explosives within 60m of any part of the Gas Transmission Network.</p>	<p>Matters over which discretion is restricted:</p> <p>a. The risk of hazards affecting public or individual safety, and the risk of property damage.</p> <p>b. Measures proposed to avoid or mitigate potential adverse effects on the Gas Transmission Network.</p> <p>c. Technical advice, including an assessment of the level of risk.</p> <p>d. The outcome of any consultation with the owner and operator of the Gas Transmission Network.</p> <p>e. Whether the use of explosives could be located a greater</p>

Commented [RM6]: S110.009 Oil Companies, S29.017 NZ Defence Force, S121.121 Fed Farmers - Contaminated Land & Hazardous Substances Topic, Key Issue 3

		distance from the Gas Transmission Network.
HAZS-R2 Maintenance of existing Major Hazardous Facilities		
All Zones	1. Activity Status: PER Where the following conditions are met: N/A	2. Activity status where compliance not achieved: N/A
HAZS-R3 New Major Hazardous Facilities, or upgrading of existing, Major Hazardous Facilities where this results in an increase in the quantity of hazardous substances used or stored on-site or a change in the storage method		
All Zones	1. Activity Status: DIS	2. Activity status where compliance not achieved: N/A

Commented [RM7]: S110.011 Oil Companies - Contaminated Land & Hazardous Substances Topic, Key Issue 3

Assessment Matters

For Discretionary Activities, Council's assessment is not restricted to these matters, but it may consider them (among other factors).

HAZS-AM1 Risk Assessment

The outcomes of a risk assessment, focusing on the following issues:

1. Assessment of the probability and potential consequences of an accident leading to the release or loss of control of hazardous substances. This assessment should focus on the ability of the design and management of the site to avoid accidents, such as spill containment measures, fire safety and fire water management, emergency management, site drainage and off-site infrastructure (e.g. stormwater drainage system, sewer type and capacity) and the disposal of waste containing hazardous substances.
2. Potential risk and effect on people and neighbouring activities, with emphasis on sensitive activities, such as residential activities, educational facilities, marae and urupā.
3. Potential risk and effects on natural ecosystems and the life supporting capacity of land and water, including waterbodies, sources of potable water and the Ruataniwha Unconfined Aquifer.
4. Potential risk and effects on wāhi tapu, wāhi taonga and sites of significance, sites of historical or archaeological significance, Significant Natural Areas, Outstanding Natural Features and Landscapes, and Significant Amenity Features.
5. The potential for natural hazards to impact on the operation of the hazardous facility.
6. The potential for cumulative adverse effects of hazardous substances.

HAZS-AM2 Risk Mitigation and Management

1. Consideration will be given to the adoption of specific spill contingency plans, emergency procedures, stormwater management and treatment and disposal procedures for wastes containing hazardous substances, fire safety, monitoring and maintenance procedures, and appropriate management systems.

HAZS-AM3 Alternatives

1. Where it is likely that an activity may result in significant adverse effects on the environment, a description of alternative locations or methods for undertaking the activity must be submitted.

HAZS-AM4 Traffic Safety

1. It should be demonstrated that the proposal will generate no significant adverse effects on the safety of the operation of the adjoining road network and that vehicles transporting hazardous substances will not utilise local roads in residential areas as a regular means of transport. Conditions may be imposed that require access along specified routes.

HAZS-AM5 Other Matters

1. Any other matters that may need conditions to ensure that particular measures are undertaken so that any risk posed by the proposal is avoided or satisfactorily mitigated.

Methods

Methods, other than rules, for implementing the policies:

HAZS-M1 Hazardous Substances and New Organisms Act 1996

HSNO requires that hazardous facilities may require a location test certificate, approved handler test certificates and/or a stationary container test certificate, dependent on the type and quantity of hazardous substances held at a site.

The HSNO Act requires that when considering an application, the EPA must assess the environmental risks. It must examine issues such as the risk of an organism escaping from a laboratory or the risk of contamination of surrounding plants by pollen from GMOs. In the case of field tests, the EPA must require that they be carried out under strict conditions to reduce any potential risk to the environment. It must also ensure that genetic material is not released outside the field test site and that this material is destroyed once the test is finished.

