

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of Proposed Plan Change 91
to the Whangārei District Plan.

RIGHT OF REPLY – COUNCIL REPORTING PLANNER, TAYA LAUREN BAXTER

MAY IT PLEASE THE COMMISSIONER:

Introduction

1. This Right of Reply (**ROR**) has been prepared by Taya Lauren Baxter on behalf of the Whangārei District Council (**WDC**) in response to matters raised at the hearing for Proposed Plan Change 91 – Hazardous Substances (**PC91**) to the WDC Operative District Plan (**WDP**).
2. My Statement of Qualifications and Experience is provided in paragraph 1.2 of the section 42A (**s42A**) Hearing Report. The opinions expressed in this ROR, are based on my qualifications and experience, and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that.

Structure of this Right of Reply

3. The table on pages 3 – 7 provides responses to evidence and information presented by the following submitters during the course of the hearing:
 - Horticulture New Zealand (“**Horticulture NZ**”) – Submission #4
 - Ngā Tai Ora – Public Health Northland (“**Ngā Tai Ora**”) – Submission #5
 - BP Oil New Zealand Limited, Mobil Oil New Zealand Limited & Z Energy Limited (“**The Fuel Companies**”) – Submission #6 and Further Submission #X009
4. Any changes that I recommend as a result of the ROR are indicated with ~~strikethroughs~~ representing recommended deletions and underlined writing representing recommended additions. Appendix 1 contains a clean version of the recommended PC91 provisions based on my recommendations.
5. Paragraphs 8 – 59 following the table discuss matters raised in the Ngā Tai Ora evidence relating to whether rules are required in the Hazardous Substances (**HSUB**) Chapter.
6. With respect to the matters not addressed within this ROR, no substantively new material or evidence is before me (beyond what was included in the original submissions) that prompts me to provide additional comment or revise my original s42A recommendations.

7. Attached to this ROR are:

- **Appendix 1:** Right of Reply Revised PC91 Provisions
- **Appendix 2:** Far North District Council Proposed Hazardous Substance Chapter Rules
- **Appendix 3:** Potential Hazardous Substances Rules under Option 2b
- **Appendix 4:** Examples of Large Sites with the Potential for Multiple Activities
- **Appendix 5:** Description of Major Hazardous Facilities in Whangārei

Right of Reply for PC91: Hazardous Substances			
Submitter (Sub. #)	Summary of Submitter Evidence (Deletions shown as strikethrough , additions shown as <u>underline</u>)	Reporting Officer Discussion (Deletions shown as strikethrough , additions shown as <u>underline</u>)	Recommendation
HSUB-O1 (s42A Part C)			
Ngā Tai Ora (5/2)	<p>HSUB-O1 – <i>Residual Risks</i> was notified as:</p> <p><i>“People, property and the environment are protected from any unacceptable levels of residual risk associated with the location of facilities that use, store and dispose of hazardous substances”.</i></p> <p>The s42A report recommended that HSUB-O1 be amended as follows:</p> <p><i>“People pProperty, and the environment and the health and safety of people are protected from any unacceptable levels of residual risk associated with the location of facilities that use, store and dispose of hazardous substances”.</i></p> <p>D Badham on behalf of Ngā Tai Ora sought the following changes for the reasons outlined in section 7 of his evidence:</p> <p><i>“Property, the environment and the health and safety of people are protected from any unacceptable levels of residual risk associated with the location <u>or expansion</u> of facilities that use, store and <u>or</u> dispose of hazardous substances”.</i></p>	<p>I support the amendment to HSUB-O1 for the reasons outlined by D Badham and recommend that the objective be amended as show below and as set out in Appendix 1.</p> <p>HSUB-O1 – Residual Risks</p> <p>Property, the environment and the health and safety of people are protected from any unacceptable levels of residual risk associated with the location <u>or expansion</u> of facilities that use, store and <u>or</u> dispose of hazardous substances.</p>	Ngā Tai Ora – Accept
HSUB-O2 (s42A Part D)			
Horticulture NZ (4/2) The Fuel Companies (6/2)	<p>HSUB-O2 – <i>Reverse Sensitivity</i> was notified as:</p> <p><i>“Sensitive activities do not unduly compromise existing areas and activities which, use store or dispose of hazardous substances”.</i></p> <p>The s42A report recommended that HSUB-O2 was retained as notified.</p> <p>L Wharfe on behalf of Horticulture NZ sought the following amendments for the reasons outlined in paragraphs 7.19 to 7.35 of her evidence:</p>	<p>In my opinion Horticulture NZ’s request to amend HSUB-O2 unnecessarily complicates the objective and is duplicative of components of HSUB-O1 and HSUB-P4. I consider that HSUB-O2 should focus solely on reverse sensitivity, and that matters of residual risk should not be included in HSUB-O2. I do not support this amendment.</p> <p>I support the amendment sought to HSUB-O2 by S Westoby for the reasons outlined in her evidence and recommend that the objective be amended as shown below and as set out in Appendix 1.</p>	<p>Horticulture NZ – Reject</p> <p>The Fuel Companies – Accept</p>

	<p><i>“Sensitive activities are appropriately located to avoid unacceptable residual risk from established activities and reverse sensitivity effects do not unduly compromise existing areas and activities which use, store or dispose of hazardous substances”.</i></p> <p>S Westoby on behalf of The Fuel Companies sought the following changes for the reasons outlined in section 4 of her evidence.</p> <p><i>“Sensitive activities do not unduly compromise constrain or curtail existing areas and activities which use, store or dispose of hazardous substances”.</i></p>	<p>HSUB-O2 – Reverse Sensitivity Sensitive activities do not unduly compromise constrain or curtail existing areas and activities which use, store or dispose of hazardous substances.</p>	
<p>HSUB-P2 (s42A Part F)</p>			
<p>Horticulture NZ (4/4)</p>	<p>HSUB-P2 – <i>People and Communities</i> was notified as:</p> <p><i>“To ensure activities which use, store or dispose of hazardous substances are not located in areas where they may adversely affect the health, safety and wellbeing of people and communities, unless it can be demonstrated that the residual risk to people and communities will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level”.</i></p> <p>The s42A report recommended that HSUB-P2 was retained as notified.</p> <p>L Wharfe on behalf of Horticulture NZ sought the following changes for the reasons outlined in paragraphs 7.42 – 7.50 of her evidence.</p> <p><i>“To ensure <u>that</u> activities which use, store or dispose of hazardous substances are not located in areas where they may adversely affect the health, safety and wellbeing of people and communities, unless it can be demonstrated that <u>the manage</u> residual risk to people and communities will be avoided <u>by avoiding such risk</u> or where avoidance is not practicable, remedied or mitigated to an acceptable level”.</i></p>	<p>I support the amendments sought to HSUB-P2 (with minor grammatical changes) for the reasons outlined by L Wharfe (in particular paragraph 7.47 of her evidence) and recommend that the policy be amended as shown below and as set out in Appendix 1.</p> <p>HSUB-P2 – People and Communities</p> <p>To ensure <u>that</u> activities which use, store or dispose of hazardous substances are not located in areas where they may adversely affect the health, safety and wellbeing of people and communities, unless it can be demonstrated that the <u>manage</u> residual risk to people and communities will be avoided <u>by avoiding such risk</u>, or where avoidance is not practicable, remedying <u>remedied</u> or mitigating <u>such risk</u> to an acceptable level.</p>	<p>Horticulture NZ – Accept</p>

