

**NOTICE OF SUBMISSION BY THE OIL COMPANIES: Z ENERGY LIMITED,
MOBIL OIL NEW ZEALAND LIMITED AND BP OIL NEW ZEALAND
LIMITED TO THE NOTIFIED PROPOSED PORIRUA DISTRICT PLAN FOR
PORIRUA CITY COUNCIL PURSUANT TO CLAUSE 6 OF THE FIRST
SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991**

To: Proposed District Plan, Environment and City Planning, Porirua City Council

By Email: dpreview@porirua.govt.nz

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Hereafter referred to as the Oil Companies

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A. INTRODUCTION

1. Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (*the Oil Companies*) receive, store and distribute refined petroleum products. The core business of the Oil Companies is the operation and management of their individual service station networks, commercial refuelling facilities and bulk storage (*terminal*) facilities. The Oil Companies also supply petroleum products to individually owned businesses. Collectively, there are 11 operational service stations and one truck stop within Porirua City.
2. The Proposed District Plan addresses a wide range of topics. This submission is focused on those issues that the Oil Companies consider may inappropriately restrict or limit their existing and future operations.

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

3. This submission relates specifically to the following provisions of the proposed plan:
 1. Part 1: Introduction and General Provisions: Interpretation
 2. Part 2: District-Wide Matters: CL- Contaminated Land
 3. Part 2: District-Wide Matters: HAZ- Hazardous Substances
 4. Part 2: District-Wide Matters: NH-Natural Hazards
 5. Part 2: District-Wide Matters: EW- Earthworks
4. The specific provisions submitted on, the rationale for the Oil Companies submission on each of these matters and relief sought is contained within the attached Table. Changes sought to the provisions are shown by deletion in ~~striketrough~~ and addition in underline.
5. In addition to the specific outcomes sought in the attached Table, the Oil Companies also seek the following general relief:
 - a. Address the relevant provisions in Sections 5-8 RMA;
 - b. Give effect to the relevant provisions of the Greater Wellington Regional Policy Statement (RPS) whilst remaining consistent with relevant provisions of the Wellington Regional Plans;
 - c. Implement and apply the statutory tests in Section 32 and the requirements in the First Schedule RMA;
 - d. Only address relevant statutory functions.
 - e. Ensure there is no duplication of other regulation that could give rise to double jeopardy or more than one rule being required for the same activity;
 - f. Avoid, remedy or mitigate the relevant and identified environmental effects; and
 - g. Make any consequential relief as required to give effect to this submission, including any consequential relief required in any other sections of the Proposed District Plan that are not specifically subject of this submission but are required to ensure a consistent approach is taken throughout the document; and
 - h. Any other relief required to give effect to the issues raised in this submission.

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

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

8. THE OIL COMPANIES COULD NOT GAIN AN ADVTANGE IN TRADE COMPETITION THROUGH THIS SUBMISSION.

9. THE OIL COMPANIES ARE DIRECTLY AFFECTED BY AN EFFECT OF THE SUBJECT MATTER OF SUBMISSION THAT –
- a. ADVERSELY AFFECTS THE ENVIRONMENT; AND
 - b. DOES NOT RELATE TO TRADE COMPENETION OR THE EFFECTS OF TRADE COMPETITION.

Dated at Auckland this 20th day of November 2020.

Signature of person authorised to sign on behalf of the Oil Companies



Katherine Exeter
Senior Planning and Policy Consultant

Section/Sub-section/Provision	Support/Support in Part/Oppose	Submission	Relief Sought
Part 1: Introduction and General Provisions			
Interpretation – Definitions			
<p>Residual risk is the level of risk that remains after mitigation measures have been undertaken. Therefore, the Oil Companies seek that the definition of residual risk to be amended and appropriately worded as follows:</p> <p><i>Residual Risk: means, in relation to the Hazardous Substances chapter, <u>the level of any remaining</u> risk of an adverse effect after other industry controls (including mitigation), legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work (Hazardous Substances) Regulations 2017, and regional planning instruments have been complied with.</i></p>			
Part 2: District-Wide Matters: CL- Contaminated Land			
CL- Objectives and Policies			
<p><i>CL-01</i> <i>Contaminated land is identified and made safe for its intended use and human health before any subdivision, change of use or development.</i></p>	Support in part	<p>It is considered that the intent is generally appropriate however, the objective introduces a temporal requirement in that land needs to be made safe before any development. This is not always necessary or appropriate. Risk needs to be managed and there may be different levels of risk over time. For example, land could be suitable for residential use but there may be a potential maintenance and excavation worker risk for anyone digging the ground and installing services at a later date. This may mean certain precautions or mitigations need to be maintained or put in place post development. These are often managed through a Site Management Plan. The proposed amendment better reflects Policy CL-P2.</p>	<p>Retain intent of the objective, however, provide further clarity that the intent of the objective relates to ensuring there is a level of management of any contamination (and which may need to be ongoing) relative to the sensitivity of the intended use.</p> <p>This could be achieved by way of the following wording:</p> <p><i>Contaminated land is identified and made-managed so that <u>any residual human health risk is and remains acceptable and safe for its intended use and human health before any subdivision, change of use or development.</u></i></p>
<i>CL-P1</i>	Support	<p>This policy as worded is appropriate and aligns with the outcomes sought under the National Environmental Standard for Assessing and Managing</p>	Retain intent of the policy as currently worded.