Other Legislation: Other legislation that includes provisions relating to the use, storage, disposal or transportation of hazardous substances includes: the Building Act 2004, Health and Safety at Work Act 2015, the Land Transport Rule: Dangerous Goods 2005, the Land Transport Rule: Dangerous Goods Amendment 2010 and the Civil Defence Act 1983.

HAZS-M2 Codes of Practice and New Zealand/Australian Standards

A variety of Codes of Practice and New Zealand/Australian Standards covering various aspects of the hazardous substance industry have been developed by the relevant industries, often in association with local authorities, the Department of Labour, the Environmental Protection Authority or the Ministry for the Environment. Codes of Practice are an approved means of complying with HSNO and are designed to provide guidance on how to eliminate or minimise the risk associated with hazardous substances. A good example of this is the EPA approved code of practice "[Management of Agrichemicals NZS 8409:2021/2004](#)".

Commented [RM8]: S81.064 Hort NZ - Contaminated Land & Hazardous Substances Topic, Key Issue 3

HAZS-M3 Hawke's Bay Regional Council

The Hawke's Bay Regional Council (HBRC) is also involved in the management of hazardous substances. The HBRC has responsibility for hazardous substances as they relate to the discharge of contaminants to air, water and land as defined by section 15 of the RMA. The HBRC will also have responsibility for the use, storage, and transportation of hazardous substances where these are associated with the control of the use of land of any river or lake under section 13 of the RMA. They also assist in the safe disposal of hazardous substances.

HAZS-M4 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2012

All territorial authorities are required to give effect to and enforce the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS).

These regulations provide a nationally consistent set of planning controls and soil contaminant values and ensure that land affected by contaminants is appropriately identified and assessed before it is developed and if necessary the land is remediated or the contaminants contained to make the land safe for use.

Resource consent information and monitoring data can be collated to inform the identification of land affected by contaminants in soil.

Principal Reasons

The principal reasons for adopting the policies and methods:

The HSNO Act 1996 provides the general framework for controlling hazardous substances during their entire lifecycle. Requirements apply from manufacturing or importing a substance, through its use, to disposal. This 'cradle-to-grave' approach is intended to ensure that the specific adverse effects posed by hazardous substances are managed consistently and comprehensively.

On Ministry for the Environment advice, the District Plan takes the approach that hazardous facilities are generally managed adequately through the HSNO Act. Compliance with this legislation will generally ensure that any adverse effects arising from an accident or incident will be contained within the hazardous facility site.

In addition, the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2012 (NES-CS) addresses subdivision, use and development of potentially contaminated land.

The District Plan therefore seeks to avoid any duplication of regulation with the HSNO Act, and only contains rules in relation to Major Hazardous Facilities.

Anticipated Environmental Results

The environmental results anticipated from the policies and methods:

- HAZS-AER1 Activities utilise hazardous substances where necessary for their operations, in appropriate locations.**

- HAZS-AER2 Avoidance or mitigation of adverse effects from the storage and use of hazardous substances in the District.**

APPENDIX B

Summary of Recommended Responses to Submissions and Further Submissions

Table: Summary of Recommended Responses to Submissions and Further Submissions**Contaminated Land**

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
S11.013	Hawke's Bay Regional Council	CL - Contaminated Land	No changes.	Accept	No
S81.060	Horticulture New Zealand	CL-M1	Add an new sentence in CL-M1 as follows: 'The NES-CS contains specific controls applying to potentially contaminated soils, including rules, as well as associated matters over which control is reserved or over which discretion is restricted, where applicable. The NES-CS does not apply to primary production land where the land continues to be used for production purposes. Only when the land use changes will the NES-CS apply. '	Accept in part	Yes
S110.012	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	CL - Introduction	Retain 'CL - Introduction' as notified.	Accept	No
S110.013	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	CL-O1	Amend CL-O1 as follows: ' Land containing elevated levels of contaminants Contaminated land is managed to protect human health and the environment and to enable land to be used in the future.'	Accept	Yes
FS17.32	Horticulture New Zealand		Allow	Accept	
S110.014	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	CL-P1	Retain CL-P1 as notified.	Accept	No
S110.015	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	CL-P2	Retain CL-P2 as notified.	Accept	No

