

**BEFORE A HEARINGS PANEL APPOINTED BY THE TIMARU DISTRICT COUNCIL**

**IN THE MATTER OF** the Resource Management Act 1991 (“the Act” or “the RMA”)

**AND**

**IN THE MATTER OF** the submissions of bp Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited on the Proposed Timaru District Plan (“the PDP”)

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**JOINT STATEMENT OF EVIDENCE OF SARAH WESTOBY AND THOMAS TREVILLA  
ON BEHALF OF**

**BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED AND Z  
ENERGY LIMITED (“THE FUEL COMPANIES”)  
(SUBMITTER AND FURTHER SUBMITTER 196)**

**AND**

**Z ENERGY LIMITED (“Z ENERGY”)  
(SUBMITTER AND FURTHER SUBMITTER 116)**

**HEARING D (HAZARDS AND RISKS (EXCLUDING NATURAL HAZARDS) TOPIC)**

**25 OCTOBER 2024**

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## 1. SUMMARY STATEMENT

- 1.1 Our names are Sarah Westoby and Thomas Trevilla. We have prepared this joint statement of planning evidence on behalf of the Fuel Companies.<sup>1</sup> Our evidence relates to the Fuel Companies' submissions on the contaminated land and hazardous substances provisions of the PDP, particularly in the context of activities at their retail fuel outlets (service stations and truck stops) across the Timaru District ("the District") and the two Z Energy fuel storage terminals in Timaru Port which are identified as major hazard facilities ("MHF") under the PDP.
- 1.2 The Reporting Officer's recommendations on the Fuel Companies' submissions are broadly supported; the recommendations not discussed in our evidence are supported and commented on in the table included as Appendix B. Hence, our evidence focusses on the Fuel Companies' submissions, and the Reporting Officer's recommendations, on the following provisions:
- (a) CL-O1 and CL-P3 regarding contaminated land management;
  - (b) HS-P1, HS-R2 and HS-R4 regarding MHF;
  - (c) HS-P4 and HS-R1 regarding hazardous facilities (other than MHF); and
  - (d) the associated definitions.
- 1.3 We support the PDP's general intent to manage contaminated land and hazardous substances in a way that does not overlap with higher-order planning instruments and hazardous substances legislation, nor result in unnecessary resource consent requirements. In that regard, we particularly support and recommend the adoption of the Reporting Officer's amendments to HS-R2. These amendments will provide an appropriate permitted activity pathway for upgrades, additions and alterations of existing MHF that do not increase hazardous substances risk.
- 1.4 However, further amendments are required to the provisions to address the matters raised in the Fuel Companies' submissions, correct errors, and achieve more effective and efficient policy and consenting outcomes. Our recommended relief regarding these provisions are summarised below:
- (a) Retain CL-O1 as notified, as it provides appropriate policy direction, subject to the replacement of "land disturbance" with "soil disturbance" to align with

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<sup>1</sup> Including Z Energy as an individual submitter (submission 116).

the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (“**the NES-CS**”).<sup>2</sup>

- (b) Amend CL-P3 to clarify the policy's intent and differentiate it from CL-P2 where, in particular, “management works” are further explained or described in the policy or elsewhere in the PDP.
  - (c) Adopt the Reporting Officer’s recommended “sensitive locations” definition, subject to the correction of what appears to be a minor error under cl (2)(a).
  - (d) Adopt the Reporting Officer’s recommended amendments to HS-P1, subject to the deletion of cl (4) and making it a separate policy. This is because HS-P1’s policy direction is to avoid the unacceptable risk of MHF whereas as cl (4) has a different policy direction, being the management of the adverse effects of natural hazards on MHF.
  - (e) Adopt the Reporting Officer’s recommended amendments to HS-R1, subject to the exclusion of underground fuel tanks at service stations in some “sensitive locations”, for the reasons discussed in our analysis, and the correction of what appears to be a minor error under PER-2.
  - (f) Amend the title of HS-R4 to delete “additions” because of the amendment to HS-R2 to provide for additions to MHF.
- 1.5 Z Energy, as an individual submitter (116), also requests the deletion of the SHF-7 notation on the PDP Maps as a minor amendment under sch 1 cl 16(2) of the Act.

## **2. INTRODUCTION**

### ***Sarah Louise Cartner Westoby***

- 2.1 My full name is Sarah Louise Cartner Westoby. I have over 13 years of experience in the field of resource management planning. I hold the degree of Bachelor of Planning (Honours) from the University of Auckland. I am a Full Member of the New Zealand Planning Institute.
- 2.2 I am employed as a Principal Planner at SLR Consulting New Zealand Limited (“**SLR**”) (previously 4Sight Consulting Limited). I have been employed by SLR since June 2019. Prior to SLR, I was a Senior Planner at Beca Limited from April

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<sup>2</sup> Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

2017 to June 2019. My previous employment includes local authority regulatory resource consenting roles in both New Zealand and the United Kingdom.

- 2.3 My principal role at SLR is to provide planning, resource management consenting and policy advice to a range of clients in relation to various projects and planning instruments. Of most relevance to this hearing, I have significant experience relating to provisions addressing hazardous substances, MHF, contaminated land, and associated environmental risks including through planning applications relating to refuelling facilities and policy inputs to plan changes and proposed plans throughout New Zealand.<sup>3</sup>
- 2.4 I am broadly familiar with the interface of the Hazardous Substances and New Organisms Act 1996 (“**HSNO**”) and Health and Safety at Work Act 2015 (“**HSWA**”) in relation to the management of hazardous substances.

