

**SUBMISSION ON THE PROPOSED WAIMAKARIRI DISTRICT PLAN PURSUANT TO
CLAUSE 6 OF THE FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991**

To: **Chief Executive**
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Via email : developmentplanning@wmk.govt.nz

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A. INTRODUCTION

The Fuel Companies receive, store and distribute refined petroleum products around New Zealand. In the Waimakariri District, the Fuel Companies' core business relates to distributing petroleum products and operating retail fuel outlets, including service stations and truck stops. The Fuel Companies do not have any Major Hazard Facilities in the district.

Waimakariri District Council (*Council*) is undertaking a review of its district plan with the Proposed Waimakariri District Plan (*proposed plan*) notified on 17th September 2021.

The Council invited the public to input into the review process prior to notification. The Fuel Companies submitted on this plan review process in May 2019.

This submission relates primarily to the Hazardous Substances, Contaminated Land and Earthworks provisions contained within Part 2 – District Wide Matters of the proposed plan but also addresses a number of definitions contained in Part 1 – Introduction and General Provisions.

B. THE SPECIFIC PROVISIONS OF THE PROPOSED PLAN THAT THE FUEL COMPANIES' SUBMISSION RELATES TO ARE SUMMARISED AS FOLLOWS

The specific provisions submitted on, the rationale for the Fuel Companies' submission on each of these matters, and the relief sought is contained in the schedules below. Changes sought to the provisions are shown by deletion in ~~striketrough~~ and addition in underline. The Fuel Companies support alternative relief that achieves the same outcomes.

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 Canterbury Regional Policy Statement;
 - iii. Assist the Council to carry out its functions under Section 31 RMA;
 - iv. Meet the requirements of the statutory tests in section 32 RMA; and
 - v. 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 proposed 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; and
- c) Any other relief required to give effect to the issues raised in this submission.

C. THE FUEL COMPANIES WISH TO BE HEARD IN SUPPORT OF THIS SUBMISSION.

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

E. THE FUEL COMPANIES COULD NOT GAIN AN ADVANTAGE IN TRADE COMPETITION THROUGH THIS SUBMISSION.

F. THE FUEL COMPANIES ARE DIRECTLY AFFECTED BY AN EFFECT OF THE SUBJECT MATTER OF THE 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



Jarrold Dixon

Planning and Policy Consultant

26 November 2021

SCHEDULE A – HAZARDOUS SUBSTANCES

A1. The specific parts of the Proposed Plan that are subject of this submission are:

- **SUPPORT IN PART** – HS – Introduction
- **SUPPORT IN PART** – Objectives HS-O1 and HS-O2
- **SUPPORT IN PART** – Policies HS-P1 to HS-P3
- **SUPPORT IN PART** – Rule HS-R1
- **SUPPORT IN PART** – Rule HS-R2
- **SUPPORT** – Rule HS-R3
- **SUPPORT** – Major Hazard Facility definition
- **SUPPORT** – Hazardous Facility definition
- **SUPPORT** – Sensitive activities definition

A2. The reason for the submission and the relief sought are:

- 1.1 The Fuel Companies support Council's intent to only control matters in relation to hazardous substances that are not covered by other more specific legislation and the functions of the Canterbury Regional Council, as set out in the introduction to the proposed plan.
- 1.2 While the Fuel Companies do not have any Major Hazard Facilities (MHF) in Waimakariri and understand that there are none in the district, they have an interest in ensuring provisions relating to the same are reasonable and consistent across the country, noting that part of the plan making process typically includes analysis of how other plans have addressed particular matters.
- 1.3 The Fuel Companies consider that the proposed objectives do not adequately recognise the contribution hazardous substances make to economic and social wellbeing. In addition, the Fuel Companies consider that clarity is required in regards to the term 'flood events' used in HS-O1 and the direction to manage the same, noting that both managed and minimised are used in the objective. Further, the Fuel Companies consider that property is clearly part of the environment and in relation to hazardous substance risk, does need not be specifically identified as a subset of the same. The following amendments are sought to address these matters:

Hazardous substance use, storage and disposal activities are enabled and located, ~~and in the case of flood events, managed~~, so that:

1. *risk to people, ~~property~~ and the environment from any major hazard facility is minimised, including avoiding unacceptable risk to sensitive activities;*
2. *risk to any sensitive area is minimised; and*
3. *risk to land and water as a result of flood events is ~~minimised~~ managed.*

Note:

A flood event is defined as a 0.5% AEP flood event for low and medium hazard and a 0.2% AEP flood event for high hazard.

