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# PREFERRED OPTION REPORT TO DISTRICT PLAN COMMITTEE

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**DATE:** 19 March 2018

**TOPIC NAME:** Hazardous Substances and Contaminated Land

**SCOPE DESCRIPTION:** Preferred Option Report for Hazardous Substances and Contaminated Land

**TOPIC LEAD:** Robert Love

**PREPARED BY:** Frances Lojkine (Stantec New Zealand)

## EXECUTIVE SUMMARY

|                              |   |
|------------------------------|---|
| <i>Issue(s)</i>              | <ol style="list-style-type: none"><li><i>1. Objectives and policies that overlap with the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health</i></li><li><i>2. Objectives, policies and rules located in multiple places in the Operative District Plan, potentially leading to confusion for resource users</i></li><li><i>3. An ongoing need to manage cumulative effects and effects of hazardous substances and contaminated land on sensitive sites and areas</i></li></ol> |
| <i>Preferred Option</i>      | <i>That hazardous substances and contaminated land are managed by amended definitions, policies and rules within the Proposed District Plan that remove duplication and overlaps with legislation and Environment Canterbury responsibilities, and that are located within zone provisions to provide an integrated approach</i>  |
| <i>Recommendation to DPC</i> | <i>That the preferred option for Hazardous Substances and Contaminated Land is endorsed for further development (targeted stakeholder engagement, Section 32 and Drafting Phase).</i>   |
| <i>DPC Decision</i>          | <i>"That the Committee endorses the Preferred Option for Hazardous Substances and Contaminated Land for further development."</i>   |

## 1.0 Introduction

The Hazardous Substances and Contaminated Land Baseline Report sought to better understand the issues in relation to storage, use and manufacture of hazardous substances, and use of contaminated land, within Selwyn District. The effectiveness of the current Operative Selwyn District Plan (the Operative District Plan) provisions was also assessed. The key deliverable of the report was policy and rule options to manage the storage and use of hazardous substances and the use of contaminated land in Selwyn District. A copy of the Hazardous Substances and Contaminated Land Baseline Report is attached as **Appendix 1**.

The purpose of this Preferred Option Report is to provide a summary of the Baseline Report, and to identify issues and options for addressing the management of hazardous substances and contaminated land within Selwyn District.

A preferred option has been identified and is outlined. If endorsed by Council, this preferred option will form the basis of further engagement with targeted stakeholders as part of the District Plan Review project.

## 2.0 Summary of Issues

### 2.1 Hazardous substances

Historically, District Plans have included separate chapters on hazardous substances, with detailed controls on their storage and use. However, amendments to the Resource Management Act 1991 (RMA) in 2017 removed the specific requirement for councils to manage hazardous substances. The reason for this is that other pieces of legislation (principally the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Health and Safety at Work Act 2015) already deal comprehensively with the issues relating to hazardous substances.

#### ***Sites using and storing hazardous substances in Selwyn District***

The majority of sites storing or using hazardous substances in Selwyn District are small, and generally do not use complex combinations of different types of hazardous substances. The Baseline Report used Environment Canterbury's Listed Land Use Register (the Register) to identify sites that may potentially be using or storing hazardous substances.

Many of the sites that appear on the Register do so because an activity that is occurring there may use a hazardous substance. For example, motor vehicle garages appear on the Register because the repair of vehicles inevitably involves the use (and storage) of petroleum hydrocarbons (e.g. engine oil), even though the quantity kept on site is likely to be very small. At the other end of the scale there are a number of clearly identified and well known sites in the District where significant quantities of hazardous substances are present, such as some sites within the Izone Business Park at Rolleston (e.g. Westland Dairy Company, Rolleston Pest Control Research Facility and the Lyttelton Port Company Inland Port) and the Synlait and Fonterra dairy

processing sites. These sites are well known and managed through resource consent conditions and requirements under the other legislation noted above.

