

The Resource Management Act 1991

Selwyn District Council

**Proposed District Plan
(Rural and Townships Volumes)**

Variation No. 26 – Hazardous Substances

A variation to amend the provisions within the Proposed District Plan relating to Hazardous Substances

Date of Notification: Saturday 14 October 2006

Introduction

The notified Proposed District Plan (PDP) provides a range of provisions within both the Rural and Townships Volumes which deal with hazardous substances. The purpose of the hazardous substances provisions is to ensure the protection of people and land from potential adverse effects of the storage of hazardous substances.

Reasons for the Variation

The Council has identified the need to deal with a number of areas of the hazardous substances provisions which have been identified as needing to be addressed, particularly through the District Plan decision and appeal processes. The intent of this variation is to address the areas needing updating with the particular intention of ensuring consistency between the hazardous substances provisions in the two volumes of the Plan and between the Plan and other relevant documents (including HSNO legislation and the Natural Resources Regional Plan). This process will assist in the interpretation of rules for the public and in the clear and consistent administration of the Plan by Council staff. A variation is required to make the necessary amendments to the hazardous substances provisions.

What is a Variation?

A variation is an amendment to a proposed plan, which is made by the Council under Clause 16A of the First Schedule to the Resource Management Act 1991 ("the Act"). The changes to the proposed plan, which are promoted in the variation, occur from the date the variation is publicly notified.

Section 32 of the RMA

The Council's Section 32 Evaluation and the Summary of this evaluation in respect of these matters accompany this variation document, as **Attachment 1**. A challenge to any objective, policy, rule or other method contained in the variation on the ground that that Section 32 has not been complied with can only be made through a submission on the variation.

Amendments to the Proposed District Plan

(Amendments are shown with additions underlined and deletions ~~struck out~~)

- 1) Amend "Table 1 – Cross-Boundary Issues in Selwyn District", on Page 7 of both the Townships and Rural Volumes, by inserting the following into each table:

Issues	Local Authorities	Methods
...
<u>Hazardous Substance</u> <u>Thresholds and Controls</u>	<u>Christchurch City Council, Westland District Council, Waimakariri District Council, Ashburton District Council, Hurunui District Council,</u>	<ul style="list-style-type: none">▪ <u>Liaison with relevant staff and representatives of other local authorities on hazardous substances issues of local and regional concern, with due consideration to relevant legislation and local and regional environmental issues</u>▪ <u>Submissions and cross references on variations of hazardous substances</u>

	<u>Environment Canterbury, West Coast Regional Council</u>	<u>provisions in District Plans and the NRRP to aim for consistent approach between plans, with due consideration to relevant legislation and local and regional environmental issues</u> ▪ <u>Submissions on changes to hazardous substances legislation and standards of relevance to the District Plan</u>
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- 2) Insert the following wording into the advice notes at the beginning of each of the Hazardous Substances rules in both the Townships (Living Zones Rule 6 and Business Zones Rule 2) and Rural (Rule VII) Volumes:
Any activity involving the storage, use, disposal, discharge or transportation of a hazardous substance may require resource consent from Environment Canterbury. Therefore, Environment Canterbury should be consulted.
- 3) Amend the wording of the Plan to address inconsistencies between the two volumes as set out in Appendix One to this report.
- 4) Amend both the Townships and Rural Volumes to remove unnecessary references to 'use' and refine the discussion on 'use'. This requires text amendments throughout the issues/objectives/policies and rules sections of both volumes as set out in Appendix One to this report.
- 5) Amend note 3 at the start of Rule VII of the Rural Volume as follows:
"Rule VII does not apply to the disposal of any hazardous substance by use of it in accordance with the manufacturer's instructions, ~~nor to empty containers which are disposed of in accordance with the manufacturer's instructions.~~"
- 6) Amend the wording to refer to the Resource Management Act as follows:
Hazardous substance is defined in section 2 of the Resource Management Act 1991 to include, but is not limited to, any substance defined in section 6 of the Hazardous Substances and New Organisms Act 1996 (HSNO) as a hazardous substance. ~~Act as being the same as the definition in section 6 of the Hazardous Substances and New Organisms Act 1996 (HSNO).~~
- 7) Amend the issues section of both the Townships and Rural volumes of the Plan to refer to the Resource Management Act definition of hazardous substances (see Appendix One).
- 8) Amend the definition of hazardous substances in both the Townships and Rural volumes of the Plan as follows:

Hazardous substance: includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance.

- 9) Amend Rule 2 in the Land use rules for Business Zones, in the Townships Volume as follows:

2.1.4 Any hazardous substance(s) is/are not stored within 20 m of any waterbody.

- 10) Amend the wording within rule 2.3(a) and 2.3(b) (Exceptions), in the Townships volume in relation to Land Use rules for Business zones, as follows:

2.3 Exceptions [R15.3]

- (a) The storage and retail sale of petrol (up to 100,000 litres storage in underground tanks) and diesel (up to 50,000 litres in underground tanks) at service stations and/or truck stops shall be a controlled activity and will not require the written consent of other persons and shall be non-notified, ~~provided that the "Code of Practice for the Design, Installation and Operation of Underground Petroleum Storage Systems" (Department of Labour) is complied with.~~ [R15.3]
- (b) The storage and sale of LPG (up to 6 tonnes, single vessel storage) at service stations and/or truck stops is a controlled activity and will not require the written consent of other persons and shall be non-notified, ~~provided that the "Australian/New Zealand Standard 1596:1997, Storage and Handling of LP Gas" is complied with.~~ [R15.3]

- 11) Amend the wording within the Classes of Hazardous Substances tables in both the Townships and Rural volumes of the Plan, under both 2.2 Toxic Gases and 7.1a Poisonous Substances, to remove reference to the external documents, as shown in Appendix One.
- 12) Correct the Classes of Hazardous Substances table, in the Rural Volume, in the left-most column in relation to Oxidising Substances, to refer to 5 rather than 5.1 (see Appendix One).
- 13) Correct the Quantity Limits for each Class of Hazardous Substance table, in the Rural Volume, by amending the location of the note relating to quantities for 3a Aboveground storage to be at the end of the table (see Appendix One).
- 14) Correct the Quantity Limits for each Class of Hazardous Substance table, in the Rural Volume, by amending the quantity limit for class 7.1b Agrichemicals to express the limit as 1000 litres/kilograms (see Appendix One).

