

Waimakariri District Council Proposed Waimakariri District Plan

Recommendations of the PDP Hearings Panel

Recommendation Report 5

Hearing Stream 3 Part 2: District-wide matters – HS – Hazardous Substances

This report should be read in conjunction with **Report 1** and **Recommendation Report 2**.

Report 1 contains an explanation of how the recommendations in all subsequent reports have been developed and presented, along with a glossary of terms used throughout the reports, a record of all Panel Minutes, a record of the recommendation reports and a summary of overarching recommendations. It does not contain any recommendations per se.

Recommendation Report 2 contains the PDP Panel's recommendations on the PDP's Part 2: District-wide Matters – Strategic directions - SD Strategic directions objectives and policies.

Appendix 1: Schedule of attendances

Appendix 2: Recommended amendments to the Proposed Plan - Tracked from notified version (provisions not consequentially renumbered).

The Hearings Panel for the purposes of **Hearing Stream 3** comprised Commissioners Gina Sweetman (Chair), Allan Cubitt, Gary Rae, Neville Atkinson and Niki Mealings.

1. Introduction

Report outline and approach

1. This is Report 5 of 37 Recommendation Reports prepared by the PDP Hearings Panel appointed to hear and make recommendations on submissions to the Proposed Waimakariri District Plan (PDP).
2. The report addresses the objective, policies and the advice note relating to the HS – Hazardous Substances Chapter and the submissions received on those provisions. The relevant provisions are:
 - Introduction
 - Objectives HS-O1 and HS-O2
 - Policies HS-P1, HS-P2 and HS-P3
 - Rules HS-R1, HS-R2 and HS-R3
 - Advice Note HS-AN1
 - Matters of Discretion HS-MD1
3. We have structured our discussion on this topic as follows:
 - (a) **Section 2** summarises key contextual matters, including relevant provisions and key issues/themes in submissions;
 - (b) **Sections 3 – 4** contains our evaluation of key issues and recommended amendments to provisions; and
 - (c) **Section 5** contains our conclusions.
4. This Recommendation Report contains the following appendices:
 - (a) **Appendix 1: Schedule of attendances** at the hearing on this topic. We refer to the parties concerned and the evidence they presented throughout this Recommendation Report, where relevant.
 - (b) **Appendix 2: Recommended amendments to the Proposed Plan – Tracked from notified version.** This sets out the final amendments we recommend be made to the PDP provisions relating to this topic. The amendments show the specific wording of the amendments we have recommended and are shown in a ‘tracked change’ format showing changes from the notified version of the PDP for ease of reference. Where whole provisions have been deleted or added, we have not shown any consequential renumbering, as this method maintains the integrity of how the submitters and s42A Report authors have referred to specific provisions, and our analysis of these in the Recommendation Reports. New whole provisions are prefaced with the term ‘new’ and deleted provisions are shown as struck out, with no subsequential renumbering in either case.
5. We record that all submissions on the provisions relating to HS – Hazardous Substances chapter have been taken into account in our deliberations. In general, submissions in support of the PDP have not been discussed but are accepted or accepted in part. More

detailed descriptions of the submissions and key issues can be found in the relevant s42A Reports, Responses to Preliminary Questions and written Reply Reports, which are available on the Council's website. As stated above, our decision on each submission point is set out in Appendix 2.

6. In accordance with the approach set out in Report 1, this Report focuses only on 'exceptions', where we do not agree fully or in part with the s42A report author's recommendations and / or reasons, and / or have additional discussion and reasons in respect to a particular submission point, evidence at the hearing, or another matter.
7. The requirements in clause 10 of the First Schedule of the Act and s32AA are relevant to our considerations of the PDP provisions and the submissions received on those provisions. These are outlined in full in Report 1. In summary, these provisions require among other things:
 - (a) our evaluation to be focussed on changes to the proposed provisions arising since the notification of the PDP and its s32 reports;
 - (b) the provisions to be examined as to whether they are the most appropriate way to achieve the objectives; and
 - (c) as part of that examination, that:
 - i. reasonable alternatives within the scope afforded by submissions on the provisions and corresponding evidence are considered;
 - ii. the efficiency and effectiveness of the provisions is assessed;
 - iii. the reasons for our recommendations are summarised; and
 - iv. our report contains a level of detail commensurate with the scale and significance of the changes recommended.
8. We have not produced a separate evaluation report under s32AA. Where we have adopted the recommendations of Council's s42A report authors, we have adopted their reasoning, unless expressly stated otherwise. This includes the s32AA assessments attached to the relevant s42A Reports and/or Reply Reports. Those reports are part of the public record and are available on the Council website. Where our recommendation differs from the s42A report authors' recommendations, we have incorporated our s32AA evaluation into the body of our report as part of our reasons for recommended amendments, as opposed to including this in a separate table or appendix.
9. A fuller discussion of our approach in this respect is set out in Section 5 of Report 1.