***Thomas Gabriel Dela Cruz Trevilla***

- 2.5 My full name is Thomas Gabriel Dela Cruz Trevilla. I have over four years of experience in the field of resource management planning. I hold the degree of Bachelor of Urban Planning (Honours) from the University of Auckland. I am an Intermediate Member of the New Zealand Planning Institute.
- 2.6 I am employed as a Senior Planner at SLR. I have been employed by SLR since October 2022. Prior to SLR, I was a Planning Assistant at Barker & Associates Limited from January 2019 to October 2020 and Planner at Babbage Consultants Limited from October 2020 to October 2022.
- 2.7 My principal role at SLR is to provide planning services with a particular focus on the industrial, commercial and infrastructure sectors (fuel, electricity, stormwater and telecommunications). This includes preparing or processing resource consent applications, providing consenting and policy advice, and preparing submissions, hearing statements and evidence. At SLR, I have provided planning services to private, commercial, council and infrastructure clients, including the Fuel Companies, both collectively and separately.
- 2.8 I have provided submissions and hearings services to the Fuel Companies on proposed plans or plan changes in the Far North, Whangārei, Waitomo, Wairarapa

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<sup>3</sup> Such as Plan Change 91: Hazardous Substances to the Whangārei District Plan, Plan Change 78: Intensification to the Auckland Unitary Plan, the Proposed Far North District Plan and the Proposed Wellington City District Plan.

(Masterton, Carterton and South Wairarapa) and Napier districts with a focus, among other topics, on contaminated land and hazardous substances.

### **3. CODE OF CONDUCT FOR EXPERT WITNESSES**

- 3.1 We have read the Environment Court's Practice Note January 2023 as it relates to expert witnesses. Our brief of evidence is prepared in compliance with the Code of Conduct, and we agree to comply with it in appearing before the Hearings Panel. We are not, and will not behave as, advocates for our client. We are engaged by the Fuel Companies as independent experts and SLR provides planning services to the Fuel Companies along with a range of other corporate, public agency and private sector clients. We have no other interest in the outcome of the proceedings.
- 3.2 We confirm that our evidence is within our area of expertise and that we have not omitted to consider material facts known to us that might alter or detract from our expressed opinions. We have not relied on the evidence or opinion of any other person in preparing our evidence.

### **4. SCOPE OF EVIDENCE**

- 4.1 This is a joint statement of evidence. We agree on the analyses, conclusions and recommendations of our evidence.
- 4.2 The Fuel Companies are submitter and further submitter 196 on the PDP. Our evidence relates to the Fuel Companies' submissions on the PDP's contaminated land and hazardous substances provisions, particularly in the context of activities at their retail fuel outlets and fuel storage terminals in the District. We specifically address the following provisions:
- (a) CL-O1 and CL-P3 regarding contaminated land management;
  - (b) HS-P1, HS-R2 and HS-R4 regarding MHF;
  - (c) HS-P4 and HS-R1 regarding hazardous facilities (other than MHF); and
  - (d) associated definitions.
- 4.3 In preparing our evidence, we have reviewed:
- (a) the relevant notified PDP provisions and supporting documents;
  - (b) the relevant submissions and further submissions,

- (c) other planning instruments and documents relevant to our analyses; and
- (d) the s 42A report<sup>4</sup> prepared by Andrew Willis (“**the Reporting Officer**”) on behalf of the Timaru District Council (“**the Council**”).

## **5. OTHER SUBMISSION POINTS**

- 5.1 The Fuel Companies support the Reporting Officer’s recommendations on their submissions on the contaminated land and hazardous substances provisions not discussed in this evidence. These matters are commented on in the table included as Appendix B.
- 5.2 As an individual submitter, Z Energy (submitter 116) supports the Reporting Officer’s recommendation to accept submission 116.15 and delete the SHF-8 notation over the Z Caroline Bay site at 62 Theodosia Street, Timaru. We note that Z Energy’s feedback on the Draft Timaru District Plan (2020) (“**the Draft Plan**”) requested the deletion of the SHF-7 notation over the Caltex Truckstop Washdyke site at 184 Hilton Highway, Washdyke as it was incorrectly applied.<sup>5</sup> As the SHF-7 notation still exists on the PDP Maps, Z Energy requests that the Council deletes this minor error as an amendment under sch 1 cl 16(2) of the Act.

## **6. BACKGROUND**

### ***The Fuel Companies’ interest in Timaru District***

- 6.1 The Fuel Companies receive, store and distribute refined petroleum products around New Zealand. In the Timaru District, the Fuel Companies’ core business relates to retail fuel outlets, including service stations and truck stops, and two Z Energy bulk fuel storage (terminal) facilities in Timaru Port. Under the PDP, the Fuel Companies’ retail fuel outlets and fuel storage terminals are considered “hazardous facilities” and “major hazard facilities”, respectively.

### ***Pre-hearing correspondence***

- 6.2 Pre-hearing correspondence between the Reporting Officer and us has occurred to discuss the Fuel Companies’ submission in further detail to help clarify some of

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<sup>4</sup> Titled ‘Proposed Timaru District Plan Section 42A Report: Contaminated Land and Hazardous Substances Report on submissions and further submissions’ and dated 11 October 2024.

<sup>5</sup> The PDP’s “Major Hazard Facilities” definition requires the facility or activity to be designated by WorkSafe New Zealand as an MHF under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016. As the Z Caroline Bay and Caltex Truckstop Washdyke sites are not designated as such, they are not MHF and should not have the SHF notations.

the submission points. This included a meeting between the Reporting Officer and us on 27 August 2024 followed by emails.

## 7. CONTAMINATED LAND

### *The Fuel Companies' interest in contaminated land provisions*

7.1 The Fuel Companies have an interest in contaminated land provisions as service stations and fuel storage terminals are listed activities on the Ministry for the Environment's Hazardous Activities and Industries List and are often identified on the selected-land use register of regional councils. In addition to regional plan rules, the Fuel Companies' activities typically require a review of the regulations of the NES-CS in relation to soil disturbance or the removal, upgrade or replacement of underground fuel tanks. Where the permitted activity standards cannot be met, the Fuel Companies require resource consent under the NES-CS for activities such as retanking or certain redevelopment works at their sites.