- 15) Amend the wording of the Plan to address inconsistencies between the two volumes and the nationally recognised classification system and controls of the HSNO legislation, as shown in Appendix One.
- 16) Include statement in section 3.2 of the respective Townships and Rural volumes of the Plan: "When assessing compliance with the provisions of the hazardous substances rules and when considering applications for resource consents involving storage, use, disposal or transportation of hazardous substances, the Council will consider the types and quantities of hazardous substances and the adequacy of controls and conditions on the hazardous substances at the application site, the location of the substances relative to sensitive environments and natural resources, and the degree of risk of flooding or earthquake in the area of the site. The Council will also have due consideration of any controls imposed by other legislation. This will include but will not be limited to the provisions of the Hazardous Substances and New Organisms Act 1996 and Regulations (including test certification, approved handler certificates, controlled substances licences and codes of practice issued by or recognised by ERMA), the Natural Resources Regional Plan and resource consents issued by the Canterbury Regional Council, and the Health and Safety in Employment Act 1992".
- 17) Amend the wording to exclude Liquefied Petroleum Gas (LPG) from the site containment conditions of the hazardous substances rules in each volume.

See also Appendix Two to this document for a summary of the changes to the hazardous substances quantity limits in both volumes.

Making a Submission

Any person may make a submission on the variation. The submission must be in the format of Form 5 of the Resource Management Act Regulations (Forms) 1991 – copies are available from the Council Services Centres at Leeston, Darfield, Rolleston and Lincoln or on the Council's website at www.selwyn.govt.nz.

A submission needs to include:

- Your name and contact details;
- The provisions which are being submitted on;
- Whether the person supports or opposes the variation;
- The reasons for the submission;
- The decision the person wants the Council to make; and
- Whether the submitter wishes to be heard in support of their submission.

The submission form needs to be signed and lodged with the Council by **5.00pm on Tuesday 14 November 2006**.

Process From Here

After submissions are closed, they will be summarised and advertised for further submissions.

The Council will then hold hearings for all submitters who requested to be heard in support of their submissions. The Council will make a decision on each submission. Each submitter will receive a copy of the Council's written decision on their submission and has 30 working days from that date to appeal any decision to the Environment Court.

Attachment 1

Section 32 Evaluation

1. Statutory Requirements of Section 32 of the Act

Under Section 32 of the Act, before the Council publicly notifies the changes promoted in this variation, it must carry out an evaluation to examine:

- the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and
- whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

The evaluation is required to take into account:

- The benefits and costs of policies, rules, or other methods; and
- The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

2. Objectives of the Proposed District Plan

This variation does not intend to fundamentally alter the objectives of the PDP, although there is some rearrangement proposed to align the objectives within the two volumes of the Plan and removal of the term “use” (see details in section 3.3 of this report). This evaluation will therefore examine the extent to which the variation achieves the objectives of the PDP.

As this variation relates to a range of clauses, which apply to policies, rules and appendices throughout both volumes of the PDP, the provisions could be considered relevant to all the objectives of the PDP. The proposed amendments to the policies, rules and appendices will not alter the intent of any of the objectives but will clarify the application of the objectives through clarifying terms used through the PDP and the application of the rules to hazardous substances.

3. Analysis of Benefits and Costs¹ in relation to Definitions

The relevant assessment in this instance is whether the existing rules are the most appropriate method to clarify terms used within the PDP, what alternative rules (or amendments to the rules) could be introduced and what are the costs and benefits of the preferred amendments.

3.1 Cross Boundary Issues

3.1.1 The Issue

The Resource Management Act (RMA) Section 31 requires District Councils to control any actual or potential effects of the use, development, or protection of land, for the purpose of the prevention or mitigation of any adverse effects of

- the storage, use, disposal, or transportation of hazardous substances
- the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land.

¹ The Act defines “benefits and costs” as including benefits and costs of any kind, whether monetary or non-monetary.

RMA section 74 requires that when preparing or changing a district plan, a territorial authority shall have regard to the Regional Policy Statement and any Regional Plan (the Natural Resources Regional Plan in the case of Canterbury).

At a regional level, the Council must ensure that the Plan is consistent with Environment Canterbury's Natural Resources Regional Plan (NRRP), which controls the storage of a limited range of substances to protect the region's water resources. The review of the RPS by ECan and decisions on the NRRP may also alter the situation with regard to the use of hazardous substances. ECan staff have indicated that the RPS revision is likely to significantly widen ECan's control of substances beyond the currently limited number of HSNO classes and situations. A further variation to hazardous substances provisions in the Plan may be required in due course to address these regional changes.

Significant cross boundary effects could arise at/near the common boundaries of Districts if the degree and nature of controls of hazardous substances in their District Plans differ significantly – e.g. risks to sensitive land uses or sensitive environments, land use incompatibility issues, cumulative effects of hazardous substances storage facilities in neighbouring Districts, soil contamination and ground/surface water contamination, transportation issues, emergency response issues, waste disposal issues, public concern about perceived and actual risks. At present, there are some significant inconsistencies in the quantity thresholds and site controls for permitted activities in the various districts surrounding Selwyn – e.g. Waimakariri District Council / Selwyn District Council and Christchurch City Council, Ashburton District Council / Selwyn District Council, etc.