### ***Effects on sensitive activities and/or sensitive natural environments***

Hazardous substances can pose a risk if stored or used close to sensitive activities (such as residential areas or schools) or sensitive areas such as waterbodies. There are however no significant concentrations of sites using or storing hazardous substances close to sensitive activities or areas in the District. Two locations contain a number of sites that may use or store hazardous substances - the Izone Business Park at Rolleston, and the area of Lincoln where research and university activities are located. However, the Izone is separated from the closest Living Zones by the railway line, the state highway and in some areas the Rolleston business district, and at Lincoln the quantities of hazardous substances being used or stored have not been sufficient to trigger consents under the Operative District Plan (and the plan limits are quite restrictive).

The only other location in the District where there is a significant number of sites potentially using or storing hazardous substances is Leeston, where a wide variety of small business zoned sites are located. However, the small size of the sites, and the fact that consents have not been required for hazardous substances other than for the CRT Store, suggest that the risks to nearby residential areas will be low.

### ***Risks from sites using or storing hazardous substances in natural hazard events***

The controls on hazardous substances required for compliance with HSNO (e.g. packaging, secondary containment, emergency management and more general hazard management) are designed to protect against the risk of discharge in natural hazard events. However, areas subject to major flood events may need additional controls to ensure that hazardous substances are protected against inundation by flood waters.

### ***Cumulative effects***

Sites that store or use hazardous substances that are situated close to each other may generate a cumulative risk of effects that is greater than the risk from each individual site, because of the adverse and of synergistic effects that can arise when hazardous substances are accidentally combined. The most likely area for this to occur currently would be the Izone Business Park at Rolleston, where a number of sites occur in relatively close proximity to each other.

## **2.2 Contaminated land**

Investigations of potentially contaminated land in Selwyn District since the earthquakes have shown that while there may be contaminant 'hot spots' in and around areas where concentrated farm chemicals and fuels have been stored or used, in general contamination of soils in the District is not a major issue. However, most subdivision in the District occurs on greenfield rural sites. These sites may have been subject to herbicide/pesticide use, had sheep dips located on them in the past, or have been the sites of other potentially contaminating agricultural activities.

There is therefore an element of risk associated with the development of any potentially contaminated land in the District.

## 3.0 Statement of Operative District Plan approach

### 3.1 Hazardous substances

Objectives, policies, rules and other methods relating to the management of hazardous substances are spread throughout the Operative District Plan, in both the Township Volume and the Rural Volume. The provisions are closely related to those for contaminated land, as spills, leaks and disposal of hazardous substances are seen as the main causes of contaminated land.

In the Township Volume, policies relating to the manufacture and storage of hazardous substances require:

- potential risks of adverse effects to be avoided or mitigated
- manufacture, use or storage of large quantities of hazardous substances in Living or Business 1 Zones to be avoided
- manufacture, use or storage of hazardous substances in Business 2, 2A, 2B and 3 Zones does not have to be avoided, but adverse effects must be mitigated

These policies are achieved through a series of rules that permit only those activities using or storing hazardous substances at volumes below those specified in Appendix 9 of the Operative District Plan. In general, the volumes specified in Appendix 9 are reasonably small in Living Zones and slightly higher in Business Zones.

Policies in the Township volume also cover the disposal of hazardous substances, and seek to:

- avoid disposal occurring into sewage systems or onto land in townships
- ensure that commercial manufacturing or storage has the means to dispose of hazardous substances without affecting the environment
- work toward obtaining access to appropriate disposal facilities for residents and ratepayers.

A largely identical approach to the management of hazardous substances is taken in the Rural Volume, although an additional focus for the policies is allowing appropriate quantities and classes of hazardous substances to be stored in the rural area to provide for rural activities. As a result the volumes of hazardous substances specified for permitted activities vary again from those identified for the Living and Business Zones.

### 3.2 Contaminated land

The policy approach in both the Township and Rural Volumes in relation to contaminated land is, first, to manage activities to avoid creating contaminated land in the first instance, and second to control activities on any contaminated land that does exist in order to avoid adverse effects on people's health and well-being.

