

IN THE MATTER of the Resource Management Act 1991  
AND

IN THE MATTER of appeals under clause 14 of  
Schedule 1 to the Act

BETWEEN DAVID RENOUF  
(ENV-2015-WLG-000049)

NGATI KAHUNGUNU IWI  
INCORPORATED

(ENV-2015-WLG-000055)

Appellants

AND HASTINGS DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge C J Thompson sitting alone pursuant to section 279 of the Act.

IN CHAMBERS

### CONSENT ORDER

#### *Introduction*

[1] The Court has read and considered the appeal and the parties' draft consent order received 9 November 2016 and the parties' memorandum received 27 January 2017.

[2] In relation to Mr Renouf's appeal, Ngati Kahungunu Iwi Inc, Hawkes Bay District Health Board, and Horticulture New Zealand gave notice of intention to become parties under s274. In relation to the appeal by Ngati Kahungunu Iwi Inc, David Renouf, Hawkes Bay District Health Board, Hawke's Bay Regional Council, Horticulture New Zealand and NZ Kiwifruit Growers Inc, Maungaharuru- Tangitū Trust, BP Oil New Zealand Ltd, Mobil Oil New Zealand Ltd, and Z Energy Ltd gave notice of intention to become parties under s274.

[3] The Court is making this order under s 279(1)(b) of the Act, such an order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for the present purposes that:



- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, including in particular Part 2.

*Order*

[4] The Court orders, by consent, that the Proposed Hastings District Plan is amended as set out in **Annexure A** to this order, with additions shown in underline and deletions shown in strike-through.

[5] This order disposes of appeal ENV-2015-WLG-49, and those parts of ENV-2015-WLG-55 not otherwise addressed in the memorandum and draft consent order of parties in relation to that appeal dated 19 October 2016.

[6] For the avoidance of doubt, while amendments are directed to Section 29.1 – Hazardous Substances and Genetically Modified Organisms District Wide Activity, it is noted that there remains an outstanding appeal (ENV-2015-WLG-053) in respect of the content of parts of that Section which are not affected by this Order.

[7] There is no order as to costs.

DATED at Wellington this 29<sup>th</sup> day of March 2017

  
C J Thompson  
Environment Judge



## Annexure A

### Changes to Hastings District Plan required by Consent Order

#### Section 5.2 – Rural Zone

- (a) Amend 5.2.2 – Anticipated Outcomes to add the new Outcomes in **Annexure B** after RZA06.
- (b) Amend 5.2.3 – Objectives and Policies to add the new Objective and 2 new Policies as set out in **Annexure C** after RZP16.
- (c) Amend 5.2.4 – Rules to add a new, separate rule table and accompanying explanatory note as follows after Rule Table 5.2.4:

<b>RULE TABLE 5.2.4A – HERETAUNGA PLAINS UNCONFINED AQUIFER OVERLAY</b>		
<b><u>Rule</u></b>	<b><u>Land Use Activities</u></b>	<b><u>Activity Status</u></b>
<b><u>RZ26</u></b>	<u>The Storage, Handling or Use of Hazardous Substances (except Arsenic (As)) within the Heretaunga Plains Unconfined Aquifer Overlay</u>	<u>P</u>
<b><u>RZ27</u></b>	<u>Permitted activities under Rule RZ26 not meeting the Specific Performance Standards and Terms in Section 5.2.6[next available letter]</u>	<u>RD</u>
<b><u>RZ28</u></b>	<u>The Storage, Handling or Use of Arsenic (As)) within the Heretaunga Plains Unconfined Aquifer Overlay</u>	<u>Prohibited</u>

Note: For users affected by the rules that apply specifically to the Heretaunga Plains Aquifer, attention is drawn to the National Environmental Standard for Sources of Human Drinking Water which may also be relevant to the activity.

- (d) Amend 5.2.6 – Specific Performance Standards and Terms to add the text in **Annexure D** at the end of the section.



- (e) Amend 5.2.8 – Assessment Criteria – Restricted Discretionary and Discretionary activities to add the text in **Annexure E** at the end of the section.

### **Section 6.2 – Plains Production Zone**

- (f) Amend 6.2.2 – Anticipated Outcomes to add the new Outcomes in **Annexure B** after PPA08.
- (g) Amend 6.2.3 – Objectives and Policies to add the new Objective and 2 new Policies as set out in **Annexure C** after PPP20.
- (h) Amend 6.2.4 – Rules to add a new, separate rule table and accompanying explanatory note as follows after Rule Table 6.2.4:

<b><u>RULE TABLE 6.2.4A – HERETAUNGA PLAINS UNCONFINED AQUIFER OVERLAY</u></b>		
<b><u>Rule</u></b>	<b><u>Land Use Activities</u></b>	<b><u>Activity Status</u></b>
<b><u>PP35</u></b>	<u>The Storage, Handling or Use of Hazardous Substances (except Arsenic (As)) within the Heretaunga Plains Unconfined Aquifer Overlay</u>	<u>P</u>
<b><u>PP36</u></b>	<u>Permitted activities under Rule PP35 not meeting the Specific Performance Standards and Terms in Section 6.2.6[next available letter]</u>	<u>RD</u>
<b><u>PP37</u></b>	<u>The Storage, Handling or Use of Arsenic (As)) within the Heretaunga Plains Unconfined Aquifer Overlay</u>	<u>Prohibited</u>

Note: For users affected by the rules that apply specifically to the Heretaunga Plains Aquifer, attention is drawn to the National Environmental Standard for Sources of Human Drinking Water which may also be relevant to the activity.

