

**BEFORE DUNEDIN CITY COUNCIL
LUC-2017--319**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for resource consent by BP Oil New Zealand Limited for redevelopment at BP Mosgiel, 70 – 76 Gordon Road, Mosgiel, Dunedin

**LEGAL SUBMISSIONS ON BEHALF OF
BP OIL NEW ZEALAND LIMITED**

Dated: 14 December 2017



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Introduction

1. BP Oil New Zealand Limited (**BP**) seeks resource consent to demolish and redevelop the existing BP Mosgiel service station located at 72 – 76 Gordon Road. BP proposes to expand into the adjoining site at 70 Gordon Road to construct a new BP Connect service station and car wash. 70 Gordon Road was occupied by a residential dwelling and garage which has now been demolished.
2. The BP Mosgiel service station is located on State Highway 87, which provides a connection from Mosgiel and Central Otago to the Dunedin Southern Motorway, and Gordon Road is generally regarded as the “main street” of Mosgiel. The service station has been operating at this site since at least the 1970s and has not been upgraded for over 30 years. It provides important infrastructure for residents in Mosgiel, as well as commuters travelling from Central Otago and Mosgiel into Dunedin.
3. The proposed redevelopment represents a significant investment by BP into the local economy. While the existing site is well located to serve Mosgiel’s residents and the travelling public, the existing facility is tired, out-of-date, and is not providing the level of service that is consistent with BP’s expectations and that of its customers. There are limited fuel pumps, and the current layout leads to queueing onto Gordon Road during busy periods, and customers queue at point of sale. In addition, the existing service station and workshop buildings are not well located on the site, and there are an excessive number of vehicle crossings accessing the site, which of itself creates unnecessary potential risks for motorists and pedestrians.
4. For these reasons, BP considers it is appropriate to rationalise the existing site, and expand onto an adjoining site, in order to provide a modern, well designed, high-quality, efficient, more resilient, and fit-for-purpose BP facility which provides a far superior offer to Mosgiel and its residents than presently exists. Given the location and context of the existing facility, BP considers that the outcome will be a considerable improvement, and provide a number of benefits including additional facilities such as a car wash, vacuum and a Wild Bean café. It is also proposed to operate the new facility on a 24-hour a day basis. The workshop and existing above-ground LPG tanks will be removed, and the number of vehicle crossings into the site will be reduced from 5 to 2.

5. It is submitted that the need to address existing operational constraints and upgrade infrastructure provides a strong rationale for the proposed redevelopment. This is not a speculative nor ill-considered proposal; rather it is a clear example of the efficient use and development of natural and physical resources, and one which sits comfortably with the Resource Management Act 1991 (**RMA**)'s sustainable management purpose.
6. BP has high standards and a strong commitment to environmental stewardship, and has an excellent track record of careful and rigorous management of its sites across New Zealand. It operates in accordance with and often exceeds industry best practice. There are numerous BP facilities which are located in or adjacent to residential land, and BP is committed to being a good neighbour. That is very much BP's approach to the present application and underpins the careful consideration it has given to managing the actual and potential effects of the redevelopment.
7. For these reasons, it is disappointing and puzzling that the Council's section 42A report (**Officer's Report**) recommends that the proposal be declined. While the Officer's Report is commendably thorough, it is submitted that it is unduly conservative in terms of the key conclusions and recommendations. While a conservative approach is entirely appropriate, the key conclusions do not appear to be well-founded when considered against the expert assessments and by reference to the environmental standards set by the Council's own planning documents.¹
8. On an objective analysis of the proposal, and bearing in mind the existing environment and the environmental setting of the site,² it is submitted that the effects of the proposed redevelopment are, at worst, minor. This is a long-standing commercial activity located on a busy main road. This is not a new commercial development inserted into a quiet and pristine residential environment. All residential environments are not uniform, and nor are they an embodiment of the permitted activity standards which apply to them.
9. Any relevant effects and issues have been carefully considered by BP, and the proposal has been modified in material respects to respond to concerns

1 Which in turn reflect the meaning and interpretation of relevant objectives and policies.

expressed. It is submitted that it would be in fact be open to the Council to conclude that the effects were neutral or even positive when compared to what currently exists. In addition, it is evident that there is little if any dispute as to the accuracy of the expert assessments of noise, traffic or lighting that have been commissioned by BP.

