

BEFORE THE ENVIRONMENT COURT AT CHRISTCHURCH

ENV-2018-CHC-

IN THE MATTER

of an appeal under Clause 14 of the First
Schedule to the Resource Management Act
1991

AND

IN THE MATTER

of the decisions of the Dunedin City Council
on the Proposed Second Generation
District Plan

BETWEEN

**BP OIL NEW ZEALAND LIMITED, MOBIL OIL
NEW ZEALAND LIMITED AND Z ENERGY
LIMITED**

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

**NOTICE OF APPEAL BY BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED AND
Z ENERGY LIMITED
DATED 19 DECEMBER 2018**

To: The Registrar
Environment Court
Christchurch

INTRODUCTION

1. BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited (**The Oil Companies**) appeal against parts of a decision of Dunedin City Council (**the Council**) on the Proposed Second Generation District Plan (**the Proposed 2GP**).
2. The Oil Companies made submissions and further submissions on the Proposed 2GP.
3. The Oil Companies are not trade competitors for the purposes of section 308D of the Resource Management Act 1991 (**the RMA**).
4. The Oil Companies received notice of the Council's decisions on 7 November 2018.

BACKGROUND

5. The Oil Companies receive, store and distribute refined petroleum products. Within Dunedin City, the Oil Companies own, operate and/or supply service stations and truck stops and supply various commercial activities. These facilities provide an essential service to the residents and businesses of Dunedin.
6. The Oil Companies also own and operate the bulk fuel storage terminals at and adjacent to the Dunedin Port along with the associated pipelines (wharflines and bunkerlines). The terminals comprise the Z Energy 2015 Ltd Terminal (former Chevron Terminal) located at 203 Fryatt Street, the Z Energy Ltd Terminal at 9-25 Wickliffe Street, and the BP Oil NZ Ltd Terminal at Parry Street. Each of the terminals is designated as a Lower Tier Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016. Fuels come to Dunedin either from the Marsden Point Refinery or are directly imported. Fuel distribution to Dunedin and the wider region is trucked from the bulk storage terminals at the Port. These facilities are infrastructure of regional and strategic importance and are critical to the functioning of the region as a whole.

THE PARTS OF THE DECISION BEING APPEALED

7. The parts of the decision that the Oil Companies' appeal relates to is:
 - (a) Chapter 1: Plan Overview and Introduction
 - a. Rule 1.5.2 Definitions – Network Utilities
 - b. Rule 1.5.2 Definitions – Network Utility Structures
 - c. Rule 1.5.2 Definitions – Reverse Sensitivity
 - d. Rule 1.5.2 Definitions – Underground or Internal Network Utilities

- e. Chapter 1: Plan Overview and Introduction – Rule 1.1.5.3 User Guide
- (b) Chapter 2: Strategic Directions
 - a. Policy 2.2.6.2
 - b. Objective 2.3.1
 - c. Policy 2.3.1.7
 - d. Objective 2.7.1
 - e. Policy 2.7.1.2
- (c) Chapter 5: Network Utilities
 - a. Rule 5.6.2
- (d) Chapter 6: Transportation – classification of ‘urban high-density corridors’
- (e) Chapter 8: Earthworks
 - a. Rule 8A.5.1.4
 - b. Rule 8A.5.1.5
 - c. Rule 8A.5.4
 - d. Rule 8A.5.6
- (f) Chapter 9: Public Health & Safety
 - a. Policy 9.2.2.11
 - b. New objective and policies relating to the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (*NESCS*)
 - c. New hazardous facility overlay comprising new objectives, policies, rules and definitions
 - d. Rule 9.3.4 Hazardous Substances Quantity Limits and Storage Requirements
 - e. A6. Hazardous Substances Quantity Limits
- (g) Chapter 10: Natural Environment – Rule 10.3.3
- (h) Chapter 15: Residential Zones – Policy 15.2.1.7
- (i) Chapter 16: Rural Zones – Policy 16.2.1.11
- (j) Chapter 18: Commercial and Mixed-Use Zones - zoning of the land between Ravensbourne Road and Parry Street West
- (k) Chapter 19: Industrial Zones
 - a. Objective 19.2.2
 - b. Policy 19.2.2.8
 - c. Rule 19.6.11.1
 - d. Zoning of land south of Magnet Street

REASONS FOR APPEAL

8. The general reasons for the appeal are that the decision:
- (a) Does not promote the sustainable management of natural and physical resources and is contrary to Part 2 and other provisions of the RMA.
 - (b) Does not enable people and communities of Dunedin to provide for their social and economic wellbeing and their health and safety.

- (c) Does not give effect to the objectives and policies of the operative and proposed Otago Regional Policy Statements (**ORPS** and **PRPS**).
 - (d) Does not adequately address the matters set out in the submissions, further submissions and evidence of the Oil Companies on the 2GP.
 - (e) Is not the most efficient or effective way of managing hazardous substances and regionally significant infrastructure.
 - (f) Does not recognise and provide appropriate protection for the regionally significant motor fuel infrastructure to the region.
 - (g) Applies an inconsistent approach to the management of land use compatibility, including risk and reverse sensitivity issues, relating to Major Hazard Facilities.
 - (h) Results in undue complexity and will lead to inconsistent administration of the 2GP and inconsistent environmental outcomes.
 - (i) Does not represent the most appropriate means of exercising the Council's statutory functions, having regard to the efficiency and effectiveness of other available options under section 32 of the RMA.
 - (j) Will not ensure that the actual or potential adverse effects of the relevant activities enabled by the 2GP will be appropriately avoided, remedied or mitigated.
 - (k) Will potentially impose unnecessary and unjustified costs.
9. Without limiting the generality of the above, the specific reasons for the Oil Companies' appeal are set out below.

10. **NEW BULK FUEL TERMINALS EMERGENCY MANAGEMENT OVERLAYS**

The Oil Companies' Submission (OS634.88)

- 10.1 The Oil Companies' sought to include a suite of provisions (objectives, policies and rules) to manage development within a reasonable proximity of the bulk fuel storage terminals at Port Dunedin to manage risk and reverse sensitivity issues.

