

Legislative GAP analysis of RMA-HSNO/HSW Relationship

Health and Safety at Work (Hazardous Substances) Regulations 2017

Part/Section/Clause	Issues in relation to part, section or clause	Any gaps, inconsistencies or duplications identified?	Summary
Definitions	<p>Terms identified as potentially relevant include:</p> <ul style="list-style-type: none"> • area of high intensity land use • area of low intensity land use • hazardous substance location • protected place • vulnerable facility. <p>The definitions were analysed and it was established that the defined terms are not used in a manner applicable to land use planning in the RMA context. They are not consistent with relevant terms defined in the NZ Planning Standard. On the basis of the definitions alone the scope and details of the Regulations and the proposed Plan provisions differ.</p>	<p>Gaps identified in terms of scope and applicability of relevant defined terms.</p> <p>No inconsistencies or relevant overlaps with the proposed Plan provisions.</p>	<p>No other definitions required to be included in District Plan provisions. Current definitions are necessary and appropriate.</p>
Part 1 - Application	<p>This part refers to the application to the Armed Forces and hazardous wastes and provides a number of exemptions. It does not have specific reference or relevance to land use planning.</p>	<p>No</p>	<p>No specific landuse controls required to be covered in the District Plan.</p>
Part 2 – Labelling, signage, safety data sheets and packaging	<p>This part deals with particular life-cycle controls that are substance specific and not included in the proposed Plan provisions.</p>	<p>No</p>	<p>No specific landuse controls required to be covered in the District Plan.</p>
Part 3 – General duties relating to risk management	<p>This part addresses duties of a PCBU to keep a hazardous substances inventory, managing risks associated with hazardous substances and in reviewing control measures. Considered relevant could be s3.2(1) and 3.2(2).</p> <p>While s3.2(1) does not specify who's health and safety may be at risk, reference is made to hazardous substances 'at a workplace'. This means cumulative risks in relation to hazardous substances outside the workplace are not included. Under</p>	<p>Gap identified in respect to external risk outside a workplace.</p> <p>No inconsistencies or overlaps with the</p>	<p>Because this part of the regulation is focused on 'internal' risk and the risk to workers, this gap may need to be covered by the District Plan in the landuse context, particularly in respect to cumulative risks outside the workplace and risk of</p>

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	<p>s3.2(2) the matters a PCBU must have regard to are specifically related to the substances and their hazardous properties, ignition sources and the 'nature of the work' being carried out.</p> <p>Specific reference in that regard is made to 'the workers' risks of exposure to the substance'. The risk to members of the public is not mentioned. There is no specific reference or relevance to land use planning.</p>	<p>proposed Plan provisions.</p>	<p>exposure to the public.</p>
<p>Part 4 – Certified handlers and supervision and training of workers</p>	<p>This part does not have specific reference or relevance to land use planning. There are no inconsistencies or overlaps with the proposed Plan provisions as staff competency in a workplace is not included in any proposed requirements.</p>	<p>No</p>	<p>No specific landuse controls required to be covered in the District Plan.</p>

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Part 5 – Emergency management	<p>Sub-part 1 deals with fire extinguishers, a requirement not included in the proposed Plan provisions.</p> <p>Sub-part 2 is on Emergency response plans. Sections 5.6 to 5.13 specify the circumstances and content of emergency response plans. Considered to be of relevance could be s5.7 which is effectively on the required content of an emergency response plan.</p> <p>Emergency response plans under this Part only apply for reasonably foreseeable emergencies (Regulations 5.7 (2) and 5.7 (3)), less likely events are not required to be covered. This is different to a case where an adverse effect of an emergency in a particular location may fall within the definition of RMA s.3(f) as one of low probability which has a high potential impact. The ability to manage such rarer but more devastating emergencies, in addition to the minimum HSW requirements for reasonably foreseeable emergencies, is location specific and hence a resource management matter. The requirements also do not cover information to and involvement of local authorities and communities; responses to other effects than injuries; cumulative effects and site specific responses reflecting local land uses and environments. All these matters identify gaps in emergency response (or rather: emergency management) in the resource management context. While the proposed Plan provisions do not require any specific content of emergency management plans, the adequacy of plans in the resource management context is a matter for controlled activities (currently retail of fuel in some zones) and needs to be considered as part of a risk assessment as an assessment matter for discretionary activities. There is no inconsistency or duplication in that regard with any of the proposed Plan provisions.</p>	<p>Gap identified in respect to emergency response plans.</p> <p>No inconsistency or duplication with any of the proposed Plan provisions.</p>	<p>This gap may need to be managed through the District Plan in the landuse context (i.e. as a matter of control) to control responding to off-site effects, particularly in proximity to sensitive environments and cumulative operations.</p>
Part 6 – Compliance certification	<p>This part does not have specific reference or relevance to land use planning. The compliance certification documents compliance with applicable requirements and does not in itself add any requirements. There are no inconsistencies or duplication by the proposed Plan provisions as a land use consent (if required) is part of a different process than a compliance certificate.</p>	<p>No</p>	<p>No specific landuse controls required to be covered in the District Plan.</p>
Part 7 – Controlled substance licences	<p>Controlled substances are those extremely poisonous substances listed in Schedule 13. Neither the licensing process itself nor the criteria for a license are in relation to land use planning.</p>	<p>No</p>	<p>No specific landuse controls required to be covered in the District Plan.</p>

