Online submission

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Submitter No.	S110
Submitter Name	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)
Submitter Company/Group Name	Z Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd (the Oil Companies)
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Wish to be heard	Yes
Joint presentation	Yes
Trade competition	I could not gain an advantage in trade competition through this submission.
Directly affected	N/A
Withhold contact details?	No

Submission points

Plan section	Provision	Support/oppose	Reasons	Decision sought
GENERAL DISTRICT-WIDE MATTERS	EW – Earthworks	Amend	Please refer to the supporting document for the complete submission on the proposed district plan.	Please refer to the supporting document for the complete submission on the proposed district plan.

Documents included with submission

Document name	The Oil Companies submission on the Central Hawkes Bay Proposed District Plan
File	centralhawkesbayproposedplan_submission_v.1.pdf
Description	

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SUBMISSION ON THE PROPOSED CENTRAL HAWKE'S BAY DISTRICT PLAN PURSUANT TO CLAUSE 6 OF THE FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991

To:

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LAND. PEOPLE. WATER.

[1] On behalf of the wider Z group, including the Z Energy and Caltex operations in New Zealand.

INTRODUCTION

1. The Oil Companies receive, store, and distribute refined petroleum products around New Zealand. In the Central Hawke's Bay District, the Oil Companies' core business relates to operating retail fuel outlets, including service stations and truck stops.

2. Central Hawke's Bay District Council (*Council*) is undertaking a review of its district plan with the Proposed Central Hawke's Bay District Plan (*the proposed plan*) notified on 28 May 2021.

3. The Oil Companies provided input to the draft district plan, including presenting to Council's District Plan Committee. The feedback provided by the Oil Companies is reflected in part in the proposed plan but it is the Oil Companies' view that there continue to be areas that require further amendment; these points form the basis of this submission.

4. This submission focuses on key topics relevant to the Oil Companies' interests, particularly:
    a. Hazardous substances;
    b. Contaminated land; and
    c. Earthworks.

THE SPECIFIC PROVISIONS OF THE PROPOSED PLAN CHANGE THAT THE OIL COMPANIES' SUBMISSION RELATES TO ARE SUMMARISED AS FOLLOWS:

5. The specific provisions submitted on, the rationale for the Oil Companies' submission on each of these matters, and the relief sought is contained in the attached schedules. The Oil Companies support alternative relief that achieves the same outcomes.

6. In addition to the specific outcomes and relief sought, the following general relief is sought:

    a. Achieve the following:

        i. The purpose and principles of the Resource Management Act 1991 (*RMA*) and consistency with the relevant provisions in Sections 6 - 8 RMA;

        ii. Give effect to the Regional Policy Statement;

        iii. Avoid duplication with the Regional Resource Management Plan and other legislation;

        iv. Assist the Council to carry out its functions under Section 31 RMA;

        v. Meet the requirements of the statutory tests in Section 32 of the RMA;

        vi. Avoid, remedy or mitigate any relevant and identified environmental effects.

    b. Make any alternative or consequential relief as required to give effect to this submission, including any consequential relief required in any other sections of the plan that are not specifically subject of this submission but where consequential changes are required to ensure a consistent approach is taken throughout the document.

    c. Any other relief required to give effect to the issues raised in this submission.

THE OIL COMPANIES WISH TO BE HEARD IN SUPPORT OF THIS SUBMISSION

IF OTHERS MAKE SIMILAR SUBMISSIONS THE OIL COMPANIES MAY BE PREPARED TO CONSIDER PRESENTING A JOINT CASE WITH THEM AT ANY HEARING

THE OIL COMPANIES COULD NOT GAIN AN ADVANTAGE IN TRADE COMPETITION THROUGH THIS SUBMISSION

THE OIL COMPANIES ARE DIRECTLY AFFECTED BY AN EFFECT OF THE SUBJECT MATTER OF THAT SUBMISSION THAT:

I. **ADVERSELY AFFECTS THE ENVIRONMENT; AND**

II. **DOES NOT RELATE TO TRADE COMPETITION OR THE EFFECTS OF TRADE COMPETITION.**

Signed on behalf of Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited

Mitchell Fuller

Planning and Policy Consultant

6 August 2021

SCHEDULE 1 - HAZARDOUS SUBSTANCES

A. The specific parts of the Proposed Plan that are subject of this submission are:

- Introduction, which is opposed in part.
- Issue and corresponding explanation, which are opposed in part.
- The extent of controls definition of Major Hazardous Facility, which is opposed in part and supported in part.
- Objective HAZS-O1, which is supported.
- Objective HAZS-O2, which is supported in part.
- Policies HAZS-P1 and P3, which are supported.
- Policies HAZS-P2 and HAZS-P4, which are opposed.
- Rule HAZS-R1, which is supported in part.
- Rule HAZS-R2, which is supported.
- Rule HAZS-R3 which is supported in part.