The Council's Decision

- 10.2 The Oil Companies' submission is rejected and no mechanism is provided to address risk and reverse sensitivity issues associated with the bulk fuel storage terminals at Port Dunedin.
- 10.3 The decision is also to rezone land to the north of the Z Terminal, between Ravensbourne Road and Anzac Avenue, from 'Industrial 1' to 'Princes, Parry and Harrow Street Zone (PPH

Zone)'; and to rezone land to the south of the BP Terminal, to the south of Magnet Street, from 'Industrial 1' to 'Recreation Zone'.

Reason for Appeal

- 10.4 The Oil Companies' facilities are regionally significant, strategic infrastructure and provide a vitally important role in the fuel supply chain of the region. In order to continue to store and distribute fuel products to the Otago Region and wider South Island, there must be resilient, efficient and effective loading, storage and conveyance mechanisms for fuel at and from Port Dunedin. This includes the continuity and efficiency of fuel supply to the Dunedin International Airport.
- 10.5 While the Oil Companies adhere to international best practice and maintain robust safety and risk management on all their sites, due to the nature and volume of fuels stored, the bulk fuel terminals at Port Dunedin are major hazardous facilities and pose a potential risk to surrounding land uses.
- 10.6 The rezoning of land adjacent to the Z and BP Terminals will enable sensitive land uses to establish in close proximity to the terminal sites. This raises concerns around risk to public health and safety and reverse sensitivity effects, which may result in restrictions on the ongoing operation, maintenance and upgrade of the Terminals. This, in turn, could undermine the resilience of the fuel supply chain to the Otago Region and compromise the ability to meet ongoing fuel demands for the medium and long term, in an appropriate and safe manner.
- 10.7 Specific provisions are needed to recognise and protect the bulk fuel storage facilities and appropriately manage development within a reasonable proximity of the Terminals to address risk and reverse sensitivity issues.

Relief Sought

- 10.8 Amend the 2GP to introduce a policy and regulatory framework that recognises and provides:
- a) avoidance of encroachment of risk sensitive land uses that would unduly compromise the ability of the bulk fuel terminals at Port Dunedin to continue to provide for existing and on-going future fuel demands, including by creating lower thresholds of acceptable risk in the receiving environment and generating reverse sensitivity effects; and
 - b) that activities operating within the wider proximity are aware of the risks at this location and are suitably prepared, including through the development of appropriate emergency management plans; and
 - c) that building design mitigation has been considered when developing and altering buildings that are in closest proximity to the terminal.
 - d) Provisions should be provided for in a dedicated overlay.
- 10.9 Make any consequential amendments as a result of the above amendments.

10.10 Such other relief as the Court sees fit.

11. CHAPTER 18: COMMERCIAL AND MIXED USE ZONES – REZONING

The Oil Companies' Submission (OS634.90 & FS2487.61)

- 11.1 The Oil Companies opposed the rezoning of land between Ravensbourne Road and Parry Street West, to the north of the Z Energy bulk fuel storage terminal, to PPH Zone and sought to retain the underlying Industrial zoning applied in the Operative Dunedin District Plan (***the Operative DP***).

The Council's Decision

- 11.2 The decision is to rezone the land between Ravensbourne Road and Parry Street West to PPH Zone. The decision goes on to state¹ *'The only justifications for an industrial zoning are reverse sensitivity effects and public safety issues arising from activities in the adjacent Industrial Zone. These are addressed by our decision to apply a Major Hazard Overlay within 200m of the Liquigas site'*.

Reason for Appeal

- 11.3 The rezoning of land adjacent to the Z Energy bulk fuel storage terminals from Industrial to PPH will enable sensitive land uses to establish in close proximity to the terminal sites, noting that all activities in the residential activities category are permitted activities in the PPH Zone. This raises concerns around risk and reverse sensitivity effects, which may result in restrictions on the ongoing operation, maintenance and upgrade of the Terminals. This, in turn, could undermine the resilience of the fuel supply chain to the Otago Region and compromise the ability to meet ongoing fuel demands for the medium and long term, in an appropriate and safe manner.
- 11.4 The Major Hazard Overlay relates to the Liquigas facilities and not to the Oil Companies' facilities. It does not cover the area of concern to the Oil Companies' and does not, therefore, address risk and reverse sensitivity matters relating to the Z Terminal. It could, in fact, make the situation worse for the Oil Companies, if new sensitive activities did seek to establish in the adjoining PPH Zone, they may choose to locate outside the Major Hazard Overlay (which extends 200m from the Liquigas facility) and closer to the Z Energy terminal to avoid the discretionary activity consent requirement that applies to sensitive activities within the Major Hazard Overlay area.

Relief Sought

¹ Refer para 1052 of the Decision of the 2GP Hearings Panel on the Commercial and Mixed-Use Zones

- 11.5 Apply an Industrial zoning to the land between Ravensbourne Road and Parry Street West, as per the Operative DP, to ensure development in close proximity to the Z Energy bulk fuel storage terminal remains compatible with the terminal activities.
- 11.6 Make any consequential amendments as a result of the above amendments.
- 11.7 Such other relief as the Court sees fit.

12. CHAPTER 19: INDUSTRIAL ZONE – REZONING

The Oil Companies' Submission (OS634.110)

- 12.1 The Oil Companies opposed the rezoning of land south of Magnet Street, to the south of the BP bulk fuel storage terminal, to Recreation Zone and sought to retain the underlying Industrial zoning applied in the Operative DP.

