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	Response Date	Aug 31 22
	Notes	
Q1	Select the chapter you want to provide feedback on	
Q2	In general, to what extent do you support the contents of this chapter?	
Q3	Objective/Policy/Rule/Standard reference:	
Q4	Feedback/Comments	
Q5	Objective/Policy/Rule/Standard reference:	
Q6	Feedback/Comments	
Q7	Objective/Policy/Rule/Standard reference:	
Q8	Feedback/Comments	
Q9	Objective/Policy/Rule/Standard reference:	
Q10	Feedback/Comments	
Q11	supporting documents?	
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Q12	If you need more space, or have any other general comments, please leave them here	

COMMENTS BY THE FUEL COMPANIES
IN RELATION TO THE WAITAKI DRAFT DISTRICT PLAN

To:

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Via email: planreview@waitaki.govt.nz

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Hereafter referred to as the Fuel Companies

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Date:

31st August 2022

LAND. PEOPLE. WATER.

A. INTRODUCTION

1. BP Oil New Zealand Limited, Mobil Oil New Zealand Limited, and Z Energy Limited (*the Fuel Companies*) receive, store and distribute refined petroleum products around New Zealand. In the Waitaki District, the Fuel Companies' core business relates to operating retail fuel outlets including service stations and truck stops, and supply to commercial facilities.

2. Waitaki District Council is undertaking a review of its district plan and released the Waitaki Draft District Plan (*the draft plan*) for feedback on the 1st of June 2022. The Fuel Companies appreciate the opportunity to provide comments at the draft stage.

3. This submission relates specifically to the following chapters of the proposed plan:
   - *Part 2 – District Wide Matters – HS Hazardous Substances*
   - *Part 2 – District Wide Matters – CL Contaminated Land*
   - *Part 2 – General District Wide Matters – EW Earthworks*

4. The Fuel Companies would be pleased to discuss these comments further with the Council in advance of notification of the draft plan.

B. HAZARDOUS SUBSTANCES

Background

5. The Resource Legislation Amendment Act 2017 (*RLAA*) removed the explicit function of district and regional councils to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under sections 30 and 31 of the Resource Management Act 1991 (*RMA*). While councils do retain a broad power under the RMA to manage hazardous substances through their plans and policy statements to achieve the purpose of the RMA and to carry out the function of integrated management of natural and physical resources in their region/district, this should only be exercised where the potential environmental effects are not adequately addressed by other legislation, including by the Hazardous Substances and New Organisms Act 1996 (*HSNO*) and the Health and Safety at Work Act 2015 (*HSWA*).

6. HSNO and HSWA consider surrounding land uses generically, by including different clearances with respect to substances (HSNO) or surrounding land uses (HSWA). Most of these controls apply regardless of where that substance is stored or used and apply a precautionary approach which provides for an acceptable level of safety in most circumstances.

7. In most cases, the Fuel Companies consider that HSNO and HSWA controls are adequate to avoid, remedy or mitigate adverse environmental effects of hazardous substances. This position is supported by the Ministry for the Environment[1][2] (*MfE*). However, in particular circumstances, it may be appropriate that RMA controls are used, subject to robust section 32 analysis to ensure that such controls are both necessary and efficient. The expectation is, however, that controls on hazardous substances in RMA plans will be the exception rather than the norm.

8. Recognition of the need to avoid duplication regarding hazardous substances is already reflected in several plans around the country. For instance, the Independent Hearing Panel (which included both a High Court and an Environment Court Judge) on the Christchurch Replacement District Plan rejected Christchurch City Council's hazardous substance controls (which were based on an activity status table approach) and only retained controls relating to hazardous substances in close proximity to the National Grid. The Hearing Panel's decision followed a rigorous examination process, including significant debate and cross-examination of expert witnesses. The Hearing Panel considered the provisions gave effect to the Canterbury Regional Policy Statement 2013. Importantly the decisions adopted overlays around Major Hazard Facilities (*MHF*), for instance the bulk fuel storage facilities of the Fuel Companies at

[1] Resource Legislation Amendments 2017 – Fact Sheet 2, MfE, Amended in September 2017

[2] Plan Topics, Hazardous Substances under the RMA – MfE, updated in 2019 (https://www.qualityplanning.org.nz/sites/default/files/2019-05/managing-hazardous-substances.pdf)

Lyttelton and Woolston, to protect critical infrastructure from reverse sensitivity effects. In terms of hazard overlays, additional hazardous substance controls apply under the Canterbury Land and Water Regional Plan where storage of hazardous substances is proposed within 250 metres of an active fault (recurrence period of less than 10,000 years) ***and*** over an unconfined or semi-confined aquifer or within 50 metres of a permanently or intermittently flowing river or lake. These provisions were adopted at a time when councils still had the explicit function to control hazardous substances. Importantly the decisions adopted overlays around MHF, for instance the bulk fuel storage facilities of the Fuel Companies at Lyttelton and Woolston, to protect critical infrastructure from reverse sensitivity effects.