The rule framework therefore permits a variety of activities on land that may have been contaminated, but requires consent for erection of a dwelling, educational facilities, outdoor recreation activities and growing commercial food crops or rearing animals.

The provisions are drafted slightly differently between the Township and Rural Volumes, particularly the rules.

### 3.3 Definitions

Definitions of 'agrichemical', 'contaminated land', 'fumigant', 'hazardous substance' and 'vertebrate toxic agent' are included within the Operative District Plan.

### 3.4 Effectiveness of existing provisions

Explanatory material within the Operative District Plan states that the plan complements HSNO by addressing the effects of hazardous substances on health and safety, and on the environment, including amenity values. However, rather than complementing, the Operative District Plan duplicates many of the requirements of HSNO without acknowledging that HSNO will also apply to resource users. In some cases the Operative District Plan adds more complicated layers of regulation on top of the HSNO requirements. There is therefore the potential for considerable confusion for hazardous substance users in terms of dual compliance with HSNO and District Plan requirements, and there is no clear justification provided in the Operative District Plan for an inconsistent approach having been adopted. There are also significant overlaps between the current plan provisions and Environment Canterbury's Regional Policy Statement and Regional Land and Water Plan, particularly with regard to disposal of hazardous substances.

Existing contaminated land rules overlap with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the NESCS) and are the general policy and rule approach is often inconsistent with the approach of the NESCS.

For both the hazardous substances and contaminated land provisions, the inclusion of provisions across both the Township and Rural volumes of the District Plan has caused unnecessary complications. Policies and rules dealing with the same matters are worded differently between the two volumes, for no apparent reason, which is likely to cause confusion for plan users.

If the terms 'agrichemical', 'fumigant' and 'vertebrate toxic agent' are retained in the District Plan, their definitions are fit for purpose. Whether these definitions remain necessary will be addressed in the drafting stage of the District Plan, in conjunction with other topic areas.

Updated definitions of both 'hazardous substance' and 'contaminated land' should be included, in order to achieve consistency with HSNO and the NESCS.

## 4.0 Summary of relevant statutory and/or policy context and other background information

Five matters are particularly relevant to the statutory and policy context for the management of hazardous substances and contaminated land in Selwyn District:

- Hazardous Substances and New Organisms Act 1996
- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health
- Resource Legislation Amendment Act 2017
- Canterbury Regional Policy Statement 2013
- Mahaanui Iwi Management Plan 2013

#### 4.1 Hazardous Substances and New Organisms Act 1996

HSNO provides a comprehensive and detailed regime for controlling the risks of using, storing, transporting and disposing of hazardous substances.

#### 4.2 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

The NESCS provides a nationally consistent set of planning controls for contaminated land. It ensures that contaminated land is identified, assessed, and (if necessary) made safe for human activity, although it does not address environmental effects of contaminated land. The NESCS also does not contain objectives or policies to guide decisions made under its rules.

#### 4.3 Resource Legislation Amendment Act 2017

Council's responsibilities with respect to controlling the storage, use and environmental effects of hazardous substances have changed substantially with the amendments to sections 30 and 31 of the RMA. The intent of the amendments was to ensure that councils only place additional controls on hazardous substances if they are necessary to control effects under the RMA that are not dealt with by controls already imposed by HSNO and the Health and Safety at Work Act 2015, such as effects on sensitive sites and areas.

#### 4.4 Canterbury Regional Policy Statement 2013

Methods within the RPS currently require Selwyn District Council to set out objective and policies (and consider whether to include methods) to avoid the actual or potential effects of the use, storage, transport or disposal of hazardous substances on identified areas, and avoid, remedy or mitigate adverse effects in general. In relation to contaminated land, the RPS requires Selwyn District Council to set objectives, policies or methods to require site investigations, ensure that adverse effects are avoided, remedied or mitigated, and ensure that any remediation or mitigation works do not lead to further significant adverse effects. It is important to note that the Canterbury Regional Policy Statement 2013 (the RPS) was prepared before the Resource Legislation Amendment Act 2017 and at about the same time as the NESCS.