B. The reasons for the submission are:

The Resource Legislation Amendment Act 2017 *(RLAA)* removed the explicit function of district and regional councils to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under sections 30 and 31 of the RMA. While councils can manage hazardous substances through their plans and policy statements to achieve the purpose of the RMA and to carry out the function of integrated management of natural and physical resources in their region/district, this should only be exercised where the potential environmental effects are not adequately addressed by other legislation, including the Hazardous Substances and New Organisms Act 1996 *(HSNO)* and the Health and Safety at Work Act 2015 *(HSWA).*

HSNO and HSWA consider surrounding land uses generically by including different clearances with respect to substances (HSNO) or surrounding land uses (HSWA). Most of these controls apply regardless of where that substance is stored or used and apply a precautionary approach which provides for an acceptable level of safety in most circumstances. The Oil Companies consider that HSNO and HSWA controls are typically adequate to avoid, remedy or mitigate adverse environmental effects of hazardous substances. This position is supported by the Ministry for the Environment (*MfE*)[2][3].

However, in particular circumstances it may be appropriate that RMA controls are used. To identify these instances, in light of the RLAA and controls under other legislation, robust section 32 analysis is fundamental to ensuring the proposed controls are both necessary and efficient. Additionally, the RLAA has emphasised the importance of avoiding the duplication of other legislation and the recent MfE Guidance has reinforced the position of central government in this regard. The Oil Companies support the greater efficiency of this approach.

Recognition of the need to avoid duplication of hazardous substances is reflected in several plans around the country. For instance, decisions by the Independent Hearing Panel (including

[2] Resource Legislation Amendments 2017 – Fact Sheet 2, MfE, Amended in September 2017

[3] Plan Topics, Hazardous Substances under the RMA – MfE, updated in 2019
https://www.qualityplanning.org.nz/sites/default/files/2019-05/managing-hazardous-substances.pdf

both a High Court and Environment Court Judge) on the Christchurch District Plan rejected Christchurch City Council's hazardous substance controls, which were based on an activity status table approach, and only retained controls relating to hazardous substances in close proximity to the National Grid. The provisions were considered to give effect to the Canterbury Regional Policy Statement 2013. More importantly, the decisions adopted overlays around MHF. For example, the bulk fuel storage facilities of the Oil Companies at Lyttelton and Woolston to protect critical infrastructure from reverse sensitivity effects.

Introduction

The proposed plan acknowledges Council no longer has the explicit function to control hazardous substances but records that Council has 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. It is this function which the proposed plan refers to as supporting the placement of additional controls on the use and storage of hazardous substances.

The plan purports to control hazardous substances where HSNO or WorkSafe controls are not adequate to address the environmental effects of hazardous substances in any particular case. The Oil Companies support the recognition of the role of other legislation but oppose the principle of broad controls without adequate section 32 analysis to demonstrate whether that is the most appropriate way to achieve the purpose of the RMA.

Issues and MHF definition

There is one issue identified in relation to hazardous substances:

> *HAZS-I1 - If not appropriately stored and used, hazardous substances pose potential threats to the health and safety of the District's people and natural environment.*

The corresponding explanation states that while hazardous substances are largely controlled through other legislation, the Council is still required to achieve integrated management, including controlling potential effects associated with hazardous substances. The Oil Companies agree, in so much as where an issue and intervention is necessary to manage the same, but do not consider this has been demonstrated, both in association to the "*safe day-to-day use*" of hazardous substances and the possible effects on the environment involving the establishment and operation of MHF (as broadly defined in the proposed plan). This appears to be reflected in work undertaken to inform the proposed plan, at least at the scoping stage, which the s32 report quotes as stating "*… deleting much of this [hazardous substances] chapter, and generally leaving the management of the use and storage of hazardous substances to the provisions of the HSNO Act…*".