		Contaminants in Soil to Protect Human Health Regulations 2011 (NESCS).	<i>At the time of subdivision, change of use or development, identify sites that may be subject to potential contamination as a result of historical land uses and activities.</i>
CL-P2	Support	This policy as worded is appropriate. Particular regard to management options and best practice remediation options that ensure no significant risk to human health, whilst ensuring the land is suitable for its intended use is supported.	<p>Retain intent of the policy as currently worded.</p> <p><i>Minimise the risk to people from the subdivision, change of use and development of land that may or does contain elevated levels of contaminants by:</i></p> <ol style="list-style-type: none"> <i>1. Enabling site investigations to better understand the type and level of contaminants present;</i> <i>2. Having particular regard to management measures proposed, which may include remediation, containment, or disposal of contaminated soil;</i> <i>3. Applying a best practice approach to remediation that does not pose a more significant risk to human health than if the remediation had not occurred; and</i> <i>4. Ensuring the land is suitable for its intended use.</i>
CL-P3 <i>Recognise that the treatment and remediation of contaminated land can provide positive social, economic and health effects for people and the community.</i>	Support in part	The intent of this policy is appropriate. Reference to the management is considered necessary to enable a broader suite of options for dealing with contaminated land. Management can be an essential component of ensuring positive social, economic and health outcomes for people and communities, as prescribed within the NESCS.	<p>Retain intent of the objective, however, provide further clarity that the intent to provide for positive social, economic and health effects requires suitable management of contaminated land in achieving those outcomes.</p> <p>This could be achieved by way of the following wording:</p> <p><i>Recognise that the <u>management</u>, treatment and remediation of contaminated land can provide positive social, economic and health effects for people and the community.</i></p>
Rules	Support	It is appropriate to rely on the provisions of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (NESCS) for consistency, efficiency and to avoid duplication of provisions and process.	<p>Retain the intent of the wording as drafted, with rules being addressed under the existing NESCS framework.</p> <p><i>Note: As the NESCS provides a complete framework of rules that deal with assessing and managing contaminated soils, the District Plan does not contain any independent or</i></p>

			<p>separate set of rules or assessment matters. The Council is required to enforce the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 pursuant to section 44A(8) of the RMA.</p>
<p>Part 2: District-Wide Matters: HAZS- Hazardous Substances</p>			
<p>Objectives</p>			
HAZS-O1	Support	<p>The Oil Companies support the intent of Objective HAZS-O1. However, it is not considered appropriate to protect a value or place from residual risk (i.e. after mitigation has occurred) - the test has to be about the acceptability of the risk rather than whether there is zero risk. International risk acceptance criteria (especially those used in NZ in the absence of specific NZ derived criteria) generally establish different levels of acceptable risk for different environments. A zero-risk objective would mean that there may be no pest control allowed in the area for example.</p>	<p>Retain the intent of Objective HAZS-O1, however remove reference to residual risk and refer to the acceptability of a risk as follows:</p> <p><i>People and the identified values and qualities of the Overlays in Schedules 2 to 11 are protected from <u>any unacceptable level of residual risk</u> of the use, storage and disposal of hazardous substances.</i></p>
HAZS-O2	Support	<p>The Oil Companies support the intent of Objective HAZS-O2.</p>	<p>Retain the intent of Objective HAZS-O2.</p> <p><i>Established activities using, storing or disposing of hazardous substances are not compromised by sensitive activities.</i></p>
HAZS-P1	Support	<p>The intent of HAZS-P1 is supported. It is appropriate to rely on existing regulations provided for under WorkSafe and the HSNO Act requirements.</p>	<p>Retain the intent of Policy HAZS-P1 as currently worded.</p> <p><i>Recognise the role of national and regional organisations, including the Environmental Protection Authority, WorkSafe and Wellington Regional Council, in managing hazardous substances at the district, regional and national levels, and avoid regulating hazardous substances where an adequate level of human health and environmental protection is already provided.</i></p>