ECan staff have also requested that acknowledgement of the interaction with the NRRP be included in the rules sections of the District Plan by inserting the following wording:

Any activity involving the storage, use, disposal, discharge or transportation of a hazardous substance may require resource consent from Environment Canterbury. Therefore, Environment Canterbury should be consulted.

This is seen as appropriate acknowledgement and also as assistance to users of the District Plan.

3.1.2 Options

The options for dealing with the cross boundary issues include:

- Leave the provisions within the district plan as they are currently (status quo);
- Provide a statement within the cross boundary issues table within each plan to outline the issue and insert the requested wording from ECan;
- Carry out a full review of the quantity thresholds and site controls within all district plans adjacent to Selwyn and alter the district plan accordingly.

3.1.3 Recommended option

The recommended option for dealing with this issue is to amend "Table 1 – Cross-Boundary Issues in Selwyn District", on Page 7 of both the Townships and Rural Volumes, by inserting the following into each table:

Issues	Local Authorities	Methods
...
Hazardous Substance Thresholds and Controls	Christchurch City Council, Westland District Council, Waimakariri District Council, Ashburton District Council, Hurunui District Council, Environment Canterbury, West Coast Regional Council	<ul style="list-style-type: none"> ▪ Liaison with relevant staff and representatives of other local authorities on hazardous substances issues of local and regional concern, with due consideration to relevant legislation and local and regional environmental issues ▪ Submissions and cross references on variations of hazardous substances provisions in District Plans and the NRRP to aim for consistent approach between plans, with due consideration to relevant legislation and local and regional environmental issues ▪ Submissions on changes to hazardous substances legislation and standards of relevance to the District Plan

And by inserting the wording requested by ECan at the beginning of each of the Hazardous Substances rules in both the Townships and Rural Volumes.

3.1.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Identification of a cross boundary issue so that all users of the district plan are aware of this • Easier use of the plan for the public. 	<ul style="list-style-type: none"> • Continuation of existing inconsistency between the Selwyn District Plan and other adjoining plans in relation to quantity thresholds and site controls.

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.2 Consistency across the two volumes of the District Plan, with legislation and other controls relating to hazardous substances and their effects

3.2.1 The Issue

Both the Rural and Township volumes contain sections relating to the issues, objectives and rules for Hazardous Substances, but there are significant differences between the two volumes in respect of the wording of these provisions which has the potential for confusion in understanding and interpretation. In considering what changes should be made to address these inconsistencies, the Council needs to recognise the relevance and impact of legislation other than the Resource Management Act 1991, most importantly recent changes to the administration of hazardous substances at a national level brought about by the Hazardous Substances and New Organisms Act 1996 (HSNO) and its various regulations and controls.

The Council has limited powers and responsibilities under HSNO, which is administered mainly by various other agencies particularly in terms of the use

and application of hazardous substances in working situations. Other legislation administered by various other authorities directly controls aspects of hazardous substances management in New Zealand, i.e. the Transport Act 1962 and Land Transport Dangerous Goods Rule, the Radiation Protection Act 1965 and regulations, and the Health and Safety in Employment Act 1992, and the Building Act 1991.

The Council must determine to what level it wishes to replicate (or build on) such legislation and whether it is appropriate or necessary to extend or replicate controls deemed adequate by other controlling authorities. While HSNO addresses the protection of health and safety within the immediate environment of a facility or activity, it is appropriate for wider environmental issues and the community's concerns about hazardous substances to be addressed by the District Plan through the provisions of the Resource Management Act. This needs to be done with appropriate reference to HSNO, and the classification system and thresholds of hazard specified in the Hazardous Substances regulations.

At a regional level, the Council must also ensure that the Plan is consistent with Environment Canterbury's Natural Resources Regional Plan (NRRP), which controls the storage of a limited range of substances to protect the region's water resources. The review of the RPS by ECan and decisions on the NRRP may also alter the situation with regard to the use of hazardous substances. ECan staff have indicated that the RPS revision is likely to significantly widen ECan's control of substances beyond the currently limited number of HSNO classes and situations. A further variation to hazardous substances provisions in the Plan may be required in due course to address these regional changes.

Substantial rewriting of many of the hazardous substances provisions of the two volumes is necessary to align them as much as possible on the basis that the principle issues relating to environmental protection against the adverse effects of hazardous substances are the same for townships and rural areas. However it is reasonable to have different wording within the two volumes where they require a different emphasis (eg a specific emphasis on rural issues in the rural volume).

The Appendices of the two volumes also need to be amended to adopt the HSNO hazardous substances classification system, and the new subclasses identified in that process will result in some new quantity limits for permitted activities involving the manufacture, and storage of hazardous substances.

3.2.2 Options

The options for dealing with these inconsistency issues include:

- Leave the wording of the two volumes as it currently stands (status quo)
- Amend the wording of the Plan to address inconsistencies between the two volumes (as identified elsewhere in this Section 32 analysis), except for consistency issues with other legislation.
- Amend the wording of the Plan to address inconsistencies between the two volumes, including consistency issues with other legislation.

3.2.3 Recommended option

The recommended option for dealing with this issue is to amend the wording of the Plan to address inconsistencies between the two volumes, including consistency issues with other legislation, with respect to land uses involving hazardous substances and their effects.

3.2.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none">• Consistency of wording between the two volumes• Consistency with other legislation• Strengthened hazardous substances provisions of the Plan, giving more certainty in its interpretation, understanding and application	<ul style="list-style-type: none">• No costs are identified with this option

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.3 References to “use” of hazardous substances

3.3.1 The Issue

With the introduction of Environment Canterbury’s (ECan) Natural Resources Regional Plan (NRRP), greater control has been taken by ECan over the ‘use’ of some hazardous substances with respect to soil and water protection (most significantly the storage and use of agrichemicals). This involves some stringent standards such as those relating to certification of users under HSNO. While the current District Plan rules do state that they relate to ‘use and storage’ of hazardous substances, the general approach of the rules is to restricting the quantity and manner of storage and not to controlling use.

