

Section 19 - Hazardous Substances and Contaminated Land

19.1 Introduction

- 19.1.1 How hazardous substances are stored, transported and used; and the rules around the use of contaminated land, including its remediation, is a significant resource management issue. Under the Act, District and Regional Councils have functions related to hazardous substances. The provisions in the Waikato Regional Policy Statement are clear that it is the function of a Regional Plan to control the use, storage and transportation of hazardous substances in the coastal marine area, and on the beds of lakes and rivers; however it is a function of a District Plan to contain provisions relating to hazardous substances for all other land. It is also the function of District Councils to control the use of and remediation of contaminated land. Both Council and the Regional Council maintain a data base that records land that is potentially contaminated due to its association with a hazardous activity or industry as defined by the Hazardous Activities and Industries List (HAIL).
- 19.1.2 It is important to note that the National Environmental Standard for “Assessing and Managing Contaminants in Soil to Protect Human Health” **prevails** over any District Plan rule related to the assessment and management of contaminants in soil to protect human health.
- 19.1.3 The purpose of the National Environmental Standard is to ensure national consistency. It includes national planning rules that direct the requirement for consent or otherwise for activities on contaminated or potentially contaminated land, and standardised methods for the establishment of numerical standards for contaminants in soils. This includes a national set of soil contaminant standards for 12 priority contaminants, and best practice guidelines for investing and reporting on contaminated or potentially contaminated land. An inability to meet the requirements of this standard, or the undertaking of particular activities in certain locations will result in the need for a resource consent.
- 19.1.4 Places that manufacture or store hazardous substances are controlled under both the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Resource Management Act 1991 (the Act). The hazardous facilities screening procedure is applied to hazardous facilities in all land use zones. The procedure is applied to all new hazardous facilities that fall outside of the listed exemptions, irrelevant of their type or size to assess the potential impact of these activities. This section of the Plan details the consents that may be required for new activities and for significant change in existing activities (i.e. where existing use rights provided for under the Act cease to apply).

19.2 Resource Management Issues

- 19.2.1 The handling, transport, storage, use and disposal of hazardous substances can pose a risk to the environment, and to human health and safety if not appropriately managed.
- 19.2.2 The development of potentially contaminated or contaminated land can lead to adverse effects on the environment and human health. Ensuring that land is remediated or managed in a way that makes it environmentally sound and safe for its intended use is a significant issue.

19.3 Objectives and Policies

Please also refer to the objectives and policies of Part C, Part D and Part F, as relevant.

Objective - Hazardous substances and facilities: prevention or mitigation of adverse environmental and human health effects and minimisation of risk

19.3.1 To avoid or mitigate the risks of adverse effects created by the transport, use, storage and disposal of hazardous substances and/or the management of hazardous facilities on the environment.

Policy - Management of adverse effects of hazardous facilities

19.3.1.1 To ensure that hazardous facilities are designed, located, constructed and operated to avoid or mitigate adverse effects, including minimising risks to human health and the environment.

Policy - Location of hazardous facilities

19.3.1.2 To ensure that the establishment of hazardous facilities are prevented where the risks created by the facilities cannot be adequately avoided or mitigated, when having regard to:

- (a) Surrounding land use activities; and
- (b) The sensitivity of the surrounding natural environment; and
- (c) Potential future use of adjacent land areas where these areas have been identified by Council as suitable for growth; and
- (d) The potential for sensitive land uses anticipated by the zone; and
- (e) The cumulative effects of activities involving the use of hazardous substances; and
- (f) The potential for effects from hazards such as flooding or unstable ground.

Advice Note: Please also refer to the objectives and policies of the zone, in particular consistency of the proposal with the objectives and policies of the zone in which it is locating.

Policy - Transport and disposal of hazardous substances and waste

19.3.1.3 To ensure that hazardous substances and hazardous waste are transported and disposed of using methods and facilities which:

- (a) Are specifically designed to handle the disposal of hazardous substances; and
- (b) Use techniques that avoid adverse effects on human health and the environment.

Policy - Risk management for hazardous facilities

19.3.1.4 To ensure that all hazardous facilities have emergency contingency plans and/or strategies capable of avoiding, remedying or mitigating adverse environmental or human health effects upon failure of a facility, primary storage device, or accidental spill or release during handling or transfer.