2. Summary of provisions and key issues

Outline of matters addressed in this section

10. In this section, we provide relevant context around which our evaluation of the notified provisions and submissions received on them is based. Our discussion includes:
 - (a) summary of relevant provisions;
 - (b) themes raised in submissions; and
 - (c) identification of key issues for our subsequent evaluation.

Relevant provisions

11. As indicated in paragraph 1.2 of this Recommendation Report, the relevant provisions we address relate to Part 2: District-wide matters – HS – Hazardous Substances.

Submissions

12. Eight original submissions and one further submission were received on the HS – Hazardous Substances Chapter. The six submissions raised 48 submission points, and generally supported the notified plan provisions, with some amendments sought.

Key issues

13. The issue in contention on this chapter addressed in this report is the Fuel Companies' submission in respect to HS-R1.

3. Fuel Companies

Overview

14. The Panel's recommended amendments to new Rule HS-R1b, over and above the amendments recommended by the reporting officer, is summarised below:

Provisions	Panel recommendations
HS-R1b	Include a single clause requiring that storage is required to be undertaken in accordance with the listed standards.

Amendments and reasons

15. Our evaluation focuses on the amendments sought to HS-R1, in respect to underground hazardous storage facilities. Mr Rowe, planner for the Fuel Companies¹, considered requiring a resource consent for underground storage in a flood hazard area was inefficient, as it would unlikely result in any different or reduced effect to what is already required under other legislative requirement, and it would be unlikely to result in any changes to the design or location of underground storage tanks.
16. Ms Manhire responded to Mr Rowe's evidence in her Reply Report, recommending that HS-R1 be split into two rules; one for aboveground storage and use, and the second for underground storage and use. The latter would be subject to compliance with two particular codes of practice and ensuring protection measures were in place. These recommendations were on the basis of further research she had undertaken, but at the time of writing her Reply Report she had not engaged with Mr Rowe.
17. We received a final memorandum from Ms Manhire on 20 September 2023, which included comments from Mr Rowe on Ms Manhire's recommended two rules. Mr Rowe generally supported the proposed new underground rule but sought that the reference

¹ 276.5

in clause (a) be to general accordance with the codes of practice, and that clause (b) be deleted as it is a matter already covered by the codes of practice.

18. We accept both planners' evidence that HS-R1 should be split into two separate rules. Having considered Ms Manhire and Mr Rowe's evidence in respect to the underground rule, in respect of clause (a), we agree with Ms Manhire that the use of "general" in a permitted activity condition is not appropriate or certain enough, and we agree with Mr Rowe that the clause should be specific to the effect that the rule is designed to address – the flood hazard. We have recommended minor rewording to the clause. In respect of clause (b), we prefer Mr Rowe's evidence that clause (a) adequately addresses protection measures and there is no need to have this repeated. Further, we consider that clause (b) as drafted would be difficult to implement as a permitted activity condition, as it would require an assessment process to determine if appropriate protection measures were in place, without any specific document, standard or code to assess it against. We consider it preferable that the relevant code of practice is incorporated by reference into the rule to provide the necessary certainty. Overall, we find that the revised HS-R1 and new Rule as we recommend them, addressing aboveground and underground hazardous substance storage and use, are the most appropriate means of achieving the relevant objectives of the PDP.