‘Use’ is heavily controlled by other authorities, especially the HSNO controls. The District Council has the option of also dealing with use or could choose to leave this control to the Regional Council and HSNO/ERMA regulations. This is already alluded to in the explanation and reasons for Hazardous Substances Objectives 1 and 2 in the Townships section and Objective 1 in the Rural section, which states *“The Council is satisfied that actual risk to peoples’ health and safety are most appropriately managed under the HSNO Act 1996 and the Health and Safety in Employment Act 1992”*. It is the Council’s preference not to control use but to focus on storage.

If the Council did want to control use, then there would be a need for revision to the policies and rules to cover this issue and decisions would need to be made on what substances to control the use of and why. The Council could also consider control of the use of a limited range of substances if these have been seen as a concern to the community. Introducing controls on use would also have implications on the Council staff resources in relation to monitoring and enforcement and could potentially lead to community concern relating to over-regulation.

As the Council has decided to leave the control of use to the Regional Council and other bodies, there is a need for revision of the objectives, policies and rules to remove unnecessary references to ‘use’ and refine the discussion on ‘use’. If these are left as they currently stand, the District Plan is ambiguous as it refers to use but does not actually control it.

The review of the RPS and decisions on the NRRP may also alter the situation with regard to the use of hazardous substances. ECan staff have indicated that the

RPS revision is likely to significantly widen ECan's control of substances beyond the currently limited number of HSNO classes and situations. A further variation to hazardous substances provisions in the Plan may be required in due course.

3.3.2 Options

The options for dealing with the control of 'use' issue include:

- Leave the wording as it currently stands (status quo)
- Revise the policies and rules to control use including the introduction of a range of provisions controlling use.
- Revise the objectives, policies and rules to remove references to use and to refine the discussion on use.

3.3.3 Recommended option

The recommended options for dealing with this issue is to remove unnecessary references to 'use' and refine the discussion on 'use'. This requires text amendments throughout the issues/objectives/policies and rules sections of both volumes as set out in Appendix One to this report.

This includes amendments to:

- The Issues, Objectives and Policies section in the Townships Volume.
- The Land Use Rules for Living Zones in the Townships Volume.
- The Reasons within the Land Use Rules for Living Zones in the Townships Volume.
- The Land Use Rules for Business Zones in the Townships Volume.
- The Reasons within the Land Use Rules for Business Zones in the Townships Volume.
- The Issues, Objectives and Policies section in the Rural Volume.
- The Notes at the beginning of Chapter VII Hazardous Substances in the Rural Volume.
- The Rule table in Chapter VII Hazardous Substances in the Rural Volume.
- The Cross referencing summary in Chapter VII Hazardous Substances in the Rural Volume.
- The Reasons for Rules in Chapter VII Hazardous Substances in the Rural Volume.

3.3.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Clear interpretation of the plan provisions in relation to use and storage of hazardous substances • Easier use of the plan for the public – able to understand that use is not controlled by the District Council. 	<ul style="list-style-type: none"> • No restriction on use at a District Council level.

<ul style="list-style-type: none"> • Less confusion for applying the rules • No double up of responsibility between the District Council, Regional Council and other authorities. 	
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The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.4 Objectives and Policies relating to Hazardous Substances

3.4.1 The Issue

Both the Rural and Township volumes contain a section in relation to the issues, objectives and policies for Hazardous Substances. These two sections are not the same with different wording in a number of areas leading to the potential for confusion in understanding and interpretation. While it is necessary in places to have different wording within the two volumes where there is a different emphasis (eg rural issues specifically in the rural volume), it is not necessary in the areas in which the issues are the same.

It is therefore considered necessary that the issues, objectives and policies be compared and made the same where the same issue is being dealt with, and left alone or only partly changed for the purpose of consistency where there is an issue relating to the specific volume eg rural or township. Making the two volumes as consistent as possible in this way reduces the risk of the differences causing inconsistencies in interpretation or application. This will not only achieve consistency of wording between the two volumes, but consistency with other legislation and greater certainty in the interpretation, understanding and application of the Plan.

3.4.2 Options

The options for dealing with the issue of differences between the issues include:

- Leave the wording as it currently stands (status quo)
- Revise the wording of the Plan to address inconsistencies between the issues, objectives and policies of the two volumes.

3.4.3 Recommended option

The recommended option for dealing with this issue is to revise the wording of the Plan to address inconsistencies between the issues, objectives and policies of the two volumes, by identifying common themes and concerns in the current wording and in the reasons and explanations for them, and other relevant matters that have common application. The revision will achieve a high level of consistency while accepting that differences may remain where they have a distinct relevance, for example to a particular zoning in the rural or township context to which they apply.

3.4.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Consistency of wording between the two volumes • Consistency with other legislation • Strengthened hazardous substances provisions of the Plan, giving more certainty in its interpretation, understanding and application 	<ul style="list-style-type: none"> • No costs are identified with this option

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.5 Disposal of Hazardous Substances

3.5.1 The Issue

Note 3 at the start of Rule VII of the Rural Volume states:

Rule VII does not apply to the disposal of any hazardous substance by use of it in accordance with the manufacturer's instructions, nor to empty containers which are disposed of in accordance with the manufacturer's instructions.