7.2 The Fuel Companies support the PDP's approach of relying on the NES-CS' rules framework while providing a contaminated land chapter that has a corresponding policy framework, but no additional or independent rules, for assessing applications requiring resource consent under the NES-CS.

### ***Submission on CL-O1 (196.44)***

#### *The Fuel Companies' submission*

7.3 Submission 196.44 requested that CL-O1 be retained as notified, while noting that the Fuel Companies' submission 196.43 requested the general replacement of "land disturbance" with "soil disturbance" in the chapter, which includes CL-O1, so that it aligns with the wording of the NES-CS. This submission considered that CL-O1 appropriately focuses on managing contaminated land, and the change of use, soil disturbance, development and subdivision (referred to in the following analysis as "**activities**" for brevity), so that it is safe for human health.

#### *Analysis of the Reporting Officer's recommendation*

7.4 The Reporting Officer recommends this submission be accepted in part as he recommends amendments to CL-O1 based on the Fuel Companies' submission 196.43 and Transpower's submission 159.58. The Reporting Officer's recommended insertions are shown in blue and underlined and deletions in blue and struck through.

CL-O1 Management of contaminated land

~~Contaminated land is made safe for human health and its intended use before any~~  
~~The~~ change of use, ~~land~~ soil disturbance, development or subdivision of  
contaminated land does not result in a risk to human health.

- 7.5 We agree with the replacement of “land disturbance” with “soil disturbance” but disagree with the other amendment which seeks that the activities on contaminated land do not result in a *risk* to human health. The Reporting Officer’s reasoning for this amendment is set out at [6.6.8] of his report:

*Regarding the Transpower [159.58] submission, I consider that this requested wording is clearer and better aligns with the implementing policies. However, I favour wording that does not limit the objective to only where risk has been increased, noting that CL-P3 refers to encouraging a reduction in risk, and therefore recommend that this submission is accepted in part.*

- 7.6 And, at [6.6.15], the Reporting Officer states:

*I consider that the original s32 evaluation continues to apply as this change is minor in nature and does not significantly change the intent of the provision.*

- 7.7 This policy will, primarily, be used when an applicant requires resource consent under the NES-CS and is undertaking an assessment of the relevant planning instruments in accordance with s 104(1)(b) of the Act. The intent of the NES-CS is to manage contaminants to protect human health, and it is, in our view, to manage risks to human health, which is different to not resulting in any risk. While “risk” is undefined by the PDP and the Act, it is widely accepted as the factor of likelihood of something occurring and the consequences of that occurrence (in this case, the level of harm to a receptor or the environment).

- 7.8 Our view is that the existence of risk does not necessarily mean there is an adverse effect, and our understanding is that there must be a pathway for contamination to reach the receptor (in this case, humans) for there to be an adverse effect. What this means is that an activity might have an inherent risk to human health but, if the activity is managed appropriately, the adverse effects from that inherent risk are appropriately avoided or minimised.

- 7.9 Secondly, the amendment is a significant change to CL-O1’s intent. Rather than contaminated land being managed so that it is safe for human health and its intended use, CL-O1 would instead seek that the activities do not result in *any risk* to human health. The Environment Court has established that the Act is not a “no



risk” statute, and that the degree of risk and its acceptability is assessed in the circumstance of each case.<sup>6</sup> The NES-CS tolerates a level of risk through its regulations; this is principally evident through the presence of permitted activities under reg 8 and the absence of prohibited activities. The amendment conflicts with how risk is managed under the Act and NES-CS.

7.10 Thirdly, the amendment conflicts with the chapter’s policies (CL-P1, CL-P2 and CL-P3). These policies, in summary, require contaminated land to be investigated where necessary, managed so that it is safe for its intended use, does not increase human health risks and, in the case of remediation or management works, encouraged to reduce human health risks where possible. None of these policies require activities to avoid, or not result in *any*, human health risks.

7.11 We add that “intended use” in CL-P2 is an important concept that arises from reg 7 of the NES-CS; it is in the context of subdividing or changing the use of land and ensuring that contaminant levels are safe with respect to risk profile or sensitivity of the intended use or user. This varies, for example, for residential activities, industrial activities or, in the Fuel Companies’ case, sealed service station sites. The Reporting Officer’s amendment deletes “intended use” from CL-O1 despite its importance and it being used in the NES-CS and CL-P2.

7.12 In conclusion, we consider that:

- (a) CL-O1 is appropriately drafted as notified subject to the replacement of “land disturbance” with “soil disturbance”; and
- (b) the Reporting Officer’s other amendment to CL-O1 would conflict with how contaminated land and, more broadly, risk is managed by the Act, NES-CS and the PDP’s other contaminated land policies.

*Recommended relief*

7.13 We recommend that CL-O1, as notified, is amended as set out below. Our recommended insertions are shown in red and underlined and deletions in ~~red and struck through~~.

CL-O1 Management of contaminated land
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<sup>6</sup> *Land Air Water Association v Waikato Regional Council A110/01* [2001] NZEnvC 366 at [516] and [519].

Contaminated land is made safe for human health and its intended use before any change of use, ~~land~~ soil disturbance, development or subdivision.

***Submission on CL-P3 (196.47)***

***The Fuel Companies' submission***

- 7.14 Submission 196.47 requested that CL-P3 be retained as notified. This submission considered that the policy appropriately requires that human health risks do not increase, and encourages the reduction of risks where possible, from the remediation or management of contaminated land.