Through feedback to the draft plan the Oil Companies sought that the provisions, including the proposed definition of MHF, be reconsidered and analysed from a risk-based perspective. In terms of a starting point for the definition of MHF, the Oil Companies sought that the definition from the Health and Safety at Work (MHF) Regulations (*the MHF Regulations*) be the starting point for a definition of MHF. That analysis does not appear to have been undertaken, with the options assessed in the s32 report focused on retention of the operative plan approach or adopting the proposed approach.

If a tailored definition (as opposed to the definition in the MHF Regulations) was retained, the Oil Companies sought that the volume thresholds for the storage of petrol or diesel be per the MHF Regulations. The notified definition of MHF no longer lists the storage/use of petrol and diesel above particular volumes as being MHF and specifically exempts service stations, truck stops and commercial refuelling activities. These changes are helpful and supported, if the broad definition of MHF is retained, but do not address the potentially significant duplication of controls and the challenges of the proposed activity based definition, including the omission of a range of facilities which could store and use hazardous substances with potentially significant off site risk. For instance, as defined, a transport depot could store hydrogen at volumes that would make it a MHF under the MHF Regulations but would not necessarily appear to be a MHF per the proposed plan. This is just one example but highlights the

challenge of an activity based definition like that proposed. The Oil Companies seek that Council reconsiders the need for broad hazardous substance controls.

Objectives

The notified objectives are as follows:

> *HAZS-O1 Protect the community and natural environment from the adverse effects associated with the manufacture, use, storage or transportation of hazardous substances.*
>
> *HAZS-O2 Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996 and the District Plan.*

HAZS-O1 is supported. The intent of HAZS-O2 is similarly supported but the Oil Companies consider it is appropriate at the objective level to seek to avoid duplication and not just in relation to HSNO, but also regional plans and HSWA, as recognised in the introductory section of the proposed plan and the accompany s32 analysis.

Policies

The proposed policies are as follows:

Policies

HAZS-P1	To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations.
HAZS-P2	To ensure Major Hazardous Facilities avoid or are adequately set back from: 1. residential activities; 2. vulnerable activities; 3. the coast, historic heritage and scheduled features; 4. scheduled wāhi tapu, wāhi taonga and sites of significance; 5. priority waterbodies, including sources of potable water; and 6. identified natural hazard areas.
HAZS-P3	To require new or expanded Major Hazardous Facilities to demonstrate that the activity is located appropriately, having regard to the effects of the activity, the risks to the health and safety of the community, and: 1. the type, scale, duration, intensity or frequency of the activity's effects; 2. the design and site layout of the activity and its ability to internalise effects; 3. effective management and disposal of wastes containing hazardous substances; 4. any potential adverse cumulative or synergistic effects; and 5. avoidance or management of risks associated with natural hazards.
HAZS-P4	To avoid any unnecessary duplication of regulation with other statutory processes for hazardous substance activities.

While HAZS-O2 seeks to avoid duplication, HAZS-P2 addresses a range of matters which will be appropriately controlled through other provisions at both the district (for instance 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. HAZS-P4 essentially repeats HAZS-O2. The Oil Companies seek that policies HAZS-P2 and P4 be deleted and that HAZS-P1 and HAZS-P3 are retained as notified.

Rules

Proposed Rule HAZS-R1 permits the storage, handling or use of hazardous substances at **non-MHF**, subject to standards. There are two permitted standards, one of which requires that all relevant standards in the underlying zone are complied with. The effect of this would appear to be that any infringement of a zone provision, which could relate to a range of matters, for instance a height in relation to boundary infringement, would remove a permitted pathway for facilities storing, handling or using hazardous substances. The rationale for that approach is unclear and its implications potentially significant. In contrast, the standard relating to the use of explosives within 60m of the Gas Transmission Network is targeted and clear.

The permitted pathway for maintenance of MHF provided by HAZS-R2 is supported.

The discretionary pathway for new MHF is supported but in terms of upgrading of existing MHF, it is considered that the rule should only apply to activities increasing hazardous substance storage, or increasing off site risk associated with hazardous substance, not other

development unrelated to hazardous substances at an existing MHF which will be appropriately addressed by other provisions.

C. The relief sought is:

Introduction

- Retain the introductory section but amend the final paragraph as follows:

  ~~Whilst t~~The Resource Legislation Amendments 2017 changed the RMA so Councils no longer have ~~this~~ the explicit function to control hazardous substances~~, they~~. 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. 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. ~~Council proposes to use this broad function to place extra controls on hazardous substance use under the RMA, where HSNO or Worksafe controls are not adequate to address the environmental effects of hazardous substances in any particular case.~~

Issues and definition

- 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.

