

CHAPTER 63**HAZARDOUS SUBSTANCES****63.1 Introduction**

The use of hazardous substances and genetically modified organisms in New Zealand is primarily managed by the Hazardous Substances and New Organisms Act 1996 (HSNO). The purpose of the HSNO Act is to ‘protect the environment, and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances and new organisms’. The HSNO Act is administered by the Ministry for the Environment and implemented by the Environmental Protection Authority. The new Ministry of Business, Innovation and Employment is also involved with enforcement in terms of hazardous substances.

63.2 HSNO Act

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

The Resource Management Act 1991 (RMA) provides scope for additional controls for hazardous substances located on particular sites. Through Section 31, Regional and District Councils share the function of:

Section 31(1)(b) ‘The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –

...
(ii) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.’

The current Ministry for Environment advice is that Council’s take the approach that hazardous facilities are generally managed adequately through the HSNO Act. Compliance with this legislation will generally ensure that any adverse effects arising from an accident or incident will be internalised within the hazardous facility site. The District Plan therefore seeks to avoid any duplication of regulation with the HSNO Act. An extra layer of protection can however be applied appropriately under the RMA to particularly sensitive environments or in relation to major hazardous facilities, in order to further minimise the potential for adverse effects impacting on the environment or the community. In the case of Napier City, the Ahuriri Estuary is considered to be one such environment, while major hazardous facilities will be assessed as to their appropriateness via the resource consent process.

63.3 RESOURCE MANAGEMENT ISSUES

The following resource management issues have been identified as significant:

63.3.1 The adverse effects on the environment, human health and property of inadequate management of hazardous substances and facilities.

Hazardous substances are used in a wide range of activities occurring within the Napier City, from dry-cleaning clothes, manufacturing industrial products, to controlling pests and plant diseases in the agricultural sector. The use of hazardous substances creates the potential for adverse effects on human health, property or the natural environment.

63.3.2 The potential for adverse effects on sensitive environments through inadequate management of hazardous substances.

The nature and scale of adverse environmental effects, and the risks associated with land uses storing or using hazardous substances, are influenced in part, by their location, such as their proximity to sensitive environmental areas e.g. estuarine, river and coastal areas and residential areas. Specific controls relating to the use and storage of hazardous substances will therefore directly address the nature of the environmental effect and the potential level of risk of any hazardous substance or facility.

63.3.3 District Plans should not duplicate regulation already provided by the Hazardous Substances and New Organisms Act 1996 (HSNO).

The use of hazardous substances and genetically modified organisms in New Zealand is primarily managed by the Hazardous Substances and New Organisms Act 1996 (HSNO). Section 31 of the Resource Management Act 1991 (RMA) provides scope for additional controls for hazardous substances located on particular sites. The District Plan therefore seeks to avoid any duplication of regulation with the HSNO Act. An extra layer of protection can however be applied appropriately under the RMA to particularly sensitive environments or in relation to major hazardous facilities, in order to further minimise the potential for adverse effects impacting on the environment or the community. In the case of Napier City, the Ahuriri Estuary is considered to be one such environment, while major hazardous facilities will be assessed as to their appropriateness via the resource consent process.

OBJECTIVES, POLICIES AND METHODS

The following objectives, policies and methods apply:

Objective 63.4

To protect the community and natural environment from the adverse effects associated with hazardous substances.

In order to achieve this objective, the Council will:

Policy

63.4.1 Ensure that where activities involving hazardous substances are located in proximity to the sensitive environment of the Ahuriri Estuary, they are designed and managed to reduce risks to the environment and community.

Objective 63.5

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

In order to achieve this objective, the Council will:

Policy

63.5.1 To ensure that major hazardous facilities are appropriately sited and managed in order to reduce risks to the environment and community.

Objective 63.6

To avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996 and the District Plan.

In order to achieve this objective, the Council will:

Policy

63.6.1 To not regulate the use, storage or transportation of hazardous substances, nor any activities associates with the release of GMOs in the District Plan, where adequate levels of community and environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996, or other legislation and regulation.