HSUB-P3 (s42A Part G)			
<p>Horticulture NZ (4/5)</p>	<p>HSUB-P3 – <i>Sensitive Environments and Areas</i> was notified as:</p> <p><i>“To ensure activities which use, store or dispose of hazardous substances are not located within sensitive environments and areas, unless it can be demonstrated that the residual risk to people, property and the environment will be avoided, or where avoidance is not practicable, remedied or mitigated to an acceptable level”.</i></p> <p>The s42A report recommended that HSUB-P3 was retained as notified.</p> <p>L Wharfe on behalf of Horticulture NZ sought the following amendments for the reasons outlined in paragraphs 7.51 – 7.63 of her evidence:</p> <p><i>“To ensure activities which use, store or dispose of hazardous substances <u>which are located</u> are not located within sensitive environments and areas <u>manage</u>, unless it can be demonstrated that the residual risk to people, property and the environment <u>by avoiding such risk</u> will be avoided, or where avoidance is not practicable, remedied or mitigate to an acceptable level”.</i></p>	<p>As noted in s42a report, I still consider the wording sought by Horticulture NZ is similar to the policy wording that was notified. However, further evidence has clarified the submitter’s intent. I now support the amendments sought to HSUB-P3 (with minor grammatical changes) for the reasons outlined by L Wharfe and recommend that the policy be amended as shown below and as set out in Appendix 1.</p> <p>HSUB-P3 – Sensitive Environments and Areas</p> <p>To ensure activities which use, store or dispose of hazardous substances <u>which are located</u> are not located within sensitive environments and areas <u>manage</u>, unless it can be demonstrated that the residual risk to people, property and the environment <u>by avoiding such risk</u> will be avoided, or where avoidance is not practicable, remedying ingie or mitigating ged <u>such risk</u> to an acceptable level.</p>	<p>Horticulture NZ – Accept</p>
Definitions (s42A Part I)			
<p>The Fuel Companies (X009)</p>	<p>The definition of ‘Residual Risk’ was not notified. In response to submissions, the s42a recommended the inclusion of a definition of “Residual Risk” as follows:</p> <p>“Residual Risk (This definition only applies to the Hazardous Substances Chapter of the District Plan).</p> <p><i>means any risk of an adverse effect after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work Act (2015) and regional planning instruments, have been complied with”.</i></p> <p>S Westoby on behalf of The Fuel Companies sought the following amendment to the definition for the reason outlined in Section 5 of her evidence:</p>	<p>I acknowledge the rationale of the amendments sought to the “residual risk” definition. However, I do not consider it appropriate to limit consideration of residual risks to only adverse effects “beyond the site boundary”.</p> <p>Site is defined in the WDP as:</p> <p><i>means:</i></p> <ol style="list-style-type: none"> a. <i>an area of land comprised in a single record of title under the Land Transfer Act 2017; or</i> b. <i>an area of land which comprises two or more adjoining legally defined allotments in such a way that the allotments cannot be dealt with separately without the prior consent of the Council; or</i> 	<p>The Fuel Companies – Reject</p>

	<p>“Residual Risk (This definition only applies to the Hazardous Substances Chapter of the District Plan)</p> <p>means any risk of an adverse effect <u>beyond the site boundary</u> after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work Act (2015) and regional planning instruments, have been complied with”.</p>	<p>c. the land comprised in a single allotment or balance area on an approved survey plan of subdivision for which a separate record of title under the Land Transfer Act 2017 could be issued without further consent of the Council; or</p> <p>d. despite paragraphs (a) to (c), in the case of land subdivided under the Unit Title Act 1972 or the Unit Titles Act 2010 or a cross lease system, is the whole of the land subject to the unit development or cross lease</p> <p>“Sites” can often be quite large and can comprise numerous activities. Appendix 4 contains examples of three large sites in the District which are briefly described below. These examples illustrate why limiting the definition to just applying beyond the site boundary does not reflect real-world scenarios where “sites” can contain a range of activities.</p> <p><u>Example 1: New World Grocery Store Site</u></p> <p>This site is zoned as Local Centre Zone and has an area of approximately 1.38ha. The site currently has a petrol station and a grocery store.</p> <p><u>Example 2: BP Service Station Site</u></p> <p>This site is zoned as Neighbourhood Centre Zone and has an area of approximately 5,264m². The site currently has a petrol station and food and beverage activities.</p> <p><u>Example 3: Northport Site</u></p> <p>This site is zoned as Port Zone and has an area of approximately 4.6ha. The Port Zone provides for a range of “port activities” and the site predominately comprises port activities as well as a “Sea-farers Mission and Managers Accommodation”. These terms are defined in the WDP as follows:</p> <p>Port Activities means the use of land and/or building within the Port Zone for port related activities, including but not limited to:</p>	
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		<p>a. port and ancillary port activities; b. cargo handling, including the loading, unloading, storage, processing and transit of cargo; c. debarking; d. fumigation; e. transport, storage and goods handling activities; f. maritime passenger handling/services; g. construction, maintenance and repair of port operations and facilities; h. port administration; i. refuelling/fuel handling facilities; j. activities associated with surface navigation, berthing; k. maintenance or repair of a reclamation or drainage system; l. marine and port accessory structures and services. m. repair and maintenance services and facilities ancillary to port activities.</p> <p>Sea-Farers Mission and Managers Accommodation means Christian welfare centre located within the Port Zone providing communal facilities for transitional merchant seafarers. Includes a single residential unit to be used solely for the purpose of providing accommodation for the Manager/Pastor of the Sea Farers Mission and immediately family. Does not include motels or hotels, backpackers, bed and breakfast, farmstay or homestay accommodation, or any other types of accommodation.</p> <p>I recommend that the definition of “residual risk” be retained as recommended in the s42A report and as set out in Appendix 1.</p>	
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Do we need rules in the Hazardous Substances Chapter?

8. Throughout the hearing the key issue of contention was whether rules are required in the WDP, and specifically in the HSUB Chapter, to manage the residual risk and reverse sensitivity effects of hazardous substances.
9. PC91 proposes to remove the WDP rules specifically relating to hazardous substances. I maintain that this approach is appropriate and do not recommend the inclusion of hazardous substance specific rules for the reasons set out below. I have included further assessment of potential rules in paragraphs 54 – 59 to assist the Commissioner if he is of a mind to consider that rules are appropriate.
10. As noted in the section 32 (**s32**) report¹ the Resource Legislation Amendment Act 2017 (**RLAA**) amendments to the Resource Management Act 1991 (**RMA**) removed the explicit function of local authorities to control the adverse effects of the storage, use, disposal, and transportation of hazardous substances. The Ministry for the Environment Guidance of Hazardous Substances (2019) (**MFE Guide**)² stated that while councils do retain a broad power under the RMA to manage hazardous substances through their plans to achieve the purpose of the RMA, 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 (**HSW**). The MFE Guide states:

In most cases, the HSNO Act and the HSW Act controls are adequate to avoid, remedy or mitigate adverse environmental effects of hazardous substances. However, in particular circumstances it may be appropriate that RMA controls are used, subject to robust s32 analysis to ensure that such controls are effective and efficient... The expectation is that controls on hazardous substances in RMA plans will be the exception rather than the norm³.

11. The MFE Guide indicates that controls to manage the effects of the use of hazardous substances is generally only warranted when hazardous substances are located within sensitive environments and/or to manage incompatible activities. To this point the MFE Guide states:

One of the key circumstances where councils may want to consider addressing hazardous substances in their RMA plans is where the risk to the receiving environment is of such significance that the risk of a hazardous facility in a specific location may not be acceptable without additional mitigation, taking into account controls under HSNO Act and the HSW Act.⁴

12. The MFE Guide also identified Major Hazardous Facilities (**MHFs**) as an example of where hazardous substances may pose a risk off site and may warrant additional controls. According to WorkSafe there are two MHFs within the Whangārei District⁵. Appendix 5 contains a description of the two MHFs in the District.

¹ [Section 32 Report - Plan Change 91 \(PC91\) Hazardous Substances - Notification \(wdc.govt.nz\)](#) (paragraph 5)

² [managing-hazardous-substances.pdf \(qualityplanning.org.nz\)](#) (MFE Guide)

³ [managing-hazardous-substances.pdf \(qualityplanning.org.nz\)](#) (page 2)

⁴ [managing-hazardous-substances.pdf \(qualityplanning.org.nz\)](#) (page 2)

⁵ [MHF public information | WorkSafe](#) I am aware in S Westoby's tabled evidence that she reference's 3 MHFs in the District, I base my understanding on the WorkSafe website which only lists 2 MHFs.

13. In light of the RLAA and the changes to the RMA, PC91 proposes objectives and policies to manage hazardous substances and relies on other legislation such as HSNO and HSW as the primary methods for achieving the objectives and policies.
14. The WDP also contains zone-based provisions as discussed in the s42A report⁶. The purpose of the zone-based framework and zone mapping is to be secondary to, and to support, the role of HSNO and HSW by providing land use controls to help manage the more significant potential adverse effects between incompatible activities such as the zoning for the MHFs described in Appendix 5.
15. Rules for managing hazardous substances were considered as part of the plan change development process. Hazardous substance rules in other district plans⁷ were used as examples for the analysis. The analysis concluded that those rules were an inefficient way of managing hazardous substances. It was considered that specific hazardous substance rules were inappropriate as they duplicated controls under other legislation. Further discussion on the efficiency and effectiveness of potential rules is covered in paragraphs 54 – 59 below.
16. As noted in the MFE Guide, I consider that any RMA controls to manage hazardous substances should be the exception rather than the norm and must be supported by robust s32 analysis.
17. I do not consider that sufficient analysis and justification was provided in any evidence to suggest that RMA controls are required in Whangārei, and I have been unable to identify any specific examples where HNSO or HSW is insufficient for managing hazardous substances.
18. I have reviewed the provisions in several other district plans as well as other hearing documents on this topic. Of particular relevance was the hearing on hazardous substances for the Christchurch Replacement District Plan.
19. As part of the Christchurch Replacement District Plan expert evidence was provided by Dr Dawson on behalf of the Crown. Dr Dawson⁸ is a principal scientist at the Environmental Protection Authority. He noted that the purpose of HSNO is *“to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances....”*.
20. Dr Dawson specifies that the HSNO regime *“comprises a comprehensive set of regulatory tools capable of being used on a stand-alone basis to manage hazardous substances” to achieve the [HSNO] Act’s purpose*⁹.
21. Dr Dawson also stated *“that many HSNO requirements, while generic, are aimed at protecting the environment and people’s health and safety from hazardous substances, irrespective of their location.*

⁶ [PC91 - Hazardous Substances - Section 42A Report \(wdc.govt.nz\)](#) (paragraph 42)

⁷ The plans assessed include the draft Far North District Plan, the Porirua Proposed District Plan, the Wellington District Plan, the appeals version Kapiti Coast District Plan, and the appeals version South Taranaki District Plan.

