

20 January 2022

Hearing Administrator
Porirua City Council

By e-mail: dpreview@pcc.govt.nz

RE: HEARING STREAM 4 TO THE PROPOSED PORIRUA DISTRICT PLAN - HEARING STATEMENT ON BEHALF OF THE OIL COMPANIES

1. INTRODUCTION

- 1.1 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*) and represents their views. It is not expert evidence. The Oil Companies will not be attending the hearing but ask that this Hearing Statement be tabled before the Panel.
- 1.2 The Oil Companies (submitter 123 and further submitter 49) made submissions and further submissions re earthwork and sign provisions within the Proposed Porirua District Plan (*PDP*). These submissions have been allocated to hearing stream 4.
- 1.3 The Oil Companies generally support or accept the Reporting Planner's s42A recommendations which is reflected in Attachment 1 to this hearing statement. There is one recommendation which the Oil Companies do not accept and that is addressed below.

2. EW-S2 - Height, Location and Slope

- 2.1 The Oil Companies' submission (123.21) sought to amend EW-S2 to exclude earthworks for the maintenance, replacement, or upgrade of underground petroleum storage systems. The submission also sought to clarify EW-S2 by excluding any temporary cut and fill activities that do not result in any change to ground level. The amendments below were sought (additions underlined):

The following are exempt from the height, location and slope standard:

...

Earthworks for the maintenance, replacement or upgrade of underground petroleum storage systems.

Note: This standard does not apply to temporary cut and fill if it does not result in a change to ground level once completed.

- 2.2 The Reporting Planner has rejected the relief sought by the Oil Companies and proposed to retain EW-S2 as drafted. The Reporting Planner has raised particular concern with the NESCS not addressing matters covered by the district plan earthworks provisions, for example the stability of cuts and fills. In addition, the Reporting Planner rejected the exclusion of temporary cut and fill activities from EW-S2, stating:

'...the amendment sought to the standard would not be specific to any particular activity but would exclude all 'temporary' cut and fill earthworks. This may create consequential unanticipated perverse outcomes and potentially significant effects.'

2.3 A number of amendments have, however, been proposed to EW-S2 in response to other submissions (additions in underline):

1. *Earthworks must not:*

- a. *Exceed a cut height or fill depth of 1.5m measured vertically; or*
- b. *Be located within 1.0m of the site boundary, measured on a horizontal plane; or*
- c. *Be undertaken on an existing slope with an angle of 34° or greater.*

The following are exempt from the height, location and slope standard:

- *Earthworks for interments within existing cemeteries or urupā;*
- *Earthworks for the construction, alteration or decommissioning of bores, including geotechnical investigation and monitoring bores, undertaken in accordance with NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock;*
- *Earthworks for sampling of soil permitted under Regulation 8(2) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011; and*
- *Earthworks for test pits where the depth of the test pit does not exceed the distance of the test pit hole at ground level to the nearest site boundary, and the test pit is backfilled and compacted, and the surface reinstated upon completion of the sampling or investigative works.*

Test pit: means a temporary hole in the ground excavated in order to investigate the conditions below the ground surface, including geological, hydrological, or soil contamination conditions.

2.4 The Oil Companies accept that there may be some instances where controls on temporary cuts and fills may be appropriate but do not consider this is necessary in terms of the removal, replacement, and upgrade of underground assets, or at least removal and replacement of fuel storage systems, subject to appropriate setbacks.

2.5 The Oil Companies also do not accept the requirement in EW-S2 for any earthworks within 1m of the site boundary to require resource consent, especially where they are temporary. If retained, the Oil Companies consider the standard needs to be linked to excavation depth relative to site boundary to avoid a scenario whereby there are no earthworks permitted within 1m of a site boundary. To do otherwise will impact on the ability to undertake a range of day-to-day activities, like installation and maintenance of landscaping.

2.6 The Oil Companies consider that these matters could be appropriately addressed by amending the proposed exemption for test pits to also provide for the removal and replacement of underground assets where excavations do not extend through a 45-degree plane from the site boundary. Further, the Oil Companies consider it appropriate that there is a specific exemption for sheet piled excavations that maintain stability and safety of surrounding land, buildings, and structures. These matters could be addressed by amending EW-S2 as follows (additions underlined, deletions in strikethrough):

Earthworks for test pits and the removal, replacement, or upgrade of underground assets provided excavations exceeding 1 metre do not extend through a 45-degree plane from the ~~where the depth of~~

~~the test pit does not exceed the distance of the test pit hole at ground level to the nearest site boundary, and the test pit excavation is backfilled and compacted, and the surface reinstated upon completion of the sampling or investigative works~~

...

Earthworks are sheetpiled to maintain the stability and safety of surrounding land, buildings, and structures.