10. A further and important part of the context is that the site of the existing facility (i.e. excluding the proposed expansion onto 70 Gordon Road³) is proposed to be rezoned Commercial Principal Centre in the Proposed Dunedin Second Generation Plan (**proposed 2GP**), which appropriately recognises the character and environment of the existing operation.
11. Notwithstanding this, the proposed redevelopment has been primarily assessed against the operative Dunedin District Plan (**operative plan**) which manages effects on the basis of what is appropriate for *residential* use, given the Residential 2 zoning in that plan. There seems to be little dispute that the proposal largely complies with the relevant standards applicable for residential use in respect of noise and light. The traffic assessment is that any increase in effects from the proposed redevelopment will not be noticeable against the background volume on Gordon Road. It is respectfully submitted that such effects do not become different or more severe because they are generated by a non-residential use. And of course, effects do not occur in a vacuum - the setting in which those effects occur is highly relevant.
12. In addition, the objectives and policies of the operative plan do not set their face against non-residential uses in residential zones, either individually or collectively. Rather, as Ms Small correctly identifies,⁴ the relevant objective and policy framework clearly envisages situations where non-residential activities can be appropriately established and existing activities can expand in residential areas. It is submitted that there would be few more appropriate locations and contexts where this could occur than the existing BP site on Gordon Road.
13. Considered against the environmental standards and the policy framework of the operative plan, and fully acknowledging that the proposal is a non-

2 A service station has existed on this site since the 1940s. The site is located on Mosgiel's main road very near to its commercial centre. Mosgiel itself is a growing and thriving community.

3 Which is currently bare and proposed to be zoned Residential 2 in the proposed 2GP.

4 Small evidence, para 17.

complying activity, there is submitted to be little sound basis for concluding that consent should be declined other than what appears to be a value judgment that service stations are inherently inappropriate in residential environments and that their effects are amplified on that basis.⁵ That also appears to lead to a corresponding value judgment that service stations in residential zones are contrary to the objectives and policies of the relevant planning documents.

14. With respect, neither of those value judgments find support from an objective analysis of the evidence or the relevant planning documents. Overall, it is BP's view – entirely subjective – that this proposal is a good thing for Mosgiel. It is apparent that there are some sectors of the Mosgiel community, beyond those identified as affected,⁶ that agree entirely.⁷
15. The Officer's Report sets out a number of recommended conditions in the event that the Hearings Panel determines that consent should be granted. BP considers that amendments are necessary to those conditions, as set out in **Appendix 5** to the evidence of Ms Small.

Activity status and notification

16. The redevelopment requires a number of consents, as set out in the Officer's Report and Ms Small's evidence.⁸ On a bundling approach the activity status is non-complying.
17. The non-complying activity status was triggered by Rule 8.8.6 of the operative plan, as service stations are not specifically provided for as a permitted, controlled or discretionary activity in Residential 2 Zone.
18. The existing service station site is zoned Commercial Principal Centre in the proposed 2GP and the site onto which it is proposed to expand is zoned General Residential 2. Service stations are a discretionary activity in the Commercial Principal Centre zone and a non-complying activity in the General Residential 2 Zone.

5 See, for example, the Officer's Report at para 99 "*Even with compliance with the [operative] District Plan standards, the illumination ... will create amenity effects on the character of the neighbourhood*".

6 Several of whom have provided written approvals or not submitted.

7 See <https://www.facebook.com/talkonthetaieri/posts/1534975903258173>

19. The application was limited notified to the owners and occupiers of 14 properties in Gordon Road, Irvine Street and Mure Street. Ten of those parties have made submissions.⁹

Statutory considerations

20. As the redevelopment is a non-complying activity, it must pass one of the "gateways" in section 104D. If it does, under section 104B, the Council may grant or decline the application and it may impose conditions under section 108. For the reasons set out below, it is submitted that the application passes both "gateways".
21. Section 104 sets out the matters the Council shall have regard to in considering a consent application. In this particular application, the primary relevant matters are:
- (a) Part 2 of the RMA;
 - (b) actual or potential effects on the environment;
 - (c) the operative plan and the proposed 2GP;
 - (d) the operative Otago Regional Policy Statement and the proposed Otago Regional Policy Statement; and
 - (e) the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NESCS**).