Objective - Managing risks of potentially contaminated land

19.3.2 To ensure that significant risks to human health and the environment posed by potentially contaminated land are identified and addressed as part of development, or change of use.

Policy - Investigation of potentially contaminated land

- 19.3.2.1 To ensure that development sites that have a history of land use that may have resulted in contamination of the soil shall be subject to a preliminary site investigation to confirm whether further investigation, remediation or management is required. This will ensure that the land is suitable for the intended exposure to humans and the environment.

Advice Note: For the effects on human health the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) must be followed.

Objective - Managing risks of contaminated land

- 19.3.3 To ensure that unacceptable risk to human health and the environment posed by remediation, development, use and redevelopment of contaminated land is prevented or mitigated.

Policy - Avoid or mitigate of adverse effects of contaminated land

- 19.3.3.1 By ensuring that all development, use, and redevelopment of land affected by soil contamination avoids, remedies or mitigates adverse effects and risk on human health.

Policy - Management measures for contaminated land

- 19.3.3.2 By ensuring that management measures for contaminated land, that provide for remediation, management, or disposal of contaminated soil, ensure that the level of contamination is appropriate for any proposed future use of the land.

Policy - Risk management for use of contaminated land

- 19.3.3.3 By ensuring that exposure from the on-going use of land affected by soil contaminants is managed in a way that prevents or mitigates any adverse effects on human health.

Advice Note: For the effects on human health the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) must be followed.

19.4 Rules

The rules that apply to activities are contained in:

- (a) *The activity status tables and the performance standards of this section; and*
(b) *The activity status tables and the performance standards in Part D Zone Provisions, Part E District Wide Provisions and Part F District Wide Natural and Cultural Heritage of the Plan.*

The status of some activities will be determined by the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011. Reference should be made to the Ministry of Environment website for a copy of these regulations, a user's guide, and documents incorporated by reference in these regulations. Reference must be made to this Ministry of Environment website for the latest version of the documents incorporated by reference.

Advice Note: The Waikato Regional Council has controls relating to the effects on the environment from contaminated land.

19.4.1 Activity Status Tables

19.4.1.1	Permitted activities
(a)	All hazardous facilities shall comply with the performance standards of 19.4.2.
(b)	Any hazardous facility with an Effects Ratio that equals or falls below the Effects Ratio (R) specified for the zone in which it's proposed to locate, as indicated in the Hazardous Facilities Screening Procedure (HFSP) Consent Status Matrix within this section. (Note

19.4.1.1	Permitted activities
	Rule 19.4.2.4 for exemptions from this procedure).
(c)	Activities that do not equal or fall below the Effects Ratio (R) specified for the zone in which it is proposed to locate, will be assessed as a restricted discretionary activity (see 19.4.1.3(b)).
(d)	Any use or storage of radio-active materials with a level of activity below that specified as an exempt activity in the Radiation Protection Regulations 1982.
(e)	The co-disposal of hazardous substances to a landfill operation, but only where: <ul style="list-style-type: none"> (i) The landfill is operating under a resource consent or a requirement that provides for the disposal of hazardous substances; and (ii) The hazardous substance is listed as being permitted to be disposed of in the landfill; and/or (iii) The hazardous substance is within the quantities and concentrations permitted in the landfill; and/or (iv) The disposal is undertaken and completed in accordance with the conditions controlling the landfill operation.
(f)	Use or storage of hazardous substances on the Te Awamutu and Hautapu Dairy Manufacturing sites as identified on the Planning Maps where the activity is located at least 30m distance from the nearest adjacent Zone boundary. Advice Note: Refer also to Section 7 - Industrial Zone, Policy 7.3.1.2

Advice Note: Land known or likely to be potentially affected by soil contaminants are those sites recorded on a Contaminated Site Register held either by the Waikato Regional or Waipa District Council and/or those on the Hazardous Activities and Industries List (HAIL) contained in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS).