- (i) Amend 6.2.6 – Specific Performance Standards and Terms to add the text in **Annexure D** at the end of the section.



- (j) Amend 6.2.8 – Assessment Criteria – Restricted Discretionary and Discretionary activities to add the text in **Annexure E** at the end of the section.

**Section 9.2 – Flaxmere Residential Zone**

- (k) Amend 9.2.2 – Anticipated Outcomes to add the new Outcomes in **Annexure B** after FRAO12.
- (l) Amend 9.2.3 – Objectives and Policies to add the new Objective and 2 new Policies as set out in **Annexure C** after FRP11.
- (m) Amend 9.2.4 – Rules to add a new, separate rule table and accompanying explanatory note as follows after Rule Table 9.2.4:

<b><u>RULE TABLE 9.2.4A – HERETAUNGA PLAINS UNCONFINED AQUIFER OVERLAY</u></b>		
<b><u>Rule</u></b>	<b><u>Land Use Activities</u></b>	<b><u>Activity Status</u></b>
<b><u>FR27</u></b>	<u>The Storage, Handling or Use of Hazardous Substances (except Arsenic (As)) within the Heretaunga Plains Unconfined Aquifer Overlay</u>	<u>P</u>
<b><u>FR28</u></b>	<u>Permitted activities under Rule FR27 not meeting the Specific Performance Standards and Terms in Section 9.2.6[next available letter]</u>	<u>RD</u>
<b><u>FR29</u></b>	<u>The Storage, Handling or Use of Arsenic (As)) within the Heretaunga Plains Unconfined Aquifer Overlay</u>	<u>Prohibited</u>

Note: For users affected by the rules that apply specifically to the Heretaunga Plains Aquifer, attention is drawn to the National Environmental Standard for Sources of Human Drinking Water which may also be relevant to the activity.



- (n) Amend 9.2.6 – Specific Performance Standards and Terms to add the text in **Annexure D** at the end of the section.
- (o) Amend 9.2.8 – Assessment Criteria – Restricted Discretionary and Discretionary activities to add the text in **Annexure E** at the end of the section.

### **Section 9.3 – Flaxmere Village Centre**

- (p) Amend 9.3.2 – Anticipated Outcomes to add the new Outcomes in **Annexure B** under the heading 9.3.2.1 – Throughout Flaxmere Village Centre, after FVCA06.
- (q) Amend 9.3.3 – Objectives and Policies to add the new Objective and 2 new Policies as set out in **Annexure C** after FVCP19.
- (r) Amend 9.2.4 – Rules to add a new, separate rule table and accompanying explanatory note as follows after Rule Table 9.3.4C:

<b><u>RULE TABLE 9.2.4D – HERETAUNGA PLAINS UNCONFINED AQUIFER OVERLAY</u></b>		
<b><u>Rule</u></b>	<b><u>Land Use Activities</u></b>	<b><u>Activity Status</u></b>
<b><u>FVC1</u></b>	<u>The Storage, Handling or Use of Hazardous Substances (except Arsenic (As)) within the Heretaunga Plains Unconfined Aquifer Overlay</u>	<u>P</u>
<b><u>FVC2</u></b>	<u>Permitted activities under Rule FVC1 not meeting the Specific Performance Standards and Terms in Section 9.3.6[next available letter]</u>	<u>RD</u>
<b><u>FVC3</u></b>	<u>The Storage, Handling or Use of Arsenic (As)) within the Heretaunga Plains Unconfined Aquifer Overlay</u>	<u>Prohibited</u>

Note: For users affected by the rules that apply specifically to the Heretaunga Plains Aquifer, attention is drawn to the National Environmental



Standard for Sources of Human Drinking Water which may also be relevant to the activity.

- (s) Amend 9.3.6 – Specific Performance Standards and Terms to add the text in **Annexure D** at the end of the section.
- (t) Amend 9.3.8 – Assessment Criteria – Restricted Discretionary and Discretionary activities to add the text in **Annexure E** at the end of the section.