The Council's Decision

- 12.2 The decision is to rezone the land south of Magnet Street to Recreation Zone. The decision goes on to state² *'We note that the related request by the submitters to include a new hazard overlay is addressed in the Public Health and Safety decision (Liquigas Limited (OS906.1), where we have decided to impose a hazard overlay surrounding the Liquigas LPG storage depot only. We consider that appropriately addresses the concerns raised by the submitters.'*

Reason for Appeal

- 12.3 The rezoning of land adjacent to the BP bulk fuel storage terminal from Industrial to Recreation will enable sensitive land uses to establish in close proximity to the terminal sites. This raises concerns around risk and reverse sensitivity effects, which may result in restrictions on the ongoing operation, maintenance and upgrade of the Terminals. This, in turn, could undermine the resilience of the fuel supply chain to the Otago Region and compromise the ability to meet ongoing fuel demands for the medium and long term, in an appropriate and safe manner.
- 12.4 The Major Hazard Overlay relates to the Liquigas facilities and not to the Oil Companies' facilities. It does not cover the area of concern to the Oil Companies' and does and cannot, therefore, address risk and reverse sensitivity matters relating to the BP Terminal. It could, in fact, make the situation worse for the Oil Companies, as if new sensitive activities did seek to establish on the adjoining Recreation Zone land, they may choose to locate outside the Major Hazard Overlay (which extends 200m from the Liquigas facility) and closer to the BP terminal to avoid the discretionary activity consent requirement that applies to sensitive activities within the overlay area.

² Refer para 350 of the Decision of the 2GP Hearings Panel on the Industrial Zones

Relief Sought

- 12.5 Apply an Industrial zoning to the land south of Magnet Street, as per the Operative DP, to ensure development in close proximity to the BP bulk fuel storage terminal remains compatible with the terminal activities.
- 12.6 Make any consequential amendments as a result of the above amendments.
- 12.7 Such other relief as the Court sees fit.

13. CHAPTER 2: STRATEGIC DIRECTIONS – POLICY 2.2.6.2

The Council's Decision

- 13.1 The Council's decision was to include a new Objective 2.2.6 and Policies 2.2.6.1 and 2.2.6.2 as a cl 16 amendment on the basis *'they only summarise methods used in the Plan and therefore their inclusion as a cl.16 amendment has no substantive effect'*. A note in the track change decision version of the 2GP advises that *'Objective 2.2.6 and related policies were omitted from the notified Plan due to a technical error, however they were referred to in Rule 9.7.2'*.

Reason for Appeal

- 13.2 The Oil Companies do not consider there is scope to include a new Objective 2.2.6 and Policies 2.2.6.1 and 2.2.6.2 at the decisions stage of the process as no parties, other than the council, have had the opportunity to review and submit on the provisions.
- 13.3 Policy 2.2.6.2 is opposed. The requirement that risk is 'no more than low' is ambiguous and open to interpretation.
- 13.4 Further, the direction to include rules that limit the quantity of hazardous substances that may be used in different environments (zones) is inappropriate. The Council has not provided adequate section 32 justification of the need for additional controls on hazardous substances through the 2GP, over and above the controls already in place through the Hazardous Substances and New Organisms Act 1996 (**HSNO**) and Worksafe legislation. Notwithstanding this, the policy does not reflect the reasons given by the Council in its decision report for retaining controls on hazardous substances, being in all zones where sensitive activities can establish and in industrial zones in a natural hazard overlay.

Relief Sought

- 13.5 Amend Policy 2.2.6.2 to improve clarity and to focus on managing risk to acceptable levels. Delete the requirement to include rules that limit the quantity of hazardous substances that may be used in different environments and instead focus on managing risk to acceptable levels.

- 13.6 This could be achieved by making changes along the following lines (additions in underline, deletions in strikethrough):

Policy 2.2.6.2

Manage the risk posed by the storage and use of hazardous substances to an acceptable level ~~so that it is no more than low~~, including by ~~through~~ rules that:

- a. Managing the storage and use of hazardous substances in close proximity to sensitive activities and in areas subject to natural hazards ~~limit the quantity of different hazardous substances that may be used in different environments (zones); and~~*
- b. restrict sensitive activities from locating within a hazard facility mapped area.*

- 13.7 Make any consequential amendments as a result of the above amendments.

- 13.8 Such other relief as the Court sees fit.

14. CHAPTER 9: PUBLIC HEALTH & SAFETY – POLICY 9.2.2.11

The Oil Companies' Submission (OS634.17 & FS2487.48)

- 14.1 The Oil Companies sought to amend Policy 9.2.2.11 to shift the focus from risk avoidance to management of risk and acceptable levels of risk.

The Council's Decision

- 14.2 The Council has amended the policy to require that risk of adverse effects on the health and safety of people on the site or surrounding sites is avoided, or if avoidance is not practicable, is 'no more than low', rather than 'insignificant'.

Reason for Appeal

- 14.3 The requirement that risk is 'no more than low' is ambiguous and open to interpretation. The council has adopted this terminology in the natural hazards chapter but it does not translate directly or readily to the issue of risk associated with hazardous substances. A key difference being that risk associated with hazardous substances risk is generated within a site whereas natural hazard risk is an external influence on a site.
- 14.4 A further concern with the policy is that it requires risk to be managed to the same level both within a hazardous facility site and on sites surrounding the hazardous facility. This is unrealistic and contrary to what is provided for by relevant WorkSafe legislation and regulations.

Relief Sought

- 14.5 Amend Policy 9.2.2.11 to improve clarity and ensure a focus on management of residual risk to acceptable levels. This could be achieved as follows (additions in underline, deletions in strikethrough):

***Policy 9.2.2.11** Require hazardous substances to be stored and used in a way that ~~avoids~~ ensures residual risks of adverse effects on the health and safety of people on the site or surrounding sites are managed to acceptable levels. ~~or, if avoidance is not possible, ensures any adverse effects would be insignificant.~~*

- 14.6 Make any consequential amendments as a result of the above amendments.

- 14.7 Such other relief as the Court sees fit.

15. NATIONAL ENVIRONMENTAL STANDARDS FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH 2011 (NESCS) – APPROPRIATE REFERENCING AND NEW OBJECTIVE & POLICIES FOR APPLICATIONS REQUIRING CONSENT UNDER THE NESCS

The Oil Companies' Submission (OS634.58 & OS634.57)

- 15.1 The Oil Companies sought (OS634.58) to include an appropriate policy framework in Section 9 Public Health & Safety to provide guidance on the assessment of applications requiring consent under the NESCS.
- 15.2 In addition, changes were sought (OS634.57) to Clause 1.1.5.3, which draws attention to the need for compliance with the NESCS to ensure consistency with the wording used in the NESCS.