19.4.1.2	Controlled activities
(a)	Any activity which involves the manufacture, storage, use, transportation or disposal of hazardous substances in accordance with <i>Appendix C: Rating Guide of the "Land Use Planning Guide for Hazardous Facilities Ministry for the Environment 1999"</i> that complies with any one or more of the following, is a controlled activity and exempt from completing a HFSP assessment: Activities which involves the retail sale and storage of: <ul style="list-style-type: none"> (i) Petrol (up to 200,000 litres of storage in underground storage tanks); or (ii) Diesel (up to 120,000 litres of storage in underground tanks; or (iii) Involves the retail sale and storage of LPG (up to 12 tonnes single-vessel storage underground). Matters over which Council reserves its control are: <ul style="list-style-type: none"> ▪ Site layout; and ▪ Contingency or emergency plans. These matters will be considered in accordance with the assessment criteria in Section 21. Any activity that involves the retail sale and storage of petrol, diesel or LPG in underground tanks that does not comply with this rule is a discretionary activity and will be required to complete a HFSP assessment. NOTE: Compliance with relevant Codes of Practice is considered to address the matters relating to location and associated mitigation measures.

Advice Note: See Rules 19.4.2.20 and 19.4.2.21.

19.4.1.3	Restricted discretionary activities
(a)	All activities shall comply with the performance standards of 19.4.2.
(b)	Any hazardous facility with an Effects Ratio above the Effects Ratio (R) specified for the zone in which it is proposed to locate, as indicated in the Hazardous Facilities Screening Procedure (HFSP) Consent Status Matrix in Rule 19.4.2.1. Assessment will be restricted to the following matters: <ul style="list-style-type: none"> ▪ Effects of non compliance on the surrounding environment or the pattern of

19.4.1.3	Restricted discretionary activities
	subdivision, land use, roading or infrastructure services in the locality; and <ul style="list-style-type: none"> ▪ The risk to sensitive environments. These matters will be considered in accordance with the assessment criteria in Section 21.
(c)	Hazardous facilities within the Rural Zone. Assessment will be restricted to the following matters: <ul style="list-style-type: none"> ▪ Effects of non compliance on the surrounding environment or the pattern of subdivision, land use, roading or infrastructure services in the locality; and ▪ The risk to the environment and sensitive environments; and ▪ Conditions relating to application material. These matters will be considered in accordance with the assessment criteria in Section 21.
(d)	Co-disposal of hazardous substances to a landfill operation not provided for as a permitted activity in Rule 19.4.1.1(e). Assessment will be restricted to the following matters: <ul style="list-style-type: none"> ▪ Effects of non compliance on the surrounding environment or the pattern of subdivision, land use, roading or infrastructure services in the locality; and ▪ The risk to the environment and sensitive environments; and ▪ Conditions relating to application material. These matters will be considered in accordance with the assessment criteria in Section 21.

19.4.1.4	Discretionary activities
(a)	Any activity that does not comply with Rule 19.4.1.2 is a discretionary activity.

19.4.1.5	Non-complying activities
(a)	Any hazardous facility for the disposal of hazardous substances not provided for as a permitted or restricted discretionary activity.
(b)	Any use or storage of radio-active materials in excess of that specified as an exempt activity in the Radiation Protection Regulations 1982.

19.4.1.6	Prohibited activities
(a)	There are no prohibited activities.

19.4.2 Performance Standards

The following rules apply to activities listed as permitted, controlled or restricted discretionary.

Any activity that does not comply with the requirements of the performance standards is a discretionary activity.

Where rules are not complied with resource consent will be required in accordance with the rules in the activity status table or as identified in the performance standards, and will be assessed against the relevant objectives and policies. In the case of controlled and restricted discretionary activities, the assessment will be restricted to the matters over which control or discretion has been reserved, in accordance with the relevant assessment criteria contained in Section 21. For discretionary activities Council shall have regard to the assessment criteria in Section 21. The criteria in Section 21 are only a guide to the matters that Council will consider and shall not restrict Council's discretionary powers.

Rules - Hazardous facilities

19.4.2.1 The following Hazardous Facilities Screening Procedure Consent Status Matrix must be used to determine the consent status of a hazardous facility in the zone where it is to be located.