HAZS-P2	Support in part	The intent of Policy HAZS-P2 is supported. However, use of the word avoid at the start of the sentence is somewhat contrary to the intent of the policy, as it then further seeks to remedy and mitigate residual risks to an acceptable level.	<p>Clarify the intent of policy HAZS-P2 to ensure that the risk arising from the use, development, as well as the operation and maintenance of established hazardous facilities, remains at acceptable levels.</p> <p>This could be achieved by making changes along the following lines:</p> <p><i>Avoid use and development which uses, stores or disposes of hazardous substances from locating in areas where they may adversely affect the health and wellbeing of people and communities, unless they can <u>it can be demonstrated</u> that the residual risk to people and communities will be avoided, <u>or where avoidance is not practicable, remedied or mitigated to an acceptable level.</u></i></p>
HAZS-P3	Oppose	Policy HAZ P3 is not supported as it requires avoidance of residual risk. This is nonsensical, as by its on nature, residual risk is the risk that remains after mitigation is applied. The wording as stated effectively requires a zero-tolerance approach and would result in unintended impediments. For example, how would you demonstrate that a gas connection to an historic building does not pose a potential risk to that building?	<p>This could be achieved by making changes along the following lines:</p> <p><i>Avoid use and development which uses, stores or disposes of hazardous substances, from locating within the following areas, unless it can be demonstrated that the residual risk to the identified values and qualities of these areas will be avoided, or where avoidance is not practicable, remedied or mitigated <u>is acceptable.</u></i></p>
HAZS-P4	Support in part	The intent of Policy HAZS-P4 is supported.	<p>Retain the intent of the Rule as currently worded.</p> <p><i>Avoid locating sensitive activities in areas which provide for activities which use, store or dispose of hazardous substances.</i></p>
Rules	Support	It is appropriate to rely on existing regulations provided for under WorkSafe and the HSNO Act requirements	<p>Retain the intent of the Rule as currently worded.</p> <p><i>There are no rules in this chapter.</i></p>

Part 2: District-Wide Matters: NH-Natural Hazards			
NH – Introduction			
The Oil Company’s support the intent and clarification on the application of the NH rules by: <i>“If the building or the activity is not partially or fully located within the Natural Hazard Overlay, then the natural hazard rules will not be triggered”.</i>			
NH- Objectives and Policies			
<i>NH-O1 Risk from natural hazards</i>	Support	In general, the Oil Companies support the intent of this objective.	<p>Retain intent of NH-O1 as currently worded</p> <p><i>Subdivision, use and development in the Natural Hazard Overlay do not significantly increase the risk to life or property and do not reduce the ability for communities to recover from a natural hazard event.</i></p>
<i>NH-O2 Planned mitigation works</i>	Support	In general, the Oil Companies support the intent of this objective.	<p>Retain intent of NH-O2 as currently worded</p> <p><i>There is reduced risk to life and property from flood hazards through planned mitigation works..</i></p>
<i>NH-P1 Identification and mapping of natural hazards</i>	Support	In general, the Oil Companies support the intent of this policy. A risk-based approach to the management of use and development of sites within an area subject to natural hazards is appropriate.	<p>Retain intent of NH-P1 as currently worded</p> <p><i>Identify and map natural hazards in the Natural Hazard Overlay and take a risk-based approach to the management of subdivision, use and development within the Natural Hazard Overlay based on the approach outlined in APP10 - Natural Hazard Risk Assessment, including:</i></p> <ol style="list-style-type: none"> <i>1. The sensitivity of the activity to loss of life, damage from a natural hazard and the ability for communities to recover after a natural hazard event; and</i> <i>2. The level of risk presented to people and property from a natural hazard.</i>
Part 2: District-Wide Matters: EW- Earthworks			
EW Objectives and Policies			