The Council's Decision

- 15.3 The Council's decision is to include an advice note referring to the NESCS after the activity status table in the Earthworks chapter, rather than to include policy guidance relating to works on contaminated soil.
- 15.4 The decision is also to amend the wording of Clause 1.1.5.3 as sought (OS634.57). However, in response to other submissions, the whole of section 1.1.5, along with other guidance on how to use the 2GP has been deleted. Instead, this information is to be made available on the Council's website so it can be more easily updated without a plan change.

Reason for Appeal

- 15.5 In the absence of a policy framework in the NESCS itself, it is important to provide policy guidance for the assessment of applications that require consent under the NESCS, particularly those that require a discretionary activity consent under the NESCS. This is not achieved by including an advice note in the Earthworks chapter. Nor will an advice note in this location necessarily draw the attention of plan users to the requirements of the NESCS in relation to change of land use or subdivision, where earthworks may not form part of the application.

Relief Sought

- 15.6 Ensure appropriate references are included in the 2GP to draw the attention of plan users to the need to comply with the NESCS when undertaking works on contaminated soil. Include a new objective and policy in Chapter 9 – Public Health & Safety as follows or to the same effect (additions underlined):

Objective:

There are no significant risks to human health posed by residual soil contaminant levels in land that has a history of land use which may have resulted in contamination.

Policies:

Ensure that before any development, redevelopment or change of land use on land that has a history of land use that may have resulted in contamination, associated health risks are appropriately identified and managed.

Any change of land use, development or redevelopment on contaminated land ensures that any proposed management controls, including remediation, pathway or receptor controls, will ensure the risks to human health are acceptable for the intended land use.

- 15.1 Make any consequential amendments as a result of the above amendments.
- 15.2 Such other relief as the Court sees fit.
16. **CHAPTER 9 – PUBLIC HEALTH & SAFETY – RULE 9.3.4 & A6 HAZARDOUS SUBSTANCES QUANTITY LIMITS**

The Oil Companies' Submission (FS2487.23, FS2487.18, FS2487.55, FS2487.29 & FS2487.30)

- 16.1 The Oil Companies' supported the submissions of LPG Association (OS85.1, OS85.4, OS85.2 & OS85.3) and Liquigas Limited (OS906.13), which oppose the setting of hazardous substances quantity limits and storage requirements in the 2GP, and seek, instead, to rely on HSNO and WorkSafe requirements.

The Council's Decision

- 16.2 The decision is to retain the 2GP approach to managing hazardous substances in all zones where sensitive activities can establish as a permitted activity and all areas which are subject to a natural hazard overlay zone.

Reason for Appeal

- 16.3 The Resource Legislation Amendment Act 2017 removed the explicit function of councils to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under the RMA. The intent of this change³ was to remove the perception that councils must always place controls on hazardous substances under the RMA, and to ensure councils only place additional controls on hazardous substances if they are necessary to control effects under the RMA that are not covered by the HSNO or HSW Acts.
- 16.4 Despite this, the 2GP continues to apply a blanket thresholds-based approach to the management of hazardous substances. The 2GP approach to the management of hazardous substances is not warranted and has not been adequately justified in terms of s32 of the RMA. The provisions in the 2GP include rules around substances, methods and thresholds which are already managed by HSNO and HSW processes and procedures. This duplication is unnecessary and inefficient and there is a risk of inconsistencies if any changes are made to the HSNO and HSW provisions.
- 16.5 In particular, there is no justification for the approach taken to underground fuel storage and LPG storage associated with service stations and truck stops, which is more onerous than that set out in the Operative DP.

Relief Sought

- 16.6 Remove the provisions managing hazardous substances and rely on HSNO unless exceptional circumstances can be demonstrated to exist through a robust s32 analysis for any specific additional control.
- 16.7 Make any consequential amendments as a result of the above amendments.
- 16.8 Such other relief as the Court sees fit.

17. CHAPTER 9 – PUBLIC HEALTH & SAFETY – A6. HAZARDOUS SUBSTANCES QUANTITY LIMITS

The Oil Companies' Submission (OS634.18)

- 17.1 The Oil Companies sought to amend Appendix A6 to exempt the underground storage of petrol and diesel at service stations and truck stops from the hazardous substances quantity limits and storage requirements in all parts of the district.

³ Refer MfE factsheet 2 titled 'Revised functions for Resource Management Act 1991 decision-makers'.

The Council's Decision

- 17.2 The decision is to reject the Oil Companies submission, but to consider providing an exception for underground fuel storage at service stations as part of a separate plan change process where further analysis could be undertaken.

Reason for Appeal

- 17.3 While the Oil Companies are not opposed to further analysis of appropriate hazardous substances quantity storage limits for HSNO sub-class 3.1 liquid petroleum fuels in underground tanks, they do not consider this to be necessary.
- 17.4 The Hazardous Facility Screening Procedure (HFSP) manual⁴, developed in the mid 1990's, includes a long standing standard exemption relating to this matter. Specifically, the HFSP recognises that it may be appropriate to exempt some activities from the HFSP process where control is provided elsewhere, or because well-established codes of practice or suitable regulations are already in place. The storage of petrol in underground storage tanks (up to 100,000 litres) and diesel (up to 50,000 litres) in accordance with the "Code of Practice for the Design, Installation and Operation of Underground Petroleum Systems" published by the Department of Labour – OSH is given as a specific example.
- 17.5 This was recognised in the Operative DP, which applied a controlled activity status to underground fuel storage and LPG storage associated within service stations and truck stops. Under the 2GP is more onerous than the controlled activity status in the Operative DP. Under the 2GP, such activities are required to comply with the hazardous substances quantity limits set out in Appendix A6 and will, typically, require restricted discretionary activity consent. This represents a significant change in approach, from a consent which must be granted to one which the Council has the discretion to grant or refuse. This change has not been justified and does not recognise that these activities are tightly controlled through HSNO and associated regulations and codes of practice (HSNOCOP 44 and 45). These controls are widely recognised, including by MfE, as providing adequate protection from potential adverse environmental effects and risks presented by such facilities in the short and long term. The Oil Companies consider there are sufficient other controls in place to merit a move to permitted activity status rather than restricted discretionary.
- 17.6 The recent experience of the Oil Companies' in obtaining consents from the Council for hazardous substances storage associated with service station and truck stop activities has been that reliance is placed on compliance with HSNO requirements and no additional consent conditions are imposed in relation to the storage of petroleum products or LPG. It is, therefore, unclear what issue the Council is seeking to address by imposing more stringent resource consent requirements on hazardous substances storage at service station and truck stop facilities.