4. Other matters and consequential changes

19. There were no other matters or consequential changes raised.

5. Conclusion

20. For the reasons summarised above, we recommend the adoption of a set of changes to the PDP provisions relating to Part 2: District-Wide Matters – HS – Hazardous Substances. Our recommended amendments are shown in Appendix 2.
21. Overall, we find that these changes will ensure the PDP better achieves the statutory requirements, national and regional direction, and our recommended Strategic Directions, and will improve its useability.

**Appendix 1: Submitter attendance and tabled evidence for Hazardous Substances -
Hearing Stream 3**

Attendee	Speaker	Submitter No.
Council Reporting Officer	<ul style="list-style-type: none"> • Jessica Manhire 	N/A
Environment Canterbury Regional Council	<ul style="list-style-type: none"> • Joanne Mitten • Jolene Irvine • Nick Griffiths • Kate Dickson 	316
Fuel Companies	<ul style="list-style-type: none"> • Miles Rowe 	276, FS 104
Tabled Evidence		
N/A	N/A	N/A

Appendix 2: Recommended amendments to the Proposed Plan - Tracked from notified version
(provisions not consequentially renumbered)

HS - Matū mōrearea - Hazardous Substances

Introduction

Hazardous substance use, its storage and disposal can pose potential risks for human and ecological health and safety, and for property. These risks are primarily managed by HSNO, HSWA, Health and Safety at Work (Major Hazard Facilities) Regulations 2016, Health and Safety at Work (Hazardous Substances) Regulations 2017.

The District Plan should not duplicate specific legislation or the functions of Regional Council but can control effects that are not otherwise managed. This chapter addresses risk that is not controlled by zone provisions, Regional Council or other legislation. This includes the location of major hazard facilities using or storing hazardous substances, the location of sensitive activities and locations in areas that are prone to ~~flood hazard~~ natural hazards¹.

The provisions in this chapter are consistent with the matters in Part 2 - District Wide Matters - Strategic Directions and give effect to matters in Part 2 - District Wide Matters - Urban Form and Development.

Other potentially relevant District Plan provisions

As well as the provisions in this chapter, other District Plan chapters that contain provisions that may also be relevant to hazardous substances include:

- Energy and Infrastructure: this chapter contains rules for energy and infrastructure such as fuel and gas distribution, ~~and~~² storage and also addresses hazardous substances, amongst other activities, located in the National Grid Yard³.
- Any other District wide matter that may affect or relate to the site.
- Zones: the zone chapters contain provisions about what activities are anticipated to occur in the zones.

Objectives	
HS-O1	<p>Hazardous substance use, storage and disposal</p> <p>Hazardous substance use, storage and disposal activities are <u>enabled and</u>⁴ located, and in the case of flood events, managed,⁵ so that:</p> <ol style="list-style-type: none">1. risk to people, property and the environment from any major hazard facility is minimised, including avoiding unacceptable risk to sensitive activities;2. risk to any sensitive area is minimised; and3. risk to land and water as a result of <u>natural hazards, including</u>⁶ flood events,⁷ is minimised.
HS-O2	<p>Sensitive activities</p>

¹ Environment Canterbury [316.33]

² Transpower [195.54]

³ Transpower [195.54]

⁴ Fuel Companies [276.2]

⁵ Fuel Companies [276.2]

⁶ Environment Canterbury [316.34]

⁷ Environment Canterbury [316.34]