Hazardous Substances

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
S11.014	Hawke's Bay Regional Council	HAZS - Hazardous Substances	No change	Accept in part	No
S29.001	New Zealand Defence Force	MAJOR HAZARDOUS FACILITY (Definition)	Retain definition as notified.	Accept in part	No
S29.017	New Zealand Defence Force	HAZS-R1	Clarify what standards apply to the storage, handling or use of hazardous substances.	Accept	Yes
S57.004	Fire and Emergency New Zealand	HAZARDOUS SUBSTANCE (Definition)	Retain the definition of 'Hazardous Substance' as notified.	Accept	No
S57.006	Fire and Emergency New Zealand	MAJOR HAZARDOUS FACILITY (Definition)	Amend the definition of 'Major Hazardous Facility' as follows: 'a. any facility which involves one or more of the following activities: ... xvii. The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment. xviii. Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016 ... b. The following activities are not considered to be major hazardous facilities ... x. Emergency service activities.'	Accept in part	Yes
S57.033	Fire and Emergency New Zealand	HAZS-O1	Retain HAZS-O1 as notified.	Accept	No
S57.034	Fire and Emergency New Zealand	HAZS-O2	Retain HAZS-O2 as notified.	Accept in part	No
S57.035	Fire and Emergency New Zealand	HAZS-P1	Retain HAZS-P1 as notified.	Accept	No
S57.036	Fire and Emergency New Zealand	HAZS-P2	Retain HAZS-P2 as notified.	Accept	No

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
S57.037	Fire and Emergency New Zealand	HAZS-P3	Retain HAZS-P3 as notified.	Accept	No
S57.038	Fire and Emergency New Zealand	HAZS-P4	Retain HAZS-P4 as notified.	Reject	No
S57.039	Fire and Emergency New Zealand	HAZS-R1	Retain HAZS-R1 as notified.	Accept in part	No
S57.040	Fire and Emergency New Zealand	HAZS-R3	Retain HAZS-R3 as notified.	Accept in part	No
S57.041	Fire and Emergency New Zealand	HAZS-AM1	Retain HAZS-AM1 as notified.	Accept	No
S57.042	Fire and Emergency New Zealand	HAZS-AM2	Retain HAZS-AM2 as notified.	Accept	No
S81.020	Horticulture New Zealand	MAJOR HAZARDOUS FACILITY (Definition)	Retain the definition of 'Major Hazardous Facility'.	Accept in part	No
S81.061	Horticulture New Zealand	HAZS-O2	Retain HAZS-O2.	Accept in part	No
S81.062	Horticulture New Zealand	HAZS-P1	Retain HAZS-P1.	Accept	No
S81.063	Horticulture New Zealand	HAZS-R1	Retain HAZS-R1.	Accept in part	No
FS3.013	First Gas Limited		Allow	Accept	
S81.064	Horticulture New Zealand	HAZS-M2	Amend HAZS-M3[HAZS-M2?] as follows: "... Codes of Practice are an approved means of complying with HSNO and are designed to provide guidance on how to eliminate or minimise the risk associated with hazardous substances. A good example of this is the EPA approved code of practice "Management of Agrichemicals NZS 8409:20042021".'	Accept	Yes
S110.001	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS - Introduction	Amend the final paragraph of 'HAZS - Introduction' as follows: Whilst the Resource Legislation Amendments 2017 changed the RMA so Councils no longer have this explicit function to control hazardous substances, they. Councils still have a broad function of achieving integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. To avoid duplication, the Council seeks only to control matters that are not adequately covered by other more specific	Accept	Yes