Principal Reasons for Adopting Objective and Policies

The reasons align with the before mentioned policies.

- (1) The protection of the quality of the water of the Ahuriri Estuary is important as this is a sensitive ecosystem. Additional protection to that provided by HSNO regulation is therefore considered appropriate to apply to this area to ensure that this water resource is not contaminated.
- (2) Major hazardous facilities have the ability to adversely affect the environment and community if they are not appropriately sited and/or managed. HSNO and associated regulation aims to internalize the effects of hazardous substances to within the site/building they are located on. However, through deeming all major facilities a Discretionary Activity, it will allow Council the discretion to determine whether proposed locations and methods of risk management are appropriate. This includes opportunity to consider risks to neighbouring properties and communities from fire or natural hazard events affecting the hazardous facility.
- (3) The previous District Plan contained a comprehensive hazardous substances regulation including rules requiring screening via the Hazardous Facilities Screening Procedure or HFSP. In the late 1990's the HSNO Act had not been fully implemented with transitional provisions still applying and there was belief that hazardous substances also required regulation under the RMA. Current advice from the Ministry for the Environment is that the HFSP is out of date and is a duplication of HSNO regulation. Given this there is a need for change in the management of hazardous substances under the District Plan and part of this change is to avoid the duplication of regulation. This same approach is considered appropriate in relation to the management of GMOs. In addition to this the HFSP is difficult to use and was not often used in the assessment of activities under the District Plan.

Given this there is a need for change in the management of hazardous substances under the District Plan and part of this change is to avoid the duplication of regulation. This same approach is considered appropriate in relation to the management of GMO's (genetically modified organisms).

Notwithstanding this however, there is still the need to consider the potential impacts of major hazardous facilities and the appropriateness of their location with regard to community and environmental risk.

Methods

- (1) City Of Napier District Plan
- (2) Napier City Council Bylaws
- (3) Other legislation

- (4) Radiation Protection Act 1965 and Radiation Protection Regulations 1982
- (5) Codes of Practice and New Zealand/Australian Standards
- (6) Compliance and Monitoring
- (7) Integrated Management
- (8) Hazardous Substances and New Organisms Act 1996
- (9) Hawkes Bay Regional Council

Reasons for Methods

- (1) The rules contained in the Hazardous Substances Section of the City of Napier District Plan work to ensure that additional precaution is exercised in the use and storage of hazardous substances near the Ahuriri Estuary, but generally acknowledge the HSNO Act as providing the appropriate regulation to manage the effects of hazardous substances.
- (2) A number of bylaws have provisions relating to risks from hazardous substances including Napier City's fire control (2008), solid waste (2012), trade waste (2008), water supply (2012), wastewater drainage (2008), and stormwater drainage (2012) bylaws.
- (3) Other legislation that includes provisions relating to the use, storage, disposal or transportation of hazardous substances include: the Building Act 1991, Health and Safety in Employment Act 1992, Transport Act 1992 and the Civil Defence Act 1983.
- (4) The use, storage and transport of radioactive material is controlled and licensed by the Ministry of Health through the National Radiation Laboratory.
- (5) A variety of Codes of Practice and New Zealand/Australian Standards covering various aspects of the hazardous substance industry have been developed by the relevant industries, often in association with local authorities, the Department of Labour, the Environmental Protection Authority or the Ministry for the Environment. Codes of Practice are an approved means of complying with HSNO and are designed to provide guidance on how to eliminate or minimise the risk associated with hazardous substances. A good example of this is the EPA approved code of practice "Management of Agrichemicals NZS 8409:2004".
- (6) Monitoring will be undertaken to ensure that the conditions of resource consents are complied with. In general the appropriate authorities to direct complaints regarding the location or appropriate management of hazardous facilities to (aside from any relating to the rules or standards in this Plan section) will be the Environmental Protection Authority or the new Ministry of Business, Innovation and Employment.
- (7) Napier City will work with the Hawke's Bay Regional Council, adjacent local authorities and other statutory agencies and industries where appropriate for the assessment and management of hazardous facilities.
- (8) HSNO requires that hazardous facilities may require a location test certificate, approved handler test certificates and/or a stationary container test certificate, dependant on the type and quantity of hazardous substances held at a site.