Permitted baseline

22. Section 104(2) provides that when considering an application for a resource consent and any submissions received, a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect. There is no relevant permitted baseline in terms of the non-residential use of Residential zoned properties.

⁸ Evidence of Fiona Small on behalf of BP at paragraph 27; Officer's Report at paragraphs 34 – 47.

⁹ Ian Berry at 2 Mure Street, Murray Stephen at 37A Irvine Street, Gwendoline Bamberg at 69A Gordon Road, Leon Roff at 69B Gordon Road, Victor and Gertruda McDonald at 71 Gordon Road, Michael and Nicola Stewart at 77 Gordon Road, Judith and Eric Kirby as tenants of 68 Gordon Road, Craig Byers as the owner of 68 Gordon Road, Margaret Sutherland at 35C Irvine Road and Rosalie Cabral at 41A Irvine Road. Ms Cabral appears to have belatedly lodged a written approval dated 28 November 2017.

23. The existing service station is authorised by a mixture of existing use rights and a number of resource consents. Although it is proposed to expand the service station into the adjoining residentially zoned site, the proposal largely complies with the noise and fully complies with lighting requirements of the operative plan as discussed in the evidence of Ms Small. All buildings and structures on the land zoned residential are compliant with relevant bulk and location controls of the proposed 2GP.

Existing environment

24. The existing environment is important context to the application. The Environment Court has described the existing environment as:

*“the existing environment is the environment as it exists at the time of hearing including all operative consents and any consents operating under section 124 of the Act, overlain by those future activities which are permitted activities and also unimplemented consents (which can be considered at the discretion of the authority)”.*¹⁰

25. The environment has also been aptly described in the following manner by the Environment Court in *Outstanding Natural Landscape Protection Society Inc v Hastings District Council*:¹¹

“Logically, it is an unavoidable conclusion that what must be considered is the impact of any adverse effects of the proposal on ... the environment. That environment is to be taken as it exists or, following Hawthorn, as it can be expected to be, with whatever strengths or frailties it may already have, which make it more, or less, able to absorb the effects of the proposal without a breach of the environmental bottom line - the principle of sustainable management.”

26. It is submitted that while the Officer's Report correctly identifies that the expansion of the service station site on to a Residential Zone property can have negative impacts on the amenity and sustainability of the residential environment,¹² the assessment of effects must be viewed against the existing environment and the context of the site, which includes consideration of the following factors:

¹⁰ *Bay of Plenty RC v Fonterra Cooperative Group Ltd* [2011] NZEnvC 73, (2011) 16 ELRNZ 338.

¹¹ [2008] NZRMA 8 at [53].

¹² Officer's Report, para 67.

- (a) a service station has been located on the site for very many years, and is a lawfully established activity;
- (b) the scale and effects of the activity on the site will not materially increase as a result of the redevelopment;
- (c) the site is located on a busy main transport route; service stations are generally located on these roads and are often located within or close to residential areas;
- (d) the site is located at the interface between a residential area and the Mosgiel commercial centre where a number of non-residential activities and/or commercial facilities are in close vicinity to the site, including a supermarket;
- (e) the site of the existing BP facility is appropriately being rezoned for commercial purposes in the proposed 2GP to recognise the long-standing use and its setting;
- (f) Mosgiel is understood to be a growing community within Dunedin City, and is likely to generate a corresponding demand for commercial activity to service residents' needs;
- (g) given the location and environmental setting of the existing and proposed facilities, any new or different effects (including on residential character and amenity) will need to be seen through that "lens"; and
- (h) the storage and use of hazardous substances will remain within the existing service station site and will continue to comply with Hazardous Substances and New Organisms Act 1996 (**HSNO**) requirements.

27. All of these factors support the need for a "real world" assessment of effects¹³, rather than an abstract or subjective analysis against what might be considered to be an "ideal". Ms Small's evidence provides such real world assessment.