Advice Note: There are certain activities provided for under Rule 19.4.1.2(a) which are exempt from the Hazardous Facilities Screening Procedure. However, they are required to comply with the relevant provisions of the Hazardous Substances and New Organisms Act 1996 (HSNO), Regulations and performance standards.

Zone	Effects ratio for permitted activities	Effects ratio for Restricted discretionary activities
Residential	≤0.05	>0.05
Marae Development	≤0.05	>0.05
Reserve	≤0.05	>0.05
Lake Karāpiro Events	≤0.05	>0.05
Large Lot Residential	≤0.05	>0.05
Rural	≤0.25	>0.25
Commercial	≤0.25	>0.25
St Peters	≤0.25	>0.25
Mystery Creek	≤0.25	>0.25
Arapuni & Karāpiro Hydro	≤0.5	>0.5
Airport Business	≤1	>1
Industrial	≤1	>1

- 19.4.2.2 Calculation of the Effects Ratio (R) must be undertaken by a suitably qualified practitioner experienced, qualified and presently operating in the field of hazardous substances and facilities, using the “Hazardous Facilities Screening Procedure” contained in the document titled “Land Use Planning Guide for Hazardous Facilities – A Resource for Local Authorities and Hazardous Facilities Operators, Ministry for the Environment (February 2002)”.

Advice Note: Where there is any disagreement as to the Effects Ratio (R) value, then the matter shall be referred to an independent expert agreed to by both parties for a determination.

- 19.4.2.3 “Minimum Performance Requirements for Hazardous Facilities Under the Resource Management Act” set out in Section 4 of the document titled “Land Use Planning Guide for Hazardous Facilities – A Resource for Local Authorities and Hazardous Facilities Operators, Ministry for the Environment (February 2002)” shall apply to all hazardous facilities as permitted activities.

Advice Note: All reports submitted to Council will be held on the relevant property file.

- 19.4.2.4 The following activities are exempt from the Hazardous Facilities Screening Procedure:
- (a) Existing facilities will not be subject to the Hazardous Facilities Screening Procedure unless they expand or alter their operations by expanding beyond any existing use right or lawfully established activities that may exist. A significant increase would be a 50% increase in the quantity of any substances, or a 20% increase in the total quantity of the substances provided that any change of substance does not result in a higher hazard classification.
 - (b) Retail LPG outlets, with storage of up to 6 tonnes (single vessel storage) of LPG, provided that it complies with:
 - (i) The “Australian Standard (AS 1596-1989) for LP Gas Storage and Handling - Siting of LP Gas Automotive Retail Outlets”; and
 - (ii) The Hazardous Substances and New Organisms Act 1996 (HSNO) and Regulations.
 - (c) Activities that involve the storage, use, disposal and transportation of agrichemicals on land used for primary production that complies with:
 - (i) NZS8409:2004 Management of Agrichemicals; and
 - (ii) The Hazardous Substances and New Organisms Act 1996 (HSNO) and Regulations.
 - (d) The storage or use of hazardous consumer products for private domestic purposes.

- (e) Activities that involve facilities and structures for the transmission and distribution of natural gas.
- (f) Activities that involve the sealing of vehicle parking, loading, manoeuvring and access areas, and road carriageways and footpaths using penetration-grade bitumen cut back with kerosene and the application of coverstone.
- (h) Trade waste to public sewer system and waste treatment or disposal facilities.
- (i) The storage or use of hazardous consumer products for private domestic purposes.
- (j) Retail outlets for the domestic usage sale of hazardous substances (e.g. supermarkets, hardware outlets at large format retail scale, pharmacies, LPG domestic use 'swap a bottle' services).
- (k) Facilities using genetically modified or new organisms.
- (l) Developments that are or may be hazardous but do not involve hazardous substances (e.g. mineral extraction, high voltage transmission lines, radio masts, electrical substances).
- (m) Dust explosions.
- (n) Gas and oil pipelines.
- (o) Fuel in motor vehicles, boats and small engines such as weed eaters, lawnmowers, chainsaws etc.
- (p) The storage and use of LPG accessory to residential, commercial, recreation and rural activities, provided the maximum volume on a residential property at any one time does not exceed 100kg and on a rural property at any one time does not exceed 300kg.
- (q) The storage and use of hazardous substances in association with any temporary military training activity provided that all such hazardous substances and any contaminants that may result from the use of those substances are removed from the site at the completion of the military training exercise.
- (r) The on farm storage and use of fertilisers on land used for primary production that complies with Hazardous Substances and New Organisms Fertilisers (Subsidiary Hazard) Group Standard 2006.