#### ***Section 14.1 - Industrial***

- (u) Amend 14.1.2 – Anticipated Outcomes to add the new Outcomes in **Annexure B** after IZA08.
- (v) Amend 14.1.3 – Objectives and Policies to add the new Objective and 2 new Policies as set out in **Annexure C** after IZP17.
- (w) Amend 14.1.5 – Rules to add a new, separate rule table and accompanying explanatory note as follows after Rule Table 14.1.5.2 – General Industrial Zone:

<b><u>RULE TABLE 14.1.5.2A – HERETAUNGA PLAINS UNCONFINED AQUIFER OVERLAY</u></b>		
<b><u>Rule</u></b>	<b><u>Land Use Activities</u></b>	<b><u>Activity Status</u></b>
<b><u>GI17</u></b>	<u>The Storage, Handling or Use of Hazardous Substances (except Arsenic (As)) within the Heretaunga Plains Unconfined Aquifer Overlay</u>	<u>P</u>
<b><u>GI18</u></b>	<u>Permitted activities under Rule GI17 not meeting the Specific Performance Standards and Terms in Section 14.1.7 [next available letter]</u>	<u>RD</u>
<b><u>GI19</u></b>	<u>The Storage, Handling or Use of Arsenic (As)) within the</u>	<u>Prohibited</u>



	<u>Heretaunga Plains Unconfined Aquifer Overlay</u>	
--	---	--

Note: For users affected by the rules that apply specifically to the Heretaunga Plains Aquifer, attention is drawn to the National Environmental Standard for Sources of Human Drinking Water which may also be relevant to the activity.

- (x) Amend 14.1.7 – Specific Performance Standards and Terms to add the text in **Annexure D** at the end of the section.
- (y) Amend 14.1.8 – Assessment Criteria – Restricted Discretionary and Discretionary Activities to add the text in **Annexure E** at the end of the section.

### **Section 33 – Definitions**

- (z) Amend the definition of “Hazardous Substances” in 33.1.2 – Definitions as follows:

**Hazardous Substance:** means any substance:

- (a) With one or more of the following intrinsic properties:
  - (i) Explosiveness;
  - (ii) Flammability;
  - (iii) A capacity to oxidise;
  - (iv) Corrosiveness;
  - (v) Toxicity (both acute and chronic);
  - (vi) Ecotoxicity, with or without bioaccumulation; or
- (b) which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph a) of this definition.

For the purposes of provisions relating to the Heretaunga Plains Unconfined Aquifer, the definition of hazardous substances ~~will~~ includes organic matter which contains animal waste., if it entered the Aquifer, would be capable of causing ill health, injury or death to any living organism. For the avoidance of doubt, decomposing vegetation associated with horticultural activities, such as from pruned vegetation, crop residue and fallen fruit, does not fall within the definition of hazardous substances.





## Annexure B

### Anticipated Outcomes to be added as directed in Annexure A

- [Next #]**      The life supporting capacity of the Heretaunga Plains Unconfined Aquifer system will be sustained.
- [Next #]**      That Mana Whenua values regarding the Kaitiakitanga of the Aquifer water resource are maintained.



## Annexure C

### Objectives and Policies to be added as directed in Annexure A

**OBJECTIVE**  
**[Next**  
**Objective #]**  
*Relates to*  
*Outcome*  
*UAAO1*

**To ensure the life supporting capacity of the Heretaunga Plains Unconfined Aquifer water resource is not compromised by the effects of land use occurring above it.**

**POLICY [Next**  
**#]**  
*Relates to*  
*Objective*  
*[Insert new*  
*Objective #]*

*Ensure that where activities involving hazardous substances are located within the sensitive environment of the Heretaunga Plains Unconfined Aquifer Overlay area (Appendix 59), their usage and storage are designed and managed to ensure the water supply for the environment and community is not compromised.*

#### Explanation

The protection of the quality of the drinking water, irrigation water and natural watercourses that emanate from the Heretaunga Plains Unconfined Aquifer is critical to the health and economic welfare of the Hawke's Bay community. Industrial Zoned land and intensive horticultural and viticulture operations are located over the unconfined area of the aquifer. Additional protection to that provided by HSNO regulation is therefore considered appropriate to apply to this area to ensure that this critical ground water resource is not contaminated. The District Plan will adopt a precautionary approach to the storage, use, and disposal of all materials in order to avoid the entry of any hazardous substance into the aquifer. For this reason the storage, handling or use of Arsenic (As) within the Heretaunga Plains Unconfined Aquifer is a Prohibited Activity via the adoption of Rule ASQ5.

**POLICY [Next**  
**#]**  
*Relates to*  
*Objective*  
*[Insert new*  
*Objective #]*

*Monitor land use activities occurring within the Heretaunga Plains Unconfined Aquifer Overlay area (Appendix 59) to ensure that current regulation is adequately ~~protecting-preventing~~ contaminants from entering this groundwater resource.*

#### Explanation

Substances utilised by new and existing land use activities overlying the aquifer, pose a potential threat of contamination. The District Council will monitor land use activities and their effects to ensure that appropriate land use practices are employed and that District Plan provisions are being complied with.