Expansion into the residential zone

28. Although the expansion into the Residential 2 Zone could be characterised as "commercial creep", it is submitted that this suggestion would be misplaced in the present instance. This is not a new activity, nor is the expansion

indiscriminate. There is submitted to be no evidence that it is likely to result in insidious further commercial or non-residential development spreading into the Residential 2 Zone. The expansion proposed is very minor taking into account the presence of the existing service station, and hence will not result in any material cumulative effects on residential character or amenity (of either the immediate setting, the wider Mosgiel residential area, or the Residential 2 zone as a whole).

29. Further, the policy framework (both in the operative plan and proposed 2GP) recognises situations where it is appropriate for existing non-residential activities to establish and expand in residential areas, provided that effects on residential amenity are managed effectively. It is submitted that the conditions proposed in the Assessment of Environmental Effects (**AEE**) and in the evidence for BP appropriately manage any adverse effects on residential character and amenity.

Environmental effects

30. According to the Officer's Report, the key potential adverse effect of the proposed redevelopment is the potential impact on residential amenity.¹⁴ There is disagreement between the BP and the Council regarding the level of effects on general amenity. BP's position is supported by the expert evidence of Fiona Small (planning), John Chandler (BP Overview), Paul Gilbey (Lighting), Chris Rossiter (Traffic) and Peter Runcie (Acoustics), although the difference appears to revolve primarily around differences in planning assessments. These elements are canvassed briefly below.

Residential Character and Amenity, and Signage

31. It is submitted that the risk of adverse effects on residential character and amenity is low due to the existing environment as discussed above and the comprehensive mitigation measures proposed by BP. There appears to be no dispute that potential amenity effects are limited to properties adjacent or very close to the application site.

13 The High Court in *Shotover Park Ltd v Queenstown Lakes DC* [2013] NZHC 1712 confirmed that *Hawthorn* was intended to involve a "real world" analysis of the existing and future environment for resource consent applications.

14 Officer's Report, paragraph 2.

- 32.** In terms of existing residential amenity, Gordon Road exhibits a mix of commercial and residential character with a variety of built forms and has a "less intact" residential amenity when compared to Irvine Street, which runs parallel. This is largely due to the status of Gordon Road as a major arterial route, which has meant that residential development has, over time, accommodated commercial activity to service the corridor.
- 33.** The service station is being developed on the same land it has existed on for many years. The expansion onto the adjoining residential site is for the car wash only, a small building of 72m² in area. BP has proposed no activity or lighting on this part of the site after 9pm.
- 34.** Ms Small's comments at paragraph 60 of her evidence are also apposite, where she states that service stations are often located in residential areas, and that our towns and cities are dynamic, and change over time with the introduction of new or expanded permitted or consented activities.
- 35.** In relation to the properties of submitters located across from the site at 69A, 69B, 71 and 77, and the properties around the site at 35, 37A, 41 Irvine Street, 1 Mure Street and 68 Gordon Road, Ms Small's evidence concludes that the potential effects on these properties in terms of residential character and amenity is low. The Officer's Report appears to agree that the effects on these properties are limited to the visual effects of the car wash on 69 Gordon Road and the visual effects of the pylon sign on 68 Gordon Road.
- 36.** A real world assessment against what already exists and the context of the site should not lead to the conclusion in the Officer's Report that residential character and amenity will be compromised.¹⁵ This conclusion appears to be based on the view that, as a service station is not provided for in the zone, the effects (whether compliant or not) are not anticipated¹⁶ and therefore any change is inherently adverse. That conclusion is submitted to be unsustainable and based on a series of personal value judgments,¹⁷ some of which appear to go well beyond the expert assessments of relevant Council experts.¹⁸ For completeness, there is no apparent basis in the objectives and

¹⁵ Officer's Report, para 69.

¹⁶ Officer's Report, para 99 for example.

¹⁷ Officer's Report, paras 112 – 126, and para 138 where the Officer notes that the branding is not in keeping with the surrounding environment and is designed to "dominate" the environment.

¹⁸ For example, the conclusions on signage in paras 127 – 138, and the character and (urban) design conclusions at paras 122 – 124. The Memorandum from the Council's Urban Designer dated 10 August 2017,

policies of either the operative plan or the proposed 2GP for these value judgments.