Activities that fail to comply with Rules 19.4.2.1 to 19.4.2.4 will require a resource consent for a discretionary activity.

Rules - General site design

19.4.2.5 Any part of a site where hazardous substances are used, stored, manufactured, mixed, packaged, loaded, unloaded or otherwise handled shall be designed, constructed and managed to prevent any adverse effects of the intended use from occurring outside the area where the particular activity is to be carried out.

19.4.2.6 All stormwater grates on the site shall be clearly labelled "STORMWATER ONLY".

Activities that fail to comply with Rules 19.4.2.5 and 19.4.2.6 will require a resource consent for a discretionary activity.

Rules - Spill containment system

- 19.4.2.7 Any part of the site, including vehicle accessways, where hazardous substances are used, stored, manufactured, mixed, packaged, loaded, unloaded, or otherwise handled shall be served by a spill containment system:
- (a) Constructed from impervious materials resistant to the hazardous substances; and
 - (b) Able to meet Ministry for the Environment standards including NZS 8409:2004 Management of Agrichemicals or contain the maximum volume of the largest tank used, or where drums or other containers are used, able to contain half the maximum volume of substances stored, or complies with the Secondary Containment requirements of the Hazardous Substances Emergency Management Regulations as a means of compliance; and
 - (c) Able to prevent any spill or other unintentional release of hazardous substances (including waste), and any stormwater that has become contaminated from discharging into or on to land and/or water (including stormwater, groundwater and potable water supplies), unless the discharge is permitted by a rule in a Regional Plan or Proposed Regional Plan or by a resource consent; and
 - (d) Provided with a release mechanism for the drainage of the bunded areas that is secured to prevent unintentional release of contaminants into stormwater; and
 - (e) Maintained to ensure it remains effective in the event of a spill.

Provided that this rule does not apply to the application of agrichemicals or fertilisers applied in accordance with the manufacturer's recommendations.

- 19.4.2.8 The collection of hazardous substances for disposal or subsequent use shall be in suitable containers that seal and contain the substances in a safe location as defined in Rule 19.4.2.7.
- 19.4.2.9 LPG facilities for storage, use and retail activities that comply with AS/NZS 1596:2008 LP Gas Storage and Handling, and HSNO requirements and regulations are exempt from Rules 19.4.2.7 and 19.4.2.8 above.

Activities that fail to comply with Rules 19.4.2.7 to 19.4.2.9 will require a resource consent for a discretionary activity.

Rules - Washdown areas

- 19.4.2.10 Any part of a site where washing of vehicles, equipment or containers which have or may have been contaminated shall be designed, constructed and managed to prevent the effluent from the washdown area from:
- (a) Entering or discharging into the stormwater or wastewater network, unless pursuant to a trade waste consent; and
 - (b) Discharging onto land and/or into water (including groundwater and potable water supplies) unless the discharge is permitted by a rule in a Regional Plan or Proposed Regional Plan, or by resource consent.

Provided that this rule does not apply to the application of agrichemicals or fertilisers applied in accordance with manufacturers recommendations.

- 19.4.2.11 LPG facilities for storage, use and retail activities that comply with AS/NZS 1596:2008 LP Gas Storage and Handling, and HSNO requirements and regulations are exempt from Rule 19.4.2.10.

Activities that fail to comply with Rules 19.4.2.10 to 19.4.2.11 will require a resource consent for a discretionary activity.

Rule - Underground storage tanks for petroleum products

- 19.4.2.12 Underground tanks for the storage of petroleum products shall be designed, constructed and managed in accordance with:
- (a) Below Ground Stationary Container Systems for Petroleum – Design and Installation HSNO COP 44 and Below Ground Stationary Petroleum Container Systems for Petroleum – Operation HSNO COP 45; and
 - (b) Any requirements of the Hazardous Substances and New Organisms Act 1996 (HSNO) and Regulations.