- 1.4 The Fuel Companies support the intent of objective HS-O2 to minimise reverse sensitivity effects on MHF and avoid unacceptable risk to sensitive activities but consider the provision should be simplified and not just applied to establishment of new MHF, recognising that ongoing management of these matters is important. The Fuel Companies consider that this would be better achieved by amending the objective as follows:

The location of any new sensitive activity minimises reverse sensitivity effects on any existing major hazard facility, and avoids unacceptable risk to the sensitive activity. Avoid unacceptable risk from the establishment or intensification of sensitive activities and otherwise minimise reverse sensitive effects on major hazard facilities.

- 1.5 The proposed wording of HS-P1 is such that any addition to an existing MHF would trigger a Quantitative Risk Assessment (QRA) to identify and assess any potential further risk on human and ecological health. This policy would require a QRA for changes to a MHF which would not increase the risk profile of an existing MHF, for instance new or extended buildings. The notified wording also seeks to avoid locating new MHF in overlays and zones where sensitive areas or activities predominate. The Fuel Companies consider that this intent will be achieved by provisions relating to those overlays and zones and need not be specified in the hazardous substance chapter. Additional changes are proposed to HS-P1 and HS-P2 for consistency with amendments to provisions above.

Minimise risk to people, ~~property~~ and the environment from any new major hazard facility, or any increase in the risk profile ~~addition to~~ of a major hazard facility by:

- 1. an appropriate risk assessment of the proposed storage and use of hazardous substances, identifying risk to human and ecological health and safety, and to ~~property~~, though a QRA of any proposed activity, including consideration of its site characteristics and any cumulative risk from the use, storage and disposal of hazardous substances on other sites;*
- 2. avoiding unacceptable risk identified in the QRA on existing sensitive activities; ensuring the location provides sufficient separation from any sensitive activity to minimise any risk identified in a QRA for the activity and avoids unacceptable risk to existing sensitive activities;*
- 3. locating outside any areas of significant indigenous vegetation, significant habitats for indigenous fauna and Sites and Areas of Significance to Māori, and zones and overlays where sensitive areas or activities predominate; and*
- 4. locating outside any high hazard area unless risk associated with the hazard can be appropriately mitigated to protect human, and environmental, health and safety.*

Ensure any new or intensified activities are ~~sensitive activity~~ is sufficiently separated from any existing major hazard facility to ~~minimise reverse sensitivity effects for the major hazard facility, and avoid unacceptable risk to the sensitive~~ activities and minimise reverse sensitivity effects.

- 1.6 The Fuel Companies also seek that rule HS-R1 is amended to only apply to above ground storage of hazardous substances, noting that underground facilities, like petroleum storage at service stations, are resilient to inundation. This could be achieved by amending HS-R1 as follows:

(Permitted) Where:

- 1. aboveground the storage of hazardous substances within any hazardous facility is at, or above the finished floor level established either by the Kaiapoi Fixed Minimum Finished Floor Level Overlay or by a Flood Assessment Certificate issued in accordance with NH-S1*

- 1.7 The Fuel Companies also seek that rule HS-R2 is amended to reflect the proposed changes to HS-P1 and HS-P2 above:

Any new major hazard facility or any increase in the risk profile of a ~~addition to~~ major hazard facility.

SCHEDULE B – CONTAMINATED LAND

B1. The specific parts of the Proposed Plan that are subject of this submission are:

- **SUPPORT IN PART** – CL – Introduction
- **SUPPORT IN PART** – Objective CL-O1
- **SUPPORT** – Policy CL-P1
- **SUPPORT IN PART** – Policy CL-P2
- **OPPOSE** – Policies CL-P3 and CL-P4
- **SUPPORT** – Hazardous substances definition
- **SUPPORT** – Contaminated land definition

B2. The reason for the submission and the relief sought are:

- 1.1 The proposed provisions recognise that subdivision, development and use of contaminated or potentially contaminated land is primarily managed through the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS). The Fuel Companies support this approach but note some inconsistencies with the proposed introduction as it relates to the NESCS.
- 1.2 The NESCS seeks to 'identify' and 'assess' contaminants in soil to then determine if any management is required before the land is 'subdivided, used or developed'. In contrast the second paragraph of the introduction states that the NESCS requires contaminants in soils to be managed before it is subdivided, used or developed.
- 1.3 Similarly, the third paragraph states that District Council can implement consents under the NESCS. While this is technically correct, the Council could obtain and implement resource consent conditions under the NESCS, it is anticipated that the intent of this statement was to convey that the District Plan does not contain rules for contaminated land but contains objectives or policies.
- 1.4 Thirdly, the Fuel Companies support recognition of the Regional Council's responsibility in relation to contaminated land, including managing contaminated land within the CMA and within the beds of lakes and rivers but seek that those responsibilities are more accurately reflected as they relate to discharges. The Fuel Companies consider that the following amendments to the Introduction would address these inconsistencies:

Sites are identified as contaminated when land has a hazardous substance in or on it that may have significant adverse effects on human health or the environment.

The District Council is required to implement the NESCS. The NESCS requires that land affected, or potentially affected, by contaminants in soil is identified and, assessed ~~and managed~~ before it is subdivided, used or developed to mitigate adverse effects on human health. The NESCS sets out the activity status for subdivision, use and development of land.

The District Council Plan does not contain any rules for the subdivision, use or development of contaminated land as this is regulated ~~implements resource consents~~ under the NESCS. The District Plan does, however, provide the relevant as the NESCS does not contain any objectives or policies relating to contaminated land, noting that none are provided by the NESCS the District Plan will apply.

Regional councils identify and monitor contaminated land. The Regional Council has recorded potentially contaminated land in the LLUR, which is a public database of land with a history of potentially hazardous activities or industries. The information in the LLUR is used by territorial authorities to identify land that is or has been used for a hazardous activity or industry, when

preparing Land Information Memoranda and when assessing applications for resource consent.

The Regional Council is ~~also~~ responsible for the avoidance, remediation, or mitigation of adverse effects from the use of contaminated land within the CMA and within the beds of lakes and rivers and the avoidance, remediation, or mitigation of adverse effects from discharges of contaminants into or onto contaminated land, air or water.

The provisions in this chapter are consistent with the matters in Part 2 - District Wide Matters - Strategic Directions and give effect to matters in Part 2 - District Wide Matters - Urban Form and Development

- 1.5 The Fuel Companies consider that Objective CL-O1 should seek the protection of human health and environment which is consistent with the NESCS and better aligns with CL-P2. In addition, the use of 'adversely affect' does not appropriately enable outcomes where adverse effects may be acceptable. This could be addressed by amending CL-O1 as follows:

The subdivision, use and development of contaminated land is managed to protect human health ~~does not adversely affect people, property, and the environment.~~

- 1.6 The Fuel Companies also seek that CL-P2 is amended to better reflect that remediation is one of a range of options to help manage contaminated land and to ensure that the policy intent aligns with the NESCS, noting that the NESCS does not require avoidance of all effects. This could be achieved by amending CL-P2 as follows:

Require applications for subdivision, use or development of contaminated land, or potentially contaminated land, to apply a good practice approach include an to the investigation management of the risks to remediate the contamination, or manage activities on contaminated land, to protect the human health of people and the environment. The remediation or mitigation works for contaminated land shall be undertaken in such a way to not pose further risk to human health or the environment than if remediation had not occurred.

- 1.7 The Fuel Companies oppose policy CL-P3 as it explicitly discourages the disturbance of contaminated land which is often the first step in identifying and assessing risk. While an allowance is made for disturbance associated with remediation, as set out above, remediation is only one method of addressing potential effects associated with contaminated land and disturbance may be necessary for a range of other reasons, for instance instatement of sealed surfaces. The Fuel Companies consider that any risk or effects associated with earthworks and/or disturbance can be appropriately addressed by the intent of policy CL-P2 and, as such, consider policy CL-P3 be deleted.