<p><i>EW-01</i></p>	<p>Support</p>	<p>The intent of this objective is supported, however it is important to recognise that earthworks are also necessary throughout the function and operation of an existing use, and that equipment does require replacement from time to time to protect the safety of people and property. For example, re-tanking of underground petroleum storage systems is required from time to time.</p> <p>It is also important to note that such works are already subject to the requirements of the NESCS, which provides an appropriate level of regulation over the removal and replacement of underground petroleum storage systems, irrespective of whether they occur at a service station or another type of site. There are standard practices and procedures that apply, with specialised and experienced contractors employed.</p>	<p>Retain the intent of EW-01</p> <p><i>Earthworks are undertaken in a manner that:</i></p> <ol style="list-style-type: none"> <i>1. Is consistent with the anticipated scale and form of development for the zone;</i> <i>2. Minimises adverse effects on visual amenity values, including changes to natural landforms;</i> <i>3. Minimises erosion and sediment effects beyond the site and assists to protect receiving environments, including Te Awarua-o-Porirua Harbour;</i> <i>4. Protects the safety of people and property; and</i> <i>5. Minimises adverse effects on the National Grid and the Gas Transmission Pipeline.</i>
<p>EW- Effects Standards</p>			
<p><i>EW-S1 Earthworks Area</i></p>	<p>Support in part</p>	<p>In general, the Oil Companies support the intent of this standard as worded. However, it is considered that a further exemption be provided for anticipated earthworks associated with underground petroleum storage.</p> <p>Repair and replacement of fuel storage tanks are undertaken as necessary to ensure health and safety regulations for the storage of hazardous substances are complied with. Repair and replacement works would typically require 250-400m² of earthworks.</p> <p>The standards as written, would impose the ongoing need for The Oil Companies (and others) to obtain resource consent for such works where they occur within the Residential, Settlement or</p>	<p>Retain the intent of this standard, however, provide an exemption for the repair, maintenance and installation of anticipated works within the residential, settlement and neighbourhood centre zone, as follows:</p> <p>[Within the] Residential Zones; Settlement Zone; Neighbourhood Centre Zone:</p> <ol style="list-style-type: none"> <i>1. The area of earthworks must not exceed 250m in any 12 month period per site.</i> <p><i>The following are exempt from the maximum area standard:</i></p> <ul style="list-style-type: none"> • <i>Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool;</i> <i>and</i>

		<p>Neighbourhood Centre Zone. This is considered unreasonably onerous as these associated earthworks are already managed under the NESCS provisions. The NESCS requires land stability, erosion, sediment and contamination risks to be mitigated and minimised to an acceptable level. Outcomes sought under the NESCS are consistent with the outcomes sought by the proposed district plan, as referenced by the matters of discretion.</p> <p>It is therefore appropriate to include an exemption in this instance, where 400m² of anticipated earthworks are otherwise permitted within alternative zones, and additionally managed and assessed under the requirements of the NESCS.</p>	<ul style="list-style-type: none"> • <i>Earthworks for interments within existing cemeteries or urupā.</i> • <i><u>Earthworks up to 400m² associated with the construction, replacement, maintenance and repair of underground petroleum storage systems.</u></i>
<p><i>EW-S2 – Earthworks – Height, location and slope</i></p>	<p>Support in part</p>	<p>It is not clear if the intent of this standard is to ensure any effects of permanent cut and fill are acceptable. The rule as currently drafted suggests that any cut or fill needs to adhere to the effects standard otherwise consent is required. In some instances, cut and fill activities may be temporary in nature and not result in any final change to ground level (e.g., Installation/ replacement of stormwater devices tank replacement activities)</p> <p>The Oil Companies seek the rule: Be amended to provide clarity that, any temporary cut and fill that does not result in a change in ground level, is excluded from this standard and there be specific exemptions for excavation for underground petroleum storage systems.</p>	<p>Retain the intent of this standard, however, provide clarity that this does not apply to temporary cut and fill that does not change ground levels once completed.</p> <p>This could be achieved by the following amendments:</p> <p><i>1. Earthworks must not:</i></p> <ol style="list-style-type: none"> <i>Exceed a cut height or fill depth of 1.5m measured vertically; or</i> <i>Be located within 1.0m of the site boundary, measured on a horizontal plane; or</i> <i>Be undertaken on an existing slope with an angle of 34° or greater.</i> <p><i>The following are exempt from the height, location and slope standard:</i></p> <ul style="list-style-type: none"> • <i>Earthworks for interments within existing cemeteries or urupā.</i>

			<ul style="list-style-type: none">• <u>Earthworks for the maintenance, replacement or upgrade of underground petroleum storage systems</u> <p><u>Note: This standard does not apply to temporary cut and fill if it does not result in a change to ground level once completed.</u></p>
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