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
			legislation or regulated by the Hawke's Bay Regional Council and proposes to do this by focused provisions targeting major hazardous facilities. Council proposes to use this broad function to place extra controls on hazardous substance use under the RMA, where HSNO or Worksafe controls are not adequate to address the environmental effects of hazardous substances in any particular case.'		
FS17.33	Horticulture New Zealand		Allow	Accept	
S110.002	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-I1	Amend the explanation to HAZS-I1 as follows: 'While hazardous substances are largely controlled through other legislation, some hazardous facilities may create off site risks to people, property and the environment. the Council is still required by the RMA to achieve integrated management of effects, including control of any actual or potential effects associated with the storage, use, disposal, or transportation of hazardous substances. Two issues arise from the use of hazardous substances. The first concerns the safe day-to-day use of hazardous substances. The second is the possible effects on the health and safety of people and on the natural environment involving the establishment and operation of major hazardous facilities.'	Accept	Yes
FS17.34	Horticulture New Zealand		Allow	Accept	
S110.003	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-O1	Retain HAZS-O1 as notified.	Accept	No
S110.004	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-O2	Amend HAZS-O2 as follows: 'Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, Health and Safety at Work Act 2015, Regional Plan, and the District Plan. '	Accept	Yes
S110.005	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-P1	Retain HAZS-P1 as notified.	Accept	No
S110.006	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-P2	Delete HAZS-P2.	Accept	Yes
S110.007	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-P3	Retain HAZS-P3 as notified.	Accept	No
S110.008	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-P4	Delete HAZS-P4.	Accept	Yes
S110.009	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-R1	Amend HAZS-R1 as follows: '1. Activity Status: PER Where the following conditions are met: a. All relevant standards in the underlying zone are complied with. b. ...'	Accept	Yes
FS12.4	New Zealand Defence Force		Allow	Accept	

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
			Accept the submitter's relief sought or include permitted activity standards specific to the storage, handling or use of hazardous substances within rule HAZS-R1.		
S110.010	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-R2	Retain HAZS-R2 as notified	Accept	No
S110.011	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	HAZS-R3	Amend HAZS-R3 such that it only applies to new 'Major Hazardous Facilities' or existing 'Major Hazardous Facilities' which are increasing potential off site risk associated with the storage, use, or manufacture of hazardous substances.	Accept	Yes
FS8.026	Silver Fern Farms Limited		Allow	Accept	
S110.018	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)	MAJOR HAZARDOUS FACILITY (Definition)	Reconsider the need for hazardous substance controls based on the broad definition of 'Major Hazardous Facilities'. If a broad definition can be justified, retain clauses to the effect of a(iii) and b(v) of the definition as notified.	Accept in part	No
S116.001	Silver Fern Farms Limited	MAJOR HAZARDOUS FACILITY (Definition)	Amend the definition of 'Major Hazardous Facility' as follows: 'a. any facility which involves one or more of the following activities: ... ix. meat processing freezing works and rendering plants ... b.'	Accept	Yes
S116.002	Silver Fern Farms Limited	OFFENSIVE PROCESS (Definition)	Amend the definition of 'Offensive Process' as follows: 'means one of the following processes: a. processes requiring offensive trade licenses under the Health Act 1956; b. the manufacture and processing of chemical fertilisers; c. meat processing or any associated processing of meat and meat by-products or co-products; ...'	Reject	No
S116.019	Silver Fern Farms Limited	HAZS-P2	Amendments to the definition of 'Major Hazardous Facility' [refer submission point S116.001] and UFD-O2 [refer submission point S116.017], as sought.	Accept in part	No
S121.119	Federated Farmers of New Zealand	HAZS-O2	Retain HAZS-O2 as proposed.	Accept in part	No
FS9.119	Royal Forest and Bird Protection Society of New Zealand Incorporated		Disallow	Reject	
S121.120	Federated Farmers of New Zealand	HAZS-P1	Retain HAZS-P1 as proposed.	Accept	No
FS9.120	Royal Forest and Bird Protection Society of New Zealand Incorporated		Disallow	Reject	
S121.121	Federated Farmers of New Zealand	HAZS-R1	Delete HAZS-R1. And add a new policy [refer submission point S121.253].	Accept in part	Yes

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
FS3.014	First Gas Limited		Disallow	Accept in part	
FS9.121	Royal Forest and Bird Protection Society of New Zealand Incorporated		Disallow	Reject	
S121.240	Federated Farmers of New Zealand	MAJOR HAZARDOUS FACILITY (Definition)	Retain clause (b) in the definition of 'Major Hazardous Facility' as proposed.	Accept in part	No
FS9.240	Royal Forest and Bird Protection Society of New Zealand Incorporated		Disallow	Reject	
S121.253	Federated Farmers of New Zealand	HAZS-PXX (new policy)	And add a new policy in the 'HAZS - Hazardous Substances' chapter in the Proposed Plan as follows: 'To not regulate the use, storage or transportation of hazardous substances, in the District Plan where adequate levels of community and environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996 or other legislation and regulation.'	Accept in part	Yes
FS9.253	Royal Forest and Bird Protection Society of New Zealand Incorporated		Disallow	Reject	
FS17.35	Horticulture New Zealand		Allow in part Accept submission in place of HAZS-P4.	Accept	