~~Discourage the disturbance of contaminated land, unless for the purpose of contamination remediation, where the level, type and toxicity of the contamination could adversely affect natural values~~

- 1.8 The Fuel Companies also consider that the intent of policy CL-P4 is effectively provided by CL-P2 which seeks to apply good environmental practices to effectively manage risk and effects. It is also assumed that this policy seeks to manage land fill activities which would be more appropriately dealt with under the relevant zone provisions. The Fuel Companies also seek this policy be deleted:

~~Avoid adverse effects on the health of people and the environment from the disposal of soil from contaminated land.~~

SCHEDULE C – EARTHWORKS

C.1 The specific parts of the Proposed Plan that are subject of this submission are:

- **SUPPORT** – EW – Introduction
- **SUPPORT** – Objective EW-O1
- **SUPPORT** – Policies EW-P1 to EW-P6
- **SUPPORT** – Rules EW-R1 to EW-R11
- **SUPPORT** – Land disturbance definition
- **SUPPORT** – Earthworks definition

C.2 The reason for the submission and the relief sought are:

- 1.1 This chapter recognises, in Advice Note EW-AN1(4), that earthworks managed under the NESCS (and National Environmental Standard for Plantation Forestry) are not subject to District Plan provisions except for where the District Plan deals with ‘terms or conditions not covered by the NESCS or in the circumstances where the District Plan is allowed to be more stringent’. The Fuel Companies support the recognition that earthworks relating to contaminated land are primarily regulated under the NESCS but do not consider the note provides clarity re the application of the provisions to contaminated and potentially contaminated land.
- 1.2 This clarity is important to the Fuel Companies as service stations and refuelling facilities are a HAIL activity and are therefore subject to the NESCS. In particular, the NESCS provides a potential permitted activity pathway for the removal and replacement of fuel storage systems and the disturbance and removal of soil, subject to compliance with certain standards and reporting requirements. While these activities are controlled by and subject to the NESCS, the Fuel Companies are concerned that the wording of the advice note may be interpreted as meaning the earthworks provisions extend to any matters not specifically addressed in the NESCS. For example, standard EW-S5 of the proposed plan seeks to control the height and depth of excavation and filling where there is no corresponding control in the NESCS. Further, rule EW-R8 would not apply to service station assets as these are not clearly encompassed by the proposed plan (and RMA) definition of infrastructure.
- 1.3 The Fuel Companies seek that the note be amended to provide clarity that the provisions do not apply to activities specifically regulated under the NESCS, particularly tank removal and replacement and sampling of contaminated land. This reflects that these activities are adequately controlled by the NESCS. This could be achieved by amending the note as follows:

The NESPF regulates earthworks for forestry purposes, and the NESCS manages the effects on human health from the disturbance or removal of contaminated soil. Earthworks managed under the NESCS and NESPF are not subject to provisions in this chapter other than where the District Plan deals with terms and conditions not covered in the NES or in the circumstances where the District Plan is allowed to be more stringent. The District Plan can be more stringent than the NESPF for forestry in outstanding natural features and landscapes, and SNAs.

The NESPF regulates earthworks for forestry purposes, and the NESCS regulates and manages the effects on human health from the disturbance or removal of contaminated soil. Specific activities (i.e. Soil sampling and removing or replacing fuel storage systems) are regulated under the NESCS and Earthworks managed under the NESCS and NESPF are not subject to provisions in this chapter. other than where the District Plan deals with terms and conditions not covered in the NESPF or in the circumstances where the District Plan is allowed to be more stringent. The District Plan can be more stringent than the NESPF for forestry in outstanding natural features and landscapes, and SNAs.

- 1.4 The Fuel Companies also seek that the provisions take a consistent and effects based approach to temporary earthworks, and as a minimum provide a clear permitted activity pathway for land disturbance¹ for the operation, maintenance and upgrade of existing underground assets that applies more broadly than infrastructure as defined. Given the proposed plan defines land disturbance and earthworks² but then focuses on the latter, it may be that this is the intent but certainty in that regard is required. This could be achieved by providing a new rule as follows:

EW-R12 Earthworks associated with operation, maintenance, removal or replacement of existing underground assets

(Permitted) where:

- 1. EW-S3, EW-S4, EW-S6 and EW-S7 are met; and*
- 2. The disturbance does not permanently alter the profile, contour or height of the land;*

Activity status when compliance is not achieved: RDIS

EW-MD1

EW-MD2

EW-MD3

EW-MD4

EW-MD5

EW-MD6

EW-MD7

EW-MD8

¹ Land Disturbance is defined in the proposed plan as follows:

Land disturbance means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) that does not permanently alter the profile, contour or height of the land

² Earthworks is defined in the proposed plan as follows:

means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fence posts.