	The location of any new sensitive activity minimises reverse sensitivity effects on any existing major hazard facility, and avoids unacceptable risk to the sensitive activity.
Policies	
HS-P1	New major hazard facility Minimise risk to people, property and the environment from any new major hazard facility, or any addition to a major hazard facility by: <ol style="list-style-type: none"> 1. identifying risk to human and ecological health and safety, and to property, though a QRA of any proposed activity, including its site characteristics and any cumulative risk from the use, storage and disposal of hazardous substances on other sites; 2. ensuring the location provides sufficient separation from any sensitive activity to minimise any risk identified in a QRA for the activity and avoids unacceptable risk to existing sensitive activities; 3. locating outside <u>of the National Grid Yard</u>,⁸ any areas of significant indigenous vegetation, significant habitats for indigenous fauna and Sites and Areas of Significance to Māori, and zones and overlays where sensitive areas or activities predominate; and 4. locating outside any high hazard area unless risk associated with the hazard can be mitigated to protect human, and environmental, health and safety.
HS-P2	Sensitive activity location Ensure any new sensitive activity is sufficiently separated from any existing major hazard facility to minimise reverse sensitivity effects for the major hazard facility, and avoid unacceptable risk to the sensitive activity.
HS-P3	Hazardous substance storage and flood hazards Within the Non-Urban Flood Assessment Overlay, Urban Flood Assessment Overlay and the Kaiapoi Fixed Minimum Finished Floor Level Overlay ⁹ , <u>any flood hazard overlays</u> , ¹⁰ any hazardous substance shall be stored to minimise the risk of spillage or leakage and contamination of land and water in a flood event <u>or from sea water inundation</u> . ¹¹

Activity Rules

HS-R1a	<u>Above-ground</u> h¹²azardous substance storage and use	
	<i>This rule does not apply to any major hazard facility provided for under HS-R2.</i>	
Urban Flood Assessment Overlay	Activity status: PER Where: 1. Above-ground ¹⁵ storage of hazardous substances within	Activity status when compliance not achieved: RDIS Matters of discretion are restricted to:

⁸ Transpower [195.55]

⁹ Consequential amendment

¹⁰ Environment Canterbury [316.38]

¹¹ Environment Canterbury [316.38]

¹² Fuel Companies [276.5]

¹⁵ Fuel Companies [276.5]

<p>Non-Urban Flood Assessment Overlay</p> <p>Kaiapoi Fixed Minimum Finished Floor Level Overlay¹³</p> <p><u>Coastal Flood Assessment Overlay¹⁴</u></p>	<p>any hazardous facility is at, or above the finished floor level established either by the Kaiapoi Fixed Minimum Finished Floor Level Overlay, ¹⁶ or by a Flood Assessment Certificate issued in accordance with NH-S1, <u>or by a Coastal Flood Assessment¹⁷ Certificate issued in accordance with NH-S2.</u>¹⁸</p>	<p>HS-MD1 - Hazardous substances</p>
HS-R1b	<u>Underground hH¹⁹</u> hazardous substance storage and use	
	<i>This rule does not apply to any major hazard facility provided for under HS-R2.</i>	

¹³ Environment Canterbury [316.52]

¹⁴ EC Environment Canterbury [316.39]

¹⁶ Environment Canterbury [316.52]

¹⁷ Consequential amendment

¹⁸ Environment Canterbury [316.39]

¹⁹ Fuel Companies [276.5]

<p>Urban Flood Assessment Overlay</p> <p>Non-Urban Flood Assessment Overlay</p> <p>Kaiapoi Fixed Minimum Finished Floor Level Overlay²⁰</p> <p><u>Coastal Flood Assessment Overlay</u>²¹</p>	<p>Activity status: PER Where: the storage of hazardous substances within any hazardous facility is at, or above the finished floor level established either by the Kaiapoi Fixed Minimum Finished Floor Level Overlay or by a Flood Assessment Certificate issued in accordance with NH S1.</p> <p><u>1. The underground storage within any hazardous facility is undertaken in accordance with HSNOCOP 44 Below Ground Stationary Container Systems for Petroleum – Design and Installation and HSNOCOP 45 Below Ground Stationary Container Systems for Petroleum – Operation, as relevant to the potential stability and containment of hazardous substances in a flood event</u>²²</p>	<p>Activity status when compliance not achieved: RDIS Matters of discretion are restricted to: HS-MD1 - Hazardous substances</p>
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²⁰ Consequential amendment

²¹ Environment Canterbury [316.39]

²² Fuel Companies [276.5]