⁴ <http://www.mfe.govt.nz/publications/rma/hfsp-training-manual-mar02>.

Relief Sought

- 17.7 If there are to be any hazardous substances provisions in the Plan then exempt (as a permitted activity) the underground storage of petrol and diesel and the storage of LPG, at least up to an aggregate of 1250kg in bottle swap facilities, from the hazardous substances quantity limits and storage requirements in the 2GP. This could be achieved by including a statement in the note to each of Appendices A6.1 – A6.7 as follows (additions underlined):

Except the following are exempt from the hazardous substances quantity limits:

- a. The storage of HSNO sub-classes 3.1.A-D liquid petroleum fuels in belowground tanks at sites associated with the retail sale of fuel provided the following codes of practice are adhered to:
 - i. Below Ground Stationary Container Systems for Petroleum - Design and Installation HSNO COP 44, Environmental Protection Agency, May 2012; and
 - ii. Below Ground Stationary Container Systems for Petroleum - Operation HSNO COP 45, Environmental Protection Agency May 2012.
- b. The storage of HSNO sub-class 2.1.1A LPG at sites associated with the retail sale of fuel up to an aggregate of 1250kg of LPG stored in bottle swap facilities provided AS/NZ 1596:2014 The Storage and Handling of LP Gas is adhered to.

- 17.8 Make any consequential amendments as a result of the above amendments.

- 17.9 Such other relief as the Court sees fit.

18. CHAPTER 1.5.2 DEFINITIONS – REVERSE SENSITIVITY

The Oil Companies' Submission (OS634.9)

- 18.1 The Oil Companies sought to delete the definition of 'reverse sensitivity' in favour of relying on the interpretation of the concept of reverse sensitivity through case law.

The Council's Decision

- 18.2 The decision is to retain the definition of Reverse Sensitivity and to amend it as follows:

When ~~existing~~ lawful activities that create effects beyond site boundaries (such as noise, odour, traffic movements, risk or electromagnetic interference) are affected by ~~newer~~ uses establishing nearby that may have sensitivity to, and subsequently complain about, these effects ~~of the existing activity~~; and seek to limit the ability of the ~~existing~~ activities to continue. Lawful activities in the context of this definition refers to: existing lawfully established activities, permitted activities, designations and consented activities that are

likely to establish. The most € common examples are is new residential development activities establishing next to farming or industrial operations, or airports, which can lead to the new residents complaining about noise, odour or other nuisance effects from those established activities.

Reason for Appeal

- 18.3 The definition is opposed as it limits the concept of reverse sensitivity to complaints, which is not necessarily the case. For example in relation to risk from major hazard facilities, a complaint may not be received, but operational constraints may be placed on the hazardous facility by virtue of the proximity of sensitive activities creating lower thresholds of acceptable risk in the receiving environment. Further, the definition refers only to the establishment of new sensitive activities and does not take into account that reverse sensitivity effects may be created by intensification of existing sensitive activities.
- 18.4 The definition is considered to be overly complex and reliance on the term as defined by caselaw is preferred. Alternatively, the definition should be amended to be consistent with the definition of ‘reverse sensitivity’ used in the PRPS, which reads as follows:

‘Reverse sensitivity

The potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity.’

Relief Sought

- 18.5 Delete the definition of reverse sensitivity or amend it consistent with the definition of that term used in the PRPS.
- 18.6 Make any consequential amendments as a result of the above amendments.
- 18.7 Such other relief as the Court sees fit.

19. CHAPTER 15 AND 16 – RESIDENTIAL AND RURAL ZONES

The Oil Companies’ Submission (OS634.39 & OS634.40)

- 19.1 The Oil Companies sought to amend the activity status of service stations from non-complying to discretionary in the residential and rural zones.

The Council’s Decision

- 19.2 The decision is to amend the activity status of service stations where they are on a strategic or arterial road from non-complying to discretionary and to retain the non-complying status for service stations other than on a strategic or arterial road. Also, to make consequential

amendments to Appendix 6A to clarify that 'urban high-density corridors' are a type of arterial road.

- 19.3 In addition, the decision is to add a new Policy 15.2.1.7 and Policy 16.2.1.11, as worded below:

'Provide for service stations on a strategic road or arterial road, where it is not practicable, due to a lack of site availability and/or special locational requirements, to locate in the PPH, TR, CEC, industrial or centre zones.'

Reason for Appeal

- 19.4 In Appendix 6A 'urban high-density corridors' are described as 'a high use arterial road'. However, there is no corresponding reference in the description of 'arterial' roads to 'urban high-density corridors' and these two road types are listed separately in the remainder of Chapter 6. Given the implication of being non-complying, rather than discretionary, if a service station is not on an arterial road, it is not sufficiently clear that an 'urban high-density corridor' is, in fact, an arterial road.
- 19.5 New Policies 15.2.1.7 and 16.2.1.11 are opposed. It is inappropriate to require consideration of alternative sites in commercial or industrial zones on the basis service stations have a restricted discretionary activity status in those zones. It does not recognise the role and function of service stations to be dispersed around the city or their ability to locate in a range of environments with little adverse effect on the amenity of those environments.