⁸ [2387-Crown-Hazardous-Substances-Evidence-of-Peter-Dawson-with-attachments-30-9-15.pdf \(ihp.govt.nz\)](#)

⁹ [Decision-18-Hazardous-Substances-and-Contaminated-Land-and-relevant-definitions-Stages-1-and-2-Copy.pdf \(ccc.govt.nz\)](#) (paragraphs 38 and 39).

In other words, mitigating risk to levels acceptable for people in the workplace and others in the immediate vicinity”¹⁰.

22. Dr Dawson considered that controls may be useful in relation to natural hazards and reverse sensitivity, stating: *“District plans can in my view sensibly guide the appropriate location for hazardous facilities through zoning provisions where specific issues such as possible natural hazards and ‘reverse sensitivity’ are in play”¹¹.*
23. However, with regard to natural hazards Dr Dawson is of the opinion that an emergency response plan¹² should take into account the potential for natural hazards to affect the site. An emergency response plan is a requirement of HSW and must describe and apply to all reasonably foreseeable emergencies that may arise from a breach or failure of the controls on any hazardous substance present or likely to be present at the workplace¹³. Dr Dawson indicates that *“While the regulations do not make explicit reference to natural features in the vicinity of a site, or planning to respond to natural hazards affecting a site and therefore giving rise to an emergency, it is my opinion that it would be necessary for an emergency response plan to take into account natural features unique to the site / area (e.g. streams) if these could conceivably be at risk from the site activities, and the potential for natural hazards to affect the site”¹⁴.*
24. A key matter raised in D Badham’s evidence on behalf of Ngā Tai Ora is that rules are needed to manage hazardous substances in relation to natural hazard areas as there is policy direction for this in the Northland Regional Policy Statement (**NRPS**)¹⁵. As noted in the s32 report¹⁶ the NRPS does contain policies that require hazardous substances to be managed in areas subject to flooding and coastal hazards. However, the NRPS does not direct that District Plans must have rules. I consider that HSN0 and HSW could be methods used to achieve the policies. Additionally, it is important to emphasise that the NRPS and these policies were prepared prior to the RLAA amendments that removed the explicit function of local authorities to manage hazardous substances.
25. The Christchurch District Plan includes matters of discretion in the Natural Hazards Chapter of the District Plan in respect of restricted discretionary rules RD 34, 36, 37, 38, 39 and 40. These address the safe design of facilities for the use and storage of hazardous substances in Slope Instability Management Areas¹⁷.
26. WDC is preparing a plan change to review all natural hazards provisions within the WDP, as part of its rolling review. This plan change will provide the opportunity to consider appropriate activity statuses and matters of control and discretion in relation to various natural hazard risks, including land

¹⁰ [Decision-18-Hazardous-Substances-and-Contaminated-Land-and-relevant-definitions-Stages-1-and-2-Copy.pdf \(ccc.govt.nz\)](#) (paragraph 40).

¹¹ [2387-Crown-Hazardous-Substances-Evidence-of-Peter-Dawson-with-attachments-30-9-15.pdf \(ihp.govt.nz\)](#) (paragraph 4.2)

¹² [Emergency plans | WorkSafe](#)

¹³ [Health and Safety at Work \(Hazardous Substances\) Regulations 2017 \(LI 2017/131\) \(as at 05 January 2022\) 5.7 Duty to prepare emergency response plan – New Zealand Legislation](#)

¹⁴ [2387-Crown-Hazardous-Substances-Evidence-of-Peter-Dawson-with-attachments-30-9-15.pdf \(ihp.govt.nz\)](#) (paragraph 5.4.2)

¹⁵ [PC91 - D Badham - Statement of Evidence of behalf of Nga Tai Ora 2 March 2023](#) (section 6)

¹⁶ [Section 32 Report - Plan Change 91 \(PC91\) Hazardous Substances - Notification \(wdc.govt.nz\)](#) (paragraph 84)

¹⁷ [Microsoft Word - Joint Memorandum on behalf of CCC and Crown re revised proposal 27 November 2015 \(FINAL\).docx \(ihp.govt.nz\)](#) (Section 6)

instability. Council officials are preparing to take the natural hazards plan change to Councillors in April 2023 for a decision to publicly notify the plan change. If approved for notification the plan change could be notified in late April or early May 2023¹⁸.

27. With regard to reverse sensitivity, these effects can be managed by methods other than by prescribing the design location of sensitive activities. Reverse sensitivity is defined in the WDP as:

means the potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment of other activities which are sensitive to the pre-existing activity.

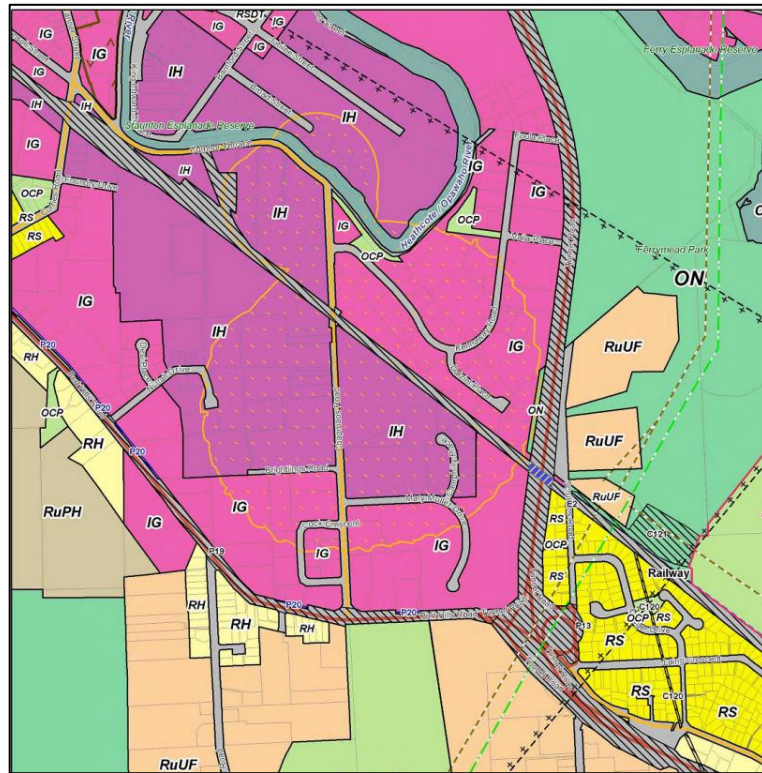
28. The primary outcome of proposed HSUB-P4 is to avoid reverse sensitivity effects. The policy directs this to be achieved through the appropriate design of new sensitive activities. However, reverse sensitivity effects could also be avoided in the first place by requiring facilities which use, store, or dispose of hazardous substances to manage their activities appropriately to ensure that there are no adverse effects externally that would give rise to reverse sensitivity. As noted above the role of the HSNO is to “*protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances*”.
29. The operative Christchurch District Plan’s Hazardous Substances chapter¹⁹ includes only two rules specifically managing hazardous substances. The first relates to the storage or use of hazardous substances within proximity to National Grid transmission lines and electricity distribution lines. The second relates to sensitive activities locating within the defined Woolston Risk Management Area (**WRMA**).
30. The location of the WRMA is marked by the orange boarder on Planning Map 47A²⁰ of the Christchurch District Plan as shown in Figure 1 below. The WRMA overlays an Industrial Heavy Zone (purple) and Industrial General Zone (pink).