HS-R2	Any new major hazard facility or addition to a major hazard facility	
General Industrial Zone Heavy Industrial Zone	Activity status: RDIS Where: 1. the activity is not located within a SASM or Fault Awareness Overlay; and 2. the activity is not located within a High Flood Hazard Area, High Coastal Flood Hazard Area ²³ or the Ashley Fault Avoidance Overlay. Matters of discretion are restricted to: HS-MD1 - Hazardous substances	Activity status when compliance not achieved with HS-R2 (1): DIS Activity status when compliance not achieved with HS-R2 (2): NC
General Rural Zone	Activity status: DIS Where: 3. the activity is not located within any SNA or SASM; and 4. the activity is not located within a Fault Awareness Overlay, the Ashley Fault Avoidance Overlay, a High Flood Hazard Area or a High Coastal Flood ²⁴ Hazard Area.	Activity status when compliance not achieved: NC
Rural Lifestyle Zone Residential Zones Commercial and Mixed Use Zones Light Industrial Zone Open Space and	Activity status: NC	Activity status when compliance not achieved: N/A

²³ Consequential amendment

²⁴ Consequential amendment

Recreation Zones		
Special Purpose Zones		
HS-R3	Sensitive activity located within a Major Hazard Facility	
All Zones	Activity Status: NC	Activity status when compliance not achieved: N/A
	Advisory Note <ul style="list-style-type: none"> • Sensitive activity within the site of any major hazard facility or within any Risk Management Contour shown on the planning map. 	

Advice Note

HS-AN1	<p>Activities and structures may also be subject to controls outside the District Plan. Reference should also be made to any other applicable rules or constraints within other legislation or ownership requirements including the following:</p> <ol style="list-style-type: none"> 1. There are additional controls for hazardous substances under the HSNO, the HSWA, Health and Safety at Work (Major Hazard Facilities) Regulations 2016, and Health and Safety at Work (Hazardous Substances) Regulations 2017. These are administered by the Environmental Protection Authority and WorkSafe New Zealand; 2. The rules in this chapter are for any residual risk from hazardous substances on human health and the environment that is not controlled through other legislation, or by the Regional Council. Resource consent may also be required from the Regional Council in relation to hazardous substances, under the LWRP and the CARP. The LWRP contains rules for the discharge and storage of hazardous substances including storage near water bodies, bores, community drinking water and faults. The CARP manages the effects of discharges to air on health and sensitive activities; and 3. Resource consent may be required from the District Council under the NESCS, which prescribes the methods that may be used to assess and manage land that is contaminated, or potentially contaminated from an activity or industry on the HAIL. The Regional Council is to be advised when contaminated land is identified. Resource consent may also be required from Regional Council in relation to disturbance of contaminated land.
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Matters of Discretion

HS-MD1	<p>Hazardous substances</p> <ol style="list-style-type: none"> 1. QRA of the activity, including use of either the individual fatality risk contour or the maximum credible fatality distance, taking into account features of the site and surrounding environment which may affect the site-specific contour. 2. Proposed mitigation in relation to risk identified by the QRA that are not controlled by other legislation or regional council functions. 3. Any effects relating to natural hazard areas identified in the District Plan, including the extent to which hazardous substances can be safely
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	<p>contained to avoid inundation by floodwater or contamination of land or water in the event of a 0.5% AEP flood event for low and medium hazard and a 0.2% AEP flood event for high hazard.</p> <ol style="list-style-type: none"> 4. The level of risk relating to the nature and volume of the hazardous substance, except where this is controlled by other legislation, including the: <ol style="list-style-type: none"> a. probability and potential consequences of an accident leading to the loss of control of hazardous substances; b. potential effects on natural ecosystems and life-supporting capacity of land and water from escape or spillage; c. potential risk and effect on sites and areas of significance to Māori as set out in SASM-SCHED1; d. potential risk and effect on the human health and safety, and on neighbouring activities such as residential activities and areas where people congregate, and the amenity values of these areas and activities; e. potential effects on sensitive activities that would be permitted in the zone near a major hazard facility; and f. potential for cumulative adverse effects considering other activities in the surrounding area that store, use, or dispose of hazardous substances. 5. Reverse sensitivity effects from a sensitive activity on the functioning of a major hazard facility. 6. Effects on any sensitive activity from a major hazard facility establishing in that location. 7. The operational need or functional need for a major hazard facility, or sensitive activity to locate in that location. 8. Any positive effects of the major hazard facility.
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