Relief Sought

- 19.6 Amend Appendix 6A to clarify that 'urban high-density corridors' are a type of arterial road.
- 19.7 Delete new Policies 15.2.1.7 and 16.2.1.11. Instead add a new policy in each of Sections 15 and 16 that appropriately recognises the functional and locational needs of service stations while requiring the adverse effects of such activities to be appropriately managed. Suggested wording is included below:

New policy

Enable service stations in the residential and rural zones where they:

- (a) Support the social and economic well-being of the community;***
- (b) Are located on strategic or arterial roads or urban high-density routes and will not adversely affect the retail hierarchy;***
- (c) Are in keeping with or complement the planned built character and are compatible with the scale and form of development anticipated within the zone; and***
- (d) Avoid, remedy or mitigate adverse effects on residential and rural amenity.***

- 19.8 Make any consequential amendments as a result of the above amendments.

- 19.9 Such other relief as the Court sees fit.

20. CHAPTER 19 – INDUSTRIAL ZONES – Objective 19.2.2 & Rule 19.6.11.1

The Oil Companies' Submission (FS2487.85 & FS2487.82)

- 20.1 The Oil Companies supported the amendment of Objective 19.2.2 by either deleting the objective or redrafting it to provide greater clarity and certainty. In addition, changes to Rule 19.6.11.1 were supported to exempt several features associated with service stations from specified boundary setbacks.

The Council's Decision

- 20.2 The decision is to amend Objective 19.2.2 as follows:

~~Development and~~ Activities are designed and operated so that:

- a. a reasonable level of amenity is maintained within the industrial zones;
 - b. ~~any~~ adverse effects on the amenity of adjoining residential, school or recreation zones are minimised as far as practicable;
 - c. a high standard of amenity along identified ~~an~~ amenity route mapped areas is maintained; ~~and~~
 - d. ~~the potential for reverse sensitivity effects on industrial and port activities, from activities that are provided for within the industrial zones, is minimised {Ind 906.34}~~
- 20.3 The decision is to amend Rule 19.6.11.1 to require a 3m landscaping strip (rather than 1.5m) and to amend the minimum building setback to reduce it to 4m (from 10.5m) where sites are located on an amenity route mapped area; and to add a height to boundary requirement that buildings not protrude through a plane rising at an angle of 60 degrees measured from ground level at the road boundary.
- 20.4 In addition, the decision states⁵: 'We note the 2GP does not have any strategic directions policies or explanation in the Industrial section to explain how the amenity routes were chosen and what their function is. We see this as a gap in the Plan and have recommended that this be subject to a future plan review. In the meantime, we have based our decisions with respect to amenity route mapped areas on the evidence we heard'.

Reason for Appeal

- 20.5 The basis and purpose of the amenity route mapped areas is unclear. There appears to be an inherent conflict in the policy requirement to achieve a high standard of amenity on amenity route mapped areas where they are located within industrial areas with typically lower amenity expectations.

⁵ Refer para 118 of the Decision of the 2GP Hearings Panel on the Industrial Zones

- 20.6 The requirement in clause (a) of Objective 19.2.2 to maintain a ‘reasonable level of amenity’ is subjective and the requirement in clause (c) to maintain a ‘high standard of amenity’ is both subjective and overly onerous for an industrial zone. The wording of these clauses is opposed.

Relief Sought

- 20.7 Amend Objective 19.2.2 along the following lines (additions underlined; deletions in strikethrough):

Development and activities are designed and operated so that:

- a. a ~~reasonable~~ lower level of amenity is maintained within the industrial zones compared to in other zones;*
- b. ~~any~~ adverse effects on the amenity of adjoining residential, school or recreation zones are minimised, to the extent practicable;*
- c. a higher standard of amenity is maintained at the interface of ~~along an identified an~~ amenity route mapped area ~~is maintained~~; and*
- d. the potential for any activity in industrial zones to hinder or constrain the establishment of ~~reverse sensitivity effects on industrial and port activities, from activities that are provided for within the industrial zones,~~ is avoided ~~minimised~~.*

- 20.8 Amend Rule 19.6.11.1 to ensure the setback and landscape requirements are appropriate and do not result in an inefficient use of land or traffic safety and visibility issues.
- 20.9 Make any consequential amendments as a result of the above amendments.
- 20.10 Such other relief as the Court sees fit.

21. CHAPTER 19 – INDUSTRIAL ZONES – Policy 19.2.2.8

The Oil Companies’ Submission (FS2487.73 & FS2487.89)

- 21.1 The Oil Companies supported the amendment of Policy 19.2.2.8 to require avoidance of potential reverse sensitivity effects and to refer to the ongoing operation and development of industrial activities.

The Council’s Decision

- 21.2 The decision is to renumber the policy as 19.2.1.X and amend it as follows (additions underlined; deletions in strikethrough):

Only allow industrial ancillary tourism and activities other than industrial activities in the industrial zones where: ~~a. the potential for reverse sensitivity is insignificant, that may affect the ability of industrial activities to operate, will be avoided or, if avoidance is not possible, will be no more than minor.~~

Reason for Appeal

- 21.3 The requirement that potential reverse sensitivity effects are ‘insignificant’ is opposed. Such effects should be avoided to avoid incompatible activities operating in the Industrial Zone.
- 21.4 Further, the introduction of the reference to ‘industrial ancillary tourism’ was not sought by any submitter and appears to be out of scope. It is uncertain why ‘industrial ancillary tourism,’ which is a restricted discretionary activity has been specifically identified in a policy intended to address reverse sensitivity issues from all activities in the Industrial Zone, including from more sensitive and non-complying activities such as residential. This is also in the context that Policy 19.2.1.9, which did specifically seek to avoid residential activity due to reverse sensitivity concerns has been deleted on the basis it duplicates Policy 19.2.1.3.

Relief Sought

- 21.5 Amend Policy 19.2.1.X to require the potential for reverse sensitivity effects in the industrial zones be avoided, rather than ‘insignificant’ and delete the reference to ‘industrial ancillary tourism’ as follows:

Only allow ~~industrial ancillary tourism and~~ activities other than industrial activities in the industrial zones where: ~~a. the potential for reverse sensitivity is avoided insignificant, that may affect the ability of industrial activities to operate, will be avoided or, if avoidance is not possible, will be no more than minor.~~

- 21.6 Make any consequential amendments as a result of the above amendments.
- 21.7 Such other relief as the Court sees fit.