Appendix C

Schedule 2 to the Health and Safety at Work (Major Hazard Facilities) Regulations 2016

Table 1
Categories of specified hazardous substances

Column 1	Column 2	Column 3	Column 4	Column 5
Hazard category	HSNO classification ¹	GHS classification ²	Threshold quantities: lower tier requirements (tonnes)	Threshold quantities: upper tier requirements (tonnes)
<i>Health hazards (section H)</i>				
H1	6.1A— <i>Substances that are acutely toxic, all exposure routes</i>	Acute toxicity Category 1, all exposure routes	5	20
H2	6.1B— <i>Substances that are acutely toxic, all exposure routes</i>	Acute toxicity Category 2, all exposure routes	50	200
	6.1C— <i>Substances that are acutely toxic, inhalation exposure route³</i>	Acute toxicity Category 3, inhalation exposure route ³		
H3	6.9A— <i>Substances that are toxic to human target organs or systems, but only those that produce specific, non-lethal target organ toxicity arising from a single exposure</i>	Specific target organ toxicity—single exposure Category 1 (STOT-SE)	50	200
<i>Physical hazards (section P)</i>				
P1a ^{4,5,6}	Unstable explosives; or	Unstable explosives; or	10	50
	1.1— <i>Substances and articles that have a mass explosion hazard</i>	Explosives, Division 1.1, 1.2, 1.3, 1.5, or 1.6; or		
	1.2— <i>Substances and articles that have a projection hazard but not a mass explosion hazard</i>	Substances or mixtures having explosive properties according to Chapter 2.4.2.4.2 of the United Nations <i>Recommendations on the Transport of Dangerous Goods Model Regulations, seventeenth revised edition</i> , and that do not belong to the hazard classes organic peroxides or self-reactive substances and mixtures		
	1.3— <i>Substances and articles that have a fire hazard and either a minor blast hazard or a minor projection hazard, or both, but not a mass explosion hazard</i>			
P1b ^{4,5,6,7}	1.4— <i>Substances and articles that present no significant explosive hazard</i>	Explosives, Division 1.4	50	200
	1.5— <i>Very insensitive substances that have a mass explosion hazard</i>			
P2	2.1.1A— <i>Flammable gases: high hazard</i> or 2.1.1B— <i>Flammable gases: medium hazard</i>	Flammable gases, Category 1 or 2	10	50
P3a ⁸	Articles classified as 2.1.2A— <i>Flammable aerosols</i> containing flammable gas 2.1.1A or 2.1.1B or flammable liquids 3.1A	"Flammable" aerosols, Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1	150 (net)	500 (net)
P3b ⁹	Articles classified as 2.1.2A— <i>Flammable aerosols</i> not containing flammable gas 2.1.1A or 2.1.1B or flammable liquids 3.1A	"Flammable" aerosols, Category 1 or 2, not containing flammable gases Category 1 or 2 or flammable liquids Category 1	5 000 (net)	50 000 (net)
P4	5.1.2A— <i>Oxidising substances that are gases</i>	Oxidising gases, Category 1	50	200
P5a	3.1A— <i>Flammable liquids: very high hazard</i>	Flammable liquids, Category 1; or	10	50
	3.1B— <i>Flammable liquid: high hazard</i> or 3.1C— <i>Flammable liquids: medium hazard</i> maintained at a temperature above their boiling point	Flammable liquids, Category 2 or 3 maintained at a temperature above their boiling point		