***Analysis of the Reporting Officer's recommendation***

- 7.15 The Reporting Officer recommends this submission be accepted in part and, based on other submissions, recommends amendments to clarify CL-P3. We do not oppose the recommended amendments but, on further consideration, our view is that there is remaining uncertainty regarding the meaning of "management works" and the intent of this policy which is not already addressed by CL-P2.
- 7.16 The Fuel Companies' feedback on the Draft Plan suggested that CL-P3 be deleted as remediation and management works are a form of use and development which are already addressed by CL-P2. While this feedback point is identified in the Versatile Soils and Contaminated Land s 32 report,<sup>7</sup> CL-P3 is not discussed in this report nor are management works explained in this report or PDP.
- 7.17 Remediation and contaminated land management are terms used in the NES-CS and are further discussed in the Ministry for the Environment's Users' Guide.<sup>8</sup> The guide assists those undertaking or assessing activities that are regulated by the NES-CS which has clear definitions for replacing fuel storage systems, soil sampling or disturbance, subdividing or changing use. Remediation and site management activities are undertaken within and as part of those principally defined activities under the NES-CS. Thus, while "remediation" is well-understood, the use of "management works" in HS-P3 is still unclear to us, as to what activities or application types would be relevant to this activity and therefore this policy.

***Recommended relief***

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<sup>7</sup> Page 5 of the report titled "Section 32 Report District Plan Review Versatile Soils and Contaminated Land May 2022" prepared by the Council and dated May 2022.

<sup>8</sup> Ministry for the Environment (2012). Users' Guide: National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (April 2012).

7.18 Given the current uncertainty around CL-P3, we are unable to recommend specific relief or amendments at this time. However, it would be helpful for plan users that CL-P3's intent is made clearer and differentiated from CL-P2, where in particular, "management works" are further explained or described in the policy or elsewhere in the PDP.

## 8. HAZARDOUS SUBSTANCES

### *The Fuel Companies' interest in hazardous substances provisions*

8.1 The Fuel Companies operate retail fuel outlets throughout the district and two Z Energy fuel storage terminals in Timaru Port (see Figure 1) which are listed by the PDP as MHF-3 and MHF-4 of SCHED2 – Schedule of Major Hazard Facilities. The Fuel Companies are required to operate their sites in accordance with, among other legislation, hazardous substances legislation like the HSNO, HSWA and, for fuel storage terminals, the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 ("the **MHF Regulations**"). The Fuel Companies also operate their sites in accordance with the Ministry for the Environment guidelines for petroleum hydrocarbon contaminated sites<sup>9</sup> ("the **MfE Guidelines**").



**Figure 1:** Satellite photograph of Timaru Port with the Z Energy fuel storage terminals highlighted in yellow (Source: GRIP Maps).

<sup>9</sup> Ministry for the Environment (2011). Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand (Revised 2011).

- 8.2 The 2017 amendments<sup>10</sup> to the Act removed the explicit function of regional and district councils to control the adverse effects of the storage, use, disposal, or transportation of hazardous substances under ss 30 and 31. While councils do retain broad power under the Act to manage hazardous substances through their planning instruments to achieve the Act's purpose, and to carry out the integrated management of natural and physical resources in their region or district, this should only be exercised where the potential environmental effects are not adequately addressed by other legislation.
- 8.3 In that regard, the Fuel Companies support the PDP's general intent of controlling hazardous substances matters that are not addressed by other legislation like the HSNO, HSWA and MHF Regulations.

***Submission on HS-P1 and request for a new policy (196.60 and 196.61)***

*The Fuel Companies' submission*

- 8.4 Submissions 196.60 requested various amendments to HS-P1:
- (a) amend cl (1) to refer to "unacceptable risk" instead of stating its definition;
  - (b) delete cl (2) as cumulative effects are an "effect" under s 3 of the Act and are already considered, if relevant, for any assessment of effects;
  - (c) amend cl (3) to limit the clause to new MHF as the district's existing MHF are already located in a sensitive environment; and
  - (d) delete cl (4) and make it a separate policy as managing the adverse effects of natural hazards on MHF is not part of HS-P1's policy intent.
- 8.5 Submission 196.61 requested a new policy based on cl (4) of HS-P1.

*Analysis of the Reporting Officer's recommendation*

- 8.6 The Reporting Officer recommends submission 196.60 be accepted in part and recommends the following amendments to HS-P1:
- (a) make the Fuel Companies' requested amendment to cl (1);
  - (b) retain cl (2) as notified;

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<sup>10</sup> Resource Legislation Amendment Act 2017.

- (c) make the Fuel Companies' requested amendment to cl (3) but replace "sensitive environment" with his new recommended term "sensitive location"; and
- (d) retain cl (4) but delete "hazardous facilities" as it was included in error.

8.7 The Reporting Officer's analysis is set out at [6.18.8] to [6.18.13] of his report. We generally agree with his recommendations except for the retainment of cl (4). At [6.18.12], the Reporting Officer states:

*... Regarding the requested deletion of clause 4, I consider that this clause provides value regarding how to respond to natural hazard risk. I consider it is important to consider natural hazards as these can damage MHF which could lead to environmental and human health risk. I consider that 'avoid or minimise' provides flexibility in how operators address risk and I note that other MHF operators have submitted to retain these clauses. Overall, I recommend that this submission is accepted in part, noting the change I recommended to HS-P1 clause 1 in response to Timaru Oil Services [155.1].*

8.8 Accordingly, the Reporting Officer recommends submission 196.61 be rejected. His analysis is set out at [6.22.3] of his report and considers that the natural hazards matter is better associated with HS-P1 and should be retained there as cl (4). He does, however, note that the request for a separate policy is a minor text change and could be acceptable.

8.9 While we agree that there should be policy direction to address natural hazards, cl (4) should be made its own policy. This is because HS-P1's policy direction is to avoid unacceptable risks of MHF which, by definition,<sup>11</sup> is not related to avoiding or minimising the adverse effects of natural hazards on MHF (and the adverse effects resulting from damage to MHF). It would thus be clearer for plan users that these two policy directions are kept separate. Additionally:

- (a) In the chapeau, "suitable measures" should be replaced with "good practice measures". We understand that the latter is often used in government practice guidelines, such as the WorkSafe Good Practice Guidelines for MHF, and consider it to be clearer direction than "suitable" while not ruling out the outcome of the measure *being* suitable.