Activities that fail to comply with this rule will require a resource consent for a discretionary activity.

Rule - Warning signs

- 19.4.2.13 Any hazardous substance facility shall be adequately sign-posted to indicate the nature of the substances stored, used or otherwise handled on the site in accordance with:
- (a) The Environmental Risk Management Authority (ERMA) approved Code of Practice for Signage for Premises Storing Hazardous Substances and Dangerous Goods HSNO COP 2-1 09-04; and
 - (b) Any requirements of the Hazardous Substances and New Organisms Act 1996 (HSNO) and Regulations.

Activities that fail to comply with this rule will require a resource consent for a discretionary activity.

Rules - Waste management of hazardous substances

- 19.4.2.14 The storage or processing of any contaminated waste containing a hazardous substance shall comply with any relevant requirement in the Hazardous Substances and New Organisms Act 1996 (HSNO) and Regulations, and NZS 8409:2004 Management of Agrichemicals.
- 19.4.2.15 Any process waste or waste containing hazardous substances shall be managed to prevent the waste:
- (a) Entering or discharging into a stormwater or sewerage network, unless pursuant to a trade wastes consent; and
 - (b) Discharging on to land and/or into water (including groundwater and potable water supplies), unless the discharge is permitted by a rule in a Regional Plan or Proposed Regional Plan or by a resource consent, or complies with Appendix S of NZ8409:2004 Management of Agrichemicals.

- 19.4.2.16 The storage of any contaminated waste containing a hazardous substance(s) shall prevent:
- (a) Exposure to ignition sources; and
 - (b) Corrosion or other alteration of the containers used for the storage of the waste; and
 - (c) Unintentional release of the waste into the surrounding natural environment.
- 19.4.2.17 Any facility generating waste containing hazardous substances shall dispose of these wastes to an authorised disposal facility or a facility permitted by a resource consent.

Activities that fail to comply with Rules 19.4.2.14 to 19.4.2.17 will require a resource consent for a discretionary activity.

Rules - Separation from water bodies

- 19.4.2.18 All storage facilities containing hazardous substances shall be bunded and set back a minimum of 30m from a lake or water bodies, except as otherwise provided for in the Plan where a greater separation distance is required, provided that this rule does not apply in the Karāpiro and Arapuni Hydro Power Zone.
- 19.4.2.19 LPG facilities for storage, use and retail activities that comply with AS/NZS 1596:2008 LP Gas Storage and Handling, and Hazardous Substances and New Organisms Act 1996 (HSNO) requirements and regulations are exempt from Rule 19.4.2.18.

Activities that fail to comply with Rules 19.4.2.18 and 19.4.2.19 will require a resource consent for a discretionary activity.

Rules - Controlled activities: Hazardous substances

- 19.4.2.20 Activities provided for in Rule 19.4.1.2(a)(i) and (ii), shall comply with:
- (a) The Code of Practice for Design, Installation and Operation of Underground Petroleum Storage Systems: Department of Labour-Occupational Health and Safety(1995); and
 - (b) The Hazardous Substances and New Organisms Act 1996 (HSNO) and Regulations; and
 - (c) The Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand, MfE, 1998.
- 19.4.2.21 Rule 19.4.1.2(a)(iii) shall comply with:
- (a) AS/NZS 1596: 2008 LP Gas Storage and Handling; and
 - (b) The Hazardous Substances and New Organisms Act 1996 (HSNO) and Regulations.

Activities that fail to comply with Rule 19.4.2.20 and 19.4.2.21 will require a resource consent for a discretionary activity.

19.5 Assessment Criteria

19.5.1 Controlled activities and Restricted Discretionary activities

For controlled and restricted discretionary activities the assessment will be restricted to the matters over which control or discretion has been reserved, in accordance with the relevant assessment criteria contained in Section 21. Resource consent conditions can only be imposed over the matters which control or discretion has been reserved. The assessment criteria is contained within Section 21.

19.5.2 **Discretionary activities**

For discretionary activities Council shall have regard to the assessment criteria in Section 21. The criteria in Section 21 are only a guide to the matters that Council will consider and shall not restrict Council's discretionary powers.