Visual amenity

- 37.** It is submitted that the mitigation measures proposed in the AEE, the evidence of Mr Chandler and Ms Small, and in the Officer's Report will provide adequate mitigation of any potential adverse visual effects. BP has made the following changes to the proposal since receiving and considering submissions from those in the surrounding residential properties:
- (a) retention of the existing boundary hedge between the site and 68 Gordon Road;
 - (b) changing the south west elevation of the car wash to be white in colour;
 - (c) erecting "no idling" signs at the car wash entry;
 - (d) reducing the height of the main ID pylon sign from 9m to 7.5m so that it is the same height as the existing sign;
 - (e) moving the rear boundary fence 600mm in from the boundary;
 - (f) amending the height of the boundary fence to 3m along the rear boundary with 41A Irvine Street;
 - (g) relocated the underground tank farm away from the boundary of 37A Irvine Street;
 - (h) planting hedge along the road frontage at the exit to the car wash;
and
 - (i) removal of a verge board advertising sign along the front of the property.
- 38.** These measures respond, in part, to issues raised by submitters. They also address some of the issues raised in the assessment by the Council's Urban Designer. BP accepts the majority of the conditions set out in the Officer's Report relating to landscaping. It is submitted however that a number of recommended noise and hours of operation conditions are unnecessary or inappropriate. These conditions are addressed below.

which pre-dates BP's subsequent mitigation/modification of the application to address some identified issues, is entirely measured and objective, and its conclusions are unobjectionable.

Noise

- 39.** Overall, the effects of the predicted noise ratings at the closest residential zoned properties will be less than minor. The principal noise sources associated with the proposed redevelopment are expected to be generated by vehicle movements and the use of the carwash during the restricted hours of operation.
- 40.** The noise assessment completed by BP shows that the existing average ambient noise levels are consistent with or higher than that permitted in the operative plan and proposed 2GP shoulder period noise limits.
- 41.** The proposed service station will result in minor exceedances of the District Plan day time Development Standards at some of the surrounding receivers (1-2 dB). Mr Runcie's expert evidence is that a difference in noise levels of 1 – 2 dB is so small that it is imperceptible. Due to the existing noise environment, the effects of predicted activity noise levels at the closest residential properties and surrounding Residential 2 zoned properties are expected to be less than minor.¹⁹
- 42.** In light of the undisputed evidence as to the ambient noise levels and the predicted increase in noise from BP's activities, it is regrettable that the Officer's Report should engage in another value judgment about this issue. It is unclear what expert basis exists for an assessment that *"the effect of the increase in noise levels ... to the maximum levels permitted and/or marginally exceeding them is not a reasonable effect in a residential area"* or that the *"change in noise environments during night time hours will be significantly different and will affect the adjoining properties [sic] amenity levels and expectations"*.²⁰
- 43.** This view does not appear to be based on advice from the Council's Environmental Health Officer²¹ and appears to be at odds with the earlier statement that the operative plan noise standards provide a logical frame of reference for determining an acceptable level of noise from a proposed activity.²² It is also difficult to understand how a conclusion could reasonably

¹⁹ Evidence of Peter Runcie on behalf of BP at paragraph 30.

²⁰ Officer's Report, para 85.

²¹ See memoranda dated 15 August 2017 and 20 November 2017.

²² Officer's report, para 75.

be reached that the BP proposal was contrary to the operative plan's objective and policies relating to noise.²³

- 44.** Finally, and for completeness, the submission for 68 Gordon Road raised concerns regarding the accuracy of the acoustic assessment provided by SLR Consulting NZ Limited. These concerns have been addressed in the evidence of Mr Runcie.²⁴