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<sup>11</sup> The PDP's "unacceptable risk" definition solely relates to MHFs and the individual fatality risks associated with people and their relative exposure to hazardous substances. The definition, in our opinion, does not relate to, for example, whether the land on which the MHF or individual is located is subject to minor, or potential, flood hazards.

- (b) The policy should require the consideration of all relevant natural hazard areas. It is unclear from the PDP and the Hazardous Substances s 32 report<sup>12</sup> as to why cl (4) excludes High Hazard Areas despite it directing the consideration all other natural hazards, including Flood Assessment Areas which, we understand, may pose less flood risks than High Hazard Areas.
- (c) The PDP does not define “natural hazard areas” and as such it should not be capitalised, as capitalisation suggests that it is defined.

8.10 In conclusion, we consider that the Reporting Officer’s amendments to cls (1) and (3) are appropriate, cl (2) as notified is acceptable, and cl (4) should be deleted and made a separate policy.

Recommended relief

8.11 We recommend the following relief:

- (a) adopt the Reporting Officer’s recommended amendments to HS-P1 subject to our additional amendments as set out below; and
- (b) insert a new policy, HS-P5, as set out below.

8.12 The Reporting Officer’s recommended insertions are shown in blue and underlined and deletions in ~~blue and struck through~~. Our additional recommended insertions are shown in red and underlined and deletions in ~~red and struck through~~.

<p>HS-P1 New Major Hazard Facilities and additions to existing Major Hazard Facilities</p> <p>Avoid unacceptable risks of new Major Hazard Facilities and additions to Major Hazard Facilities by:</p> <ol style="list-style-type: none"> <li>1. using Quantitative Risk Assessments to ensure <u>there is no unacceptable risk the risk of an individual human fatality is not greater than 1 x 10<sup>-6</sup> per year (one in a million), including cumulative effects</u>; and</li> <li>2. ensuring Major Hazard Facilities do not cause unacceptable cumulative effects by locating too close to each other; and</li> <li>3. locating <u>new</u> Major Hazard Facilities outside of sensitive <u>locations-environments</u>, except for <del>N</del><u>n</u>atural <del>H</del><u>h</u>azard <del>A</del><u>a</u>reas (not defined as a High Hazard Area), <del>and</del></li> <li><del>4.—ensuring, in Natural Hazard Areas (not defined as a High Hazard Area), suitable measures are to undertaken to:</del></li> </ol>
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<sup>12</sup> Report titled “Section 32 Report Hazardous Substances Chapter” prepared by the Council and dated May 2022.

- ~~a. avoid or minimise adverse effects from natural hazards on hazardous facilities and Major Hazard Facilities; and~~
- ~~b. minimise the risk of hazardous substances entering the environment in the event of a natural hazard event.~~

8.13 Our recommended insertions are shown in red and underlined.

HS-P5 Major Hazard Facilities in natural hazard areas

Ensure, in natural hazard areas, good practice measures are undertaken to:

- a. avoid or minimise adverse effects from natural hazards on Major Hazard Facilities; and
- b. minimise the risk of hazardous substances entering the environment in the event of a natural hazard event.

***Submission on HS-P4 (196.64)***

*The Fuel Companies' submission*

8.14 Submission 196.64 requested the deletion of HS-P4. This submission opposed HS-P4's approach of principally avoiding hazardous facilities (other than MHF) from being within "sensitive environments". As notified, sensitive environments encompass numerous areas, and many of which are not necessarily more sensitive to the effects of hazardous substances such as areas of heritage, visual amenity or landscape significance. Concern was also raised regarding the implications on the operation, maintenance or upgrading of existing hazardous facilities in sensitive environments. This submission considered that the effects of hazardous facilities in sensitive environments would be better managed by the chapter of each environment, rather than HS-P4's blanket approach to managing these facilities.

8.15 This blanket management approach does not appear to have been robustly assessed in the s32 report or the s42A report in respect of:

- a consideration of the different types of hazard facilities (non-MHF) currently in the district or that might be likely be located the district,
- a consideration of each 'sensitive' overlay in respect of the hazard facilities; and
- following the above two steps, and in light of HSWA and HSNO controls, what the resource management gaps are and how management of them is best achieved in the PDP.

We would expect this type of robust analysis to be carried out before policies like this and associated rules are put in place, in the context of the 2017 RMA changes.

*Analysis of the Reporting Officer's recommendation*

8.16 The Reporting Officer recommends this submission be accepted in part and his analysis is set out at [6.21.7] to [6.21.13] of his report. He agrees that “sensitive environments” is too broad, and that reference should instead be made to a narrower term: “sensitive locations”. He recommends the definition includes:

- (a) natural hazard areas (excluding liquefaction areas which he considers can be managed via the Building Act 2004) (cls (1) and (2)(b));
- (b) Drinking Water Protection Areas (cl (1)(e));
- (c) areas within 250 m of an MHF (cl (1)(f)); and
- (d) areas within 100 m from the edge of a riparian margin or wetland area (cl (2)(a)).

8.17 The definition also provides some exclusions for PORTZ areas.

8.18 We support the use of a narrower term and consider the definition to be generally appropriate, but there appears to be an error in (2)(a). As the “riparian margin” definition already includes land within 50 m of a wetland, cl (2)(a) essentially extends the definition to being within 150 m of a wetland, or, 100 m of a wetland, which appears to be a contradiction that should be corrected.

8.19 Additionally, as the extent and edges of wetlands are typically undefined and not currently known, a 100 m setback appears to be excessive in the context of what a wetland could be (for example, boggy rural pasture). A 50 m setback appears to be more appropriate in the absence of a robust analysis to support the 100 m setback in the ss 32 and 42A reports.