9. Councils have responded differently to the RLAA. Several councils propose no rules relating to hazardous substances (for instance the Proposed Porirua District Plan) while others propose focused provisions on MHF (as defined in the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 (*the MHF Regs*), for instance the proposed Selwyn District Plan) or have come up with a new definition - significant hazards facilities (*SHF,* for instance the proposed New Plymouth District Plan and the draft Timaru District Plan). The Fuel Companies have provided feedback to these draft/proposed plans and have been generally supportive of the approaches taken, except where the definitions of MHF or SHF are not appropriately risk based. In contrast to the Councils mentioned, Waikato District Council essentially sought to rollover existing controls in its proposed district plan. Through the hearing process, the Hearing Panel determined that the threshold approach proposed by Waikato District Council was inappropriate and recommended provisions relating to SHF. As relevant to the Fuel Companies, the definition of SHF only captures above ground storage of both petrol (in excess of 50,000 litres) and diesel (in excess of 100,000l), neither of which will capture typical hazardous substance storage for retail purposes.

10. As a first step to reviewing hazardous substance provisions, the Fuel Companies consider the Council should identify:

- specific hazardous substance related activities that are occurring within their area that might pose a risk off site (using MHF as a starting point and noting that in the Waitaki district there are no such sites listed by Worksafe (https://www.worksafe.govt.nz/topic-and-industry/major-hazard-facilities/mhf-public-information/); and
- the probability of a particular risk event (such as a fire or explosion); and
- sensitive land uses that may require additional protection not otherwise provided for.

11. The Council should then confirm whether there is appropriate environmental protection through HSNO or HSWA or any other relevant legislation to address these matters. If not, consideration should be given to whether adequate controls are provided through zoning/overlay controls (in combination with compliance with HSNO and HSWA) and, if not, establish if it is necessary to provide additional protection for any of these areas or activities.

12. In most circumstances, the Fuel Companies consider this analysis is likely to show that existing zoning controls and/or overlays in plans provide adequate protection to manage the risks of hazardous substances, and therefore it is unnecessary to require additional controls. For example, hazardous substances in non-domestic quantities are usually associated with industrial activities, which are generally undertaken in industrial zones. Industrial activities are less likely to experience reverse sensitivity effects from neighbours who would typically be undertaking similar activities. Conversely, activities that use hazardous substances in large quantities in more sensitive zones (i.e. within residential areas) are often non-residential activities and it is more likely that resource consent would be required for such activities in any event and the effects of any associated hazardous substance use or storage could be addressed at that stage. If it is demonstrated that there is a gap then additional land use controls may help address it. Careful consideration would, however, need to be given to the type of information and potential controls to avoid the status quo (in the Fuel Companies' experience) whereby controls required simply require compliance with other legislation.

13. One area where the Fuel Companies recognise there is a potential land use planning gap (as has been recognised by the Independent Hearing Panels on the Auckland Unitary Plan and Christchurch City Plan) is in relation to MHF and the potential interface with adjoining land uses. This is because these facilities are usually of such a scale that potential adverse effects (risk) will extend beyond the boundary. The risk

levels may be acceptable where there is compatible land use (noting that while NZ does not have any risk criteria the New South Wales criteria has been adopted around the country at various facilities and these criteria draw a distinction between land use types as a result of the likes of mobility preparedness, training etc such that industrial areas have a much higher tolerance for risk than say residential areas). Where effects from these facilities are not completely addressed by compliance with HSNO and HSWA, measures such as location specific risk overlays or separation distances (using risk contours based on a risk analysis) may be appropriate. Depending on the risk, it may be appropriate to consider land use restrictions on land in the vicinity of a MHF to enable the MHF to carry out operations, including maintenance and upgrades, without being unreasonably constrained by encroachment of sensitive activities. This approach was reflected in the decisions of the Hearing Panel in Christchurch which applied an interim overlay around the Mobil Oil New Zealand Limited and Liquid gas terminals at Woolston. The sunset clause on that overlay has since been removed via Plan Change 1 to the plan.

14. In light of the RLAA and controls under other legislation, district plan hazardous substance controls are largely considered to be unnecessary in most circumstances, unless intervention is clearly justified by robust section 32 analysis. Councils may have grounds to control a wider range of facilities, however, such an approach must be clearly justified.

The draft plan

15. The draft plan appears to recognise the role that other legislation plays in controlling hazardous substances, with the overview section of the hazardous substances chapter outlining that District Councils have limited powers and responsibilities under HSNO and HSWA, which are administered by other agencies. Stating:

> *"This chapter, acknowledging that HSNO and the HSW Act manage most adverse effects associated with hazardous substances, only seeks to control the potential residual risks of majority hazardous facilities… looking at effects of a low probability but a high impact"*.