22. CHAPTER 10 – NATURAL ENVIRONMENT – Rule 10.3.3

The Oil Companies’ Submission (FS2487.112)

- 22.1 The Oil Companies supported removal of Rule 10.3.3 (setback from coast and waterbodies) or provision of an exemption for buildings, structures and earthworks associated with port activity.

The Council’s Decision

- 22.2 The decision is to exempt activities in the Port Zone from the need to comply with Rule 10.3.3, but to otherwise require buildings, structures and earthworks associated with port activities to comply with the rule.

Reason for Appeal

- 22.3 Activities with a functional need to locate in close proximity to mean high water springs (MHWS), such as ports, should not be required to be setback from MHWS by 20m. Buildings, structures and earthworks associated with port activity, including wharf lines and bunker lines used to convey fuel between docked vessels and the bulk storage facilities, should be exempt from the rule.

Relief Sought

- 22.4 Amend Rule 10.3.3 to exempt buildings, structures and earthworks associated with port activity from the requirement to be setback from MHWS by 20m.
- 22.5 Make any consequential amendments as a result of the above amendments.
- 22.6 Such other relief as the Court sees fit.

23. STRATEGIC INFRASTRUCTURE AND NETWORK UTILITIES

The Oil Companies' Submission (OS634.10, OS634.47, FS2487.6 & FS2487.7)

- 23.1 The Oil Companies sought amendments to the 2GP to ensure appropriate recognition and provision is made for bulk fuel storage and for pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy, as those matters were not adequately addressed in the notified version of the 2GP. Specifically, a new definition of 'infrastructure' was sought to recognise the significance of strategic infrastructure, such as the bulk fuel storage terminals, to the functioning of the regional and district economy. In addition, changes were sought to the definition of 'network utilities' to include the transmission and distribution of petroleum, biofuel, or geothermal energy, as well as natural or manufactured gas, consistent with the definition of network utility operator in s166 of the RMA.
- 23.2 The Oil Companies also supported amendments to Strategic Direction 2.7 including amendments to Objective 2.7.1 and Policy 2.7.1.2 and the addition of a new objective to provide broader recognition of all essential infrastructure, not just public infrastructure.

The Council's Decision

- 23.3 In terms of the definitions, the decision is to not include a new definition relating to strategic infrastructure. Instead, the decision is to amend the definition of 'network utilities' to include the storage as well as transmission and distribution of natural or manufactured gas, petroleum, biofuel or geothermal energy.
- 23.4 In terms of Strategic Direction 2.7, the decision is to amend Objective 2.3.1 and add a new Policy 2.3.1.7 beneath that objective, rather than amending the objectives or policies in

Strategic Direction 2.7, or by adding a separate new objective to the Strategic Directions section.

Reason for Appeal

- 23.5 The implication of including the storage, transmission and distribution of petroleum in the definition of 'network utilities' is that essentially all petroleum pipelines and storage tanks (including above and below ground facilities) at service station, truck stop and commercial refuelling facilities as well as bulk fuel storage terminals will be subject to all provisions in Chapter 5 Network Utilities. The rules and performance standards applying to network utility activities and network utility structures were not drafted with the management of these activities in mind and are, essentially, not fit for purpose.
- 23.6 The management of petroleum pipes that connect bulk fuel storage facilities as 'network utilities' could be supported, in principal. However, the approach to aboveground pipes, such as those at the terminal sites used to convey petroleum products in and around the facility is unclear. It appears these may have fallen under the definition of 'underground or internal network utilities' in the notified version of the 2GP by virtue of the reference to 'pipes transitioning to a building'. However, this reference has been removed as a cl.16, schedule 1 amendment. No reason has been provided for deleting this reference. However, the Oil Companies consider it alters the way in which the network utility provisions apply to above ground pipes at terminal sites and do not agree it is 'of minor effect', as required in order to make an amendment under cl.16.
- 23.7 The Oil Companies oppose applying the network utility provisions to above and below ground fuel storage tanks and pipes at service stations, truck stops and commercial refuelling facilities as the rules are not fit for purpose and such tanks are adequately controlled under the general zone provisions as structures or buildings.
- 23.8 The decision does not provide adequate recognition and provision of the importance of strategic infrastructure to the functioning of the regional and district economy or give effect to the PRPS in this respect⁶.

Relief Sought

- 23.9 Include a new definition for strategic infrastructure consistent with that sought in the Oil Companies' submission.
- 23.10 Amend the definition of 'network utilities' to ensure that network utilities only capture the bulk fuel facilities (including storage) and transmission and distribution pipelines relating to natural or manufactured gas, petroleum, biofuel, or geothermal energy.

⁶ Refer Objective 4.3 and Policies 4.3.1 to 4.3.4 of the PRPS.

- 23.11 Amend the definition of ‘underground or internal network utilities’, and/or other definitions relating to network utilities as appropriate, to provide a clear pathway for the management of above ground pipework used to convey products in and around an industrial or commercial facility, such as the Oil Companies’ bulk fuel storage terminals. This includes a consequential amendment to remove the reference to ‘underground fuel storage systems’ from the examples cited in the definition of ‘network utility structures’. Underground fuel storage systems should be included as a specific item for exemptions under the earthworks provisions.
- 23.12 Amend the Strategic Directions to include appropriate recognition, provision and protection of strategic infrastructure. This could be achieved by making appropriate amendments to Objective 2.3.1 and Policy 2.3.1.7 and/or by amending Objective 2.7.1 and Policy 2.7.1.2 and adding a new objective, as sought in submissions to address, as a minimum, the following matters:
- a) Recognise the importance of strategic infrastructure to the functioning of the regional and district economy;
 - b) Provide for new strategic infrastructure and the operation, maintenance and upgrade of existing strategic infrastructure; and
 - c) Protect strategic infrastructure from encroachment by activities that may result in reverse sensitivity effects or other constraints on the operation of such infrastructure.
- 23.13 Make any consequential amendments as a result of the above amendments.
- 23.14 Such other relief as the Court sees fit.