P5b	Flammable liquids, 3.1B— <i>Flammable liquid: high hazard</i> or 3.1C— <i>Flammable liquids: medium hazard</i> , where particular processing conditions, such as high pressure or high temperature, may create major-incident hazards	Flammable liquids, Category 2 or 3, where particular processing conditions, such as high pressure or high temperature, may create major-incident hazards	50	200
P5c	3.1B— <i>Flammable liquid: high hazard</i> or 3.1C— <i>Flammable liquids: medium hazard</i> not covered by P5a and P5b	Flammable liquids, Category 2 or 3, not covered by P5a and P5b	5 000	50 000
P6a	4.1.2A— <i>Self-reactive substances: type A</i> or 4.1.2B— <i>Self-reactive substances: type B</i> ; or 5.2A— <i>Organic peroxides: type A</i> ; or 5.2B— <i>Organic peroxides: type B</i>	Self-reactive substances and mixtures, type A or B or organic peroxides, type A or B	10	50
P6b	4.1.2C— <i>Self-reactive substances: type C</i> , 4.1.2D— <i>Self-reactive substances: type D</i> , 4.1.2E— <i>Self-reactive substances: type E</i> , or 4.1.2F— <i>Self-reactive substances: type F</i> ; or 5.2C— <i>Organic peroxides: type C</i> , 5.2D— <i>Organic peroxides: type D</i> , 5.2E— <i>Organic peroxides: type E</i> , or 5.2F— <i>Organic peroxides: type F</i>	Self-reactive substances and mixtures, type C, D, E, or F; or organic peroxides, type C, D, E, or F	50	200
P7	4.2A— <i>Spontaneously combustible substances: pyrophoric substances: high hazard</i>	Pyrophoric liquids, Category 1 Pyrophoric solids, Category 1	50	200
P8	5.1.1A— <i>Oxidising substances that are liquids or solids: high hazard</i> , 5.1.1B— <i>Oxidising substances that are liquids or solids: medium hazard</i> , or 5.1.1C— <i>Oxidising substances that are liquids or solids: low hazard</i>	Oxidising liquids, Category 1, 2, or 3 Oxidising solids, Category 1, 2, or 3	50	200
Other hazards (section O)				
O1	4.3A— <i>Solids that emit flammable gas when in contact with water: high hazard</i> , that also meet the criteria for the hazard statement EUH014	Substances or mixtures that react violently with water with hazard statement EUH014	100	500
O2	4.3A— <i>Solids that emit flammable gas when in contact with water: high hazard</i> , criteria (b)	Substances and mixtures that, when in contact with water, emit flammable gases Category 1	100	500
O3	4.3A— <i>Solids that emit flammable gas when in contact with water: high hazard</i> , that also meet the criteria for the hazard statement EUH029	Substances or mixtures that liberate toxic gas when in contact with water with hazard statement EUH029	50	200

¹ **HSNO classification** means a classification under the classification system described in the Hazardous Substances (Classification) Notice 2017.

² **GHS classification** means the United Nations *Globally Harmonized System of Classification and Labelling of Chemicals*, fifth revised edition. In this schedule, a reference to a GHS classification is for information only.

³ Hazardous substances that fall within HSNO classification acutely toxic 6.1C via the oral route (H301) must fall under hazard category H2 acutely toxic in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example, due to lack of conclusive inhalation and dermal toxicity data.

⁴ The hazard category explosives includes explosive substances and articles.

⁵ If the quantity of the explosive substance contained in the article is known, that quantity must be considered for the purposes of these regulations. If the quantity of the explosive substance contained in the article is not known, then, for the purposes of these regulations, the whole article must be treated as explosive.

⁶ The threshold quantity of fireworks, within the meaning of [regulation 3](#) of the Hazardous Substances (Fireworks) Regulations 2001, is calculated using the net weight of pyrotechnic substances, within the meaning of [regulation 3](#) of the Hazardous Substances (Fireworks) Regulations 2001, but excluding the weight of any construction, packaging, or other inert material used in the fireworks.

⁷ If explosives of Division 1.4 are unpacked or repacked, they must be assigned to the hazard category P1a, unless the hazard is shown to still correspond to Division 1.4, in accordance with the Hazardous Substances (Classification) Notice 2017.

⁸ Flammable aerosols are classified in accordance with HSN0 classification 2.1.2A and are assigned to this category if they contain flammable gas 2.1.1A or 2.1.1B or flammable liquids 3.1A.