*Recommended relief*

8.20 We recommend that the Reporting Officer’s “sensitive locations” definition is adopted subject to our amendments as set out below. The Reporting Officer’s recommended insertions are shown in blue and underlined and deletions in ~~blue and struck through~~. Our additional recommended insertions are shown in red and underlined and deletions in ~~red and struck through~~.

Reporting Officer’s “Sensitive Locations” definition
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Sensitive Locations means:

1. Areas within the following Overlays identified on the Planning map, but excluding the PORTZ:
  - a. An Earthquake Fault Awareness Overlay; and
  - b. A High Hazard Area Overlay; and
  - c. The Sea Water Inundation Overlay; and
  - d. The Coastal Erosion Overlay; and
  - e. A Drinking Water Protection Area; and
  - f. The area within 250m of an MHF; and
2. the below areas:
  - a. The area within 100m from the edge of a Riparian Margin (excluding the Riparian Margin of a wetland) or within 50m from the edge of a wetland-area; and
  - b. High Hazard Areas identified in a Flood Certificate issued under NH-S1.

***Submission on HS-R1 (196.65)***

*The Fuel Companies' submission*

- 8.21 Submission 196.55 requested that HS-R1 be amended to delete PER-1 and PER-2. The concern was that it was unclear whether the rule would affect alterations or changes to existing hazardous facilities. For the Fuel Companies' activities, one example is the routine and necessary replacement of existing underground fuel storage tanks ("UFTs") at service stations such that the physical works to enable the activity have been recognised and permitted at the national level through the NES-CS.
- 8.22 Tank replacement can involve an increase in the volume of underground fuel storage (usually petrol or diesel) and, at the same time, result in no change to the risk profile both on and off site, in particular, no change to risks or effects to many of the sensitive environments listed in the definition, such as heritage buildings. In such, and many other, circumstances, a permitted activity pathway for UFTs is entirely appropriate.

*Analysis of the Reporting Officer's recommendation*

- 8.23 The Reporting Officer recommends this submission be accepted in part. His analysis is set out at [6.23.9] to [6.23.12] of his report and his response to this submission is at [6.23.12]:

*Regarding the BP Oil, et al [196.65] submission, I have already recommended amending PER1 to replace the reference to “Sensitive Environments” with a reference to “Sensitive Locations”. This reduces the locations where the rule applies. Regarding PER-2, I consider that it is appropriate to consider risk from these facilities resulting from natural hazard events and I note that BP Oil, et al [196.61] proposed a new policy that sought to minimise the risk of hazardous substances entering the environment in the event of a natural hazard event and as such deleting PER-2 would appear to be inconsistent with this requested new policy. Given my recommended changes in relation to “Sensitive Environments” I recommend that this submission is accepted in part.*

- 8.24 In our view, UFTs at service stations within the following areas should not be subject to HS-R1: Flood Assessment Areas, High Hazard Areas, Sea Water Inundation Overlay, Earthquake Fault Awareness Areas, Liquefaction Awareness Areas and Drinking Water Protection Areas.
- 8.25 The design, construction and operation of service stations, and the management of hazardous substances on site, are tightly controlled by the aforementioned methods as well as regional plan rules, HSNO, HSWA, other associated regulations and codes of practice (“COPs”), the MfE Guidelines and site management plans.
- 8.26 Examples of controls relevant to the safety and resilience of hazardous substances storage at service stations include: the location of storage tanks underground; the requirement for new and replacement tanks to be double contained to reduce the risk of container failure; and physical mitigation measures such as locating pumps on raised concrete islands with bollard protection and fitting nozzles with breakaway couplings which automatically cut off fuel supply in emergencies.
- 8.27 In the flood or coastal inundation hazard areas, UFTs are not generally at risk of damage. Tanks can withstand inundation without liberating product, noting that, in many cases, UFTs sit partly below groundwater level under normal operating conditions. In any case, compliance with industry best practice would require the design of service stations or truck stops to maintain their integrity and function during natural hazard events. Furthermore, it would be inappropriate for an UFT within a Flood Assessment Area Overlay to be subject to a minimum finished floor level (“FFL”) requirement under PER-2.
- 8.28 In the earthquake hazard areas, the Christchurch earthquakes of September 2010 and February 2011 provide good examples of the resilience of service stations’

UFTs in maintaining their integrity and function during natural hazard events. It is significant to note that, while the UFTs at several service stations were displaced by these earthquakes, there were no simultaneous compartment failures nor significant product losses. This again confirms the resilience of these structures when designed, installed and operated in accordance with HSNO regulations and industry standards.

- 8.29 In the Drinking Water Protection Area, the Reporting Officer states his reason for including this area as a “sensitive location” at [6.21.8] of his report:

*In my opinion Drinking Water Protection Areas and waterbodies could be sensitive to these facilities (where the hazardous substances escape the facility) and therefore consider these areas should be retained in the provisions (noting the various spill protection requirements under HSNO and HSWA).*

- 8.30 Under the Canterbury Land and Water Regional Plan (Operative 2015) (“**the LWRP**”), Rule 5.181 controls the use of land to store hazardous substances and provides a permitted activity pathway for the storage of hazardous substances within a Community Drinking-water Protection Zone subject to compliance with the rule’s conditions and specifically condition (5).<sup>13</sup>

- 8.31 Regarding the passive discharge<sup>14</sup> of contaminants in these areas, the LWRP controls the passive discharge of contaminants from contaminated land where the contaminants may enter water, as either a permitted activity under Rule 5.187 or, if the rule’s conditions are not met, a discretionary activity under Rule 5.188. In the Fuel Companies’ case, an example is the passive discharge of petroleum hydrocarbons into groundwater.