- Retain the issues section but amend the explanation as follows:

  While hazardous substances are largely controlled through other legislation, some hazardous facilities may create off site risks to people, property and the environment. ~~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~~

Objectives and Policies

- Retain HAZS-O1 as notified
- Amend HAZS-O2 as follow*s:*

  HAZS-O2 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.

- Retain HAZS-P1 as notified
- Delete HAZS-P2
- Retain HAZS-P3 as notified
- Delete HAZS-P4

Rules

- Retain HAZS-R1 but delete condition a:

  ~~*All relevant standards in the underlying zone are complied with.*~~

- Retain HAZS-R2 as notified
- Retain HAZS-R3 but amend it such that it only applies to new MHF or existing MHF which are increasing potential off site risk associated with the storage, use, or manufacture of hazardous substances.

SCHEDULE 2 – CONTAMINATED LAND

A. The specific parts of the Proposed Plan that are subject of this submission are:

- Objective CL-O1, which is supported in part
- Policies CLP1 and CLP2, which are supported.

B. The reasons for the submission are:

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (*NESCS*) applies to activities on land where soil may be contaminated in such a way as to be a risk to human health. The activities are removing or replacing a fuel storage system, sampling the soil, disturbing the soil, subdividing land, and changing the use of the piece of land. The activities are classed as permitted activities, controlled activities, restricted discretionary activities, or discretionary activities.

Introduction

The proposed plan acknowledges the need to avoid duplication with the NESCS. The Oil Companies support reliance on the NESCS to provide the rule framework with objectives and policies provided in the proposed plan.

Objectives

The notified objective is as follows:

CL-O1 Land containing elevated levels of contaminants is managed to protect human health and the environment and to enable land to be used in the future.

The Oil Companies support the intent of the objective but for consistency with the balance of provisions and the defined terms consider that the reference in the objective should be to contaminated land, not 'land containing elevated levels of contaminants'.

Policies

The notified policies are as follows:

CL-P1 Identify sites that are known to contain, or may contain, contaminated soil as a result of land uses and activities, including current and historical land use and activities.

CL-P2 Require any proposal to subdivide, use or develop contaminated or potentially contaminated land to apply a best practice approach to investigate and manage risks to protect people and the environment.

The Oil Companies support these policies and seek they are retained as notified.

C. The relief sought is:

- Retain the introductory section as notified and reliance on the NESCS to provide the rule framework for contaminated land.
- Amend CL-O1 as follows:

  CL-O1 ~~Land containing elevated levels of contaminants~~ Contaminated land is managed to protect human health and the environment and to enable land to be used in the future.

- Retain CL-P1 as notified
- Retain CL-P2 as notified

SCHEDULE 3 - EARTHWORKS

A. The specific parts of the Proposed Plan that are subject of this submission are:

- Rule EW-R1, which is supported in part
- The consenting pathway for land disturbance activities

B. The reasons for the submission are:

The Oil Companies undertake a range of intrusive works on sites to operate, maintain and upgrade refuelling facilities and seek to ensure that the district earthwork controls do not duplicate matters which are appropriately addressed under the NESCS or which have limited potential for adverse effects, namely temporary land disturbance activities which reinstate existing ground levels.

Rules

The Oil Companies support the intended permitted pathway for earthworks associated with the removal and replacement of fuel storage systems provided at EW-R1C. The Oil Companies consider that the removal and replacement of fuel storage systems is a well-defined activity and one that is particularly well controlled under the NESCS. The Oil Companies seek clarity that activities provided for by EW-R1 are not required to comply with other permitted activity standards. This could be achieved by an additional note to the rule.

In terms of the balance of intrusive works undertaken by the Oil Companies, which typically involve reinstatement of existing levels, the Oil Companies seek clarity that these 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.

C. The relief sought is:

- *Amend EW-R1 as follows:*

  1. Activity Status: PER
  Where the following conditions are met:
  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; or*
  b. *The earthworks are associated with any network utilities, including the upgrade or maintenance of existing public roads; 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); or*
  d. *The earthworks are associated with gravel extraction within the bed of a river.*

  Note:
  1. Gravel extraction within the bed of a river is subject to rules administered by the Hawke's Bay Regional Council.
  2. Specified activities are exempt from complying with the standards in EW-S1 to EW-S9

- *Provide a permitted activity pathway for land disturbance activities.*