Figure 1: Planning Map 47A – Christchurch District Plan

¹⁸ [eSCRIBE Agenda Package \(escribemeetings.com\)](https://www.escribemeetings.com) (refer to page 21 of Council Briefing Agenda 29 March 2023)

¹⁹ [DistrictPlan \(ccc.govt.nz\)](https://www.ccc.govt.nz/DistrictPlan)

²⁰ [PlanningMaps_47.pdf \(ccc.govt.nz\)](https://www.ccc.govt.nz/PlanningMaps_47.pdf)



31. Within the WDP, the Heavy Industrial Zone (**HIZ**) and the Light Industrial Zone (**LIZ**) are the zones where it is anticipated that most large-scale industrial activities will occur. The HIZ and LIZ require consent as a non-complying activity for sensitive activities such as residential activities, visitor accommodation, care centres, educational facilities, and places of assembly. I consider that the approach applied in the Christchurch District Plan to manage reverse sensitivity effects in the WRMA has essentially been applied to the HIZ and LIZ more broadly in the WDP to manage reverse sensitivity effects within these zones through the zone-based framework.
32. For the Christchurch District Plan the Hearing Panel decision²¹ stated the following reasons for the recommended approach:

.... the Revised Proposal provides for a simple, easy-to-use regime under which rules apply to the storage and use of hazardous substances only in specifically justified, limited circumstances.

The controls provided for by the Revised Proposal include an appropriate, limited rule framework addressing location-specific issues, requiring consent for hazardous facilities near particularly sensitive areas that require specific protection through the Replacement District Plan, namely:

(a) Transpower transmission lines (protected through Rule 12.1.2.2.2 NC1); and

(b) Slope Instability Management Areas (addressed through the additional matter for discretion to be inserted in Chapter 5).

The Revised Proposal also appropriately restricts sensitive activities close to major hazardous facilities, as a way of dealing with reverse sensitivity. This is done through Rule 12.1.2.2.2 NC1, which covers specifically identified Risk Management Areas containing major hazardous facilities.

²¹ [Decision-18-Hazardous-Substances-and-Contaminated-Land-and-relevant-definitions-Stages-1-and-2.pdf \(ihp.govt.nz\)](#) (paragraph 72)

33. I was unable to identify any specific reasons in the Hearing Panel's decision on why rules for managing natural hazards and reverse sensitivity (besides the WRMA) were not included in the Hazardous Substances Chapter of the Christchurch District Plan.
34. Having heard the evidence from submitters and reviewed other district plan provisions and plan change documents, my overall position as to whether rules are needed in the HSUB Chapter has not changed. I am still of the opinion that the inclusion of rules in the HSUB Chapter is inappropriate for the reasons above and because I do not consider that sufficient analysis and justification was provided in any evidence to suggest that RMA controls are required in Whangārei.
35. The MFE Guidance has indicated that in most cases, the HSNO and HSW controls are adequate to manage hazardous substances and that any RMA controls must be subject to robust s32 analysis to ensure their appropriateness. In my opinion Ngā Tai Ora has not assessed the potential implications of the RMA controls sought in their evidence.
36. To assist the Commissioner, I have included analysis below of potential options for hazardous substances rules if the Commissioner is of a mind to consider that rules are appropriate. This analysis also highlights the inefficiencies with potential rules in support of my primary recommendation that the inclusion of rules in the HSUB Chapter is inappropriate.

Evaluation of Ngā Tai Ora Relief Sought

37. In their submission Ngā Tai Ora opposed PC91 as proposed. The relief sought by Ngā Tai Ora²² was:
1. *Include appropriate rules for the management storage, use, transport and disposal of hazardous substances in PC91. At a minimum, this should include (but is not limited to) the inclusion of rules managing:*
 - a. *The establishment or expansion of facilities managing, storing, using or disposing of hazardous substances within, or in close proximity to, sensitive environments (e.g., residential areas or adjacent to schools or health care facilities and hospitals).*
 - b. *The establishment of sensitive activities (e.g., residential activities, marae schools or healthcare facilities and hospitals) adjacent to, or within close proximity to, lawfully established hazardous substances facilities.*
 - c. *The establishment or expansion of facilities managing, storing, using or disposing hazardous substances in areas that may increase the risk of accident or adverse effects on public health and safety, and the environment (e.g., in areas subject to natural hazards or adjacent to sensitive natural environments or habitats).*
 - d. *Appropriate limits or thresholds for the storage of certain hazardous substances across the various zones in the WDP.*
38. The s42a report recommended that Ngā Tai Ora's submission be rejected²³.

²² [PC91 - Hazardous Substances - Original Submissions 001 to 006](#) (refer to Section 2.1 of Ngā Tai Ora submission (submission 5))

²³ [PC91 - Hazardous Substances - Section 42A Report](#) (paragraphs 44 – 47)

39. D Badham in his evidence on behalf of Ngā Tai Ora²⁴ considered that there were inadequacies in the s32 report which need to be addressed by further by Council. D Badham proposed the following high-level options to assist the Commissioner:

***Option 1** – Further consequential changes to update the zone-based rules to ensure that all “sensitive activities” and activities that generally use, store or dispose of hazardous substances are adequately captured by appropriate rule triggers to enable the consideration of the HSUB objectives and policies. However, given the scale of the changes that may be required, I suspect that this may have issues as to the scope of PC91 and submissions that go beyond my area of expertise, and may require specific legal advice.*

***Option 2** – Include overall provisions for setbacks for “sensitive activities” from “significant hazardous facilities” and vice versa, similar to the approach applied in the Proposed FNDP.*

***Option 3** – Placeholder provision requiring discretionary activity consent for “significant hazardous facilities” in “sensitive environments and areas.” This could remain until Council completes other plan changes that it has signalled within its Rolling Review.*

Discussion of Ngā Tai Ora Option 1

40. My understanding of Option 1 is that it would require amendments to various zone rules across the WDP. In his evidence on behalf of Ngā Tai Ora, D Badham has identified some examples of areas where he considers there are “gaps” in the zone rules²⁵. However, D Badham’s evidence has not identified specific amendments that would be required under Option 1.
41. While I accept the rationale behind Option 1, I consider that it could have wider impacts beyond addressing matters related to hazardous substances and could have significant unintended consequences. Furthermore, I do not consider that Option 1 would give effect to the National Planning Standards (**Planning Standards**) as required under s75(3) of the RMA.
42. As an example of a potential unintended consequence, D Badham considers that there is a gap within the Commercial Zone (**COMZ**) whereby sensitive activities such as educational facilities are permitted but the zone allows for a range of industrial activities which could use, store, or dispose of hazardous substances²⁶. To address this concern a potential amendment could be to change the activity status of educational facilities from permitted to restricted discretionary with discretion limited to matters related to hazardous substances. However, this would still require all educational facilities to apply for resource consent and would impose additional consenting costs.
43. As noted at the Hearing, Option 1 raises concerns of natural justice and scope. People that would be potentially affected by such a change as described in paragraph 42 may not have reasonably anticipated the change and therefore may not have had an opportunity to participate. The Ngā Tai Ora submission was relatively broad as it sought to “include appropriate rules for the management storage, use, transport and disposal of hazardous substances in PC91”²⁷. However, as noted above a change along the lines of amending the activity status of educational facilities across the entire COMZ

²⁴ [PC91 - D Badham - Statement of Evidence of behalf of Nga Tai Ora 2 March 2023](#) (paragraphs 12.1 – 12.2)

²⁵ [PC91 - D Badham - Statement of Evidence of behalf of Nga Tai Ora 2 March 2023](#) (paragraphs 8.9 – 8.21)

²⁶ [PC91 - D Badham - Statement of Evidence of behalf of Nga Tai Ora 2 March 2023](#) (refer to paragraph 8.9(b))

²⁷ [PC91 - Hazardous Substances - Original Submissions 001 to 006](#) (refer to section 2.1 of the Ngā Tai Ora submission (submission 5)).

could have impacts that extend beyond the purposes of “the management storage, use, transport and disposal of hazardous substances”.

44. One approach to Option 1 could be to amend the zone rules in a way that better confines the amendments to matters related to hazardous substances (e.g., amend the activity status of educational facilities in the COMZ to require consent where it is located within a certain distance from “significant hazardous facilities (**SHFs**)” (or similar term)). This would be more consistent with the Ngā Tai Ora submission and could have been more reasonably anticipated by potentially affected people. However, in my opinion this would not give effect to the Planning Standards.
45. Mandatory Direction 12 of Section 7 of the Planning Standards²⁸ states:

If provisions relating to hazardous substances are addressed, they must be located in a chapter titled Hazardous substances under the Hazards and risks heading.
46. If a rule was seeking to specifically address matters related to hazardous substances, I consider it should be located in the HSUB Chapter rather than having numerous provisions across all the zone chapters of the WDP.
47. For these reasons, if the Commissioner does consider that rules should be included within the WDP through PC91, Option 1 as sought by Ngā Tai Ora is not an appropriate response in my opinion.

