

31 August 2022

Hearings Panel: Hearing 5: Earthworks, Mining & Quarrying
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: Earthworks, Mining & Quarrying - 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 Earthworks, Mining & Quarrying 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 Earthworks, Mining & Quarrying only. The position of the Oil Companies in relation to the s42A Reports for Contaminated Land & Hazardous Substances 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 Earthworks, Mining & Quarrying 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 NEW RULE EW-RXX

Submission Point S110.017

- 2.1 In their submission, the Oil Companies sought that Council provide a permitted activity pathway for temporary land disturbance activities that reinstate existing ground levels.
- 2.2 The Oil Companies sought clarity that works that involve reinstatement of existing levels would be considered land disturbance (as defined) and would not default to Rule EW-R7 and the corresponding permitted conditions (relating to (inter alia) cut depths, volumes etc). This would be consistent with the permitted pathway for land disturbance activities provided for network utilities. A consistent approach is appropriate having regard to the potential effects of land disturbance activities, irrespective of their purpose.

Reporting Planner's Position

- 2.3 The Reporting Planner recommends that the Oil Companies' submission in relation to new Rule EW-RXX be accepted in part and states, at point 5.3.23 of the s42A Report, that:
"...I am of the opinion that a separate rule providing for land disturbance activities is not warranted and may lead to adverse effects that deserve consideration and that should be avoided, remedied, or mitigated. Having said that, perhaps the submitter can supply further details at the Hearing for the Hearings Commissioners to consider."
- 2.4 The reasons given for this recommendation included that:
"...earthworks associated with replacement and/or removal of fuel storage systems are already provided for as a Permitted Activity in Rule EW-R1 Specified Earthworks. It is unclear what other land disturbance situations the Oil Companies are concerned about (i.e. what other 'intrusive works on sites to operate, maintain and upgrade refuelling facilities' involve)?."
- 2.5 The Reporting Planner also states at point 5.3.22 that:
"In the case of any other earthworks, Rule EW-R7 already provides a Permitted Activity pathway, subject to compliance with the various EW-Standards and, where these are not met, the activity defaults to a Restricted Discretionary Activity. I do not consider this to be an onerous consenting process."

The Oil Companies' Position

- 2.6 The Oil Companies acknowledge and appreciate the opportunity provided by the Reporting Planner to provide further information on this matter at the hearing.

- 2.7 In terms of land disturbance, there are a range of works that might be undertaken on a retail fuel site that do not involve fuel storage systems and would, therefore, not be considered Specified Earthworks under Rule EW-R1. These include the removal or replacement of an oil-water separator, which could require a 2.5m deep excavation but would be temporary. Other works that may require temporary land disturbance include installation of electric vehicle (EV) charging facilities, diesel exhaust fluid tanks, and site exits.
- 2.8 The Oil Companies consider that, from an effects perspective, there is no reason why temporary land disturbance activities that reinstate existing ground levels should be managed differently to the same activities associated with network utilities and other specified activities, like tank installs and replacement.

Relief Sought:

- 2.9 The Oil Companies seek that the Hearing Panel reject the recommendation of the Reporting Planner in relation to submission point S110.017 and add a Permitted Activity pathway (via a new Rule EW-RXX) for temporary 'land disturbance activities' (as defined in the Proposed Plan) that reinstate existing ground levels.
- 2.10 Alternatively, temporary 'land disturbance activities' could be provided for as specified activities under Rule EW-R1, in the same manner as earthworks associated with network utilities (EW-R1-1.b.) and earthworks associated with the replacement and/or removal of a fuel storage system (EW-R1-1.c.).

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: Earthworks, Mining & Quarrying

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.

Rules	
EW-R1 Specified Earthworks	
All Zones	<p>1. Activity Status: PER Where the following conditions are met:</p> <ul style="list-style-type: none"> a. The earthworks are associated with site preparation works for a building, the area (m²) of earthworks is no more than 150% of the area of the associated building footprint, and complies with EW-S1 Slope, and EW-S5 Control of Silt and Sediment; or b. The earthworks are associated with any network utilities, including the upgrade or maintenance of existing public roads, and complies with EW-S4 Site Reinstatement and EW-S5 Control of Silt and Sediment; or c. The earthworks are associated with replacement and/or removal of a fuel storage system defined as permitted by the Resource Management Regulations (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health), and complies with EW-S5 Control of Silt and Sediment or d. The earthworks are associated with gravel extraction within the bed of a river. e. The earthworks are temporary land disturbance activities and comply with EW-S4 Site Reinstatement and EW-S5 Control of Silt and Sediment. <p>Note: Gravel extraction within the bed of a river is subject to rules administered by the Hawke’s Bay Regional Council.</p>
Rule EW-RXX (new rule)	
All Zones	<p>Activity Status: PER Temporary land disturbance activities where existing ground levels are reinstated upon completion of works.</p>
	2. Activity status where compliance not achieved: EW-R2 to EW-R7 apply

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

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 – EARTHWORKS, MINING & QUARRYING

Proposed Central Hawke’s Bay District Plan Hearing Stream 5: Hazards and Risks, Earthworks, and Subdivision				
Addressed in s42A Report – Earthworks, Mining & Quarrying				
Plan Provisions and Oil Companies’ Position	Submission No.	Relief Sought	Section 42A Report Recommendations in relation to Oil Companies’ submission	Response of Oil Companies
Rule EW-RXX (new rule) Request new rule	S110.017	Add a Permitted Activity pathway for 'land disturbance activities' (as defined in the Proposed Plan).	Accept in part	Oppose Seek that the Hearing Panel accept the submission point and either: <ul style="list-style-type: none"> add a new permitted activity Rule EW-RXX for temporary ‘land disturbance activities’ where existing ground levels are reinstated upon completion of works; OR

				<ul style="list-style-type: none">• add temporary 'land disturbance activities' as a specified activity under EW-R1.
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