

Proposed Waikato District Plan (Stage 1) Hearing 8A Hazardous Substances and Contaminated Land

‘Highlights Package’ relating to the evidence of Georgina McPherson for BP Oil NZ Limited, Mobil Oil NZ Ltd and Z Energy Limited (the Oil Companies)

1. Scope

- 1.1 This document highlights key matters where there is disagreement with the council’s s42A report and where further changes are considered necessary. Specific changes sought are proposed in my Evidence in Chief (EIC). I confirm that I have the qualifications and expertise set out in my EIC. I have complied with the Environment Court’s Expert Code of Conduct in preparation of this summary statement.
- 1.2 The Oil Companies interests in the Waikato District relate to the operation and management of their individual service station and truck stop networks, as well as supply to commercial and aviation refuelling facilities.

2. Legislative context and the need for district plan controls on hazardous substances

- 2.1 Key legislation relevant to the management of hazardous substances has been highlighted by the council, the Oil Companies and other submitters and includes HSNO, HSWA and RLAA2017.
- 2.2 I do not dispute the Council’s conclusion that, notwithstanding RLAA2017, there remains an ability for councils to manage hazardous substances in district plans. However, I disagree that the level of control proposed by the Council is necessary and/or appropriate. This relates particularly to the proposed controls on hazardous substances storage at service station sites.
- 2.3 RLAA2017 removed the explicit function for councils to manage hazardous substances and sent a clear message that councils should re-evaluate their current hazardous substances provisions to determine if they are necessary to deal with any potential effects “gap” not covered by other legislation. I do not believe the s32 or s42A reports provide any convincing “gap” analysis.
- 2.4 Instead, the Proposed Plan essentially rolls over the existing permitted activity thresholds contained in Table HT1 of the Operative Plan and applies a significantly higher level of regulation to hazardous substances storage at service stations, including a change from permitted to non-complying activity status in certain zones.
- 2.5 The nature and extent of controls proposed is not justified in the Council’s s32 or s42A reporting. Specifically:
 - a. No issue has been identified with the current Operative Plan approach to managing hazardous substances storage at service stations, which includes a permitted activity status for up to 100,000 litres petrol and 50,000 litres of diesel in below ground storage and 6 tonnes of LPG in any zone.

- b. No additional risks or environmental effects have been identified to demonstrate why additional RMA controls are needed at service stations over and above the level of regulation already achieved by HSNO and WorkSafe (i.e. the regulatory gap).
- c. It is unclear what benefit there is in going through a consent process for an activity that is already well regulated and/or what additional controls the council expects to impose e.g. experience has been that consent conditions for hazardous substances storage at service stations typically only require compliance with relevant legislation.
- d. Recommendations in the s42a report to apply a non-complying activity status to service stations in certain 'sensitive'¹ zones appear to confuse amenity-based issues (e.g. noise, traffic, lighting, visual amenity) with risk issues.

3. Definition of hazardous facility

- 3.1 The definition of 'hazardous facility' proposed by the Council is so broad that it will apply to activities that it is either unnecessary or impractical to control through the district plan and where there is no risk based evidence to justify district plan controls.
- 3.2 The PDP should only address hazardous facilities that generate significant risk or adverse effects beyond their boundary e.g. where hazardous substances are stored at the levels managed by the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016) and/or compliance with other legislation (HSNO, WorkSafe etc) does not sufficiently manage risk.
- 3.3 An appropriate definition should be developed on the basis of further risk-based analysis to identify the types of facilities where additional RMA control is warranted. The definitions used in the South Taranaki and New Plymouth Proposed District Plans provide useful examples in relation to petroleum related activities.
- 3.4 Any definition should appropriately recognise that risk of below ground storage is minimal and for aboveground storage that risk associated with petrol storage is higher from a flammability perspective than diesel.

4. Hazardous Substances Objectives and Policies

- 4.1 **Objective 10.1.1** should be amended to appropriately focus on the management of risk and to ensure it does not require risk per se to be entirely minimised. The reference to 'transport' of hazardous substances is inappropriate and should be deleted. It is unclear how the council would give effect to such an objective and what activities it would manage. While this is partly a legal issue, I understand that any consent condition relating to transport routes to and from a hazardous facilities may be ultra vires.
- 4.2 **Policy 10.1.2** should be deleted entirely or appropriately amended to focus on land use compatibility issues associated with the interface between hazardous facilities and their receiving environments.
- 4.3 **Policy 10.1.3** should be amended to focus only on the management of hazardous facilities that generate significant potential risk and/or adverse effects beyond the boundary of the site that is not otherwise addressed by existing legislation.

¹ Noting that the term 'sensitive' zones is not defined by appears to relate primarily to residential type zones.

- 4.4 **Policy 10.1.4** should be amended further to focus on managing reverse sensitivity effects (including potential to compromise acceptable risk levels) as a whole rather than simply requiring separation between hazardous facilities and sensitive land uses.

5. Rule framework applying to hazardous substances

- 5.1 The proposed rule framework applying to service stations is opposed for the reasons set out in paragraph 2.5 of this summary.
- 5.2 In my opinion, the weight of information, advice and evidence is that if service stations are to be singled out, as sought by the Council, this should be to recognise that risks are adequately controlled by way of compliance with HSNO and HSWA, including within residential and sensitive environments, and that no additional RMA regulation of hazardous substances storage is required.
- 5.3 The council's recommendations demonstrate a lack of understanding of risk issues associated with hazardous substances storage and the level of regulation that applies to these activities outside the RMA. This is further highlighted by the imbalanced approach applied to hazardous substance storage at service stations as opposed to other facilities. For example, non-complying activity consent is required for the storage of diesel in any quantity at a service station in the Business Tamahere and Specific Area – Agricultural Research Centre Campus zones (Rule NC1). In comparison, up to 60 tonnes, or some 70,000 litres of diesel is permitted in other, non-service station sites, in those same zones (Rule P1 & Table 5.1). I am not aware of any risk-based reason that would justify a non-complying, rather than permitted, activity status for storage of diesel because the activity occurs at a service station / truck stop as opposed to any other type of site.

6. Contaminated Land Objectives and Policies

- 6.1 Reliance on the NESCS as proposed is supported. The intent of Objective 10.2.1 is supported subject to amendments to clarify the intent of the term 'sustainably managed' and remove the reference to 'safety'. The intent of Policy 10.2.2 is supported subject to amendments to focus on the consideration of risk associated with contaminated land rather than compliance with specific thresholds, consistent with the approach taken in the NESCS, which relies on risk based guidelines and SQEP's.