- 8.32 We acknowledge that drinking water supply areas under the PDP and LWRP are mapped differently; the LWRP maps community supply areas whereas the PDP maps both community and private supply areas. However, as the LWRP already controls the storage of hazardous substances in drinking water supply areas, as well as passive discharge effects separately, it is unclear what additional effects the PDP would control in areas that overlap with the LWRP. Our view is that the PDP should only control land use activities, and not the discharges from those

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<sup>13</sup> Condition (5) requires that (a) the hazardous substances on the site are stored under cover in a facility designed, constructed and managed to contain a leak or spill and allow the leaked or spilled substance to either be collected or lawfully disposed of; and (b) spill kits to contain or absorb a spilled substance are located with the storage facility and use areas at all times.

<sup>14</sup> A “passive discharge” is a discharge that occurs from the breakdown or movement of residual contaminants from legacy uses or spill events.

activities, in areas that are not already controlled by the LWRP’s provisions, and where there is an identified management gap, not appropriately addressed through HSNO and HSWA.<sup>15</sup>

8.33 In conclusion, we consider that the Reporting Officer’s amendments to HS-R1 are generally appropriate but UFTs at service stations should have some exemptions from the rule. A correction to PER-2 is also necessary as it currently requires the activity to be within a Flood Assessment Area Overlay to be permitted, which we suspect is an error. Finally, it is unclear what additional function the PDP would provide in managing the effects on drinking water resources above that already managed by the LWRP and whether this is necessary.

Recommended relief

8.34 We recommend that the Reporting Officer’s recommended amendments to HS-R1 are adopted subject to our additional amendments as set out below. The Reporting Officer’s recommended insertions are shown in blue and underlined and deletions in ~~blue and struck through~~. Our additional recommended insertions are shown in red and underlined and deletions in ~~red and struck through~~.

HS-R1 Use and/or storage of hazardous substances in a hazardous facility (excluding Major Hazard Facilities)		
All zones	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1</p> <p>The hazardous facility is located outside <u>a of sensitive locations environment (other than a Flood Assessment Area Overlay)</u>; and</p> <p>PER-2</p> <p><u>If</u> <del>If</del> the activity is within a Flood Assessment Area Overlay, <u>and</u> the hazardous facility has a finished floor level equal to or higher than the minimum floor</p>	<p>Activity status when compliance not achieved: Restricted Discretionary</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>1. The level of risk relating to likelihood and consequence of the natural hazard and the toxicity, volume, characteristics, and potential consequences of the hazardous substance; and</li> <li>2. The extent to which hazardous substances can be safely contained to minimise effects from natural hazards.</li> </ol>

<sup>15</sup> We note that, should these matters be clarified to us, we would be happy to consider the response and discuss the balance of this statement in respect of drinking water supply areas.

	<p>level as stated in a Flood Risk Certificate issued in accordance with NH-S1.</p> <p><u>Note: This rule does not apply to underground fuel storage tanks at service stations within a Flood Assessment Area, Earthquake Fault Awareness Area, Liquefaction Awareness Area, High Hazard Area, Sea Water Inundation Overlay, or Drinking Water Protection Area.</u></p>	<ol style="list-style-type: none"> <li>3. Potential effects on land use activities in the surrounding area; and</li> <li>4. The potential effects on natural ecosystems, sensitive <u>locations environments</u> and life-supporting capacity of land and water from escape or spillage; and</li> <li>5. Potential risk and effects on SASM <u>within the sensitive locations</u>; and</li> <li>6. Potential risk to human health and safety; and</li> <li><del>7. Potential effects on natural character and the amenity of sensitive areas and sensitive uses; and</del></li> <li>8. Potential for cumulative effects of other activities where hazardous substances are stored, used or disposed of.</li> </ol>
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8.35 We note that we have explored different options to implement our recommended relief, such as amendments to definitions, amendments to HS-R1, or an advice note to HS-R1. We consider an advice note to be the best option as it is explicit and contained within the rule; it does not rely on plan users to read and interpret the definition(s) and then refer to HS-R1. If there is a more pragmatic way to achieve this relief, we are more than happy to consider alternatives.

8.36 The key point is that UFTs are not “sensitive” in the specified areas and should be excluded in the context of hazardous substances management under the Act and PDP. This is a more efficient and effective outcome than unnecessarily requiring resource consent for appropriately designed UFTs at service stations, that comply with all other regulations and COPs, simply because they are in these areas, or, they do not meet the minimum FFL requirement under PER-2.

***Submission on HS-R2 (196.66)***

*The Fuel Companies’ submission*

8.37 Submission 196.66 requested that HS-R2 be amended to provide a permitted activity pathway for upgrades, additions and alterations of existing MHF that do not

increase hazardous substances risk. This submission suggested a risk-based permitted activity requirement, that the activity does not increase or enlarge the MHF's risk profile, and that non-compliance would make it a discretionary activity. Some examples of activities that should be permitted are changes to car parking and accessways, landscaping or the establishment of an office-type building that would not affect, alter or change the MHF's hazardous substances and risk profile.

*Analysis of the Reporting Officer's recommendation*

- 8.38 The Reporting Officer recommends this submission, along with other submissions that similarly seek a permitted activity pathway, be accepted in part. The Reporting Officer's analysis is set out in [6.24.9] to [6.24.15]. His analysis includes the pertinent items we raised in our pre-hearing correspondence with him regarding the Fuel Companies' submission and the role of Quantitative Risk Assessments prepared for the Z Energy fuel storage terminals. We agree with the Reporting Officer's analysis and recommended amendments to HS-R2.

*Recommended relief*

- 8.39 We recommend that the Reporting Officer's amendments to HS-R2 are adopted.

***Submission on HS-R4 (196.68)***

*The Fuel Companies' submission*

- 8.40 Submission 196.68 requested the consequential deletion of "and additions to Major Hazard Facilities" from HS-R4's title as additions would instead be provided for through the requested amendment to HS-R2 (submission 196.66).