Lighting

- 45.** The lighting for the proposed redevelopment is expected to comply with the District Plan level of 8 lux, when measured at the window of a residential dwelling during the night time in a residential zone.
- 46.** Submitters at 69A, 71 and 68 Gordon Road have raised concerns that the proposal will result in light from vehicle headlights and the proposed buildings / signs spilling onto adjoining residential properties. It is submitted however that the light spill effects from the proposed redevelopment on adjoining residential properties will be less than minor as:
- (a) the illuminated signage on proposed shop will be directed toward the Gordon Road, rather than the residential properties;
 - (b) only the illuminated information sections of the sign will be lit;
 - (c) the lights on the canopy are controlled by an automatic dimmer and will dim automatically to comply with the Operative District Plan;
 - (d) the lights are installed flat, to minimise any light spill;
 - (e) the site will be arranged for vehicles to enter at the crossing closest to the car wash and exit at the crossing closest to the shop, minimising the effect of headlights on the properties opposite the car wash;
 - (f) screening and/or planting will be established along the eastern kerb line to form a barrier against vehicle headlights onto the opposite side of Gordon Road;
 - (g) the 2m high acoustic fence along the internal boundary of the site will help to prevent light spill into the properties on Irvine Street.

²³ Ibid, para 139 at page 35 (Environmental Issues Section).

²⁴ Evidence of Peter Runcie on behalf of BP at paragraphs 4.3 – 4.11.

47. Mr Gilbey, an electrical engineer, has provided expert evidence that the proposed external lighting will comply with the District Plan and that lighting effects will be minor. There is no expert assessment for the Council which contradicts this nor calls it into question. A similar concern applies to the seemingly subjective value judgments made regarding lighting effects in the Officer's Report²⁵ as has been expressed earlier with regard to noise, and residential character and amenity.

Traffic and transportation

48. Traffic effects as a result of the redevelopment will not be noticeable, largely due to the fact the expansion is in response to existing demand as opposed to creating new demand. An Integrated Traffic Assessment (ITA) carried out by Traffic Design Group (TDG) found that the proposal largely met the traffic requirements in the operative plan. However, the proposal does breach the maximum number of vehicle crossings (being one), as it has two. This has decreased from five vehicle crossings from the current service station. Two vehicle crossings are expected to improve both safety and efficiency.²⁶
49. Overall, the ITA concluded that the proposed expansion can be supported from a transportation perspective because it will not create any noticeable effects on the road network. The Council's Traffic Planner concurred with the findings set out in the ITA, stating:

"Overall, Transport notes, and generally accepts, that the proposed service station will generate only a small increased volume of traffic and will therefore have negligible adverse effect on the safety/efficiency of the transport network."²⁷

50. After the redevelopment is complete, the volume of traffic at the site is expected to be similar to current levels, except that the redeveloped site will have greater capacity which will reduce the congestion currently experienced on the site at peak periods. Mr Rossiter predicts that, at most, there are likely to be 20 – 30 additional vehicle movements during the morning and evening peak hours. This is unlikely to be noticeable as, day to day, the traffic can vary by 50 vehicles per hour.

²⁵ Officer's Report, para 99.

²⁶ TDG Transportation Assessment Report, 19 June 2017 at page 19.

²⁷ Officers Report, paragraph 150.

Other effects, and issues raised by submitters

- 51.** Other potential effects relate to hazardous substances and construction. There are no material issues identified. The Applicant agrees with the Council Officer that any potential effects from construction activities, such as dust generation, noise, etc, will be temporary and can be appropriately managed through conditions and the Environmental Management Plan (**EMP**).²⁸ The evidence of Mr Chandler and Ms Small address these matters.
- 52.** A submitter raised a concern on the effect of the redevelopment on the value of their property. It is well-established that this is not a relevant effect under the RMA. Diminution in property values can be used as another measure of or proxy for adverse effects on amenity values: *Foot v Wellington CC* EnvC W073/98. To separately take into account impact on property values as an environmental effect would amount to double counting.

Positive effects

- 53.** The redevelopment will have a number of positive effects, including but not limited to:
- (a) reducing congestion at the service station during peak times;
 - (b) increased vehicle manoeuvrability around the site;
 - (c) reducing the frequency of tanker visits to the site;
 - (d) improving the customer experience at the service station;
 - (e) improving the resilience of the site to disruptions in fuel supply;
 - (f) improving the appearance of the buildings and additional landscaping; and
 - (g) continuation and improvement of a strategic facility which provides a valuable service to the local and wider Dunedin community.
- 54.** Little recognition or weight appears to have been given to these factors in the Officer's Report.