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

- (9) Hawke's Bay Regional Council also has involvement in the management of hazardous substances. Regional Councils regulate water quality, air quality and discharges to land; as well as assisting in the safe disposal of hazardous substances. The Operative (August 2006) Hawkes Bay Regional

Resource Management Plan states in Section 8.4.4.6.1(a) that the HBRC will have responsibility for hazardous substances as they relate to the discharge of contaminants to air, water and land as defined by Section 15 of the RMA. The HBRC will also have responsibility for the use, storage, and transport of hazardous substances where these are associated with the control of the use of land of any river or lake under section 13 of the RMA.

63.7 ANTICIPATED ENVIRONMENTAL RESULTS

- (1) Avoidance of unacceptable risk to the community and the environment from the use, storage and transport of hazardous substances.
- (2) Appropriate precaution is taken in the management of hazardous substances near the Ahuriri Estuary Zone.
- (3) There is no unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996 and the District Plan.
- (4) Activities utilise hazardous substances where necessary for their operations, in appropriate locations.

RULES**63.8 Summary of Rules for Hazardous Substances**

The following is a quick reference guide that summarises the Hazardous Substances Rule Table. It is intended as a guide only and should not be used in place of the Hazardous Substances Activity Table and Condition Table elsewhere in this Chapter.

Rule Number and Description	Classification	Page Number
Rule 63.9 The storage, handling or use of hazardous substances (excepting Arsenic (As) and Major Hazardous Facilities) within the Ahuriri Estuary Zone.	Permitted	7
Rule 63.9(A) The storage, handling or use of hazardous substances in all other areas (excepting Major hazardous Facilities)	Permitted	7
Rule 63.10 Any permitted activity that does not comply with all the relevant conditions unless stated elsewhere in this Chapter.	Restricted Discretionary	7
Rule 63.11 Major Hazardous Facilities	Discretionary	7
Rule 63.12 The storage, handling or use of Arsenic (As) within the Ahuriri Estuary Zone.	Prohibited	7

Note: The District Plan does not seek to duplicate the regulation provided by the Hazardous Substances and New Organisms Act 1996. The plan therefore remains silent on the general storage, handling or use of hazardous substances, which are not listed in the above table and therefore not regulated by this District Plan.

DISTRICT WIDE HAZARDOUS SUBSTANCES - ACTIVITY TABLE

PERMITTED ACTIVITIES	Matters the Council will restrict its discretion to for restricted discretionary activities
63.9 The storage, handling or use of hazardous substances (excepting Arsenic (As) and Major Hazardous Facilities) within the Ahuriri Estuary Zone provided that: (a) It complies in all respects with the relevant conditions in the Hazardous Substances Condition Table.	The Council will restrict its discretion to the matters referred to in Rule 63.10
63.9(A) The storage, handling or use of hazardous substances in all other areas (excepting Major hazardous Facilities)	
RESTRICTED DISCRETIONARY ACTIVITIES	Matters the Council will restrict its discretion to for restricted discretionary activities
63.10 Activities Not Complying with Conditions. 1. Any permitted activity that does not comply with all of the relevant conditions in the Hazardous Substances Activity Table and Condition Table is a restricted discretionary activity, unless stated a rule elsewhere in this Chapter.	The Council will have regard to the relevant objectives and policies of the Plan and will restrict its discretion to: - The cumulative effect of non-compliance with more than one condition. - The matters set out in Chapter 1.6.5. - The assessment criteria in Chapter 63.14 of this Plan where applicable.
DISCRETIONARY ACTIVITIES	
63.11 Discretionary Activities 1. The following activity is a discretionary activity. A resource consent application must be made and consent may be declined or granted with or without conditions. The Council will have regard to the objectives and policies of this Plan and the assessment criteria in Chapter 63.14. The Council's discretion is unrestricted. a) Major Hazardous Facilities	
PROHIBITED ACTIVITIES	
63.12 Prohibited Activities 1. The following is a prohibited activity for which no resource consent will be granted: The storage, handling or use of Arsenic (As) within the Ahuriri Estuary Zone.	