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Part 8 – Controls applying to all Class 1 to 5 substances	This part deals with the compliance certification process in relation to Class 1 to 5 substances, public transportation and exemptions. This part does not have specific reference or relevance to land use planning.	No	No specific landuse controls required to be covered in the District Plan.
Part 9 – Class 1 substances	<p>This part sets out the generic controls for Class 1 substances (explosives), controlling effects of unintended and intended deflagration and detonation, pyrotechnic displays and the transport/transfer of explosives. Of potential relevance may be sections 9.11(1), 9.12(1), 9.13(1), 9.14(1), 9.23(1) and 9.27.</p> <p>While the requirements in relation to Class 1 substances are phrased to be applicable both on-site and off-site, they do not specify risks and apply acceptable consequences only in relative terms. The probability of unintended events is not addressed.</p> <p>It is considered that a potential for duplication can exist in the case of specific consent conditions if applicable requirements are not considered, however, there are no corresponding rules or other specific requirements in the proposed Plan provisions for Class 1 substances. Low hazard explosives are not included in the scope of the Plan provisions at all. There are gaps in terms of risk management (due to a lack of required assessment under the HSW HS Regs) which justify controls on a case-by-case basis for hazardous facilities with larger quantities of explosives, particularly high hazard explosives.</p>	<p>Gap identified in relation to Class 1 substances.</p> <p>No inconsistency or duplication with any of the proposed Plan provisions, The case of specific consent conditions having a potential for conflict is a matter of guidance and training.</p>	<p>Class 1 substances may require specific provisions in the District Plan in the landuse context, particularly in respect to off-site effects and risk management depending on the hazardous facility and quantity being used. Different quantities would appear to require different provisions. Further, consenting conditions may vary depending on situation.</p>

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<p>Part 10 – Class 2, 3 and 4 substances</p>	<p>This part sets out the generic controls for Class 2, 3 and 4 substances (gases, flammable liquids, flammable solids), reducing the likelihood of unintended ignition, secondary containment of pooling substances and compliance certification. There are a number of prescriptive methods specified in regulation to provide clarity on the more performance-based regulations. While compliance with all requirements in this Part could influence the overall risk of a land use activity involving Class 2, 3 and 4 substances, there is no reference to land use, location in the land use context or variations in sensitivity of the surrounding environment in this Part.</p> <p>If in the resource management context secondary containment of less than what is specified in the Regulations was required, this would be in conflict with this Part. If the same rate of containment was required, it would be duplication. If additional containment was required, for example to allow for the absence of roofing and the collection of stormwater or firefighting water in a containment area (consequently reducing the effective containment capacity), this would be an additional requirement. This may be necessary in specific cases, subject to an assessment.</p> <p>Some examples of actual requirements and the need for additional land use planning controls are provided in the analysis.</p>	<p>Gap identified in respect to Class 2, 3 and 4 substances as there is no reference to land use, locations in the land use context or variations in sensitivity of the surrounding environment.</p> <p>Inconsistencies or duplication of requirements can occur in relation to secondary containment of pooling substances. However in general there are no overlaps or inconsistencies with proposed Plan provisions.</p>	<p>May need to consider District Plan provisions to address Class 2, 3 and 4 substances, particularly if secondary containment is less than specified in the regulations.</p> <p>Further, what is in the regulations may not be sufficient or adequate to address landuse matters. Different requirements may need to be specified from what is included in the regulations.</p>