- 2.7 Thank you for your time and acknowledgement of the issues raised in the Oil Companies' submissions. Please do not hesitate to contact the writer on 027 5101 097 should you wish to clarify any matters addressed herein.

Kind regards,



Sophie Brocklesby
Planning and Policy Consultant
4Sight Consulting Ltd

ATTACHMENT 1. HEARING STREAM 4: EARTHWORKS AND SIGNS

Part 2: District-Wide Matters: EW-Earthworks						
Submission Number	Notified Provision	Support/Oppose	Rationale	Relief Sought with additions in underline, deletions in strikethrough (alternative relief may achieve the same outcome)	S42a Recommendation	OilCo Recommendation
EW: Objectives						
123.19	EW-01	Support	The intent of EW-01 is supported.	Retain the intent of EW-01	<p>Accept the submission and amend EW-01 in response to other submitters.</p> <p>Amendment is considered more appropriate in achieving the objectives of the PDP than the notified provisions.</p> <p>Amend to: Earthworks are undertaken in a manner that:</p> <ol style="list-style-type: none"> 1. Is consistent with the anticipated scale and form of development for the zone; 2. Minimises adverse effects on visual amenity values, including changes to natural landforms; 3. Minimises erosion and sediment effects beyond the site and assists to protect receiving environments, including Te Awarua-o-Porirua Harbour; 4. Protects the safety of people, and property <u>and infrastructure</u>; and 5. Minimises adverse effects on <u>Does not compromise</u> the National Grid and or the Gas Transmission Pipeline. 	Support the recommendation
123.20	EW-S1 Earthworks Area	Support in part	<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. The standard as written would impose the ongoing need for the Oil Companies to obtain resource consent in the residential, settlement and neighbourhood centre zone.</p> <p>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>	<p>Amend EW-S1 to: [Within the] Residential Zones; Settlement Zone; Neighbourhood Centre Zone:</p> <p><i>1. The area of earthworks must not exceed 250m in any 12-month period per site.</i></p> <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> • <i>Earthworks for interments within existing cemeteries or urupā.</i> • <u>Earthworks up to 400m² associated with the construction, replacement, maintenance, and repair of underground petroleum storage systems.</u> 	<p>Council accepts relief sought by the Oil Companies and amends EW-S1 as sought. Council added a new definition of 'fuel storage system' (same as NESCS).</p> <p>Council notes that the NESCS only applies to soil which has less scope than the definition of earthworks in the NPS which means the alteration of disturbance to land.</p> <p>The amendment ensures that activities undertaken in accordance with NESCS can be undertaken without triggering the earthworks standard.</p>	Support the recommendation

123.21	EW-S2 – Earthworks – Height, Location and Slope	Support in part	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>Retain the intent but amend to clarify that this does not apply to temporary cut and fill that does not change ground levels.</p> <p>Amend to:</p> <p>1. <i>Earthworks must not:</i></p> <p>a. <i>Exceed a cut height or fill depth of 1.5m measured vertically; or</i></p> <p>b. <i>Be located within 1.0m of the site boundary, measured on a horizontal plane; or</i></p> <p>c. <i>Be undertaken on an existing slope with an angle of 34° or greater.</i></p> <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> <i>Earthworks for the maintenance, replacement or upgrade of underground petroleum storage systems</i> <p><i>Note: This standard does not apply to temporary cut and fill if it does not result in a change to ground level once completed.</i></p>	<p>Council rejects the submission</p> <p>Geotechnical advice notes that temporary cut and fill may have adverse effects on land stability.</p> <p>There is no definition of ‘temporary’ or duration limitations. Other activities that fit within the definition of ‘temporary’ which would be more questionable and therefore open to interpretation.</p> <p>The Council states that since the Oil Companies do not seek a definition or other durations of limitations on temporary cut and fill, this would introduce significant uncertainty around classifying permanent and temporary.</p>	See hearing statement
Further Submission						
Kainga Ora 81.488 Oil Companies FS49.3	EW-R1	Oil Companies Support Kainga Ora’s submission in part	The Oil Companies believed EW-R1 should also include additional exemptions in line with the Oil Companies original submissions in relation EW-S1 & S2.	<p>Kainga Ora sought the amendments below to ensure site works will not negate non-notification clauses relevant to other matters of a development proposal requiring resource consent.</p> <p>Amend:</p> <p>Activity status: Permitted</p> <p>Where: Compliance is achieved with:</p> <ol style="list-style-type: none"> EW-S1; EW-S2; EW-S3; EW-S4; and EW-S5. <p>For the avoidance of doubt this rule applies to all earthworks, except EW-R2 and EW-R3</p> <p><u>Note: In addition to those activities exempted by the Earthworks definition, the rules in this chapter do not apply to:</u></p> <p>.....</p> <ul style="list-style-type: none"> <u>earthworks regulated under a national environment standard, including but not limited to, the National Environmental Standards for Electricity Transmission Activities 2009, National Environmental Standard for Assessing and Managing</u> 	<p>Reject Kainga Ora submission and amend EWR1 and EWS2 and addition of an associated definition of ‘test pit’.</p> <p>Council states that it is not appropriate to include a rule precluding notification. The standards in the NESCS address the disturbance of soil but not the effect of earthworks more generally. Council amends to include an exclusion for sampling soil</p> <p>Amend EW-R1 to:</p> <p>...</p> <p>Note: For the avoidance of doubt this rule applies to all earthworks, except EW-R2 and EW-R3.</p> <p>2. Activity status: Restricted discretionary</p> <p>Where:</p> <ol style="list-style-type: none"> Compliance is not achieved with EW-S1, EW-S2, EW-S3, EW-S4 or EW-S5. <p>Rules</p> <p>...</p>	Accept the recommendation