Discussion of Ngā Tai Ora Option 3

48. My understanding of Option 3 is that a placeholder rule would be included in the WDP to manage “SHFs” in “sensitive environments and areas”, and that this would then be reviewed as part of future plan changes for those sensitive environments and areas.
49. I do not consider Option 3 appropriate as it could result in an uncertain and inefficient process and, similarly to Option 1, risks not giving effect to the Planning Standards.
50. Council is in the process of reviewing the WDP provisions related to natural hazard as noted in paragraph 26 above. The proposed “sensitive environments and areas” definition includes areas that are unlikely to be addressed as part of the natural hazards plan change (e.g., High Natural Character Areas, Outstanding Natural Character Areas, Outstanding Natural Landscapes, Outstanding Natural Features, Heritage Buildings, and Northpower Critical Electricity Lines). Therefore, there will be several “sensitive environments and areas” that are not scheduled to be reviewed soon.
51. Furthermore, relying on a future plan change to develop rules for managing hazardous substances could result in re-litigating issues that could be more efficiently addressed once through PC91.
52. Lastly, if the intent of Option 3 would be to include rules within each of the District Wide Matters Chapters related to each “sensitive environment and area”, then I do not consider that this would give effect to the Planning Standards for the reasons outlined in paragraphs 44 – 46 above.

²⁸ <https://environment.govt.nz/assets/publications/national-planning-standards-november-2019-updated-2022.pdf>

53. For these reasons, if the Commissioner does consider that rules should be included within the WDP through PC91, Option 3 as sought by Ngā Tai Ora is not an appropriate response in my opinion.

Discussion of Ngā Tai Ora Option 2

54. My understanding of Option 2 is that it would require the introduction of provisions similar to the approach applied in the Proposed Far North District Plan (**FNDP**)²⁹.

55. In his evidence on behalf of Ngā Tai Ora, D Badham indicated that the approach taken by Far North District Council (**FNDC**) included a definition of “SHF” and rules requiring resource consent where these are located within a sensitive environment, or within 250m of a “sensitive activity”. There is also a requirement that new “sensitive activities” cannot be located within 250m of an “SHF”³⁰.

56. D Badham clarified in his evidence that the Proposed FNDP approach is as an example for consideration. This did not necessarily mean that he agreed with the 250m setback, as he was unaware of the justification for the setback.³¹ However, D Badham’s evidence has not identified specific provisions or definition of “SHF” that would be required under Option 2.

57. For the purposes of this evaluation, I have considered the following options:

- **Option 2a** – Inclusion of the Proposed FNDP rules in the HSUB Chapter of the WDP. The Proposed FNDP rules are included in Appendix 2. I acknowledge that minor changes may be required to the formatting and terminology to be consistent with the WDP, but for the purposes of this evaluation I have included the Proposed FNDP rules in full.
- **Option 2b** – Inclusion of rules in the HSUB Chapter of the WDP to manage “SHFs” within natural hazard areas, and to manage “sensitive activities” in proximity to “SHFs”. Draft wording of Option 2b rules is included within Appendix 3.

58. The tables below provide assessments of each option compared against each other. As stated in paragraph 34, I do not consider that any rules should be included in the HSUB Chapter. However, this assessment provides further commentary on the appropriateness of potential rules under Options 2a and 2b to assist the Commissioner.

²⁹ [PC91 - D Badham - Statement of Evidence of behalf of Nga Tai Ora 2 March 2023](#) (paragraph 11.3)

³⁰ [PC91 - D Badham - Statement of Evidence of behalf of Nga Tai Ora 2 March 2023](#) (paragraph 12.2(b))

³¹ [PC91 - D Badham - Statement of Evidence of behalf of Nga Tai Ora 2 March 2023](#) (footnote 31)

Option 2a – Include provisions in the HSUB Chapter similar to the Proposed FNDP provisions – see Appendix 2

Benefits	Costs
<p><u>Environmental</u></p> <p>The proposed provisions seek to minimise the risk from hazardous substances to the environment by requiring SHFs to be setback at least 250m from sensitive activities, and to be located outside of sensitive environments, as well as by ensuring that the maintenance or repair of a SHF does not increase the volume of hazardous substances within a facility or allow an existing SHF to move closer to a sensitive environment.</p> <p><u>Economic</u></p> <p>The proposed provisions seek to minimise economic risk to property and the health and safety of people by ensuring that SHFs do not locate in sensitive environments.</p> <p><u>Social</u></p> <p>The proposed provisions seek to minimise risk to property and the health and safety of people by requiring a setback of 250m for SHFs from sensitive activities and requiring that SHFs do not locate in sensitive environments.</p> <p><u>Cultural</u></p> <p>The proposed provisions seek to minimise risk by requiring a setback of 250m for SHFs from sensitive activities such as marae or places of assembly and by ensuring that SHFs do not locate in sensitive environments such as scheduled heritage resources.</p>	<p><u>Environmental</u></p> <p>Requiring that SHFs avoid locating in sensitive environments such as the coastal environment, may result in inefficient and ineffective land use as many industrial and port related activities often rely on access to the coast.</p> <p><u>Economic</u></p> <p>The FNDP rules may have significant economic cost implications for SHF operators and for sensitive activities and may significantly restrict land use options.</p> <p>The proposed provisions would impose additional consenting requirements and increase development costs, particularly where technical expert advice is required.</p> <p>There could be significant additional economic cost to Council to identify and map the locations of SHFs so that planning officers and the public are aware of their location when assessing resource and building consents.</p> <p>Without maps or identification of SHFs, people wishing to build sensitive activities would need to somehow determine if there are any SHFs within 250m of their activity to know whether they comply with the rules.</p> <p><u>Social</u></p> <p>None identified.</p> <p><u>Cultural</u></p> <p>None identified.</p>
<p>Effectiveness and Efficiency: Option 2a is generally effective in achieving the proposed objectives and policies, except for HSUB-P1 as the provisions do not avoid regulating hazardous substances where an adequate level of environmental protection is already provided by other methods and there are no identified residual risks in my opinion.</p> <p>In my opinion Option 2a will result in inefficient provisions. My primary concern with the provisions is that I consider they duplicate the function of other legislation such as HSNO and HSW and are unnecessary for the reasons discussed in paragraphs 8 – 36 above. However, I have several additional concerns with the efficiency of technical matters of the provisions, including:</p> <ul style="list-style-type: none"> The SHF definition includes a wide range of activities that are not defined. For example, it is unclear to me what exactly activities such as a “galvanising plant”, “metal treatment”, and “rendering plant” are meant to be and how they would be defined/determined. The SHF definition includes 	

the “manufacturing, including the associated storage, of hazardous substances”. “Hazardous substances” is defined in the RMA and includes any substance that is either intrinsically explosive or flammable. This could include a wide range of activities such as any activity manufacturing a material that is easily flammable such as paper-based products.

- The potential SHF definition contains a range of activities that are likely to have varying degrees of risk. It is unclear where this definition and list of terms has come from. I understand it has been used in several district plans and proposed plans around New Zealand, but I am unaware of the rationale behind why these specific activities are considered to be “significant hazardous facilities”. Applying consistent rules and setbacks to the wide range of activities listed in the SHF definition may be a blunt and inappropriate approach.
- If SHFs are not identified and mapped there will be efficiency issues for landowners and Council when determining whether a proposed activity will be an SHF or whether any SHFs are in proximity when establishing a sensitive activity. It is unclear how landowners would be expected to know whether an SHF is within 250m of their proposed sensitive activity. Council officers may similarly struggle to identify whether surrounding activities meet the definition of and SHF if they are not mapped or more clearly defined.
- The rationale for the proposed 250m setback of sensitive activities from new SHFs is not clear to me. The setback may be inefficient for managing reverse sensitivity risks because there is no evidence to justify why such a significant buffer distance is required for all of the SHF activities.
- It is unclear what the consenting process would provide above the requirements of HSNO and HSW. For example, S Westoby on behalf of The Fuel Companies, undertook analysis of land use consents granted in the Whangārei District for typical hazardous substance storage in her tabled evidence³² which demonstrated that the consenting of hazardous substances by Whangārei Council primarily results in the duplication of matters controlled under other legislation. This is the same conclusion that I reached in my analysis of hazardous substance land use consents recently granted by Whangārei District Council. S Westoby also indicated that in her experience similar scenarios had occurred in Auckland.
- Rules HS-R1 PER-4 and HS-R2 DIS-3 in the FNDP rules require an assessment of whether or not the SHF will increase residual risk to determine activity status. It is considered that these rules are not appropriate RMA rules as compliance cannot be clearly determined and is subject to interpretation.
- Rule HS-R2 DIS-1 in the FNDP requires discretionary consent at a minimum for all SHF in LIZ zoning. This could result in a restrictive rule framework for SHFs as the LIZ may be a zone where those sorts of activities are generally anticipated.