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<p>Part 11 – Controls relating to adverse effects of unintended ignition of class 2 and 3.1 substances</p>	<p>This part sets out separation requirements for Class 2 and 3.1 substances, and some additional controls on flammable gases. Essentially this Part specifies the circumstances where minimum separation distances (mainly specified in Schedule 12 but some also within the regulations) apply. The equivalent requirements for Class 4 substances are actually included in Part 10.</p> <p>The separation distances vary depending on type and size of packaging and containers, quantity per Class and aggregate quantities for several sub-classes combined, and type of workroom or type of storage.</p> <p>It is noted that s11.39 provides for a safe work instrument if the specified separation distances (or other requirements) do not appropriately control risk.</p> <p>S11.40 provides for exemptions from requirements for separation distances or other matters in this Part.</p> <p>The applicable separation distances under this Part are basically minimum requirements for Classes 2 and 3 flammables which are still not necessarily absolutes but can be varied under particular circumstances (safe work instrument, exemptions). Due to the complexity of land use patterns they may not be sufficient in all situations, as the examples in the analysis show. In particular sensitive land uses are not necessarily appropriately protected. Separation distances in relation to natural environment or eco-systems are not specified. There are no applicable separation requirements for Class 4 flammable solids specified.</p> <p>S11.39 indicates that the separation distances specified in this Part (and Schedule 12) are minimum requirements which may not control risks appropriately. The possible work instrument has not been developed to date. There is no available data on the number, type or location of exemptions from separation requirements granted under s11.40.</p>	<p>There are gaps identified in Part 11 where planning requirements can and ought to be applied for all three Classes of hazardous substances addressed in this Part.</p> <p>There are no overlaps or inconsistencies with regard to the proposed Plan provisions. Overlaps or inconsistencies could occur in individual cases of the few hazardous facilities requiring consent if the minimum requirements of the HSW HS Regs are not taken into account in consent conditions. This is a matter of appropriate guidance and training.</p>	<p>There is a difference between what the regulations require in terms of separation of class 2 and 3.1 substances and what would be appropriate setbacks to address potential adverse effects to the adjoining or adjacent sensitive land uses.</p> <p>Further, what is in the regulations may not be sufficient or adequate to address landuse matters. Different requirements may need to be specified from what is included in the regulations.</p>

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<p>Part 12 – Class 5 substances</p>	<p>This part sets out in Sub-parts 1 and 2 general and workplace controls for Class 5.1.1 and 5.1.2 substances (oxidising substances), and, as applicable, secondary containment requirements. Sub-part 3 includes general and workplace controls for Class 5.2 substances (organic peroxides), and, as applicable, secondary containment requirements.</p> <p>It is noted that the ‘control of adverse effects’ of unintended combustion or explosion in relation to Class 5.1.1 and 5.1.2 substances (clause 12.12) is in fact to be achieved through reducing the likelihood of unintended ignition (clause 12.9(1)) in the workplace, rather than actually controlling adverse effects.</p> <p>There are no separation distances specified in this Part of the Regulations between workplaces where any Class 5 substances are used or stored and other land uses or environments, not even public places.</p>	<p>There are gaps identified in this Part in the land use planning context where planning requirements can and ought to be applied for any Class 5 hazardous substances addressed in this Part.</p> <p>There are no overlaps or inconsistencies with regard to the proposed Plan provisions.</p>	<p>The gaps in regards to Class 5 substances may require landuse provisions in the District Plan in respect to matters such as assessing location-specific risks, controlling adverse effects on sensitive land uses and environments (including by separation), additional secondary containment and cumulative effects with other facilities.</p>
<p>Part 13 – Class 6 and 8 substances</p>	<p>This part sets out general duties and equipment requirements, licensing for highly poisonous substances, transport restrictions, controls on application/discharge, secondary containment requirements (if applicable), general storage requirements and requirements for minimum separation.</p> <p>Of potential relevance may be sections 13.27 and 13.38 in relation to farms and hazardous substance locations. The <u>requirements for farms</u> only apply to particular farms, as defined. Similar to transit depots the requirements are never more stringent, in some part equivalent to, and in some less than, the corresponding requirements elsewhere.</p> <p>The applicable requirements for <u>secondary containment</u> under this Part are basically minimum requirements for most, but not all, sub-classes of Classes 6 and 8 and are not necessarily absolutes but can be varied under particular circumstances (safe work instrument, exemptions). Due to the complexity of land use patterns they may not be sufficient in all situations, as the examples in the analysis show. If in the resource management context secondary containment of less than what is specified in the Regulations was required, this would be in conflict with this Part. If the same rate of containment was required, it would be duplication. If additional containment was required, for example to allow for the absence of roofing and the collection of stormwater or firefighting water in a containment area (consequently reducing the</p>	<p>There are gaps identified in this Part in the land use planning context where planning requirements can and ought to be applied for any Class 6 and 8 hazardous substances.</p> <p>There are no overlaps or inconsistencies with regard to the proposed Plan provisions.</p>	<p>The gaps in regards to Class 6 and 8 substances may require landuse provisions in the District Plan in respect to matters such as assessing location-specific risks, controlling adverse effects on sensitive land uses and environments (including by separation), additional secondary containment and cumulative effects with other facilities.</p>