⁹ In order to use this hazard category, it must be documented that the aerosol dispenser does not contain flammable gas 2.1.1A or 2.1.1B or flammable liquids 3.1A.

Schedule 2 table 1: amended, on 15 May 2017, by regulation 5(1) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2017 (LI 2017/60).

Schedule 2 table 1 footnote 1: amended, on 1 December 2017, by regulation 7(1) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations (No 2) 2017 (LI 2017/222).

Schedule 2 table 1 footnote 6: amended, on 15 May 2017, by regulation 5(2) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2017 (LI 2017/60).

Schedule 2 table 1 footnote 7: amended, on 1 December 2017, by regulation 7(2) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations (No 2) 2017 (LI 2017/222).

Table 2
Names of specified hazardous substances

Column 1 Hazardous substance	Column 2 CAS number ¹	Column 3 Column 4 Threshold quantity (tonnes) for the application of—	
		Lower tier requirements	Upper tier requirements
1 Ammonium nitrate ⁷	—	5 000	10 000
2 Ammonium nitrate ⁸	—	1 250	5 000
3 Ammonium nitrate ⁹	—	350	2 500
4 Ammonium nitrate ⁸	—	10	50
5 Potassium nitrate ⁸	—	5 000	10 000
6 Potassium nitrate ⁷	—	1 250	5 000
7 Arsenic pentoxide, arsenic (V) acid and/or salts	1303-28-2	1	2
8 Arsenic trioxide, arsenious (III) acid and/or salts	1327-53-3		0.1
9 Bromine	7726-95-6	20	100
10 Chlorine	7782-50-5	10	25
11 Nickel compounds in inhalable powder form: nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide	—	—	1
12 Ethyleneimine	151-56-4	10	20
13 Fluorine	7782-41-4	10	20
14 Formaldehyde (concentration ≥ 90 %)	50-00-0	5	50
15 Hydrogen	1333-74-0	5	50
16 Hydrogen chloride (liquefied gas)	7647-01-0	25	250
17 Lead alkyls	—	5	50
18 Liquefied flammable gases, Category 1 or 2 (including LPG), and natural gas ⁸	—	50	200
19 Acetylene	74-86-2	5	50
20 Ethylene oxide	75-21-8	5	50
21 Propylene oxide	75-56-9	5	50
22 Methanol	67-56-1	500	5 000
23 4, 4'-Methylene bis (2-chloroaniline) and/or salts, in powder form	101-14-4		0.01
24 Methylisocyanate	624-83-9		0.15
25 Oxygen	7782-44-7	200	2 000
26 2,4 -Toluene diisocyanate	584-84-9	10	100
2,6 -Toluene diisocyanate	91-08-7		
27 Carbonyl dichloride (phosgene)	75-44-5	0.3	0.75
28 Arsine (arsenic trihydride)	7784-42-1	0.2	1
29 Phosphine (phosphorus trihydride)	7803-51-2	0.2	1
30 Sulphur dichloride	10545-99-0		1

30	Sulphur dichloride	10545-99-0		1
31	Sulphur trioxide	7446-11-9	15	75
32	Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD) calculated in TCDD equivalent ¹	—		0.001
33	The following carcinogens or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2-Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone	—	0.5	2
34	Petroleum products and alternative fuels— (a) gasolines and naphthas; (b) kerosenes (including jet fuels); (c) alternative fuels serving the same purposes as, and with similar properties as regards flammability to, the products referred to in paragraph (a) or (b)	—	2 500	25 000
35	Anhydrous ammonia	7664-41-7	50	200
36	Boron trifluoride	7637-07-2	5	20
37	Hydrogen sulphide	7783-06-4	5	20
38	Piperidine	110-89-4	50	200
39	Bis(2-dimethylaminoethyl) (methyl)amin	3030-47-5	50	200
40	3-(2-Ethylhexyloxy)propylamin	5397-31-9	50	200
41	Propylamine ¹⁰	107-10-8	500	2 000
42	Tert-butyl acrylate ¹⁰	1663-39-4	200	500
43	2-Methyl-3-butenenitrile ¹⁰	16529-56-9	500	2 000
44	Tetrahydro-3,5-dimethyl-1,3,5,-thiadiazine-2-thione (Dazomet) ¹⁰	533-74-4	100	200
45	Methyl acrylate ¹⁰	96-33-3	500	2 000
46	3-Methylpyridine ¹⁰	108-99-6	500	2 000
47	1-Bromo-3-chloropropane ¹⁰	109-70-6	500	2 000

¹ The Chemical Abstracts Service Registry number (CAS number) is for information only.