This note was discussed in the SDC decision report on Hazardous Substances, in which it was determined by the Hearings Panel that the reference to empty containers at the end of the note should be deleted as this implies that the manufacturer's instructions for disposal of the waste are adequate for disposing of the containers and are a suitable substitute for the rules in the District Plan. The Hearings Panel was of the opinion that this was not necessarily the case in all circumstances. While additional explanation of this could be provided, this may make the note more confusing for users of the District Plan.

It should also be noted that revision of the Issues, Objectives and Rules of the two volumes describes the Council's current position as a signatory to the Canterbury Hazardous Waste Management Strategy that is coordinated by Environment Canterbury. Under that strategy, the Council is currently moving to set up domestic hazardous waste reception and storage facilities in the District.

3.5.2 Options

The options for dealing with the disposal issue include:

- Leave the note as it currently is (status quo);
- Provide additional explanation that disposal of empty containers needs to be carried out in a managed way;
- Remove the reference at the end of the note.

3.5.3 Recommended option

The recommended option for dealing with this issue is to amend note 3 at the start of Rule VII of the Rural Volume as follows:

~~"Rule VII does not apply to the disposal of any hazardous substance by use of it in accordance with the manufacturer's instructions, nor to empty containers which are disposed of in accordance with the manufacturer's instructions."~~

3.5.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none">• Clear interpretation of the plan.• Easier use of the plan for the public – able to understand what the note means.• Less confusion for applying the rules.• Less risk of empty containers being disposed of in an uncontrolled manner, which could risk the environment.	<ul style="list-style-type: none">• Potentially a restriction on the manner in which empty containers are disposed if the manufacturers instructions conflict with the District Plan rules.

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.6 References to the Resource Management Act 1991

3.6.1 The Issue

Within the Hazardous substances – Issue sections of each volume of the Plan (page 117 of Townships section, page 131 of Rural section) there is a reference to “the Act”. This sentence is ambiguous as it is unclear what Act is referred to and it is presumed that the Act is the Resource Management Act 1991.

The Act referred to should be the Resource Management Act in the context of the District Plan being prepared under the Resource Management Act and also as the definition of Hazardous Substances is recommended to be aligned with the Resource Management Act definition (see section 3.7)

3.6.2 Options

The options for dealing with this issue include:

- Leave the wording the way it currently is (status quo);
- Amend the wording to refer to the Resource Management Act;
- Amend the wording to refer to HSNO.

3.6.3 Recommended option

The recommended option for dealing with this issue is:

Amend the wording to refer to the Resource Management Act as follows:

Hazardous substance is defined in section 2 of the Resource Management Act 1991 to include, but is not limited to, any substance defined in section 6 of the Hazardous Substances and New Organisms Act 1996 (HSNO) as a hazardous substance. ~~Act as being similar to, but wider than [R15.4] the definition in section 6 of the Hazardous Substances and New Organisms Act 1996 (HSNO).~~

3.6.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none">• Clear interpretation of the Plan provisions and references.• Greater clarity in the relationship with the Resource Management Act.	<ul style="list-style-type: none">• No costs identified.

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.7 The definition of Hazardous Substances

3.7.1 The Issue

The decision report on Hazardous Substances discussed the need for changes to the wording of the sections entitled "What is a Hazardous Substance?" in the issues sections of the two volumes and identified the need for a change in wording of those sections as the definition in the Resource Management Act is "similar to, although wider than" that in the HSNO Act rather than "the same as". This amendment was made to these sections of the plans, but the decision noted that no change was made to the definitions as that was seen as out of the scope of the submission being addressed at that time.

The Council needs to clarify the definition of 'Hazardous substance' in the Plan, so that there is consistency between the Issues and Rules of the Plan, and with relevant legislation, to avoid any uncertainty in intent or interpretation for application of the rules. The following ambiguities have been noted:

- *Hazardous substances – Issues* (page 117 of Townships section, page 131 of Rural section) states that "the Act" (presumably meaning the RMA) defines hazardous substance as being "similar to, but wider than the definition in section 6 of the HSNO Act 1996". This is incorrect, as the definition is in section 2 of HSNO.
- A slightly condensed version of the HSNO definition is given in the Issues sections but the full text is in the 'Legislation referred to in the Definitions Section' subsection of the Rules definitions. These changes in wording are confusing.
- The correct wording of the RMA definition is:

'Hazardous substance' includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance.

Whereas the definition on page 415 of the Townships rules and page 387 of the Rural rules states:

"Hazardous substance includes any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996".

It is recommended that the full definitions of the RMA and HSNO should be stated in the Issues sections for clarity, and that the Council should consider using the full RMA definition in the Rules sections if it wishes to control hazardous substances (including wastes and other substances that do not have a specific HSNO classification.)

The current omission in the District Plan definition of the words “but not limited to” from the RMA definition may limit the Council’s ability to control substances that are not HSNO hazardous substances but may have significant environmental effects, such as bulk liquids and industrial wastes that may not be covered by a HSNO classification. Although there is no definition of ‘hazardous waste’ in HSNO or RMA, the RMA definition of ‘hazardous substance’ is wide enough to include waste as it includes hazardous substances that are not defined by HSNO.

While this may not be a major issue at the present time, there is the potential for district level issues to arise and providing for flexibility within the definition is appropriate.

The Council may wish to consider including a definition of hazardous waste in the Plan, however as the Canterbury Hazardous Waste Strategy explains, there is currently no single, national definition for hazardous wastes. In the District Plan, the commentary on ‘waste’ in Waste Disposal –Issues (page 115, Rural, page 100, Townships) currently says that waste including ‘toxic substances’ is known as ‘hazardous waste’; however this is inconsistent with HSNO where toxicity is only one of a number of characteristics (explosiveness, flammability, oxidising, corrosiveness) that could make waste hazardous. The RPS and NRRP (Chapter 4 Water Quality) definition is

“Hazardous wastes - means waste material, including its containers or packaging, containing hazardous substances either singly or in combination with other material.”