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	<p>effective containment capacity), this would be an additional requirement. In that instance such requirement can be used to protect soil, natural waters or stormwater systems from contamination in a specific location on a case-by-case basis. This could occur with the proposed Plan provisions in the rare case of a consent condition but is not a requirement for the vast majority of permitted hazardous facilities.</p> <p>S13.46 indicates that the requirements for secondary containment specified in this Part (and Schedule 16) are minimum requirements which may not control risks appropriately. <i>Additional and modified requirements for specified class 6 and 8 substances – Safe Work Instrument 2017</i> have been approved as the Minister for Workplace Relations and Safety was satisfied that compliance with provisions of the Regulations that apply to certain class 6 and 8 substances will not appropriately control workplace risk associated with those substances. However, the requirements apply mainly to the application/discharge of certain pesticides, not secondary containment, and are consequently not of relevance to the proposed Plan provisions.</p> <p>For <u>separation distances</u> applicable to hazardous substances locations holding relevant sub-categories of Class 6 and 8 substances, s13.41 to 13.44 may be relevant. The applicable separation distances under this Part are basically minimum requirements for some sub-classes of Classes 6 and 8 which are still not necessarily absolutes but can be varied under particular circumstances (safe work instrument, exemptions). Due to the complexity of land use patterns they may not be sufficient in all situations, as the examples in the analysis show. In particular sensitive land uses are not necessarily appropriately protected. Separation distances in relation to natural environment or eco-systems are not specified. There are no separation distances specified for other Class 6 substances other than 6.1A/B/C. Minimum separation distances for Class 8.2A and 8.2B substances specified in this Part only apply to protected places, not public places. There are no separation distances specified for other Class 8 substances.</p> <p>S13.46 indicates that the separation distances specified in this Part (and Schedule 17) are minimum requirements which may not control risks appropriately. A <i>Additional and modified requirements for specified class 6 and 8 substances – Safe Work Instrument 2017</i> has been approved as the Minister for Workplace Relations and Safety was satisfied that compliance with provisions of the Regulations that apply to certain class 6 and 8 substances will not appropriately control workplace risk associated with those substances. However, the requirements apply mainly to the application/discharge of certain pesticides, not separation distances, and are</p>		