## Annexure D

### Specific Performance Standards and Terms to be added as directed in Annexure A

[Next  
available #]

#### **THE STORAGE, HANDLING OR USE OF HAZARDOUS SUBSTANCES WITHIN THE HERETAUNGA PLAINS UNCONFINED AQUIFER OVERLAY (Appendix 59)**

All hazardous substances shall be stored and/or handled on areas which have impervious surfaces and where facilities are provided to prevent contaminants from being washed or spilled into natural ground or entering any piped stormwater systems or stormwater ground soakage, such as bunds, filters, separators or settling areas. In Industrial Zones, this impervious surface requirement also applies to fuel operated machinery and vehicles.

*Note 1: Underground tanks and pipelines meeting HASNO Codes of Practice 44 and 45 are considered to contain hazardous substances within an impervious surface.*

*Note 2 : For the avoidance of doubt this rule is not intended to capture the incidental handling or transport of organic matter or fertilisers across a site for the purpose of their application.*

#### Outcome

*The quality of groundwater in the Unconfined Aquifer will be protected from the adverse effects of hazardous substances.*



## Annexure E

### Assessment Criteria – Restricted Discretionary and Discretionary Activities to be added as directed in Annexure A

[Next  
available  
#]

#### **LAND USE ACTIVITIES WITHIN THE HERETAUNGA PLAINS UNCONFINED AQUIFER OVERLAY NOT MEETING THE SPECIFIC PERFORMANCE STANDARDS AND TERMS IN SECTION**

##### **1. SCALE & NATURE OF ACTIVITY**

- i. The scale and intensity of the land use activity including the nature and quantity of chemicals and /or substances to be stored or provided for on the site and the methods proposed for storing, handling or processing and disposal of those substances.
- ii. The availability of fully reticulated stormwater and sewage disposal systems or on-site treatment systems for the treatment of contaminated wastewater or stormwater from buildings and yards.
- iii. The method of disposal of both solid and liquid waste and the volume of waste disposal

##### **2. RISK ASSESSMENT**

A risk assessment shall be provided, focussing on the following issues:

- i. Assessment of the probability and potential consequences of an accident leading to the release or loss of control of hazardous substances. This assessment should focus on the ability of the design and management of the site to avoid accidents, such as spill containment measures, fire safety and fire water management, emergency management, site drainage and off-site infrastructure (e.g stormwater drainage system, sewer type and capacity) and the disposal of waste containing hazardous substances.
- ii. Potential risk and effect on human health, natural ecosystems and the life supporting capacity of land and water, in particular, the Heretaunga Plains Unconfined Aquifer.
- iii. Potential risk and effect on sites of significance to Tangata Whenua, sites of historical or archaeological significance.
- iv. The extent to which a natural hazard event may exacerbate the risk as identified in (2) (i) and (ii), associated with the land use activity.
- v. The potential for cumulative adverse effects of hazardous substances stored, handled, processed or disposed of.



### **3. ALTERNATIVE LOCATIONS**

Whether alternative locations for the activity have been considered, having particular regard to locations outside of the Heretaunga Plains Unconfined Aquifer Overlay.

### **4. DISTRICT PLAN**

Consistency with the relevant Objectives, and Policies of the relevant Zone of the Hastings District Plan.

### **5. RECORD OF EXISTING ACTIVITY**

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

### **6. MONITORING**

The environmental management and quality assurance practices proposed by the applicant including the extent and frequency of any monitoring programme proposed to confirm the environmental and hazard management procedures and practices are being carried out correctly and/or are achieving the objective of avoiding the risk of groundwater contamination in the unconfined aquifer.

### **7. PERFORMANCE BONDS**

The need to take a performance bond to ensure the adoption and use of careful hazard and environmental management practices and procedures.

### **8. HAWKES BAY REGIONAL COUNCIL CONSULTATION**

Consultation with the Hawkes Bay Regional Council including consideration of whether any resource consents are required from the Hawkes Bay Regional Council in respect of the activity to which the application relates and whether these have been applied for and/or have been granted.

### **9. TANGATA WHENUA**

Consideration of tangata whenua values and interests associated with the Heretaunga Plains Unconfined Aquifer.

### **10. NATIONAL ENVIRONMENTAL STANDARDS, NATIONAL POLICY STATEMENT AND INDUSTRY CODES OF PRACTICE.**

Whether the activity complies with relevant National Environmental Standards, National Policy Statements and Industry Codes of Practice or Best Practice Guidelines.



**Annexure F**

**Amendments to Section 29 – Hazardous Substances and  
Genetically Modified Organisms District Wide Activity**



---

## 29.1 HAZARDOUS SUBSTANCES AND GENETICALLY MODIFIED ORGANISMS DISTRICT WIDE ACTIVITY

### 29.1.1 INTRODUCTION

Hazardous substances are used in a wide range of activities occurring within the Hastings District, from dry-cleaning clothes, manufacturing industrial products, to controlling pests and plant diseases in the agricultural sector. The use of hazardous substances creates the potential for adverse effects on human health, property or the natural environment. The potential for adverse effects can be exacerbated where the hazardous facilities are located adjacent or near to particularly sensitive environments, such as the Heretaunga Plains Unconfined Aquifer or where used or stored in large quantities.