Risk of acting / not acting: There are significant risks of acting due to uncertain or insufficient information about the subject matter of the provisions. The MFE Guidance indicated that the expectation is that controls on hazardous substances in RMA plans should be the exception rather than the norm. However, the MFE Guidance states that some circumstances it may be appropriate that RMA controls are used, subject to robust s32 analysis to ensure that such controls are effective and efficient³³. Option 2a risks imposing rules that have not been subject to sufficient s32 analysis to support their inclusion. Ngā Tai Ora has not provided evidence to demonstrate the potential implications of the FNDP provisions.

³² [PC91 Hazardous Substances - The Fuel Companies Tabled Evidence \(wdc.govt.nz\)](#) (section 2)

³³ [managing-hazardous-substances.pdf \(qualityplanning.org.nz\)](#) (page 2)

The efficiency of the application of the SHF definition is uncertain due to the unknown origin of the SHF definition and list of activities, the activities listed are not defined, identified, or mapped, the wide range of activities and their potentially varying degrees of risk, and the uncertainty of the appropriateness of managing all of the SHF activities equally.

As the SHFs are not mapped the actual and potential costs of the proposal are unknown due to the number of potentially affected properties being undetermined. In my opinion, if the FNPD rules were to be included in the WDP then a more robust s32 analysis should be completed to determine the impact of the rules on both SHF operators and landowners who may wish to establish a sensitive activity within 250m of any SHF.

Overall evaluation of Option 2a: I consider that Option 2a is inefficient and it is not the most appropriate way of managing the residual risk to people, property and the environment, or avoiding reverse sensitivity after other industry controls and legislation have been complied with. There are significant risks of acting associated with implementing this option because the potential impacts of the proposed provisions are uncertain and there is insufficient information about the proposed rules.

Option 2b – Include provisions in the HSUB Chapter focused on managing effects related to natural hazard areas and reverse sensitivity – see Appendix 3

Benefits	Costs
<p><u>Environmental</u></p> <p>Similar to 2a but slightly more appropriate because the reduced setback of 50m³⁴ is more evidence based. It is derived from a conservative separation distance for hazardous substances from protected places in Schedule 17 of HSW.</p> <p><u>Economic</u></p> <p>Similar to 2a but slightly less economic cost because of the refined provisions.</p> <p><u>Social</u></p> <p>Similar to 2a but slightly more appropriate because of the refined provisions.</p> <p><u>Cultural</u></p>	<p><u>Environmental</u></p> <p>Similar to 2a but the refined provisions are likely to have fewer implications for the establishment of new activities.</p> <p>Similar to 2a but is less restrictive on potential land use options as only requires that SHFs do not locate in natural hazard areas.</p> <p><u>Economic</u></p> <p>Similar to 2a but less economic cost because SHFs rules apply to natural hazard areas only, which will reduce consenting costs and increase potential land use options.</p> <p>Similar costs to 2a for sensitive activities but less economic cost around the establishment of new sensitive activities due to the refined provisions.</p>

³⁴ [Health and Safety at Work \(Hazardous Substances\) Regulations 2017 \(LI 2017/131\) \(as at 05 January 2022\) Schedule 17 Minimum separation distances for stores of packaged class 6.1 substances – New Zealand Legislation](#) Schedule 17 of the HSWA indicates that the greatest separation distance from protected places is 50m for class 6.1 substances, which are present at Channel Terminal Service Limited's upper tier MHF, many separation distances for other hazardous substances of a lower classification are less than 50m, but 50m would be applying the most conservative setback. Protected place is defined in HSWA: [Health and Safety at Work \(Hazardous Substances\) Regulations 2017 \(LI 2017/131\) \(as at 05 January 2022\) 3 Interpretation – New Zealand Legislation](#)

<p>Similar to 2a but slightly more appropriate because of the refined provisions.</p>	<p>Equivalent to 2a in that there will still be an additional economic cost to Council to identify and map the locations of SHFs so that planning officers are aware of their location when assessing resource consents.</p> <p><u>Social</u> None identified.</p> <p><u>Cultural</u> None identified.</p>
<p>Effectiveness and Efficiency: In my opinion Option 2b is generally effective in achieving the objective and policies proposed.</p> <p>In my opinion Option 2b is slightly more efficient than Option 2a due to the following key amendments:</p> <ul style="list-style-type: none"> • The refinements to the SHF definition improve its efficiency. For example, clause (b) in the Option 2a definition has been removed because it is very broad and adds more uncertainty to the definition and provisions. Additionally, a list of activities not considered to be SHFs has been included to add clarity and certainty for decision-making. • The reduced 50m setback is more efficient than the 250m setback as it more evidence based. The reduce setback will provide for an increase in potential land use options and a reduction in consenting costs compared with Option 2a. • The requirement for SHFs to avoid locating in natural hazard areas only is more efficient as it provides for a less restrictive approach and allows for an increase in potential land use options and a reduction in consenting costs compared with Option 2a. • The deletion of the inefficient rules proposed in Option 2a (HS-R1 PER-4, HS-R2 DIS-1, HS-R2 DIS-3) is more efficient as the framework for decision-making is clearer which reduces consenting costs and increases potential land use options. • The deletion of the additional rules proposed in Option 2a (HS-R1 PER-1 to PER-3, HS-R3 to HS-R11) is a more efficient as it avoids duplication with HSNO, HSW, and other legislation. <p>I have discussed the above amendments with other WDC officials, and the Resource Consents Team and it is considered that they will reduce some of the inefficiencies identified for Option 2a above. However, in my opinion Option 2b will still result in inefficiencies and duplicate the functions of other legislation. Efficiency issues for landowners and Council will remain as SHFs are not defined, identified, and mapped. The SHF definition would also still contain a wide range of activities that may be inefficient to manage under the same rule framework. Additionally, it will still be unclear what the consenting process would provide in addition to the requirements of other legislation already in place.</p>	
<p>Risk of acting / not acting: Similar to Option 2a there are significant risks of acting due to uncertain or insufficient information about the subject matter of the provisions. Option 2b still risks imposing rules that have not been subject to a sufficiently robust s32 analysis to justify their inclusion. However, I consider the risk of acting is less than that of Option 2a due to the fewer land use implications of the refined provisions.</p>	

Overall evaluation of Option 2b: I do not consider Option 2b appropriate as the additional controls could result in the inefficient regulatory duplication of other legislation and a rule framework with significant risks and inefficiencies. However, I do consider that Option 2b is slightly more efficient and appropriate than Option 2a for the reasons outlined above.

59. As noted earlier, in my opinion the inclusion of rules in the HSUB Chapter is unnecessary and inappropriate. If the Commissioner is of a mind to insert rules, then I consider that Option 2b is more appropriate than Options 1, 2a, and 3 above.

Conclusions and Recommendations

60. After carefully considering the evidence received, I recommend that PC91 be amended to the extent detailed in the table above and as illustrated in **Appendix 1**.
61. The revised provisions in **Appendix 1** have been assessed and compared above against viable alternatives in terms of their costs, benefits, efficiency and effectiveness and risk in accordance with the relevant clauses of s32AA. Overall, it is considered that the revised provisions represent the most efficient and effective means of achieving the purpose of the RMA and the proposed PC91 objectives.

Author

A handwritten signature in blue ink that reads "Taya Baxter". The signature is written in a cursive, flowing style.

Taya Lauren Baxter
Planner – District Plan
11 April 2023

Hazardous Substances (HSUB)

Issues

Hazardous substances are used throughout the District and include a wide range of substances such as medical waste, petroleum products, explosives, and industrial, agricultural and household chemicals. These substances can pose potential threats to the health and safety of people and can have significant adverse effects on the environment. At the same time, their use, storage, manufacture and disposal allow people to provide for their social and economic wellbeing, and their health and safety.

There is a wide range of legislation and industry standards controlling hazardous substances. Principal amongst these is the Hazardous Substances and New Organisms Act 1996 which provides the general framework for controlling hazardous substances during their entire life cycle. There are additional controls relating to hazardous substances in the Proposed Regional Plan for Northland, the Land Transport Act 1998, the Radiation Safety Act 2016, the Building Act 2004, the Health and Safety at Work Act 2015 and the Health and Safety at Work (Hazardous Substances) Regulations 2017.