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	<p>consequently not of relevance to the proposed Plan provisions.</p> <p>There is no publicly available data on the number, type or location of exemptions from various requirements of this Part granted under s13.44. Hence this option only indicates variability of controls but does not demonstrate any degree of effectiveness.</p>		
Part 14 - Fumigants	<p>This part includes specific requirements for the application of fumigants, in addition to Part 13. There are some further requirements for the use of methyl bromide. This part is essentially about discharges and does not contain specific storage requirements or any land use planning related matters. Consequently there are no inconsistencies or overlaps with the proposed Plan provisions.</p>	No	No specific landuse controls required to be covered in the District Plan.
Part 15 – Gases under pressure	<p>This part deals with the design, manufacture and import of refillable cylinders; low-pressure fire extinguishers; cylinder fittings, labelling and marking; testing of cylinders and fittings; the charging of gas containers and (gas) tank wagons, and cylinder repair. These are container-specific requirements that do not have a land use planning aspect; hence there are no inconsistencies or overlaps with the proposed Plan provisions.</p>	No	No specific landuse controls required to be covered in the District Plan.
Part 16 – Tank wagons and transportable containers	<p>This part sets out the requirements for the design, construction and design certification of mobile tanks (wagons and trailers) as well as some operating requirements such as fire-fighting facilities and equipment. Being primarily about specific transport container performance, there are no inconsistencies or overlaps with the proposed Plan provisions.</p>	No	No specific landuse controls required to be covered in the District Plan.
Part 17 – Stationary container systems	<p>This part specifies the requirements for some stationary container systems in workplaces. It does not apply to small containers (< 250 l), process containers otherwise controlled, containers for solids or Class 6.3/6.4 substances (skin/eye irritants) and storage in refrigeration units. It is applicable, for example, to fuel tanks. Matters covered are the design, construction and installation of tanks; fire fighting equipment and facilities; markings and records; compliance certification; minimum separation distances and secondary containment.</p> <p>The regulations specify (or refer to) minimum <u>separation distances</u> of above ground stationary tanks containing class 6 or 8 substances from protected places and public places. Of potential relevance may be sections 17.28 and 17.29 in relation to those separation distances.</p>	<p>There are gaps identified in Part 17 in the land use planning context where planning requirements can and ought to be applied for some stationary tanks (whether included in the scope of this Part or not).</p>	<p>The gaps in regards to stationary container systems may require landuse provisions in the District Plan in respect to matters such as assessing location-specific risks, controlling adverse effects on sensitive land uses and environments (including by separation), additional secondary containment and cumulative effects with other facilities.</p>

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	<p>The regulations specify <u>secondary containment</u> for above ground stationary tanks containing pooling substances (Note: farm tanks for petrol or diesel up to 2500 litres are exempt from these requirements – other exemptions apply).Of potential relevance may be sections 17.99 to 17.104.</p> <p>The minimum <u>separation distances</u> only apply to above ground stationary tanks containing class 6 or 8 substances from protected places and public places, not for other hazard Classes, or underground tanks.</p> <p>Some examples of required separation distances under these Regulations are included in the analysis.</p> <p>There are no safe work instruments at present applying to separation of above ground tanks for Classes 6 and 8. S17.28 is essentially included in s13.41 and s13.42. Consistency between s17.29 and s13.43 has not been established as part of the analysis.</p> <p>The requirements for <u>secondary containment</u> under this Part for stationary tanks are basically minimum requirements for most, but not all, sub-classes of hazardous substances and are not necessarily absolutes but can be reduced by WorkSafe. Due to the complexity of land use patterns they may not be sufficient in all situations, as the examples in the analysis show. If additional containment was required, such requirement can be used to protect soil, natural waters or stormwater systems from contamination in a specific location on a case-by-case basis. This could occur with the proposed Plan provisions in the rare case of a consent condition but is not a requirement for the vast majority of permitted hazardous facilities. It is noted that the only reference in the Regulations to account for ‘rainwater’ is in s17.100(6) in relation to a possible reduction of containment capacity approved by WorkSafe. Otherwise the effectiveness of secondary containment in this regard is not reflected in any regulation.</p> <p>S17.3 is noted with regard to the variability in the applicability of containment requirements. There is no reference to innovation, best practice or relevant outcomes. Whether complying “with this Part is to be determined having regard to the need to comply with this Part” can in any way be meaningfully interpreted has not been established as part of the analysis.</p> <p>The general performance requirements apply to likely operating and environmental conditions, unlikely (but possible) conditions are not addressed. There is also</p>	<p>There are no overlaps or inconsistencies with regard to the proposed Plan provisions.</p>	

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	reference to reasonably foreseeable situations; less likely situations are not required to be covered. This is different to a case where an adverse effect of an emergency in a particular location may fall within the definition of RMA s.3(f) as one of low probability which has a high potential impact. There is also the ability of WorkSafe to reduce minimum requirements even further.		
Part 18 - Laboratories	This part sets out the specific but generally equivalent requirements where laboratories use hazardous substances in research and development, analytical testing, or teaching. There are no inconsistencies or overlaps with the proposed Plan provisions.	No	No specific landuse controls required to be covered in the District Plan.
Part 19 – Tracking hazardous substances	This part specifies the tracking requirements for highly hazardous substances. There are no inconsistencies or overlaps with the proposed Plan provisions.	No	No specific landuse controls required to be covered in the District Plan.
SCHEDULES			
Schedule 5	This schedule refers exclusively to Part 5 (Emergency management) of the Regulations and applies specifically to emergency response plans. Thresholds cover most of the hazard categories. Some variations (fuels, farms) apply. The analysis with regard to Part 5 applies and there are gaps in requirements for emergency response (or: emergency management).	<p>There are gaps identified in Part 5 (Emergency Management) which affect schedule 5 in respect to requirements for emergency response and/or emergency management.</p> <p>There is no inconsistency or duplication in regard to the thresholds with any of the proposed Plan provisions.</p>	In reference to Part 5, District Plan provisions may be required to cover gaps to cover matters such as emergency response or emergency management.
Schedule 9	This schedule includes minimum separation distances for Class 3.2 and Class 4 substances and threshold quantities for secondary containment. The matters relate largely to Part 10 (Class 2, 3 and 4 substances) with some applying to Part 17	There are gaps identified in Part 10 and 17 which	In reference to Part 10 and 17, District Plan provisions may be required to cover gaps relating to