This section of the District Plan also addresses the issue of the release of Genetically Modified Organisms (GMOs) within the District. The outdoor use of GMOs can have adverse effects on people, communities, tangata whenua, social and cultural wellbeing, the environment and the economy. The introduction of these provisions to the Plan reflects the level of control desired by the community to manage the effects of GMO land use activities. Through community input into the preparation of the Plan, the adoption of provisions to do with the management of GMOs was identified as important to the Districts food producers. As a group they have highlighted concerns regarding the Districts international reputation and marketability associated with GMOs. To counter this approach, during the preparation of this Plan no evidence has been provided by GMO proponents that there will be a GMO market ready within the next ten years (life of this plan). Council's decision to introduce these provisions around the land use management of GMOs is therefore based on a preferred level of environmental risk management determined by the Hastings community. A precautionary approach to the management of GMOs has therefore been adopted. The application of a precautionary approach will mean that Release or Field Testing of any GMO even where the prior approval has been obtained from the Environmental Protection Agency (EPA) is prohibited, so as to avoid the risks of potential adverse effects. This framework does not preclude laboratory testing from being carried out and other technologies from being investigated that may improve production. It is recognised that the community's attitude may change and/or there may be future GMO development opportunities that could result in a net benefit to the District and where the effects can be satisfactorily managed. For this reason a review policy has been built into these provisions to ensure regular consideration of new information on the benefits and/or adverse effects of a GMO activity which might become available.

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

#### Hazardous Substances

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



The Resource Management Act 1991 (RMA) provides scope for additional controls for hazardous substances located on particular sites. Through Section 30 and 31, Regional and District Councils share the function of:

*The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –*

- i) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.*

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

#### **Genetic Modification**

The HSNO Act requires that before any GMO can be imported into the country, developed in containment, tested in the field or released into the environment, approval must be obtained from the Environmental Protection Authority (EPA).

Similar to the management of hazardous substances, the RMA provides the scope for District Plans to place additional controls on the use of GMOs, if that control can be justified under Section 32 of the RMA. It is considered that the prohibited status for all GMO land use activities is necessary to reflect social and cultural expectations that Hastings will remain a GM-free District. GMO activities are unacceptable given current social and cultural attitudes among the Hastings community and it is important for the District Plan to reflect the community's expectations. As the Council has adopted a prohibited status for the Release and Field Testing of all GMOs, while approval could be sought and obtained from the EPA their use would be unable to be carried out within the Hastings District.





### 29.1.2 ANTICIPATED OUTCOMES

It is anticipated that the following specific outcomes will be achieved:

- |              |  |
|--------------|--|
| <b>HSAO1</b> | Avoidance of the potential effects to the community and the environment from the use, storage and transport of hazardous substances.   |
| <b>HSAO2</b> | <del>Appropriate precaution is taken in the management of hazardous substances over the Heretaunga Plains Unconfined Aquifer.</del>  |
| <b>HSAO3</b> | There is no unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996 and the District Plan with regard to the regulation of Hazardous Substances. |
| <b>HSAO4</b> | Activities utilise hazardous substances where necessary for their operations, in appropriate locations.  |
| <b>HSAO5</b> | Avoidance of the potential effects from the 'release' or 'field testing' of Genetically Modified Organisms (GMOs) on the community.  |



**29.1.3 OBJECTIVES AND POLICIES**

**OBJECTIVE HSO1** To protect the community and natural environment from the adverse effects associated with the manufacture, use, storage or transportation of hazardous substances.  
*Relates to Outcomes HSAO1 and HSAO2*

**OBJECTIVE HSO2** To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations.  
*Relates to Outcome HSAO2*

**POLICY HSP1** ~~Ensure that where activities involving hazardous substances are located in proximity to the sensitive environment of the Heretaunga Plains Unconfined Aquifer, they are designed and managed to reduce risks to the environment and community.~~  
*Relates to Objective HSAO1*

Explanation

~~The protection of the quality of the drinking water, irrigation water and natural watercourses that emanate from the Heretaunga Plains Unconfined Aquifer is critical to the health and economic welfare of the Hawke's Bay community. Industrial Zoned land and intensive horticultural and viticulture operations are located over the unconfined area of the aquifer. Additional protection to that provided by HSNO regulation is therefore considered appropriate to apply to this area to ensure that this critical ground water resource is not contaminated. For this reason the storage, handling or use of Arsenic (As) within the Heretaunga Plains Unconfined Aquifer is a Prohibited Activity via the adoption of Rule HS8.~~

