

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-291

Under	the Resource Management Act 1991 (RMA)
In the matter of	an appeal under clause 14(1) of the First Schedule of the RMA in relation to the proposed Second Generation Dunedin City District Plan (2GP)
Between	BP Oil New Zealand Limited and Others
	Appellant
And	Dunedin City Council
	Respondent

Memorandum of Counsel

13 March 2020

Respondent's solicitors:

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**anderson
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May it please the Court

- 1 This report responds to the Court's direction dated 5 March 2020 on this appeal.
- 2 The part of this appeal which has DCC reference number 359 (this is a Group 1 Non-Strategic issue) seeks to amend the earthworks rules to specifically exempt 'earthworks associated with the maintenance and/or replacement of underground storage tanks' from various earthworks' standards, noting that the decisions version of the 2GP already exempts these activities from the earthworks standards by virtue of their inclusion within the definition of 'network utilities'. The parties agreed at mediation that appeal point 359 can be resolved by amending rules 8A.5.4.d, 8A.5.1.5.d, 8A.5.5.4.c and 5.6.2 (which is cross referenced via Rule 8A.5.6) to exempt "earthworks ancillary to maintenance or replacement of underground fuel storage systems".
- 3 The part of the appeal with DCC reference number 356 (this is a Group 2 issue) seeks to ensure that the network utility provisions do not apply to fuel storage systems at service stations, truck stops or commercial refuelling facilities or above ground pipework within terminals and instead apply only to bulk fuel facilities (including storage), transmission and distribution pipelines relating to natural or manufactured gas, petroleum, biofuel, or geothermal energy, and is seeking to amend relevant definitions in the 2GP (in the definitions at 1.4.1 of the 2GP).
- 4 Due to the inter-relationship between the two appeal points, whereby the outcome of appeal point 356 will inform the approach to 'earthworks associated with the maintenance and/or replacement of underground storage tanks' under appeal point 359, it is considered appeal point 359 cannot be resolved separately from the lower order definitions in appeal point 356.
- 5 Further, appeal point 356 (which is in Group 2) is itself interrelated with other parts of BP Oil New Zealand Limited and Others' appeal and also with parts of the appeal from Liquegas Limited (all of which are also in Group 2). These challenge rules to manage bulk fuel storage facilities (DCC references 58, 59 and 374) and associated reverse sensitivity issues (DCC reference numbers 62, 76, 81, 84, 88, 89, 100, 102, 108, 110, 120, 123, 128, 129, 132, 133, 181, 346 and 354).
- 6 The appellants and Council are currently working on all of these appeal points together and are close to agreement. Once agreed then the section 274 parties need to be consulted. The Council is aiming to have agreements, and therefore consent documents circulated, on these appeal points by the end of April.

Directions sought

- 7 That appeal point 359 be moved to Group 2 to be addressed along with the related Group 2 appeal points (58, 59, 374, 62, 76, 81, 84, 88, 89, 100, 102, 108, 110, 120, 123, 128, 129, 132, 133, 181, 346 and 354).

- 8 That if consent memoranda are not filed by 30 April 2020, a further progress report is to be filed by the Dunedin City Council.

Dated this 13th day of March 2020

A handwritten signature in black ink, appearing to read "m. Garbett.", positioned above a horizontal line.

Michael Garbett
Counsel for the Respondent