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	(Stationary containers). The analysis with regard to Parts 10 and 17 applies.	<p>affect Schedule 9.</p> <p>There is no inconsistency or duplication in regard to the separation distances with any of the proposed Plan provisions.</p>	Class 2, 3 and 4 substances (as identified above).
Schedule 10	This schedule includes threshold quantities for secondary containment (in kg/l respectively, assuming equivalence of mass and volume). The matters relate largely to Part 12 (Class 5 substances) with some applying to Part 17 (Stationary containers). There are no separation distances for Class 5.1 substances required. The analysis with regard to Parts 12 and 17 apply.	<p>There are gaps identified in Part 12 and 17 which affect Schedule 10.</p> <p>There is no inconsistency or duplication in regard to the thresholds with any of the proposed Plan provisions.</p>	In reference to Part 12 and 17, District Plan provisions may be required to cover gaps relating to Class 5 substances (as identified above).
Schedule 11	This schedule includes minimum separation distances for Class 5.2 substances and threshold quantities for secondary containment. The matters relate largely to Part 12 (Class 5 substances) with some applying to Part 17 (Stationary containers). The analysis with regard to Parts 12 and 17 apply.	<p>There are gaps identified in part 12 and 17 which affect Schedule 11.</p> <p>There is no inconsistency or duplication in regard to the (quantity) thresholds or separation distances with any of the proposed Plan provisions.</p>	In reference to Part 12 and 17, District Plan provisions may be required to cover gaps relating to separation distances for Class 5 substances (as identified above).
Schedule 12	This schedule contains 10 tables 8 of which specify minimum separation distances for Classes 2.1.1 and 3.1. (Table 9 and Table 10 are neither specifying distances nor calculation methods but maximum quantities for certain retail outlets and residential	There are gaps identified in Part 11 and 17 which	In reference to Part 11 and 17, District Plan provisions may be required to cover gaps relating to

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	<p>properties.) The distances apply largely to Part 11 (Controls relating to adverse effects of unintended ignition of class 2 and 3.1 substances) with some applying to Part 17 (Stationary containers). The analysis with regard to Parts 11 and 17 applies and there are examples included which identify gaps.</p> <p>Note: The Health and Safety at Work (Reduced Secondary Containment for Certain Above Ground Stationary Tanks) Safe Work Instrument 2017 reduce the required capacity of secondary containment for some types of Class 3.1 tanks.</p>	<p>affect Schedule 12.</p> <p>There is no inconsistency or duplication in regard to separation distances with any of the proposed Plan provisions.</p>	<p>minimum separation distances for Classes 2.1.1 and 3.1.</p>
Schedule 16	<p>This schedule refers specifically to s13.30 in Part 13 (Class 6 and 8 substances) and s17.99 in Part 17 (Stationary containers) with thresholds in kg/l respectively, assuming equivalence of mass and volume. Thresholds cover most of the hazard categories within these three Classes. The analysis with regard to Parts 13 and 17 apply and there are gaps in requirements for secondary containment.</p>	<p>There are gaps identified in Part 13 and 17 which affect Schedule 16.</p> <p>There is no inconsistency or duplication in regard to the thresholds with any of the proposed Plan provisions.</p>	<p>In reference to Part 13 and 17, District Plan provisions may be required to cover the gaps in relation to secondary containment.</p>
Schedule 17	<p>This schedule contains 4 tables which specify minimum separation distances between hazardous substances locations or above ground stationary tank and protected or public places. It does actually not include any separation distances for (retail) stores (applicable to Class 6.1B and 6.1C substances) which are 0 (zero). The distances apply largely to Part 13 (Class 6 and 8 substances) with some applying to Part 17 (Stationary containers). They apply specifically to Class 6.1A/B/C substances, not 6.1D or Class 8 (despite s17.28 referring to Class 6.1D, however, the Schedule does not include any separation distance for any type of storage of Class 6.1D). The analysis with regard to Parts 13 and 17 applies and there are examples included which identify gaps.</p> <p>It is noted that there are a number of errors in Schedule 17 as identified in the analysis.</p>	<p>There are gaps addressed in Part 13 and 17.</p> <p>There is no inconsistency or duplication in regard to the separation distances with any of the proposed Plan provisions.</p>	<p>In reference to Part 13 and 17, District Plan provisions may be required to cover the gaps in relation to separation distances.</p>