In addition to the above controls, the District Plan manages adverse effects associated with hazardous substances and potential reverse sensitivity effects through spatial zoning and underlying zone rules.

Given the level of regulation controlling hazardous substances, the Hazardous Substances Chapter seeks to avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the District Plan. The chapter will address the residual risk to people, property and the environment, and reverse sensitivity after other industry controls and legislation have been complied with, and where consent is required based on other district wide and area specific chapter rules.

Objectives

HSUB-O1 – Residual Risks	Property, the <u>environment</u> and the health and safety of people are protected from any unacceptable levels of <u>residual risk</u> associated with the location or expansion of facilities that use, store or dispose of <u>hazardous substances</u> .
HSUB-O2 – Reverse Sensitivity	<u>Sensitive activities</u> do not constrain or curtail existing areas and activities which use, store or dispose of <u>hazardous substances</u> .

Policies

HSUB-P1 – Residual Risks	To recognise the role of national and regional organisations, including the Environmental Protection Authority, WorkSafe and Northland Regional Council, in managing <u>hazardous substances</u> and avoid regulating <u>hazardous substances</u> where an adequate level of human health and environmental protection is already provided and there are no identified <u>residual risks</u> .
HSUB-P2 – People and Communities	To ensure that activities which use, store or dispose of <u>hazardous substances</u> manage <u>residual risk</u> to people and communities by avoiding such risk, or where avoidance is not practicable, remedying or mitigating such risk to an acceptable level.
HSUB-P3 – Sensitive Environments and Areas	To ensure activities which use, store or dispose of <u>hazardous substances</u> which are located within <u>sensitive environments and areas</u> manage the <u>residual risk</u> to people, property and the <u>environment</u> by avoiding such risk, or where avoidance is not practicable, remedying or mitigating such risk to an acceptable level.
HSUB-P4 – Reverse Sensitivity	To avoid <u>reverse sensitivity</u> effects by requiring <u>sensitive activities</u> to be appropriately designed and located in relation to existing areas and activities which use, store or dispose of <u>hazardous substances</u> .

New Definitions:

Sensitive Environments and Areas

means:

- a. High Natural Character Areas.
- b. Outstanding Natural Character Areas.
- c. Outstanding Natural Landscapes.
- d. Outstanding Natural Features.
- e. Flood Hazard Areas.
- f. Coastal Hazard Areas.
- g. Mining Hazard Areas.
- h. Sites and Areas of Significance to Māori.
- i. Heritage Buildings, Sites and Objects.
- j. Northpower Critical Electricity Lines.

Residual Risk (*This definition only applies to the Hazardous Substances Chapter of the District Plan*).

means any risk of an adverse effect after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work Act (2015) and regional planning instruments, have been complied with.

Consequential Amendments:

- *Delete Hazardous Substances Chapter and Appendices 8a – 8d.*
- *Delete “hazardous facility” and “hazardous sub facility” definitions.*
- *Delete the following reference documents from the Referenced Documents Chapter:*
 - *Department of Labour, 1992 Code of Practice for Design Installation and Operation of Underground Petroleum System.*
 - *AS/NZ 1596:1997 Australian and New Zealand standard for Storage and Handling of LPG.*
 - *New Zealand Radiation Protection Regulations 1982.*
 - *NZS 8409: 1999 New Zealand Code of Practice for the Management of Agrichemicals.*
 - *New Zealand Chemical Industry Council 1987 Code of Practice or Warning Signs for Premises Storing Hazardous Substances.*
 - *New Zealand Ministry for the Environment 1999 Land Use Planning for Hazardous Facilities – A Resource for Local Authorities and Hazardous Facility Operators.*

Appendix 2: Far North District Council Proposed Hazardous Substances Chapter Rules

Rules		
HS-R1 Maintenance and repair of a significant hazardous facility		
All zones	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1 The volume of hazardous substances used by the significant hazardous facility does not increase;</p> <p>PER-2 The location of hazardous substances on the site will not be located closer to any sensitive activities.</p> <p>PER-3 The type of hazardous substances on the site remains the same;</p> <p>PER-4 Alterations to the significant hazardous facility do not increase any residual risks.</p>	<p>Activity status where compliance not achieved with PER-1, PER- 2, PER- 3, or PER-4: Discretionary</p>
HS-R2 Establishment of a new significant hazardous facility		
Heavy Industrial zone	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1 The new significant hazardous facility is not located within a sensitive environment;</p> <p>PER-2 The new significant hazardous facility is setback at least 250m from a sensitive activity.</p>	<p>Activity status where compliance not achieved with PER-1 or PER-2: Discretionary</p>
Light Industrial zone	<p>Activity status: Discretionary</p> <p>Where:</p> <p>DIS-1 The new significant hazardous facility is not located within a sensitive environment;</p>	<p>Activity status where compliance not achieved with DIS-1, DIS-2, or DIS-3: Non-complying</p>

Rural Production zone	<p>DIS-2</p> <p>The new significant hazardous facility is setback at least 250m from a sensitive activity;</p>	
Ngawha Innovation and Enterprise Park zone	<p>DIS-3</p> <p>A new significant hazardous facility does not create any residual risk.</p>	
All other zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R3	Significant hazardous facility within the coastal environment	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R4	Significant hazardous facility within an outstanding natural feature or landscape	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R5	Significant hazardous facility within a scheduled site and area of significance to Māori	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R6	Significant hazardous facility within a significant natural area	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R7	Significant hazardous facility within a flood hazard area	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R8	Significant hazardous facility within a coastal hazard area	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable

HS-R9	Significant hazardous facility within a scheduled heritage resource	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R10	Significant hazardous facility within 100 metres of the edge of a surface water body	
All zones	Activity status: Non-complying	Activity status where compliance not achieved: Not applicable
HS-R11	New sensitive activity	
All zones	Activity status: Non-complying Where: NC-1 The new sensitive activity is located within 250m of a Significant Hazardous Facility.	Activity status where compliance not achieved: Not applicable

Key Proposed FNDP Definitions:

Residual Risk

means in relation to hazardous substances, any risk of an adverse effect that remains after other industry controls and legislation and regional planning instruments, have been complied with.

Sensitive Activity

1. means:
 - a. Residential activities;
 - b. Education facilities and preschools;
 - c. Guest and visitor accommodation;
 - d. Health care facilities which include accommodation for overnight care;
 - e. Hospital;
 - f. Marae; or
 - g. Place of assembly.

except that;

- i. subclause f. above is not applicable in relation to electronic transmission.
 - ii. subclause g. above is not applicable in relation to noise or electronic transmission
2. In relation to electricity transmission, has the same meaning as sensitive activities in the National Policy Statement on Electricity Transmission (2008): includes schools, residential buildings and hospitals

Sensitive Environment

means:

1. The coastal environment;
2. An outstanding natural feature or landscape;
3. Scheduled site and area of significance to Māori;
4. Significant natural areas;
5. River flood hazard areas;
6. Coastal hazard areas;
7. Scheduled heritage resource; and
8. The area within a 100m setback from the edge of a surface water body.

Significant Hazardous Facility

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

- a. Any Major Hazard Facility designated under the Health and Safety at work (Major Hazard Facilities) Regulations 2016, including the Ngawha Geothermal Plant.
- b. Manufacturing, including the associated storage, of hazardous substances (including agrichemicals, fertilisers, acids/alkalis or paints).
- c. Petroleum exploration and petroleum production facility.
- d. The storage/use of more than 100,000L of petrol or diesel.
- e. The storage/use of more than 6 tonnes of LPG.
- f. Galvanising plants.
- g. Electroplating and metal treatment.
- h. Tanneries.
- i. Timber treatment.
- j. Freezing works and rendering plants.
- k. Wastewater treatment plants.
- l. Metal smelting and refining (including battery refining or recycling).
- m. Milk processing plants.
- n. Polymer foam manufacturing

The storage of petrol and diesel in (c) above does not include the underground storage at service stations and commercial refueling facilities undertaken in accordance with HSNOCOP 44 Below Ground Stationary Container Systems for Petroleum - Design and Installation and HSNOCOP 45 Below Ground Stationary Containers Systems for Petroleum - Operation (or more recent HSNO code or practice for underground fuel storage.)