**POLICY HSP2** *To ensure that activities are able to utilise hazardous substances in compliance with relevant regulation as necessary to their operation, without being compromised by 'reverse sensitivity' (that is, by residential or other sensitive activities moving closer and seeking higher amenity levels, including reduced risks from hazardous substances).*  
*Relates to Objective HSAO2*

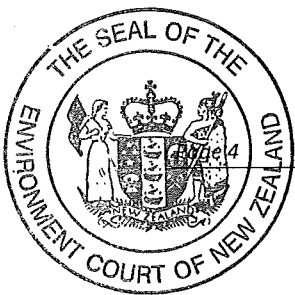
Explanation

It is accepted that, provided the use of hazardous substances is undertaken in accordance with HSNO and other relevant regulation, there will be no undue risk to the community. The land use interfaces surrounding existing hazardous facilities need to be managed to ensure that these activities are not compromised by more sensitive activities establishing in close proximity (reverse sensitivity). This policy will be particularly applicable in the case of residential development or other sensitive land uses seeking to establish in proximity of existing activities utilising hazardous substances. This policy does not apply to existing situations where industrial or commercial activities utilising hazardous substances and residential zones or activities are located in close proximity to each other.

**POLICY HSP3** *Ensure that major hazardous facilities are appropriately sited and managed in order to reduce risks to the environment and community.*  
*Relates to Objectives HSAO1 and HSAO2*

Explanation

Major hazardous facilities have the ability to adversely affect the environment and community if they are not appropriately sited and/or



managed. HSNO and associated regulation aims to internalise the effects of hazardous substances to within the site/building they are located on. However, through deeming all major hazardous facilities a Discretionary Activity, it will allow Council the discretion to determine whether proposed locations and methods of risk management are appropriate. This includes opportunity to consider risks to neighbouring property and the community from fire or natural hazard events affecting the hazardous facility.

**OBJECTIVE HSO3**  
*Relates to*  
*Outcome HSA03*

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

**POLICY HSP4**  
*Relates to*  
*Objective HSA03*

*To not regulate the use, storage or transportation of hazardous substances, in the District Plan where adequate levels of community and environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996 or other legislation and regulation.*

Explanation

The previous District Plan contained a comprehensive hazardous substances regulation including rules requiring screening via the Hazardous Facilities Screening Procedure or HFSP. In the late 1990s the HSNO Act had not been fully implemented with transitional provisions still applying and there was belief that hazardous substances also required regulation under the RMA. Current advice from the Ministry for the Environment is that the HFSP is out of date and is a duplication of HSNO regulation. In addition to this the HFSP is difficult to use and was not often used in the assessment of activities under the District Plan. Given this there is a need for change in the management of hazardous substances under the District Plan and part of this change is to avoid the duplication of regulation. Notwithstanding this however, there is still the need to consider the potential impacts of major hazardous facilities and the appropriateness of their location with regard to community and environmental risk.

**OBJECTIVE HSO4**  
*Relates to*  
*Outcome HSA05*

**To protect the community and their social, economic and cultural wellbeing and environment from the adverse effects associated with the outdoor release or field testing of Genetically Modified Organisms through the adoption of a precautionary approach.**

**POLICY HSP5**  
*Relates to*  
*Objective HSA04*

*To adopt a precautionary approach to the management of Genetically Modified Organisms by prohibiting the field testing or release of a Genetically Modified Organism.*

**HSP6**  
*Relates to*  
*Objective HSA04*

*To adopt a resource management framework for the management of Genetically Modified Organisms (GMOs) that is District specific taking into account environmental, economic and social well-being considerations.*

Explanation

In addition to the environmental risks associated with the release of GMOs, there are economic risks caused by the sensitivity of export markets for high value produce to potential GMO contamination. The export of high value produce is critical to Hastings District as one of New Zealand's most significant horticultural and viticultural areas; agriculture is also an



important component of the District's economy. Providing for the wellbeing of the community by giving certainty in prohibiting the field testing or release of GMOs is therefore justified. It is considered that the prohibited status is necessary to reflect social and cultural attitudes amongst the Hastings community. This is founded on a 2012 Colmar Brunton survey that found 84% of respondents believe that Hawkes Bay should remain a GE free food producing region. Although regulating GMOs in the District Plan could be considered a duplication of the HSNO Act 1996, the Hastings District community in seeking a precautionary approach, has requested greater certainty than can be provided by HSNO.

**POLICY HSP7***Relates to**Objective HSA04*

*To review the Plan provisions relating to Genetically Modified Organisms (GMOs), particularly if there is new information on benefits and/or adverse effects of a Genetically Modified Organism activity and/or there is a general community acceptance to the use of Genetically Modified Organisms that have proven to be safe and economically beneficial without adversely affecting the environment and the general social and economic wellbeing of the community.*

**Explanation**

The necessity and relevance of the prohibited activity status for field testing and release of GMOs will be reconsidered at the next plan review. If in the meantime GMO use is proven to be safe and advantageous and the community is accepting that a precautionary approach is no longer warranted, then their prohibited activity status may be overturned by a plan change. This could either be in relation to GMOs in general, or to a specific GMO for which there is a demand for in the community and which poses a low risk with regard to adverse effects and to the economic viability of the production and marketing of GE free produce.