24. CHAPTER 5: NETWORK UTILITIES

The Oil Companies’ Submission (FS2487.10)

- 24.1 The Oil Companies supported in part a review of the 2GP provisions in terms of finding ways of reducing dependency on non-renewable energy sources and oil-based products in the region under DCC control, provided that any amendments to provisions appropriately enabled the continued operation, maintenance, upgrade and development of existing non-renewable energy infrastructure.

The Council’s Decision

- 24.2 The decision is to make a range of changes relating to reducing dependency on non-renewable and oil-based products. This includes amending the activity status of ‘network utility structures – large scale’ from restricted discretionary to discretionary in all management zones on the basis that non-renewable energy generation falls within the Network Utility Structures – Large Scale activity definition, and it was considered contradictory generation derived from

non-renewable resources should have a more enabling activity status than renewable energy generation, which has a discretionary activity status.

Reason for Appeal

- 24.3 The definition of Network Utility Structures – Large Scale covers a wide range of network utilities (including Network Utility Structures – Small Scale that cannot meet the scale thresholds in Rule 5.5.A) not just non-renewable energy generation. The change in activity status from restricted discretionary to discretionary will affect all those structures, not just non-renewable energy generation.
- 24.4 No justification or effects-based reason is given for changing the activity status of those structures. Full discretionary activity status is considered unnecessary and inappropriate. Discretionary activity consent means that any and all aspects of the activity can be considered. It is unnecessary to retain full discretion in relation to Network Utility Structures – Large Scale as the effects of such activities are well understood and can be well defined. That is particularly the case when activities fail to be considered as Network Utility Structures – Large Scale because they are unable to meet the scale thresholds in Rule 5.5.A, where the matters of concern should be limited specifically to the effects of the scale exceedance.
- 24.5 Even if the change of activity status did apply just to non-renewable energy generation, the Oil Companies do not consider a comparison between the status of two different activities (renewable and non-renewable energy generation in this case) is, on its own, a valid reason to apply a more restrictive status to one of those activities.

Relief Sought

- 24.6 Amend the activity status of Network Utility Structures – Large Scale from discretionary to restricted discretionary.
- 24.7 Make any consequential amendments as a result of the above amendments.
- 24.8 Such other relief as the Court sees fit.

25. CHAPTER 8: EARTHWORKS

The Oil Companies' Submission (OS634.20)

- 25.1 The Oil Companies sought that earthworks for the maintenance and replacement of underground petroleum storage tanks (**UPSS**) and for the installation, replacement or upgrade or underground infrastructure in general, be provided for as a permitted activity.

The Council's Decision

- 25.2 The decision is to accept the submission and to provide for earthworks for the maintenance and replacement of underground petroleum storage tanks as a permitted activity subject to the same performance standards as other earthworks ancillary to network utilities.
- 25.3 To achieve this, the decision is to treat underground fuel storage tanks and other structures associated with ‘the transmission and distribution of petroleum, biofuel, or geothermal energy’ as a type of network utility and to amend the definitions of ‘network utilities’ and ‘network utility structure’ accordingly.

Reason for Appeal

- 25.4 The intent of the decision to permit earthworks associated with UPSS replacement subject to the same performance standards as earthworks ancillary to network utilities is supported. However, the Oil Companies have appealed the definitions of “network utilities” and “network utility structure”, on the basis that it is inappropriate for all types of petroleum storage (including tanks at service stations and truck stops) to be considered as network utilities and subject to the network utility provisions.
- 25.5 Consequently, the Oil Companies seek that “earthworks associated with the maintenance and/or replacement of underground storage tanks” are specifically identified as being exempt from the same earthworks standards that network utilities are exempt from (listed below). Alternatively, and in line with the intent of the Oil Companies’ submission, the Oil Companies would support the inclusion of “earthworks associated with the maintenance and/or replacement of underground storage tanks” as clause (j) within Standard 8A.5.1.1, which lists earthworks that are always considered earthworks – small scale (and are therefore permitted and exempt from all earthworks standards).

Relief Sought

- 25.6 Amend the earthworks provisions to specifically exempt ‘earthworks associated with the maintenance and/or replacement of underground storage tanks’ from the following standards:
- 8A.5.1.4 (Maximum area);
 - 8A.5.1.5 (Maximum volume of combined cut and fill);
 - 8A.5.4 (Setback from property boundary, buildings, structures and cliffs); and
 - 8A.5.6 (Setback from network utilities) (noting that standard 8A.5.6 simply defers to Rule 5.6.2, which excludes earthworks ancillary to network utility activities).
- 25.7 Make any consequential amendments as a result of the above amendments.
- 25.8 Such other relief as the Court sees fit.

Signature of person authorised to sign on behalf of the Oil Companies



.....
David le Marquand
Principal Planning and Policy Consultant
4Sight Consulting Limited

Dated this 19th day of December 2018

Address for Service:

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Annexures:

- A. A copy of The Oil Companies' submissions
- B. A copy of the decision on the relevant points subject to this appeal
- C. Names and addresses of the persons to be served with a copy of this notice

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must, —

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see [form 38](#)).

**How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission or the part of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

ANNEXURE A

A copy of the Oil Companies' submissions

ANNEXURE B

A copy of the decision on the relevant points subject to this appeal

ANNEXURE C

**Names and addresses of persons to be served
with a copy of this notice**

Names and addresses of persons to be served a copy of this notice

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922 & 2472	East Parry Investments Limited	C/- Megan Justice Mitchell Partnerships Limited	PO Box 489 Dunedin 9054 New Zealand	megan.justice@mitchellpartnerships.co.nz
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923 & 216	Spark NZ Trading Ltd	C/- Chris Horne, Incite	PO Box 3082 Shortland Street Auckland 1140 New Zealand	chris@incite.co.nz
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