				<p><u>Contaminants in Soil to Protect Human Health 2011, National Environmental Standards for Telecommunication Facilities 2016 and National Environmental Standards on Plantation Forestry 2017, unless otherwise subject to a rule in this Plan.</u></p> <p>2. Activity status: Restricted discretionary</p> <p>Where:</p> <p>a. Compliance is not achieved with EW-S1, EW-S2, EW-S3 or EW-S4.</p> <p>Matters of discretion are restricted to:</p> <p>1. The matters of discretion of any infringed standard.</p> <p><u>Notification: An application under this rule is precluded from being publicly or limited notified in accordance with sections 95A and 95B of the RMA.</u></p>	<p>The Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 (“NESPF”) prevails over the rules (including standards) in this chapter for earthworks regulated by the NESPF.</p>	
As above				<p>In response the Kainga Ora 81.488 Oil Companies FS49.3 above, Council also amended EW-R2:</p> <p>The following are exempt from the height, location and slope standard</p> <ul style="list-style-type: none"> • Earthworks for interments within existing cemeteries or urupā.; • <u>Earthworks for the construction, alteration or decommissioning of bores, including geotechnical investigation and monitoring bores, undertaken in accordance with NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock;</u> • <u>Earthworks for sampling of soil permitted under Regulation 8(2) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011; and</u> • <u>Earthworks for test pits where the depth of the test pit does not exceed the distance of the test pit hole at ground level to the nearest site boundary, and the test pit is backfilled and compacted, and the surface reinstated upon completion of the sampling or investigative works.</u> <p>Add a definition for test pit: <u>means a temporary hole in the ground excavated in order to investigate the conditions below the ground surface, including geological, hydrological, or soil contamination conditions.</u></p>		See hearing statement

Part 2: District-Wide Matters: Signs						
Submission and Further Submission Number	Notified Provision	Support/Oppose	Oil Companies’ Rationale	Relief Sought (by submitter) with additions in underline, deletions in strikethrough (alternative relief may achieve the same outcome)	S42a Recommendation	Oil Companies’ Position
Waka Kotahi 82.180 FS49.5	<i>Sign-P4</i>	The Oil Companies oppose Waka Kotahi submission in part	<p>The Oil Companies oppose the relief sought by Waka Kotahi to the extent the proposed amendment potentially unduly restricts all illuminated or digital signage that faces or adjoins a state highway where various examples of illuminated signage have been and may continue to be safely established on sites adjoining a state highway.</p> <p>The Oil Companies consider that certain digital or illuminated signs can be established adjoining state</p>	<p><i>Waka Kotahi sought to amend SIGN-P4 to strengthen policy position on the avoidance of certain signage. The amended policy would read:</i></p> <p><i>2. Controlling sign proliferation, illumination levels, light spill, <u>reflectivity</u>, flashing and moving images and digital signs;</i></p> <p><i>3. Avoiding signs that <u>obscure</u>, imitate, compete with, <u>cause confusion</u> or give instructions that conflict with traffic signs, <u>official road sign</u> or traffic control devices; and</i></p>	<p>Council rejects relief sought by Waka Kotahi noting:</p> <p>Sign-P4.7 is broad in its coverage and application, as it includes any signs that “face” a state highway. This is regardless of distance from the state highway or whether there are intervening buildings, natural or topographical features between the sign and the state highway.</p> <p>Council amends Sign-P4 to:</p>	Support the recommendation