#### 4.5 Mahaanui Iwi Management Plan 2013

The Mahaanui Iwi Management Plan 2013 does not specifically mention or consider hazardous substances as an issue, although the provisions relating to weed control (which express a

preference for natural solutions as opposed to the use of hazardous substances) are likely to be relevant.

Ngāi Tahu involvement in decision making about contaminated land is identified as an issue, with a policy approach involving the recognition of cultural issues and full and open information sharing. A particular issue is also raised in relation to closed landfills in the Akaroa catchment and their potential impacts on coastal water quality, groundwater and wāhi tapu and wāhi taonga, with policies relating to investigation, monitoring and possible remediation.

## 5.0 Summary of alternative management responses – Other Districts

The operative Ashburton and Hurunui District Plans currently take a similar approach to the Operative Selwyn District Plan of specifying comprehensive lists of hazardous substances, with volumes defined for permitted activities and consents for activities using or storing greater volumes. The Ashburton and Hurunui Plans also seek to control many of the activities that use, store, manufacture and dispose of hazardous substances.

The Waimakariri District Plan takes a slightly different approach, by including a much more limited list of hazardous substances and applying controls only in residential areas.

The Proposed Hurunui District Plan, and the recently operative Christchurch District Plan, both reflect current practice to substantially remove hazardous substances provisions from district plans in order to avoid overlaps with other legislation, particularly HSNO. Both of these plans have very few policies, and rules that relate only to specifically identified issues in each district.

In relation to contaminated land, only two of the district plans of adjacent districts (Hurunui and Christchurch) have objectives and policies specifically relating to management of contaminated land. None of the adjacent district plans have rules relating to contaminated land.

## 6.0 Summary of Options to address Issues

### 6.1 MAINTAIN STATUS QUO

Under this option, the existing approach of detailed provisions for hazardous substances and contaminated land, and repetition of the approach in each zone, would be maintained.

#### ***Effectiveness in Addressing Issues:***

A rollover of the current provisions would continue the issues identified in Section 2 of this report, and is therefore considered ineffective.

#### ***Risks:***

There would be a significant lost opportunity to improve the efficiency and effectiveness of management of hazardous substances and contaminated land in the District if the existing provisions were rolled over.

***Budget or Time Implications:***

This would be the most cost and time efficient option in the short-term for the Council, but rolling over the existing provisions will result in costs for those resource users who have to maintain compliance with HSNO requirements and also seek resource consents from the Council, particularly if those consents then have different requirements to those contained in HSNO.

Where contaminated land rules cover matters that are not addressed by the NESCS there would be additional costs to resource users to obtain consents.

***Stakeholder and Community Interests:***

Existing hazardous substance consent holders, major and minor commercial and industrial sites, research institutes and universities.

***Recommendation:***

Do not maintain the status quo.

## 6.2 UPDATED STAND-ALONE HAZARDOUS SUBSTANCES AND CONTAMINATED LAND PROVISIONS

Under this option, objectives, policies and methods (including rules) addressing hazardous substances and contaminated land would be updated to remove overlaps with HSNO and the NESCS, but would be retained in a separate specific section(s) of the District Plan.

***Effectiveness in Addressing Issues:***

Updating the provisions to remove overlaps with HSNO and the NESCS would address the inefficiency of the current framework, while allowing the Council to develop targeted District Plan provisions to address the residual issues identified in Section 2 of this report.

Maintaining a set of separate provisions would however continue a relatively inefficient plan framework where users have to consult both zone provisions and hazardous substances/contaminated land provisions. The updated provisions are also likely to be relatively small in number, which may not justify a stand-alone section in the District Plan.