HAZARDOUS SUBSTANCES (HAZARDOUS PROPERTY CONTROLS) NOTICE 2017

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Part 1: Preliminary Provisions	This part includes explanations on scope and applicability and a section 3 Interpretation. Potentially relevant terms are <i>protected place</i> (same meaning as in HSW HS Regs) and <i>sensitive habitat</i> ('means a habitat that may be adversely affected by the application of a substance, and includes wetlands, indigenous vegetation habitat areas, or reserves'). As the application means a discharge to the environment, this is not a land use matter and not addressed in the proposed Plan provisions. Overall this Part does not have specific reference or relevance to land use planning. There are no inconsistencies or overlaps with the proposed Plan provisions.	No	No specific landuse controls required to be covered in the District Plan.
Part 2 Substances restricted to Workplaces	This part has only one clause which deals with the supply of certain substances to workplaces only. There are no inconsistencies or overlaps with the proposed Plan provisions.	No	No specific landuse controls required to be covered in the District Plan.
Part 3 Requirements for hazardous substances in a place other than a workplace to which the HSW Act applies	<p>This part has two subparts of which only <u>Subpart A</u> may be relevant. It addresses requirements in a place other than a workplace. Many of the provisions refer to certain provisions of the HSW HS Regulations, and apply them for the purposes of the Notice as if they applied to a place other than a workplace. However, various modifications to the application of the relevant HSW HS Regulations are made, as these are necessary to ensure the requirements are relevant to the context in which they apply; the provisions of the relevant HSW HS Regulations which relate to the exercise of WorkSafe's discretionary powers under the HSW Act are not applied, and many of the requirements under the HSW HS Regulations to obtain a compliance certificate are not applied - requirements to obtain HSNO certificates from HSNO certifiers are imposed instead in accordance with s 82(a) of the Act.</p> <p>This Subpart applies to large quantities of hazardous substances (small quantities only have some 'common sense' requirements on matters such as containers and labels), LPG storage and domestic oil burner installations or SCUBA cylinders. The large quantities where controls apply (s19) are listed in Schedule 3 .</p> <p>The relevant issues with regard to applicable HSW HS Regs are not repeated here.</p> <p><u>Subpart B</u> of Part 3 of the Notice applies to ships – not a land use issue.</p>	<p>There are gaps identified in Subpart A of Part 3 in the land use planning context.</p> <p>There are no overlaps or inconsistencies with regard to the proposed Plan provisions.</p>	There are gaps in Subpart A of Part 3 which may need to be addressed in the District Plan where planning requirements can and ought to be applied for hazardous substances below the thresholds in Schedule 3 of the Notice, such as assessing location-specific risks, cumulative effects with other substances – particularly if the storage of such large quantities is proposed within a sensitive zone (such as residential, being likely as it is not a workplace matter).
Part 4: Class 9 substances	This part addresses specific matters in relation to substances with eco-toxic properties (which are not included in the definition of a hazardous substance under the HSW HS Regulations).	There are gaps in Subpart A of Part 4 in the land use planning context.	There are gaps in Subpart A of Part 4 which may need to be addressed in the District Plan