This approach is consistent with the RLAA which reinforces the importance of avoiding duplication and the Fuel Companies support the greater efficiency of doing so. However, it is important that the plan explicitly acknowledges the need to *avoid duplication* of the requirements and obligations that arise under other hazardous substances legislation and regulations (refer to paragraph 8). The Fuel Companies consider that this could be achieved through the addition of a policy (HS-P6) as follows:

> *Avoid duplication of hazardous substance controls provided by other legislation.*

This policy intent does not appear to be fully reflected in the proposed rules. In particular HAZS-R1 read in conjunction with sensitive activities and environments as described at HAZS-P5 may be interpreted as triggering discretionary activity consent for the use and/or storage of hazardous substances within 250m of sensitive activities as defined (including any residential activity), irrespective of potential risk. This is contrary to the stated intent of the chapter, not justified from a risk perspective, and inefficient. It stands to significantly restrict the establishment and operation (including upgrading of existing facilities) of a range of activities. The Fuel Companies consider that clause 8 of HAZS-P5 should be deleted.

C. CONTAMINATED LAND

16. The Fuel Companies consider that the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (*NESCS*) provides an appropriate rule framework for activities involving the use, development and disturbance of contaminated soil. The draft plan appears to acknowledge this point, with the overview statement stating that the NESCS:

> *"Provides regulations for activities occurring on pieces of land where soil may be contaminated in a way that poses a risk to human health...WDC is required to observe and enforce the requirements of the NESCS".*

17. Accordingly, the apparent intent of the draft plan to remove contaminated land rules (subject to amendments to the earthworks chapter, as outlined below) is supported. The Fuel Companies are supportive of a policy framework based on management of risk to human health to ensure contaminated land is appropriate for its intended use. However, the Fuel Companies consider the chapter could be clearer in several respects. In particular, the Fuel Companies note the following:

- The draft plan appears to use the terms 'contaminated land' and 'contaminated site' interchangeably. It is appropriate to refer to contaminated land (as defined in the NESCS in Regulation 5(7)) not contaminated sites, noting that parts of sites may be affected but other parts may not.

- The chapter overview states that the management of environmental effects will 'sit with the Otago and Canterbury Regional Councils', which is supported by the Fuel Companies. However, as drafted CL-P2 seeks to manage wider effects on the environment. It would be helpful to understand (and narrow) what the Council seeks to manage, noting the role of the Regional Council in relation to discharges, and to provide consistency throughout the chapter.

18. The Fuel Companies consider that minor amendments to CL-O2 will provide consistency in the managing the risks to human health in line with the NESCS. Specifically:

CL-O1: The risks to human health from the unacceptable exposure to contaminated land as a result of subdivision and development are ~~minimised~~ managed to a level that is appropriate for the intended use.

D. EARTHWORKS

19. The most common earthworks undertaken by the Fuel Companies are those associated with the replacement and/or removal of fuel storage systems. These temporary activities are specifically and appropriately addressed under the NESCS and need not to be duplicated under the district plan. The Fuel Companies support Council's intent to specify that earthworks undertaken on contaminated land are subject to contaminated land provisions, and the NESCS. Minor amendments to the 'general interpretation of rules' would clarify the relationship between the earthworks, contaminated land and NESCS provisions. In particular:

Earthworks on contaminated land will be subject to the Contaminated Land Chapter provisions and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health which provides controls for specific activities on potentially contaminated land.

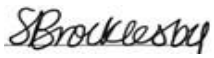
20. As drafted, EW-R1 provides a permitted pathway subject to compliance with standards. The Fuel Companies generally support this approach but seek a specific exemption for earthworks undertaken in relation to the removal or replacement of underground fuel storage systems, noting that these are specifically addressed under the NESCS and should not be duplicated under the district plan.

21. EW-S2 prescribes a maximum depth of cut and fill, and EW-S3 restricts earthworks on an angle greater than 18.5 degrees. These standards do not provide for the type of temporary earthworks activities which may be required for the removal, replacement, or upgrading of underground assets such as tanks or drainage systems, for example, noting that these may not fall under the Infrastructure chapter. The rationale for seeking to control these earthworks is unclear and is likely to capture a range of works which are already subject to robust management controls and which have limited potential for adverse effects. It is noted that, as per INF-S13, earthworks associated with underground infrastructure are exempt from the 1.5m cut or fill requirement, reflecting Council's intent to enable these works which are of a similar nature to tank removals/replacement. The Fuel Companies seek that an exempted pathway is provided for activities involving the removal, replacement, or upgrading of underground assets such as tanks or drainage systems.

E. CONCLUSION

22. Thank you for reviewing these comments. The Fuel Companies would appreciate the opportunity to discuss these matters further with the Council in advance of notification of the draft plan.

Signed on behalf of Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited



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Sophie Brocklesby
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Dated this 31st August 2022