***Risks:***

The principal risk with this option is that it would result in a confusing District Plan with provisions in multiple places, and may not lead to efficient management of hazardous substances and contaminated land.

***Budget or Time Implications:***

This option will incur some time and cost to Council in preparation of an updated set of provisions and ensuring they are integrated with other plan provisions while remaining separate.



Costs and time for resource users will be reduced over Option 1, as updated provisions will remove overlaps that currently result in costs and delays.

***Stakeholder and Community Interests:***

Existing hazardous substance consent holders, major and minor commercial and industrial sites, research institutes and universities.

***Recommendation:***

Do not proceed with updated stand-alone provisions for hazardous substances and contaminated land, as inefficient plan provisions will result.

### 6.3 INTEGRATE HAZARDOUS SUBSTANCES AND CONTAMINATED LAND PROVISIONS INTO ZONE PROVISIONS

Under this option, objectives, policies and methods (including rules) addressing hazardous substances and contaminated land would be updated to remove overlaps with HSNO and the NESCS and to focus them on specific matters (such as proximity to sensitive areas and sites) that are of concern to the community. Updated provisions would be contained within the zone provisions however, to provide an integrated approach.

***Effectiveness in Addressing Issues:***

Updating the provisions to remove overlaps with HSNO and the NESCS would address the inefficiency of the current framework, while allowing the Council to develop targeted District Plan provisions to address the residual issues identified in Section 2 of this report.

Including updated provisions within the relevant zone provisions would provide a more integrated, efficient and effective set of plan provisions. It would also allow the cumulative effects of activities to be managed within an overall zone framework, which would allow more integrated management of those effects.

***Risks:***

The principal risk with this option is that provisions would not be integrated effectively, but this can be addressed by careful plan drafting.

***Budget or Time Implications:***

This option will incur some time and cost to Council in preparation of an updated set of provisions as part of the zone provisions, but less than preparing a stand-alone set of provisions.

This option is likely to result in the lowest costs for resource users, as updated provisions will remove overlaps that currently result in costs and delays, and integrated plan provisions will make the District Plan more efficient to use.

***Stakeholder and Community Interests:***

Existing hazardous substance consent holders, major and minor commercial and industrial sites, research institutes and universities.

**Recommendation:**

Proceed with the option of updating the plan provisions to remove overlaps and integrating them with zone provisions for ease of use.

## 7.0 Summary of stakeholder engagement

Discussions with Environment Canterbury about the requirements of the Canterbury Regional Policy Statement, which has been superseded by the Resource Legislation Amendment Act 2017 were undertaken on 19 February 2018. Staff from Environment Canterbury were supportive of removing duplication between the District Plan and legislation. As highlighted earlier in this report, Environment Canterbury staff noted that there is a potential role for the District Plan in addressing matters that are not covered by national legislation, such as the issue of reverse sensitivity and how to manage the storage and use of hazardous substances in close proximity to sensitive sites and areas.

Support is available from Environment Canterbury in respect of consent applications on potentially contaminated land, and enabling this process to continue was seen as a useful focus for the District Plan.

## 8.0 Preferred Option for further engagement

The Project Team recommends that:

- Management of the use of hazardous substances and contaminated land is dealt with primarily through the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, rather than using District Plan provisions.
- District plan provisions are retained to manage the storage and use of hazardous substances in close proximity to sensitive sites or areas, such as residential areas, schools, significant natural or ecological features and sites of importance to tangata whenua, but should be integrated with the zone provisions.
- Cumulative effects of the storage and of use of hazardous substances are managed through a combination of zoning and land use rules, for example by enabling industrial activities to occur within industrial land zoning, but not permitting it within residential zoning.

Further engagement is proposed to be undertaken with landowners of sites identified on the Listed Land Use Register as potentially contaminated, and with the landowners of sites where hazardous substances are used and/or stored.

## Appendix 1 – Hazardous Substances and Contaminated Land Baseline Report