

31 August 2022

Hearings Panel: Hearing 5: Contaminated Land & Hazardous Substances
c/- Jessie Williams
District Plan Hearings Administrator
Central Hawke's Bay District Council

By e-mail only: districtplan@chbdc.govt.nz

Dear Hearings Panel members

Re: Hearing 5: Contaminated Land & Hazardous Substances - Hearing Statement on Behalf of BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited

1.0 INTRODUCTION

- 1.1 Reference is made to the abovementioned matters set down for hearing commencing 7th September 2022. This Hearing Statement has been prepared on behalf of BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited (*the Oil Companies*¹) and represents their views. It is not expert evidence.
- 1.2 The Oil Companies made submissions on the proposed Contaminated Land & Hazardous Substances provisions. The broad reasons for the Oil Companies' interests in the above matters are set out in their submission along with the rationale and relief sought in relation to specific submission points and these are not repeated here.
- 1.3 The purpose of this Hearing Statement is to record the Oil Companies' position on their submission, taking into account the Reporting Planner's recommendations in the Section 42A Report (*s42A Report*). For simplicity, this Hearing Statement responds to the matters addressed in the s42A Report for Contaminated Land & Hazardous Substances only. The position of the Oil Companies in relation to the s42A Reports for Earthworks, Mining & Quarrying is set out in an accompanying Hearing Statement.
- 1.4 The Oil Companies' position is set out below and the relief sought is summarised in **Attachment 1** to this Hearing Statement. A summary of the Oil Companies' position in relation to their submission points on the Contaminated Land & Hazardous Substances provisions is included as **Attachment 2**.

¹ Please note that the term 'the Oil Companies' is used for consistency with the submission as lodged. BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited are now known collectively as 'the Fuel Companies'



2.0 DEFINITION OF 'MAJOR HAZARDOUS FACILITY'

Submission Point S110.018

2.1 In their submission, the Oil Companies sought that Council reconsider the need for hazardous substance controls based on the broad definition of MHF. If a broad definition can be justified, retain clauses to the effect of a(iii) and b(v) of the definition as notified

Reporting Planner's Position

2.2 The Reporting Planner recommends that the Oil Companies' submission in relation to the definition of Major Hazardous Facility be accepted in part and states, at point 5.3.11 of the s42A Report, that:

"I consider that inserting the additional clause referencing 'Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016' is inserted in the definition (as sought by FENZ), would address the issue highlighted by the Oil Companies (i.e. a transport depot that stores hydrogen at volumes that would make it a Major Hazard Facility under the MHF Regulations)."

2.3 The reasons given for this recommendation included that the definition:

"...the definition in the MHF Regulations is complex for a District Plan user to interpret, and also relies on a third party (Worksafe) to determine whether a facility meets this definition, and for this reason I remain of the view that the list of 'Major Hazardous Facilities' in the definition in the PDP is simpler and easier to administer, given that it acts as a trigger for resource consent."

2.4 The Reporting Planner also recommends, at point 5.3.13, that FENZ submission point x be accepted and a new clause stating *'The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling or treatment'* be added to the definition of MHF.

The Oil Companies' Position

2.5 The reasons for retaining the definition proposed in the Proposed District Plan cited by the Reporting Planner in the s42A Report include the complexity of interpreting the definition of MHF in the Health and Safety at Work (MHF) Regulations (*the MHF Regulations*) and reliance on a third party (Worksafe) to determine whether a facility meets this definition.

2.6 The Reporting Planner's position does not appear to recognise that Schedule 2 to the MHF Regulations sets specific quantities for what constitutes a MHF (both lower and upper tier).

- 2.7 Notwithstanding disagreement with the principle of potentially broad controls, given the exemptions for *'(b)(v) service stations, truck stops and commercial refuelling activities'* and *'(b)(vi) pipelines used for the transfer of hazardous substances such as gas, oil, trade waste and sewage'*, the Oil Companies can accept retention of a version of the definition.
- 2.8 The Oil Companies support the insertion of the additional clause *'Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016'* to ensure that MHF are not inadvertently excluded from the definition.
- 2.9 The Oil Companies do not support the recommendation that a new clause stating *'The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling or treatment'* be added to the definition of MHF, as proposed by FENZ.
- 2.10 The Reporting Planner states that in their view *"...storage and/or treatment of hazardous waste would clearly pose potentially significant off-site risks to people, property, and the environment"*. However, no evidence, other than the FENZ submission, is provided to support this position.
- 2.11 A range of facilities store hazardous waste or hazardous substances, at least temporarily, pending removal off site at more than minimal domestic scale quantities as provided for by clause (b)(i). Adding the clause sought by FENZ to the definition has the potential to create unintended consequences in that the definition could capture a range of facilities that aren't what Council is intending to control through the definition of MHF.