²⁸ Officer's Report, at paragraph 165.

Planning documents

55. The relevant provisions of the planning documents are analysed in Ms Small's evidence and the Officer's Report.
56. Ms Small concludes that the proposal is not contrary to the objectives and policies of the operative plan or the proposed 2GP.²⁹ Indeed, based on her evidence, it is submitted that the proposal is largely consistent with the relevant parts of these planning documents.
57. Ms Small has expressed disagreement with aspects of Officer's Report in her evidence in relation to the consistency of the proposal with the operative plan and the proposed 2GP. Aspects of lighting, signage, and noise have been discussed above, however they are briefly discussed again here in relation to the relevant objectives and policies of the operative plan.³⁰
58. It is submitted that the relevant objectives and policies are drafted in a manner which has a relationship to the assessment of effects. In that respect, they are not strongly directive about activities, but rather their application and interpretation is submitted to be dependent upon the type and nature of effects generated by a proposal and should be assessed on a case by case basis.
59. Given the strong reservations expressed earlier regarding the basis for a number of the conclusions in the Officer's Report regarding effects, it is submitted that the assessment of the proposal against relevant objectives and policies is not reliable for many of the same reasons (i.e. failure to assess the proposal correctly against the existing environment and context, subjectivity and value judgments about the effects of service stations). It is submitted to be fundamentally illogical that effects which comply with permitted activity levels in a plan could then be said to make a proposal contrary to the parent objective or policy – yet that is the case with regard to noise and lighting.
60. In order to be "contrary" to relevant objectives and policies, the established legal test³¹ is that the word "contrary" in this context should not be given a restrictive definition, and that it contemplates being "*opposed in nature*,

29 Evidence of Ms Small, 30 November 2017 at paragraph 18.

30 It is noted at this point that the Officer's Report at pages 37 – 38 appears to conclude that the proposal is **not** contrary to the objectives and policies of the proposed 2GP, but gives this factor no weight.

31 *NZ Rail Ltd v Marlborough DC* (1993) 2 NZRMA 449.

different, opposite to". In an assessment, it is also well-established that more general objectives give way to more specific and relevant objectives and policies. It is also clear that what matters in an assessment of this issue is whether a proposal is contrary to the relevant objectives and policies "as a whole".³²

61. The absence of support for an activity in the objectives and policies of a plan does not however equate with a proposal being "contrary to" those provisions. That term requires repugnancy or opposition.³³
62. The evidence of Ms Small provides a thorough and objective assessment of the present proposal against the relevant objectives and policies. It is notable that there is no individual objective or policy where she judges the proposal to be contrary to its intent or meaning, let alone the relevant objectives or policies as a whole. The evidence of Ms Small as to the consistency of the proposal with the objectives and policies is preferred in all respects to the analysis in the Officer's Report.

Plan integrity

63. Case law³⁴ establishes that an application will only be declined on the basis of plan integrity where:
- (a) the proposal clearly clashes with important provisions of a district plan; and
 - (b) it is likely that further applications will follow, which are both materially indistinguishable and equally incompatible with the plan.
64. Put simply, there is no live plan integrity issue, in that the fundamental principle that like should be treated with like is at the heart of concern with precedent effects and issues of integrity of the plan. Neither of the requirements for declining a consent on plan integrity grounds are met in this instance. As noted earlier, neither the operative plan nor the proposed 2GP are strongly directive about outcomes (i.e. they do not contain "avoidance" objectives or policies relating to specific activities). The proposal is an expansion of an existing and long-standing commercial operation, which is

³² *Man O'War Station Ltd v Auckland RC* [2011] NZRMA 235 (HC).

³³ *Outstanding Landscape Protection Soc Inc v Hastings DC* [2008] NZRMA 8 (EnvC).

³⁴ *Blueskin Bay Forest Heights Ltd v Dunedin CC* [2010] NZEnvC 177 at paragraph 48.

itself recognised as appropriate in the proposed 2GP through the proposed zoning.