			highway while appropriately managing potential traffic safety effects. The policy should focus on the management of such effects rather than avoidance of signs per se.	<p>4. Allowing <u>Avoiding signs that do not obstruct sightlines when located parallel to the transport network.</u></p> <p>5. <u>Avoiding signs that compromise public health and safety on the transport network.</u></p> <p>6. <u>Avoiding signs that compromise the efficient operation of the transport network.</u></p> <p>7. <u>Avoiding off-site, illuminated or digital signs that face or is adjacent to a state highway</u></p>	<p>Require signs to be designed and located so they do not compromise the safe and unobstructed use of the transport network by:</p> <ol style="list-style-type: none"> 1. Restricting the type, scale, design, and location of signs having regard to the road type and speed environment of a road; 2. Controlling sign proliferation, illumination levels, light spill, <u>reflectivity</u>, flashing and moving images and digital signs; 3. Avoiding signs that <u>obscure</u>, imitate, compete with, or give instructions that conflict with traffic signs or traffic control devices; and 4. Allowing signs that do not obstruct sightlines when located parallel to the transport network. 											
Waka Kotahi 82.193 FS49.6	<i>Sign-R11</i>	The Oil Companies support Waka Kotahi submission in part	The Oil Companies look to ensure the relevant standards and policy position on digital signage adjoining or within view of a state highway are not unduly restrictive and should provide for appropriate management of potential safety risk to the state highway network.	Waka Kotahi supports the activity status for digital signs in the respective zoning under SIGN-R12	Council accepts Waka Kotahi submission and retains Sign-R11 as drafted.	Support the recommendation										
Waka Kotahi 82.212 FS49.7	<i>Sign-S12</i>	The Oil Companies oppose Waka Kotahi submission	<p>The Oil Companies oppose Waka Kotahi as some signs involving digital displays can be established through the appropriate management of potential safety effects to state highway users.</p> <p>Although it is recognised that some digital signs involving image changes, flashing, etc will not be appropriate, others that may be captured by the proposed provisions may be appropriate and can have any potential safety effects appropriately managed.</p>	<p>Waka Kotahi support in part under SIGN-S12 the control of location, operation and display of digital billboards adjacent to state highways to be extended to include all digital billboards which are visible from a state highway.</p> <p>The amended standard would include the following amendments</p> <p>3. Signs with digital displays must not be <u>visible from a state highway</u> or be located on a site that adjoins a state highway. Where the matters of discretion refer to “driver, cyclist and pedestrian safety” this term is sought to be replaced by <u>‘the transport network and its users’</u></p>	<p>Council rejects relief sought by Waka Kotahi, retains Sign-12 as drafted.</p> <p>The use of “visible “is ambiguous in application and consequential regulatory reach and does not account for differences in low-speed commercial urban environments and high-speed rural environments.</p>	Support the recommendation										
Waka Kotahi 82.202 FS49.8	<i>Sign-Table 1</i>	The Oil Companies oppose Waka Kotahi submission	The Oil Companies oppose Waka Kotahi submission as the proposed relief seeks excessive separation distances for free standing signs in identified areas.	<p>Waka Kotahi sought amendment to separation distances between signs under SIGN-Table 1</p> <p>SIGN-Table 1, Freestanding sign <u>minimum</u> separation distances</p> <table border="1"> <thead> <tr> <th>Speed limit of road (km/hr)</th> <th>Separation distance (m)</th> </tr> </thead> <tbody> <tr> <td><u>0-70</u>50</td> <td>50</td> </tr> <tr> <td><u>51-70</u></td> <td><u>60</u></td> </tr> <tr> <td>71-80</td> <td>70</td> </tr> <tr> <td>>80</td> <td>80</td> </tr> </tbody> </table>	Speed limit of road (km/hr)	Separation distance (m)	<u>0-70</u> 50	50	<u>51-70</u>	<u>60</u>	71-80	70	>80	80	<p>Council rejects relief sought by Waka Kotahi and retained Sign-Table 1 as drafted.</p> <p>The rejection is on the basis that Waka Kotahi has not provided any evidence and the amendments sought will have implications on busy urban environments.</p>	Support the recommendation
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Waka Kotahi 82.204 FS49.9	<i>Sign-Table 3</i>	The Oil Companies oppose Waka Kotahi submission	As above	<p>Waka Kotahi sought amendment to distances between signs under SIGN-Table 3</p> <p>SIGN-Table 3,</p>	As above	Support the recommendation										

				<p>Separation distances from a traffic sign, pedestrian crossing, curves with chevron signing, railway crossing or intersection</p> <table border="1"> <thead> <tr> <th>Speed limit of road (km/hr)</th> <th>Separation distance (m)</th> </tr> </thead> <tbody> <tr> <td>0-70</td> <td>50100</td> </tr> <tr> <td>71-80</td> <td>100</td> </tr> <tr> <td>>71</td> <td>200</td> </tr> </tbody> </table>	Speed limit of road (km/hr)	Separation distance (m)	0-70	50100	71-80	100	>71	200		
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