However adopting this definition may limit the Council’s ability to control substances that are not HSNO hazardous substances but may have significant environmental effects, because the NRRP/RPS definition of ‘hazardous substance’ is the same as the HSNO definition which is narrower than the RMA definition.

If the Council wants to include a definition of waste in the Plan, it should be included in the Rules sections and not only the Issues sections, and should be consistent in all sections, to avoid uncertainty in the application of the Plan. It is recommended that this matter be considered further at the time of future reviews to the District Plan.

3.7.2 Options

The options for dealing with the definition of hazardous substances issue include:

- Leave the existing issues sections and definitions as they currently are (status quo);
- Amend the issues sections and definitions in both volumes of the Plan to use the HSNO definition of hazardous substances;
- Amend the issues sections and definitions in both volumes of the Plan to use the RMA definition of hazardous substances.

3.7.3 Recommended option

The recommended options for dealing with this issue is:

- Amend the issues section of both the Townships and Rural volumes of the Plan to refer to the Resource Management Act definition of hazardous substances (see Appendix One).
- Amend the definition of hazardous substances in both the Townships and Rural volumes of the Plan as follows:

'Hazardous substance' includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance.

3.7.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Clear interpretation of the Plan definitions. • Greater consistency with the Resource Management Act. • More appropriate coverage of substances able to be covered under the definition. 	<ul style="list-style-type: none"> • Less restriction on the substances able to be covered under the definition.

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.8 Waterway setbacks

3.8.1 The Issue

The common areas of the rules between the Townships and Rural volumes of the Plan are reasonably consistent except that, for an unknown reason, Business zones are not subject to the waterway setback of 20 metres that applies in Living zones and Rural zones. While there may not currently be situations where this could apply, there is the potential that in the future re-zoning could occur and lead to inconsistency in the application of this rule and a lack of protection for waterways.

3.8.2 Options

The options for dealing with the waterways issue include:

- Leave the district plan provisions as they are (status quo);
- Amend the Business zone rules to provide for a 20 metre setback from any waterbody.

3.8.3 Recommended option

The recommended option for dealing with this issue is to amend Rule 2 in the Land use rules for Business Zones, in the Townships Volume as follows:

2.1.4 Any hazardous substance(s) is/are not stored within 20 m of any waterbody.

3.8.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Protection for waterbodies from potential impacts of hazardous substance storage. • Consistency in the application of the rules across all zones. 	<ul style="list-style-type: none"> • Potentially a restriction on the area of business zoned land where hazardous substances may be stored.

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.9 References to Codes of Practice

3.9.1 *The Issue*

Within the Townships volume, the 'Other activities Rule 2.3' (page 301) references the following Code of Practice and Standard² as means of compliance for controlled activities involving bulk storage of petroleum products and LPG (at service stations and truck stops):

- (a) 'Code Of Practice for Design, Installation and Operation of Underground Storage Tanks'; and
- (b) 'Australian/New Zealand Standard 1596:1997', Storage and Handling of LP Gas".

These documents have been adopted by ERMA as default means of compliance for sites involving the storage of petrol and LPG that require HSNO location test certificates. The Council can therefore remove the present conditions and references to Codes Of Practice and standards without compromising the Rule.

3.9.2 *Options*

The options for dealing with this issue include:

- Leave the wording the way it currently is (status quo);
- Amend the wording to remove reference to the code of practice and standard.

3.9.3 *Recommended option*

The recommended option for dealing with this issue is:

Amend the wording within rule 2.3(a) and 2.3(b) (Exceptions), in the Townships volume in relation to Land Use rules for Business zones, as follows:

2.3 Exceptions [R15.3]

- (a) The storage and retail sale of petrol (up to 100,000 litres storage in underground tanks) and diesel (up to 50,000 litres in underground tanks) at service stations and/or truck stops shall be a controlled activity and will not require the written consent of other persons and shall be non-notified, ~~provided that the "Code of Practice for the Design, Installation and Operation of Underground Petroleum Storage Systems" (Department of Labour) is complied with. [R15.3]~~
- (b) The storage and sale of LPG (up to 6 tonnes, single vessel storage) at service stations and/or truck stops is a controlled activity and will not

² 'Code Of Practice for Design, Installation and Operation of Underground Storage Systems (Department of Labour)' and 'Australian/New Zealand Standard 1596:1997, Storage and Handling of LP Gas'.

require the written consent of other persons and shall be non-notified, ~~provided that the "Australian/New Zealand Standard 1596:1997, Storage and Handling of LP Gas" is complied with.~~
[R15.3]

3.9.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Clear interpretation of the Plan provisions. • Easier use of the plan for the public. • No ambiguity over the relationship with other documents. 	<ul style="list-style-type: none"> • No costs identified.

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.10 References to external documents

3.10.1 The Issue

In the Classes of Hazardous Substances tables in both the Townships and Rural volumes of the Plan, under both 2.2 Toxic Gases and 7.1a Poisonous Substances, there is reference to "*the United Nations Recommendations on the Transport of Dangerous Goods, 7th Revised Edition, or its subsequent revisions*".

Case law³ says that you may not refer to any subsequent revisions of a document and you must carry out a variation to the plan to update it to refer to changes in documents being referred to. Therefore the "or its subsequent revisions" wording must be removed.

As the Classes of Hazardous Substances table is proposed to be revised to reflect the HSN0 classifications (see elsewhere in this document), this will also negate the need to refer to the UN recommendations, as the Hazardous Substances (Classification) Regulations 2001 cite the 11th version of the Code.

3.10.2 Options

The options for dealing with this issue include:

- Leave the wording as it currently is (status quo);
- Amend the wording to remove reference to the external documents.