- 65.** If it was a new service station in the midst of a coherent residential neighbourhood, or there was evidence that granting the present application would lead to a flood of similar applications that could not be resisted, then there might be an issue. Given the particular facts and circumstances, there is very limited risk that this proposal will create an adverse precedent for the Council's consideration of future consent applications for service stations (or even other commercial activities) in residential zones.

Proposed conditions

- 66.** Condition 2 addresses the concerns of three submitters in relation to the light produced from the proposed development. It prevents BP from producing greater than 8 lux of light onto any other residential site during night time hours. BP seeks to make this consistent with the operative plan, where the permitted activity rule specifies that the light is measured at the windows of any residentially occupied building. As Ms Small notes in her evidence, the condition should be amended to be consistent with the permitted activity limit.³⁵
- 67.** To address submitters' concerns around noise, the Officer's Report adopts the performance standards of the District Plan. As stated in the evidence of Mr Runcie and Ms Small, the performance standards in the operative plan are considered to be out of date, as they treat Sundays and statutory holidays as "night-time" in terms of applicable noise limits. This has been recognised in the proposed 2GP which applies noise limits over all seven days of the week equally, including statutory holidays. BP proposes a slightly more restrictive position than the proposed 2GP, by offering an additional reduction in hours outside of Monday – Friday in condition 3.
- 68.** Submitters expressed concern with the 24-hour operation of the proposed development, specifically the effects of noise and lighting on their property. The Officer's Report recommended the hours of operation be limited to 6am – midnight, 7 days a week, and the operation of the car wash to 7am – 7.30pm on weekdays and 8am – 7.30pm on Saturdays, Sundays and public holidays

to address these concerns. BP has addressed the issues of noise and light in the expert evidence of Mr Runcie and Mr Gilbey, and it appears to be undisputed that both noise and light limits generally comply with the operative plan's permitted limits. BP proposes that condition 5 be amended to restrict the car wash to 7am – 9pm Monday – Friday and 8 am – 9pm on Saturdays, Sundays and public holidays only.

69. Condition 6 in the Officer's Report required the pylon sign to be 7.5m and located on Lots 6 or 7. BP has proposed to relocate the sign, at the request of Council, but it is not possible to retain the sign in its existing position due to the change in the location of the northern-most vehicle crossing. BP has proposed to move the sign to Lot 8 and seeks condition 6 be amended to reflect this.
70. Conditions 13 and 14 relate to the EMP and the Operational Management Plan that were submitted with the application. BP treats both of these documents as working documents, and continually updates these as best practice progresses. It is therefore necessary to amend these conditions and add *"and any subsequent amendments which improve the efficacy of the document."*

Submissions

71. Eight submissions were received in opposition to the application, from the following properties:
- (a) 2 Mure Street;
 - (b) 37A Irvine Street;
 - (c) 69A Gordon Road;
 - (d) 69B Gordon Road;
 - (e) 71 Gordon Road;
 - (f) 77 Gordon Road;
 - (g) 68 Gordon Road (tenant); and
 - (h) 68 Gordon Road (landowner).
72. The key concerns raised in the submissions related to potential visual and residential amenity, noise, traffic and light spill. It is submitted that each of the

35 Evidence of Ms Small at paragraph 202.

areas of concern are appropriately addressed by the mitigation measures and proposed conditions as described in the AEE and BP's evidence.

Conclusion

- 73.** For the reasons set out above, it is submitted that there are no barriers to granting consent and indeed no compelling reasons why consent should be declined (or even granted on a confined basis). The application is an efficient and appropriate proposal that remedies current operational constraints in a manner which will improve the performance of the service station without causing any more than minor effects on the environment. It is an appropriate activity at a suitable location, and poses no challenge to the achievement of the goals outlined in the operative plan or proposed 2GP.
- 74.** Evidence for BP has been prepared and will be presented by:
- (a) Mr John Chandler, BP's Network Development Manager;
 - (b) Mr Chris Rossiter, traffic engineer;
 - (c) Mr Peter Runcie, acoustic specialist;
 - (d) Mr Paul Gilbey, lighting engineer; and
 - (e) Ms Fiona Small, consultant planner.

Dated 14 December 2017



J G A Winchester / C G Coyle
Counsel for BP Oil New Zealand Limited