#### 29.1.4 METHODS

The Anticipated Outcomes set out in Section 29.1.2 will be achieved and the Objectives and Policies set out in Section 29.1.3 will be implemented through the following Methods:

##### HASTINGS DISTRICT PLAN

The Rules contained in the relevant Sections of the Hastings District Plan where land is affected by the Heretaunga Plains Unconfined Aquifer Overlay ~~Hazardous Substances DWA Section of the Hastings District Plan~~ work to ensure that additional precaution is exercised in the use and storage of hazardous substances over the Heretaunga Plains Unconfined Aquifer, but generally acknowledge the HSNO Act as providing the appropriate regulation to manage the effects of hazardous substances.

##### HASTINGS DISTRICT COUNCIL BYLAWS

A number of bylaws have provisions relating to risks from hazardous substances. Part 11 – Fire Control regulates the storage of combustible materials. Part 13 – Nuisances contains regulation surrounding offensive matter and refuse. Part 14 – Public Places covers the disposal and transportation of hazardous substances in public places. Part 16 – Refuse regulates the disposal of hazardous substances by Council collection and at Omarunui Landfill. Part 21 – Water Services regulates discharges, including trade wastes, hazardous substances, waste water and storm water into the Hastings District Council infrastructure and then into the receiving environments.

##### HAZARDOUS SUBSTANCES AND NEW ORGANISMS ACT 1996

HSNO requires that hazardous facilities may require a location test certificate, approved handler test certificates and/or a stationary container test certificate, dependant on the type and quantity of hazardous substances held at a site.

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

##### OTHER LEGISLATION

Other legislation that includes provisions relating to the use, storage, disposal or transportation of hazardous substances includes: the Building Act 1991, Health and Safety in Employment Act 1992, Transport Act 1992 and the Civil Defence Act 1983.

##### RADIATION PROTECTION ACT 1965 AND RADIATION PROTECTION REGULATIONS 1982

The use, storage and transport of radioactive material is controlled and licensed by the Ministry of Health through the Office of Radiation Safety.



**CODES OF PRACTICE AND  
NEW  
ZEALAND/AUSTRALIAN  
STANDARDS**

A variety of Codes of Practice and New Zealand/Australian Standards covering various aspects of the hazardous substance industry have been developed by the relevant industries, often in association with local authorities, the Department of Labour, the Environmental Protection Authority or the Ministry for the Environment. Codes of Practice are an approved means of complying with HSNO and are designed to provide guidance on how to eliminate or minimise the risk associated with hazardous substances. A good example of this is the EPA approved code of practice "Management of Agrichemicals NZS 8409:2004".

**COMPLIANCE AND  
MONITORING**

Monitoring will be undertaken to ensure that the conditions of resource consents are complied with. In general the appropriate authorities to direct complaints regarding the location or appropriate management of hazardous facilities to (aside from any relating to the rules or standards in this Plan section) will be the Environmental Protection Authority or the Ministry of Business, Innovation and Employment.

**INTEGRATED  
MANAGEMENT**

Hastings District Council will work with the Hawke's Bay Regional Council, adjacent local authorities and other statutory agencies and industries where appropriate for the assessment and management of hazardous facilities.

**HAWKE'S BAY REGIONAL  
COUNCIL**

The Hawke's Bay Regional Council (HBRC) also has involvement in the management of hazardous substances. The HBRC have responsibility for hazardous substances as they relate to the discharge of contaminants to air, water and land as defined by section 15 of the RMA. The HBRC will also have responsibility for the use, storage, and transportation of hazardous substances where these are associated with the control of the use of land of any river or lake under section 13 of the RMA. They also assist in the safe disposal of hazardous substances.

**RESOURCE MANAGEMENT  
(NATIONAL  
ENVIRONMENTAL  
STANDARD FOR ASSESSING  
AND MANAGING  
CONTAMINANTS IN SOIL  
TO PROTECT HUMAN  
HEALTH) REGULATIONS  
2012**

All territorial authorities are required to give effect to and enforce the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS).

These Regulations provide a nationally consistent set of planning controls and soil contaminant values, and ensure that land affected by contaminants in soil is appropriately identified and assessed before it is developed -and if necessary the land is remediated or the contaminants contained to make the land safe for human use.

Resource consent information and monitoring data can be collated to inform the identification of land affected by contaminants in soil.