Appendix 3: Potential Hazardous Substances Rules under Option 2b

(Insert after Policies in proposed HSUB Chapter)

Rules

HSUB-R1	Any Activity Not Otherwise Listed in This Chapter	
All Zones and Development Areas	Activity Status: Permitted Where: 1. Resource consent is not required under any rule of the District Plan. 2. The activity is not prohibited under any rule of the District Plan.	
HSUB-R2	Establishment of a new Significant Hazardous Facility or expansion of an existing Significant Hazardous Facility	
All Zones and Development Areas	Activity Status: Permitted Where: 1. The significant hazardous facility is not located within a Flooding Hazard Area, Coastal Hazard Area, or Mining Hazard Area.	Activity Status when compliance not achieved Discretionary
HSUB-R3	Sensitive Activities	
All Zones and Development Areas	Activity Status: Permitted Where: 1. The sensitive activity is located at least 50m from a significant hazardous facility.	Activity Status when compliance not achieved: Discretionary

New Definition (in addition to those recommended under Appendix 1):

Significant Hazardous Facilities

means the area or areas of land and/or buildings used for one or more of the following activities:

- a. Major Hazardous Facilities as defined in the Health and Safety at Work (Major Hazard Facilities) Regulations 2016.
- b. Oil and gas exploration and extraction facilities.
- c. The storage/use of more than 50,000L of petrol
- d. The storage/use of more than 100,000L of diesel.
- e. The storage/use of more than 6 tonnes of LPG.
- f. Galvanising plants.
- g. Electroplating and metal treatment.
- h. Tanneries.
- i. Timber treatment.
- j. Freezing works and rendering plants.
- k. Metal smelting and refining (including battery refining or recycling).
- l. Milk processing plants.
- m. Polymer foam manufacturing.
- n. Landfills.

The following activities are not considered to be significant hazardous facilities:

- a. Areas of land and/or buildings that are ancillary to the activities listed in (a) – (n) above, such as vehicle entry and access, offices, staff rooms, retail areas, etc.

- b. The underground storage of petrol and the storage (above or underground) of diesel installed and operated in accordance with HSNOCOP 44 Below Ground Stationary Container Systems for Petroleum - Design and Installation and HSNOCOP 45 Below Ground Stationary Containers Systems for Petroleum - Operation (or more recent HSNO code or practice for underground fuel storage).
- c. The incidental use and storage of hazardous substances in minimal domestic-scale quantities.
- d. Retail activities for hazardous substances intended for domestic usage (e.g., grocery stores, trade retail stores and pharmacies).
- e. The incidental storage and use of agrichemicals, fertilisers and fuel for land-based rural production activities.
- f. Pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage.
- g. Fuel in motor vehicles, boats, airplanes and small engines.
- h. Temporary military training activities.
- i. The transport of hazardous substances (e.g., in trucks or trains).

Appendix 4 – Examples of Large Sites with the Potential for Multiple Activities

Site boundaries marked in light blue

Example 1: New World Grocery Store Site

Petrol Station circled in red with the larger building comprising the grocery store.



Example 2: BP Service Station Site

Food and Beverage circled in red within buildings to the right comprising the service station.



Example 3: Northport Site

Seafarers Mission circled in red with surrounding area providing a range of port activities.



Appendix 5 – Description of Major Hazardous Facilities in Whangārei

1. According to WorkSafe there are two MHFs within the Whangārei District³⁵ as detailed in the following table:

Operator	Address	Activity or Activities Undertaken at the Facility
Channel Terminal Services Limited	Port Marsden Highway, Ruakaka	Storage and distribution of transport fuels
Wiri Oil Services Limited	Cnr Mair Rd. & Marsden Point Highway, Ruakaka, Marsden Point	Truck loading facility for the upper North Island

2. The WorkSafe MHF public information sheet for Channel Terminal Services Limited indicates that public actions in case of a major incident at the facility is³⁶:
- *Stay away from the Terminal and surrounding area this includes the beach front around the refinery and 200m offshore.*
 - *Respect all cordons put in place and warning advice given.*
3. For Wiri Oil Services Limited the public actions are³⁷:
- *For a spill event the public should remain upwind of the Terminal.*
 - *Terminal emergency response is initially from the Refinery emergency responders.*
 - *Public should evacuate the immediate vicinity on the sounding of the Terminal siren (except test siren at 10:00 A.M. Monday mornings).*
 - *The public should follow the advice of Terminal staff and Emergency responders.*
4. Both MHFs are located within the HIZ and Precinct 6 (**PREC6**). The issues section of the HIZ chapter states that:

The Heavy Industrial Zone (HIZ) provides for large scale industrial activities which contribute to the economic wellbeing of Whangārei District and the wider Northland Region. Industrial activities in the Heavy Industrial Zone generally require large allotments with few constraints, access to freight routes, separation from sensitive land uses, and protection from the development of sensitive activities and other non-industrial land uses.

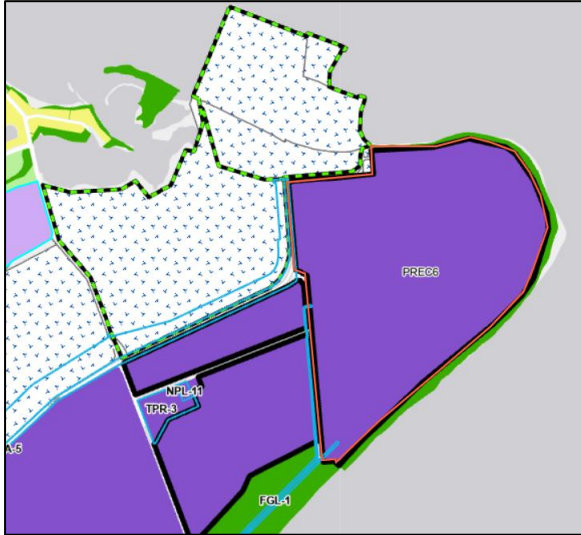
The Heavy Industrial Zone is and should continue to be located away from more sensitive zones such as Residential Zones and Open Space and Recreation Zones, to ensure that adverse effects on sensitive activities are minimised, as well as to prevent reverse sensitivity and increased risk effects that may limit the operation and expansion of industrial activities. To support this approach, it is critical to protect industrial activities from the encroaching development of sensitive activities.

³⁵ [MHF public information | WorkSafe](#). I am aware in S Westoby's tabled evidence that she reference's 3 MHFs in the District, I base my understanding on the WorkSafe website which only lists 2 MHFs.

³⁶ [WKS-14-MHF-public-information-form-Channel-Terminal-v2.pdf \(worksafe.govt.nz\)](#)

³⁷ [WKS-14-MHF-WOSL-Marsden-Pt-Public-Information.pdf \(worksafe.govt.nz\)](#)

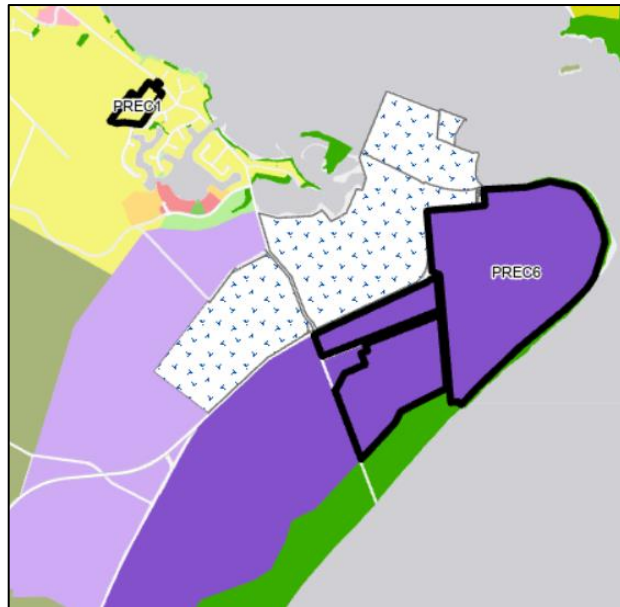
5. PREC6 is the Marsden Point Energy Precinct (**MPEP**) and applies to the land associated with the Marsden Point Refinery, which is identified as regionally significant infrastructure. The MPEP enables activities that are related to the current and reasonably foreseeable future function of the refinery site.
6. To my knowledge the location of Channel Terminal Services Limited's is marked with an orange border on the two maps below. The HIZ is shown in dark purple. The closest residential zone (light yellow) is approximately 900m from the site.



7. To my knowledge the location of Wiri Oil Services Limited's is marked by the orange border on the two maps below. The closest residential zone (light yellow) is approximately 1km from the site.



8. As shown on the map below the HIZ is also buffered from residential zones by the surrounding LIZ (light purple) and the Port Zone (white with blue flecks).



9. The following activities are listed as non-complying activities in both the HIZ and LIZ:

- Residential Activities
- Entertainment Facilities
- Visitor Accommodation
- Place of Assembly
- Care Centre
- Educational Facilities
- Hospital