Relief Sought:

2.12 The Oil Companies seek that:

- The Hearing Panel accept the recommendation of the Reporting Planner to add clause (a)(xviii) to the definition of MHF; and
- The Hearing Panel reject the recommendation of the Reporting Planner to add clause (a)(xvii) to the definition of MHF because there is not a strong evidence base to support its inclusion and it has the potential to lead to unintended consequences.

3.0 CONCLUDING STATEMENT

3.1 If the Hearing Panel requires any clarification in relation to the matters above, please contact the undersigned on 021 468 108.

Kind Regards,



Megan Barr
Senior Planning and Policy Consultant
4Sight Consulting Limited

Attachment 1: Hearing 5: Contaminated Land & Hazardous Substances

Oil Companies Proposed Text Changes

Black Text – Original wording of Proposed District Plan

Blue Text – Officer’s recommended changes, as set out in Section 42A Report.

Red Text - Additional changes proposed by the Oil Companies.

Definitions	
Major Hazardous Facility	<p>(a) any facility which involves one or more of the following activities:</p> <ul style="list-style-type: none"> (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply (iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) meat processing, freezing works and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage (xvi) landfills (xvii) the storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment <u>(xviii) any facility designated a Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016</u> <p>(b) The following activities are not considered to be major hazardous facilities:</p> <ul style="list-style-type: none"> (i) the incidental use and storage of hazardous substances in minimal domestic scale quantities (ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies) (iii) the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities (iv) the mixing of fertilisers (v) service stations, truck stops and commercial refuelling activities (vi) pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage (vii) fuel in motor vehicles, boats, airplanes and small engines (viii) military training activities (ix) the transport of hazardous substances (e.g. in trucks or trains) <u>(x) the incidental storage and use of hazardous substances for emergency service activities</u>

Attachment 2: Proposed Central Hawke’s Bay District Plan – HEARING STREAM 5: HAZARDS AND RISKS, EARTHWORKS, AND SUBDIVISION – S42A REPORT – CONTAMINATED LAND & HAZARDOUS SUBSTANCES

Summary of Oil Company submissions, recommendations of the Reporting Planner, and the position of the Oil Companies with respect to the same. *Changes from the text of the Proposed Plan as it was when proposed are shown as additions underlined and deletions in strikethrough.*

S42A REPORT – CONTAMINATED LAND & HAZARDOUS SUBSTANCES

Proposed Central Hawke’s Bay District Plan Hearing Stream 5: Hazards and Risks, Earthworks, and Subdivision				
Addressed in s42A Report – Contaminated Land & Hazardous Substances				
Plan Provisions and Oil Companies’ Position	Submission No.	Relief Sought	Section 42A Report Recommendations in relation to Oil Companies’ submission	Response of Oil Companies
Introduction CL - Introduction Support	S110.012	Retain ‘CL – Introduction’ as notified.	Accept	Support Request that the Panel accept the recommendations in the S42A Report.
Objective CL-O1 Support in part	S110.013	Amend CL-O1 as follows: ‘CL-O1 Land containing elevated levels of contaminants Contaminated land is managed to protect human health and the	Accept Amend CL-O1 as requested by the Oil Companies.	Support Request that the Panel accept the recommendations in the S42A Report.

		environment and to enable land to be used in the future.'		
Policy CL-P1 Support	S110.014	Retain CL-P1 as notified	Accept	Support Request that the Panel accept the recommendations in the S42A Report.
Policy CL-P2 Support	S110.015	Retain CL-P2 as notified	Accept	Support Request that the Panel accept the recommendations in the S42A Report.
Definition 'Major Hazardous Facility' Oppose in part / Support in part	S110.018	Reconsider the need for hazardous substance controls based on the broad definition of 'Major Hazardous Facilities'. If a broad definition can be justified, retain clauses to the effect of (a)(iii) and (b)(v) of the definition as notified.	Accept in part. Retain clauses (a)(iii) and (b)(v) as notified. Add additional clauses (a)(xvii), (a)(xviii) and (b)(x)	Oppose the addition of clause (a)(xvii) and urge the Hearing Panel to reject the Reporting Planner's recommendation on this matter. Support the addition of clause (a)(xviii).