DISTRICT WIDE HAZARDOUS SUBSTANCES – CONDITION TABLE

CONDITIONS FOR PERMITTED ACTIVITIES		Matters the Council will restrict its discretion to for restricted discretionary activities
63.13 The storage, handling or use of hazardous substances located within the Ahuriri Estuary Zone.	<p>1) Impervious surfaces All hazardous substances shall be stored and handled on areas which have impervious surfaces. This impervious surface requirement also applies to fuel operated machinery and vehicles.</p> <p>Note: For the purposes of this performance standard the storage and conveyance of gas or oil in pipelines that are part of a network utility, are deemed to comply.</p> <p>2) Storm water Facilities shall be provided to prevent hazardous substances from being washed or spilled into natural ground or entering any piped storm water systems or storm water ground soakage during a 1% AEP rain event.</p>	The extent that the quality of the water in the Ahuriri Estuary will be protected from the accidental spillage of hazardous substances.

63.14 ASSESSMENT CRITERIA

Some discretionary and restricted discretionary rules refer to assessment criteria to assist the Council in considering resource consent applications. The Council will have regard to the Assessment Criteria outlined below for hazardous substances when considering an application under Sections 104 and 105 of the Act.

1. General

An assessment shall be provided, focussing on the following issues:

(a) Risk Factors

- (i) Assessment of the probability and potential consequences of an accident leading to the release or loss of control of hazardous substances. This assessment should focus on the ability of the design and management of the site to avoid accidents, such as spill containment measures, fire safety and fire water management, emergency management, site drainage and off-site infrastructure (e.g. storm water drainage system, sewer type and capacity) and the disposal of waste containing hazardous substances.
- (ii) Potential risk and effect on natural ecosystems and the life supporting capacity of land and water, including the Ahuriri Estuary, water bodies and sources of potable water.
- (iii) The potential for natural hazards to impact on the operation of the hazardous facility.

In addition for Major Hazardous Facilities the following apply:

- (iv) Potential risk and effect on people and neighbouring activities, with emphasis on sensitive activities such as residential zones, educational facilities and community facilities.
- (v) Potential risk and effect on sites of significance to Tangata Whenua, sites of historical or archaeological significance.

b) Alternative locations

The inclusion of evidence that alternative locations for the activity have been considered, having particular regard to locations both within the sites and outside of the site.

c) District Plan

Consistency with the Objectives, Policies and Methods of the relevant Zone and of Section 63 of the City of Napier District Plan.

d) Record of existing activity

The record of compliance and acceptable risk management of any existing activity where expansion of the activity is proposed.

2. Hazardous facilities located within the Ahuriri Estuary not meeting Conditions 63.13

In addition to the matters listed above an application will be assessed according to the matters listed below:

a) Storm water and sewerage

The availability of a fully reticulated storm water and sewerage disposal system or onsite treatment systems for the treatment of contaminated waste water or storm water from buildings and yards.

b) Solid and liquid waste

The method of disposal of both solid and liquid waste and the volume of waste disposal.

63.15 PRINCIPAL REASONS FOR RULES

The Ministry for Environment has currently advised Council's that hazardous facilities are normally managed through the HSNO Act. Compliance with this legislation will usually ensure that any adverse effects arising from an accident or incident will be internalised within the hazardous facility site. The District Plan therefore seeks to avoid any duplication of regulation with the HSNO Act. An extra layer of protection can however be applied under the RMA to particularly sensitive environments, or in relation to major hazardous facilities, in order to further minimise the potential for adverse effects impacting on the environment or the community. In the case of Napier City, the Ahuriri Estuary is considered to be one such environment while major hazardous facilities will be assessed as to their appropriateness via the resource consent process.