3.10.3 Recommended option

The recommended option for dealing with this issue is:

Amend the wording within the Classes of Hazardous Substances tables in both the Townships and Rural volumes of the Plan, under both 2.2 Toxic Gases and 7.1a Poisonous Substances, to remove reference to the external documents, as shown in Appendix One.

³ Bodle v Northland Regional Council A225/2003.

3.10.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none">• Compliance with case law in relation to the use of external documents.• Clarity in the nature of the provisions without reference to another document.	<ul style="list-style-type: none">• No costs identified.

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.11 Correction of typographical errors

3.11.1 The Issue

Three typographical errors have been identified within the Rural Volume, Appendix 15, as follows:

- In the Classes of Hazardous Substances table, in the left-most column in relation to Oxidising Substances, this is referred to as 5.1 and should be 5. This is incorrect and confusing as it could lead users of the Plan to be unclear over what reference is made to Oxidising Substances.
- In the Quantity Limits for each Class of Hazardous Substance table, the note relating to 3a Aboveground storage is located within the table rather than at the end. This is confusing for users of the Plan as they may have difficulty in locating the note and may therefore not be able to interpret the provisions accurately.
- In the Quantity Limits for each Class of Hazardous Substance table, the quantity limit for class 7.1b Agrichemicals is listed as 1,000 litres rather than 1,000 litres/kilograms. The current wording precludes control of non-liquid agrichemicals, eg powders which are used as commonly as liquids.

3.11.2 Options

The options for dealing with these issues include:

- Leave the wording as it currently stands (status quo);
- Amend the wording to correct the typographical errors.

3.11.3 Recommended option

The recommended options for dealing with these issues are to correct the typographical errors as shown in Appendix One.

3.11.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Correction of errors. • Less confusion for applying the rules. 	<ul style="list-style-type: none"> • No costs identified.

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.12 Alignment of the Hazardous Substances provisions with HSNO

3.12.1 The Issue

The Hazardous Substances provisions in the Plan, and the system used to classify and describe hazardous substances in the Hazardous Substances Appendices of both volumes predates the HSNO legislation, and are now out of date. The current numbering system for the various classes of substances is not consistent with any other recognised system, and it is now appropriate to revise the classifications in the Plan to be consistent with the system of the Hazardous Substances (Classification) Regulations 2001.

The HSNO system classifies hazardous substances recognisably in much the same way as the current system, i.e. in a hierarchy of subclasses according to their degree of hazard, however the new HSNO system is closely linked to the classifications and descriptions used in the *United Nations Recommendations on the Transport of Dangerous Goods, 11th Revised Edition*. The Hazardous Substances (Classification) Regulations refer to these 'UN Model Regulations' and to the associated 'UN Manual of Tests and Criteria'.

The threshold quantity limits for resource consents in the Appendices are a convenient measure to use to distinguish between small-scale activities where effects are likely to be minor, and larger scale activities that require resource consent. The current quantity limits were established with regard to quantities of explosives, flammable liquids and solids, and oxidizing agents that were licensed previously throughout the District by the Council under the provisions of the Dangerous Goods legislation which has been superseded by HSNO. HSNO

For substances where the current classification system of the District Plan does not align with the new HSNO system, new threshold quantity limits are proposed for the reclassifications that HSNO has introduced. Those limits have been derived with due consideration to the HSNO controls, to national guidelines and procedures published and advocated by the Ministry of the Environment and the Environmental Risk Management Authority, to the Natural Resources Regional Plan, and to District Plans published by other territorial local authorities. For substances where the District Plan's existing classifications have not been changed by HSNO, it is proposed to retain the current quantity limits as they have been shown to be workable in the resource consent context without any apparent disadvantage to the Council or its customers. In that respect they are considered to still reflect local conditions and requirements.

It should be noted that the quantities of hazardous substances listed in the appendices are quite different in places from quantities in other District Plans. There is the potential to review neighbouring District plans to try and develop consistency between Selwyn and other districts, however it is not immediately desirable to align Selwyn District with other neighbouring districts eg Christchurch, which is primarily urban, or with other primarily rural districts eg Ashburton, particularly as the classification systems used by those authorities are not consistent with HSNO. It is recommended that this matter be considered

further at a future review of the hazardous substances issues in this Plan and those of other Districts, in liaison with those territorial authorities.

For the purposes of this plan change it has however been relevant to consider the Plans of other Districts that have recently aligned their hazardous substances provisions with HSNO, for example Tauranga District, Western Bay of Plenty District, Gisborne and Hastings. Those Districts have adopted the Ministry for the Environment's Hazardous Facilities Screening Procedure (HFSP), which adopts the HSNO classification system and applies a formulaic risk factoring approach to determine thresholds for resource consents. The HFSP requires the Council to derive and adopt single-figure or decimal fraction indices (not quantity limits) in a Matrix which resource consent applications must then be compared to, following the adjustment of the quantities proposed in an application by a number of environmental risk factors. While arguably the HFSP provides a consistent assessment method for use by any authority that adopts it, examination of the aforementioned district's Plans shows that the application of the HFSP approach varies from district to district and has been significantly modified in several instances. The Selwyn District Council has noted that the HFSP has been almost exclusively adopted by North Island Districts, but it is not convinced that it provides any clear benefits over the existing and proposed quantity limit approach, particularly given the complexity of establishing a Matrix and the associated need for staff training to implement it.

Some HSNO classes are not listed in the appendices because they are not considered to have a significant hazard rating in the land-use planning context. In this case, no restrictions apply under the District Plan. However, many hazardous substances have more than one HSNO class or category. Where this is the case, the most restrictive class or category will be applied, as this recognises the possible extent of the health and safety risks associated with the substance.