<p>Introduction</p> <p>HAZS - Introduction</p> <p>Oppose in part</p>	<p>S110.001</p>	<p>Retain the introductory section but amend the final paragraph of 'HAZS - Introduction' as follows:</p> <p>Whilst the Resource Legislation Amendments 2017 changed the RMA so Councils no longer have this the explicit function to control hazardous substances, they.</p> <p>Councils still have a broad function of achieving integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. <u>To avoid duplication, the Council seeks only to control matters that are not adequately covered by other more specific legislation or regulated by the Hawke’s Bay Regional Council and proposes to do this by focused provisions targeting major hazardous facilities.</u> Council proposes to use this broad function to place extra controls on hazardous substance use under the RMA, where HSNZ or Worksafe controls are not adequate to address the environmental</p>	<p>Accept</p>	<p>Support</p> <p>Request that the Panel accept the recommendations in the S42A Report.</p>
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		effects of hazardous substances in any particular case.'		
<p>Issue</p> <p>HAZS-11</p> <p>Oppose in part</p>	S110.002	<p>Retain the issues section but amend the explanation of HAZS-11 as follows:</p> <p>'While hazardous substances are largely controlled through other legislation, <u>some hazardous facilities may create off site risks to people, property and the environment.</u> the Council is still required by the RMA to achieve integrated management of effects, including control of any actual or potential effects associated with the storage, use, disposal, or transportation of hazardous substances. Two issues arise from the use of hazardous substances. The first concerns the safe day-to-day use of hazardous substances. The second is the possible effects on the health and safety of people and on the natural environment involving the establishment and operation of major hazardous facilities.'</p>	Accept	<p>Support</p> <p>Request that the Panel accept the recommendations in the S42A Report.</p>

<p>Objective</p> <p>HAZS-O1</p> <p>Support</p>	S110.003	Retain HAZS-O1 as notified.	Accept	<p>Support</p> <p>Request that the Panel accept the recommendations in the S42A Report.</p>
<p>Objective</p> <p>HAZS-O2</p> <p>Support in part</p>	S110.004	Amend HAZS-O2 as follows: 'Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, Health and Safety at Work Act 2015, Regional Plan , and the District Plan.'	Accept	<p>Support</p> <p>Request that the Panel accept the recommendations in the S42A Report.</p>
<p>Policy</p> <p>HAZS-P1</p> <p>Support</p>	S110.005	Retain HAZS-P1 as notified.	Accept	<p>Support</p> <p>Request that the Panel accept the recommendations in the S42A Report.</p>
<p>Policy</p> <p>HAZS-P2</p>	S110.006	Delete HAZS-P2. HAZS-P2 addresses a range of matters which will be appropriately controlled through other provisions at both the district (for instance	Accept	<p>Support</p> <p>Request that the Panel accept the recommendations in the S42A Report.</p>

Oppose		zoning and earthworks controls) and regional level (discharges), and through HAZS-P3 in relation to potential risks associated with the storage and use of hazardous substances.		
Policy HAZS-P3 Support	S110.007	Retain HAZS-P3 as notified.	Accept	Support Request that the Panel accept the recommendations in the S42A Report.
Policy HAZS-P4 Oppose	S110.008	Delete HAZS-P4. HAZS-P4 essentially repeats HAZS-O2.	Accept	Support Request that the Panel accept the recommendations in the S42A Report.
Rule HAZS-R1 Support in part	S110.009	Amend HAZS-R1 as follows: '1. Activity Status: PER Where the following conditions are met:	Accept	Support Request that the Panel accept the recommendations in the S42A Report.

		a. All relevant standards in the underlying zone are complied with. b. ...'		
Rule HAZS-R2 Support	S110.010	Retain HAZS-R2 as notified	Accept	Support Request that the Panel accept the recommendations in the S42A Report.
Rule HAZS-R3 Support in part	S110.011	Amend HAZS-R3 such that it only applies to new 'Major Hazardous Facilities' or existing 'Major Hazardous Facilities' which are increasing potential off site risk associated with the storage, use, or manufacture of hazardous substances.	Accept	Support Request that the Panel accept the recommendations in the S42A Report.