### 29.1.5 RULES

The following table sets out the status of activities involving hazardous facilities:

RULE TABLE 29.1.5 – HAZARDOUS SUBSTANCES AND GMOs		
RULE	LAND USE ACTIVITIES	ACTIVITY STATUS
<b>HS1</b>	<del>The Storage, Handling or Use of Hazardous Substances (excepting Arsenic (As) and Major Hazardous Facilities) within the Heretaunga Plains Unconfined Aquifer.</del>	<del>P</del>
<b>HS2</b>	The Storage, Handling or Use of Hazardous Substances in <del>all other</del> areas <u>other than within the Heretaunga Plains Unconfined Aquifer Overlay</u> (excepting Major Hazardous Facilities).	P
<b>HS3</b>	Activities involving Genetically Modified Organisms that are not classified as Field Trials or Releases. This includes (but is not limited to) research within contained Laboratories, Medical and Veterinary Applications and Food containing Genetically Modified Products that are not Viable.	P
<b>HS4</b>	<del>Permitted activities not meeting the Specific Performance Standards and Terms in Section 29.1.6.</del>	<del>RD</del>
<b>HS5</b>	Major Hazardous Facilities	D
<b>HS6</b>	The outdoor Release of Genetically Modified Organisms	Prohibited
<b>HS7</b>	The outdoor Field Testing of Genetically Modified Organisms	Prohibited
<b>HS8</b>	<del>The Storage, Handling or Use of Arsenic (As) within the Heretaunga Plains Unconfined Aquifer RMU.</del>	<del>Prohibited</del>





### **~~29.1.6 SPECIFIC PERFORMANCE STANDARDS AND TERMS~~**

The following Specific Performance Standards and Terms apply to the activities specified below.

#### **~~29.1.6A THE STORAGE, HANDLING OR USE OF HAZARDOUS SUBSTANCES WITHIN THE HERETAUNGA PLAINS UNCONFINED AQUIFER~~**

##### **~~(i) Impervious surfaces~~**

All hazardous substances shall be stored and handled on areas which have impervious surfaces. In Industrial Zones, this impervious surface requirement also applies to fuel operated machinery and vehicles.

*Note: Underground tanks and pipelines are considered to contain hazardous substances within an impervious surface.*

##### Outcome

*The quality of groundwater in the Unconfined Aquifer will be protected from the adverse effects of hazardous substances.*

##### **~~(ii) Stormwater~~**

Facilities shall be provided to prevent hazardous substances from being washed or spilled into natural ground or entering any storm water systems or storm water ground soakage up to a 1% AEP (Annual Exceedance Probability) rain event.





### **29.1.7 ASSESSMENT CRITERIA – ~~RESTRICTED DISCRETIONARY AND~~ DISCRETIONARY ACTIVITIES**

~~For Restricted Discretionary Activities, the following criteria identify those matters which Council has restricted its discretion over in assessing Resource Consent applications. For Discretionary Activities, the following criteria identify those matters which Council may assess the activity against. However, for Discretionary Activities, Council's assessment is not restricted to these matters.~~

#### **29.1.7A 1. RISK ASSESSMENT**

A risk assessment shall be provided, focussing on the following issues:

- (i) Assessment of the probability and potential consequences of an accident leading to the release or loss of control of hazardous substances. This assessment should focus on the ability of the design and management of the site to avoid accidents, such as spill containment measures, fire safety and fire water management, emergency management, site drainage and off-site infrastructure (e.g stormwater drainage system, sewer type and capacity) and the disposal of waste containing hazardous substances.
- (ii) Potential risk and effect on people and neighbouring activities, with emphasis on sensitive activities such as residential zones, educational facilities and community facilities.
- (iii) Potential risk and effect on natural ecosystems and the life supporting capacity of land and water, including the Heretaunga Plains Unconfined Aquifer, waterbodies and sources of potable water.
- (iv) Potential risk and effect on sites of significance to Tangata Whenua, sites of historical or archaeological significance, Recommended Areas for Protection, Outstanding Natural Features and Landscapes or Significant Landscape Character Areas.
- (v) The potential for natural hazards to impact on the operation of the hazardous facility.
- (vi) The potential for cumulative adverse effects of hazardous substances.

#### **2. ALTERNATIVE LOCATIONS**

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

#### **3. DISTRICT PLAN**

Consistency with the Objectives, Policies and Methods of the relevant Zone and of Section 29.1.3 of the Hastings District Plan.

#### **4. RECORD OF EXISTING ACTIVITY**

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



**29.1.7B ~~HAZARDOUS FACILITIES WITHIN THE HERETAUNGA PLAINS UNCONFINED AQUIFER  
NOT MEETING THE SPECIFIC PERFORMANCE STANDARDS AND TERMS IN SECTION  
29.1.6.~~**

~~In addition to the matters listed in 29.1.7A 1-4, an application will be assessed  
according to the matters listed below:~~

~~(a) **Stormwater and sewerage**~~

~~The availability of fully reticulated stormwater and sewage disposal systems or  
on-site treatment systems for the treatment of contaminated wastewater or  
stormwater from buildings and yards.~~

~~(b) **Solid and liquid waste**~~

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