²**Ammonium nitrate (5 000/10 000): fertilisers capable of self-sustaining decomposition**

This footnote applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers containing ammonium nitrate with phosphate and/or potash) that are capable of self-sustaining decomposition according to the trough test (*see the UN Manual of Tests and Criteria*, Part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is—

- between 15.75% (15.75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate) and 24.5% (24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate) by weight, and either with not more than 0.4% total combustible/organic materials or that fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (OJL 304, 21.11.2003, p 1); or
- 15.75% by weight or less and unrestricted combustible materials.

³**Ammonium nitrate (1 250/5 000): fertiliser grade**

This footnote applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers that fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 and in which the nitrogen content as a result of ammonium nitrate is—

- more than 24.5% by weight, except for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone, and/or calcium carbonate with a purity of at least 90%; or
- more than 15.75% by weight for mixtures of ammonium nitrate and ammonium sulphate; or
- more than 28% (28% nitrogen content by weight as a result of ammonium nitrate corresponds to 80% ammonium nitrate) by weight for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone, and/or calcium carbonate with a purity of at least 90%.

⁴Ammonium nitrate (350/2 500): technical grade

This footnote applies to ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is—

- (a) between 24.5% and 28% by weight, and that contain not more than 0.4% combustible substances; or
- (b) more than 28% by weight, and that contain not more than 0.2% combustible substances.

It also applies to aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight.

⁵Ammonium nitrate (10/50): "off-specs" material and fertilisers not fulfilling the detonation test

This footnote applies to—

- (a) material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilisers, and ammonium nitrate-based compound/composite fertilisers referred to in footnotes 3, 4, and this footnote that are being or have been returned from the final user to a manufacturer, temporary storage, or reprocessing plant for a reworking, recycling, or treatment for safe use because they no longer comply with the specifications of footnotes 3 and 4; or
- (b) fertilisers referred to in paragraph (a) of footnote 2 and paragraph (a) of footnote 3 to table 2 that do not fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003.

⁶Potassium nitrate (5 000/10 000)

This footnote applies to those composite potassium-nitrate-based fertilisers (in prilled/granular form) that have the same hazardous properties as pure potassium nitrate.

⁷Potassium nitrate (1 250/5 000)

This footnote applies to those composite potassium-nitrate-based fertilisers (in crystalline form) that have the same hazardous properties as pure potassium nitrate.

⁸Upgraded biogas

For the purpose of the implementation of these regulations, upgraded biogas is classified under this item if it has been processed in accordance with applicable standards for purified and upgraded biogas, ensuring a quality equivalent to that of natural gas, including the content of methane, and that has a maximum of 1% oxygen.

⁹Polychlorodibenzofurans and polychlorodibenzodioxins

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the following factors:

	WHO 2005 TEF		
2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-PeCDD	1	2,3,4,7,8-PeCDF	0.3
		1,2,3,7,8-PeCDF	0.03
1,2,3,4,7,8-HxCDD	0.1		
1,2,3,6,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
		1,2,3,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01	2,3,4,6,7,8-HxCDF	0.1
OCDD	0.0003	1,2,3,4,6,7,8-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.0003

(T = tetra, Pe = penta, Hx = hexa, Hp = hepta, O = octa)

Reference—Van den Berg et al "The 2005 World Health Organisation Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds" in 93(2), *Toxicological Sciences* (2006), at pp 223 to 241.

¹⁰ In cases where this hazardous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of these regulations, the lowest qualifying quantities apply.

Schedule 2 table 2 footnote 5 paragraph (a): amended, on 15 May 2017, by [regulation 5\(3\)](#) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2017 (LI 2017/60).

Schedule 2 table 2 footnote 5 paragraph (b): amended, on 15 May 2017, by [regulation 5\(4\)](#) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2017 (LI 2017/60).