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What we mean by ‘protected place’ and ‘public place’

This policy’s purpose

The Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations) require some classes and quantities of hazardous substances to be separated from ‘protected places’ and/or ‘public places’.

The definitions of these terms in regulation 3(1) (Interpretation) include several elements. This policy clarification sets out how we interpret the terms ‘protected place’ and ‘public place’, and the elements of these terms.

What to consider with protected places and public places

We expect PCBUs to:

- consider if a place is a hazardous substance location (HSL). If it is, then it isn’t a protected or public place
- apply each element of ‘protected place’ and ‘public place’, including our meaning of them below, to identify if either applies
- consider how close their hazardous substances are to their property boundaries, as they may need to get agreement from their neighbours¹
- regularly review whether a place is a protected or public place. This is important as the use of a place can change over time.

How we interpret the elements of a ‘protected place’

Our interpretation of the elements of ‘protected place’ under regulation 3(1) is set out below:

A PROTECTED PLACE INCLUDES	WHAT WE MEAN BY THIS ELEMENT
a dwelling, residential building, a place of worship, public building, school or college, hospital, childcare facility, or theatre	These terms have their usual common meanings and in general are places where people can be expected to be present.
any factory, workshop, office, store, warehouse, shop or building where persons are regularly employed	These terms have their usual common meanings and in general are places where people work. ‘regularly employed’ refers to people working on a regular basis, regardless of frequency.

¹ See WorkSafe’s [Hazardous substances located near property boundaries](#) position.

A PROTECTED PLACE INCLUDES	WHAT WE MEAN BY THIS ELEMENT
any building or open area in which persons are accustomed to assemble in large numbers	This means a building or open area where it is usual for people to gather together in large numbers. It is context-specific and needs to be determined on a case-by-case basis.
whether within or outside the property boundary of a place where a HSL is situated	This means property boundaries are not relevant in determining if a place is a protected place.
a ship lying at permanent berthing facilities ²	A ship is defined by the Maritime Transport Act 1994 Berthing refers to a ship moored at an allocated place, which it occupies when not being sailed. A berthing facility can be at a port, dock, harbour, or marina. This means a ship permanently at a berthing facility is a protected place.
a public railway	As defined in WorkSafe's Public Railways policy clarification

Under regulation 3(1), a place that is described above is a protected place **unless it meets the exclusion below:**

A PROTECTED PLACE DOES NOT INCLUDE	WHAT WE MEAN BY THIS ELEMENT
a small office or other small building associated with a place where the storage, handling, use, manufacture, or disposal of a class 2, 3, 4, 5, 6, or 8 substances is a major function	A small office or other small building can refer to a stand-alone structure or be part of a larger structure. 'Associated with' means that the small office or other small building has a functional relationship or connection with the place where the storage, handling, use, manufacture, or disposal of those classes of substances is a major function. The small office or other small building doesn't need to be used for these purposes, but we expect that it would only be used for things that are necessary for the hazardous substance activity to occur and only by persons who need to be proximate to that activity.

If a place meets this description, it is **not** a protected place.

How we interpret the elements of a 'public place'

The following table lists the elements of 'public place' under regulation 3(1), and how we interpret them, to establish whether the place is a public place:

A PUBLIC PLACE INCLUDES	WHAT WE MEAN BY THIS ELEMENT
means a place (other than private property or a protected place) that is open to, and frequented by, the public	If a place is a protected place, or is private property, it is not a public place. Otherwise, public places are places that the public regularly access. This can include public roads, footpaths, public courtyards, grass verges, public gardens, playgrounds, and reserves.
includes a public road	A public road is a road, highway, or beach that is regularly used by vehicles driven by the public. Waka Kotahi NZ Transport Agency offers a definition of road

² PCBUs should consider all nearby permanent berthing facilities when determining the separation distance requirements for their HSL.