The proposed revisions relating to this matter substantially address the issues raised by the NZ Federation of Fruit and Vegetable Growers in their appeal on the current provisions of the Plan, which identified the need to amend parts of the classes and quantities within the appendices to provide greater consistency with other documents relating to the management of agrichemicals, especially HSNO and NZS8409:2004 *Management of Agrichemicals* which is recognised as a Code of Practice for compliance with HSNO by the Environmental Risk Management Authority (ERMA).

3.12.2 Options

The options for dealing with the issue of aligning the Plan provisions with HSNO include:

- Leave the wording as it currently stands (status quo);
- Amend the wording of the Plan to address inconsistencies between the two volumes and the nationally recognised classification system and controls of the HSNO legislation.

3.12.3 Recommended option

The recommended option for dealing with this issue is to amend the wording of the Plan to address inconsistencies between the two volumes and the nationally recognised classification system and controls of the HSNO legislation, as shown in Appendix One.

3.12.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Clear interpretation of the Plan provisions. • Adoption of recognised classification systems and reference to relevant legislation • Easier use of the plan for the public 	<ul style="list-style-type: none"> • Potential regulation of a wider range of hazardous substances in the District Plan may result in extra costs to the community

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

Note: Appendix Two provides a summary of the changes to the hazardous substances quantities within each volume of the Plan.

3.13 Reference to HSNO and related documents as a measure of compliance assessment

3.13.1 The Issue

The NZ Federation of Fruit and Vegetable Growers had sought as relief in an appeal to the District Plan decisions, that NZS8409:2004 should be used as the threshold in determining small scale and large scale hazardous substances storage, and that the Council should accept compliance with the Standard as a means of determining permitted activity status for agrichemical merchants and users.

The Council considered that this method would not necessarily sit well with the resource consent process, as the Standard itself makes it clear that it is intended to complement, but not replace District Plan provisions. The Council may also be obligated to prove compliance in instances where agrichemicals are present, which would almost certainly require additional Council staff resources, and incur significant training and administration costs.

The Council is also mindful of difficulties in referencing other documents in the Plan (as discussed in section 3.10.1 of this Variation), however it accepts that such documents are relevant to the assessment of consent applications involving hazardous substances. It is therefore proposed that a statement be included in section 3.2 of both volumes recognising the relevance of such documents. This would ensure consistency with HSNO and other relevant documents without creating uncertainty of application.

3.13.2 Options

The options for dealing with the issue of appropriate reference to HSNO and related documents as a measure of compliance assessment include:

- Leave the wording as it currently stands (status quo);
- Amend the wording of both volumes, recognising the relevance of HSNO codes of practice and other documents in assessing resource consent applications.

3.13.3 Recommended option

The recommended options for dealing with this issue is to amend the wording of section 3.2 of both volumes, to include the following statement:

"When assessing compliance with the provisions of the hazardous substances rules and when considering applications for resource consents involving storage, use, disposal or transportation of hazardous substances, the Council will have due consideration to any controls imposed by other legislation and related Standards. This will include but will not be limited to the provisions of the Hazardous Substances and New Organisms Act 1996 and Regulations (including test certification, approved handler certificates, controlled substances licences, codes of practice issued by or recognised by ERMA,), the Natural Resources Regional Plan and resource consents issued by the Canterbury Regional Council, and the Health and Safety in Employment Act 1992."

3.13.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Clear interpretation of the Plan provisions. • Easier use of the plan for the public • Compliance with case law in relation to the use of external documents. • Clarity in the nature of the provisions without specific reference to another document. • Recognition of other relevant documentation • No ambiguity over the relationship with other documents. 	<ul style="list-style-type: none"> • No costs have been identified for this option

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

3.14 Site containment requirements for Liquefied Petroleum Gas (LPG)

3.14.1 The Issue

The rules in both volumes specify conditions for permitted activities storing hazardous substances, including the following requirement to avoid uncontrolled spillage or leakage of hazardous substances from a site:

"Any area used to store the hazardous substance or goods treated with the hazardous substance has an impervious surface which:

- Is separated from the bare ground;*
- Is designed to contain any runoff of the substance or water contaminated with the substance;*
- Has a minimum area able to be used to contain the hazardous substance amounting to:*

- (i) *the amount of containment available is no less than 110% of the total volume of stored hazardous substance where the area is roofed; or*
- (ii) *120% of the volume of any stored hazardous substance where the area is unroofed."*

This requirement is not relevant to the safe containment of Liquefied Petroleum Gas (LPG), which presents a significantly greater health and safety risk (fire/explosion) if leakage is contained within a confining structure. It should be noted that LPG has no potential to contaminate water or soil resources or to bioaccumulate.

3.14.2 Options

The options for dealing with these issues include:

- Leave the wording as it currently stands (status quo);
- Amend the wording to exclude Liquefied Petroleum Gas (LPG) from the site containment conditions of the hazardous substances rules in each volume.

3.14.3 Recommended option

The recommended option for dealing with this issue is to amend the wording to exclude Liquefied Petroleum Gas (LPG) from the site containment conditions of the hazardous substances rules in each volume.

3.14.4 Costs and Benefits

The following table assesses the costs and benefits of the recommended option:

Benefits	Costs
<ul style="list-style-type: none"> • Protection of the immediate environment and avoidance of health and safety concerns relating to the confinement of LPG leaks 	<ul style="list-style-type: none"> • No costs have been identified for this option

The benefits of the recommended option are considered to outweigh the costs and therefore it is considered to be an appropriate means of achieving the objectives and policies of the Plan.

4. Consultation

The Council consulted with the statutory bodies listed in Clause 3 of the First Schedule before notifying the variation. These included:

- Environment Canterbury
- the New Zealand Vegetable and Potato Growers' Federation Inc and New Zealand Fruitgrowers Federation.

Responses were received from both Environment Canterbury and the New Zealand Vegetable and Potato Growers' Federation Inc and New Zealand Fruitgrowers Federation.