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	<p>Part 4 <u>Subpart A</u> effectively sets out which specific requirements of the HSW HS Regulations apply to Class 9 substances as if Class 9 substances were treated in some respects like other hazardous substances (within the limits of the HSNO definition and with some modifications). However, the provisions of the relevant HSW HS Regulations which relate to the exercise of WorkSafe’s discretionary powers under the HSW Act are not applied. Of potential relevance are requirements with regard to stationary container systems (clause 17 of HSW HS Regs is applicable), secondary containment and emergency response plans in s40 to 42 of the Notice.</p> <p>Potential issues with regard to land use planning could be some matters of Part 4 Subpart A. The relevant issues with regard to applicable HSW HS Regs are not repeated here. The rationale for the required <u>separation distances</u> between an above ground stationary tank in a workplace and a protected place of between 3 and 8 metres, depending on quantity of Class 9 substance held, is unclear as protected places do not have a particular sensitivity to Class 9 substances. There are no separation distances specified with regard to sensitive environments or eco-systems (which actually is relevant for substances with eco-toxic properties). This is a gap.</p> <p>The matters identified with regard to <u>secondary containment</u> of toxic or corrosive substances required under Part 13 of the HSW HS Regs apply with regard to eco-toxic substances. Secondary containment may be as low as 5 % of pooling potential. Environmental sensitivity or any other locational matters are not taken into account. This is a gap.</p> <p>The matters identified with regard to <u>emergency response plans</u> required under Part 5 of the HSW HS Regs apply with regard to eco-toxic substances. The specified content of emergency response plans is primarily about the effects on people not eco-systems or the natural environment. While such plans, if properly prepared, implemented, monitored and updated, will have some positive effect with regard to the environment, they are not necessarily comprehensive enough in a particular location with regard to off-site environmental effects.</p> <p>Part 4 <u>Subpart B</u> deals with the application (discharge) of Class 9 substances. Specific controls are set for pesticide application, pesticides, plant growth regulators, vertebrate bait and invertebrate eco-toxins in specific circumstances. It does not address the management of other substances with eco-toxic properties. It does not address the storage of any Class 9 substances or any other matter related to land use planning.</p> <p>Part 4 <u>Subpart C</u> deals with the application (discharge) of some agrichemicals, specifically highly hazardous pesticide or plant growth regulators, and qualifications of handlers and contractors in this specific area. It does not address the management of</p>	<p>There are no overlaps or inconsistencies with regard to the proposed Plan provisions.</p>	<p>where planning requirements can and ought to be applied for Class 9 hazardous substances, such as assessing location-specific risks, providing additional secondary containment and other emergency management measures.</p>

Part/Section/Clause	Issues in relation to part, section or clause	Any gaps, inconsistencies or duplications identified?	Summary
	substances with eco-toxic properties in general. It does not address the storage of any Class 9 substances or any other matter related to land use planning.		
SCHEDULES			
Schedule 2, 3, 6, 7	<p>Schedule 2 sets out which specific provisions of the HSW HS Regulations are applicable to a hazardous substance (excluding Class 9) in a place that is not a workplace.</p> <p>Schedule 3 sets out the corresponding quantities of hazardous substances that require management in accordance with some HSW HS Regulations. It is noted that, while Schedule 3 lists various Class 1 substances, the applicable clause 19 specifically excludes Class 1 substances. There are also some unexplainable inconsistencies between the thresholds applicable to a place that is not a workplace and those scheduled in the HSW HS Regulations. Examples are given in the analysis.</p> <p>Schedule 6 specifies separation distances between an above ground stationary tank in a workplace containing a Class 9 substance and a <i>protected place</i> of between 3 and 8 metres, depending on quantity of Class 9 substance held. The rationale for this required separation is unclear as protected places do not have a particular sensitivity to Class 9 substances. It would make some sense if the Class 9 substance had any of a Class 6.3 to 6.9 classification as well (various human toxicity criteria). However, the HSW HS Regulations themselves do not state any applicable separation distances for substances with Classes 6.3 to 6.9. Consequently there is inconsistency between the HSW HS Regs and the HS (HPC) Notice in this regard.</p> <p>Schedule 7 Threshold quantities for secondary containment and emergency response plan lists three thresholds (in kg/l respectively, assuming equivalence of mass and volume) for Class 9 substances, treating 9.1B and 9.1C as the same (which may not be appropriate for all toxic substances in these categories). The observations on requirements for secondary containment and emergency response plans under the HSW HS Regs apply.</p>	<p>There are gaps identified in within the Schedules which correspond to the specific parts of the HSW notice.</p> <p>There is no inconsistency or duplication in regard to the thresholds, quantities or separation distances with any of the proposed Plan provisions. However, there are inconsistencies within the Notice as well as between the Notice and the HSW HS Regulations.</p>	<p>District Plan provisions may be required to cover gaps relating to the identified gaps as identified in the corresponding parts of the Hazardous Substances notice.</p>