*Analysis of the Reporting Officer's recommendation*

- 8.41 The Reporting Officer recommends the rejection of this submission and that HS-R4 be retained as notified. His analysis is set out at [6.26.5] of his report and his rationale for retaining HS-R4's title is unclear to us. If the recommended amendments to HS-R2 are made, it would be confusing to plan users that any addition to an MHF is a discretionary activity under HS-R4 despite it already being provided for under HS-R2 as either a permitted or discretionary activity depending on it meeting the permitted activity requirements. Therefore, if HS-R2 is amended to provide for additions, the amendment to HS-R4's title is necessary.

*Recommended relief*

8.42 We recommend that HS-R4, as notified, is amended as set out below. Our recommended deletions are shown in ~~red and struck through~~.

HS-R4 New Major Hazard Facilities <del>and additions to Major Hazard Facilities</del>		
All zones	Activity Status: Discretionary	Activity status when compliance not achieved: Not applicable

## 9. SUMMARY OF RECOMMENDED RELIEF

9.1 In summary, we recommend the following relief:

- (a) Adopt the Reporting Officer’s recommendations on the Fuel Companies’ submissions 196.43, 196.45, 196.46, 196.2, 196.6, 196.14, 196.57, 196.58, 196.59, 196.62, 196.63, 196.66 and 196.67.
- (b) Adopt the Reporting Officer’s recommendation on Z Energy’s submission 116.15 to delete the SHF-8 notation on the PDP Maps.
- (c) Delete the SHF-7 notation on the PDP Maps as an amendment under sch 1 cl 16(2) of the Act.
- (d) Adopt the Reporting Officer’s recommended “sensitive locations” definition subject to our amendments set out in Appendix A.
- (e) Adopt the Reporting Officer’s recommended amendments to HS-P1 and HS-R1 subject to our additional amendments set out in Appendix A.
- (f) Amend CL-P1 and HS-R4 as set out in Appendix A.
- (g) Amend CL-P3 to clarify the policy’s intent and differentiate it from CL-P2 where, in particular, “management works” are further explained or described in the policy or elsewhere in the PDP.
- (h) Insert a new policy, HS-P5, as set out in Appendix A.

**Sarah Westoby and Thomas Trevilla**

25 October 2024

**Appendices** Appendix A: Track-change amendments recommended by this evidence

Appendix B: Recommendations of the s 42A reports on the Fuel Companies' submissions and further submissions regarding hazardous substances and contaminated land provisions



## **Appendix A**

Track-change amendments recommended by this evidence

The Reporting Officer's recommended insertions are shown in blue and underlined and deletions in ~~blue and struck through~~. Our additional recommended insertions are shown in red and underlined and deletions in ~~red and struck through~~.

Adopt the Reporting Officer's recommended "sensitive locations" definition subject to our amendments as follows:

Reporting Officer's "Sensitive Locations" definition
<p><u>Sensitive Locations means:</u></p> <ol style="list-style-type: none"><li>1. <u>Areas within the following Overlays identified on the Planning map, but excluding the PORTZ:</u><ol style="list-style-type: none"><li>a. <u>An Earthquake Fault Awareness Overlay; and</u></li><li>b. <u>A High Hazard Area Overlay; and</u></li><li>c. <u>The Sea Water Inundation Overlay; and</u></li><li>d. <u>The Coastal Erosion Overlay; and</u></li><li>e. <u>A Drinking Water Protection Area; and</u></li><li>f. <u>The area within 250m of an MHF; and</u></li></ol></li><li>2. <u>the below areas:</u><ol style="list-style-type: none"><li>a. <u>The area within 100m from the edge of a Riparian Margin</u> <del>(excluding the Riparian Margin of a wetland)</del> <u>or within 50m from the edge of a wetland</u> <del>area</del>; and</li><li>b. <u>High Hazard Areas identified in a Flood Certificate issued under NH-S1.</u></li></ol></li></ol>

Amend CL-O1 as follows:

CL-O1 Management of contaminated land
Contaminated land is made safe for human health and its intended use before any change of use, <del>land</del> <u>soil</u> disturbance, development or subdivision.

Amend HS-P1 as follows:

HS-P1 New Major Hazard Facilities and additions to existing Major Hazard Facilities
Avoid unacceptable risks of new Major Hazard Facilities and additions to Major Hazard Facilities by: <ol style="list-style-type: none"><li>1. using Quantitative Risk Assessments to ensure <u>there is no unacceptable risk</u> <del>the risk of an individual human fatality is not greater than 1 x 10<sup>-6</sup> per year (one in a million), including cumulative effects</del>; and</li><li>2. ensuring Major Hazard Facilities do not cause unacceptable cumulative effects by locating too close to each other; and</li></ol>

3. locating new Major Hazard Facilities outside of sensitive locations-environments, except for Natural Hazard Areas (not defined as a High Hazard Area); ~~and~~
4. ~~ensuring, in Natural Hazard Areas (not defined as a High Hazard Area), suitable measures are to undertaken to:~~
- ~~a. avoid or minimise adverse effects from natural hazards on hazardous facilities and Major Hazard Facilities; and~~
- ~~b. minimise the risk of hazardous substances entering the environment in the event of a natural hazard event.~~

Insert a new policy, HS-P5, as follows:

HS-P5 Major Hazard Facilities in natural hazard areas

Ensure, in natural hazard areas, good practice measures are undertaken to:

- a. avoid or minimise adverse effects from natural hazards on Major Hazard Facilities; and
- b. minimise the risk of hazardous substances entering the environment in the event of a natural hazard event.

Amend HS-R1 as follows:

HS-R1 Use and/or storage of hazardous substances in a hazardous facility (excluding Major Hazard Facilities)		
All zones	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1</p> <p>The hazardous facility is located outside <del>a</del> <u>of</u> sensitive <u>locations environment (other than a Flood Assessment Area Overlay)</u>; and</p> <p>PER-2</p> <p><del>If T</del><u>he</u> activity is within a Flood Assessment Area Overlay, <del>and</del> the hazardous facility has a finished floor level equal to or higher than the minimum floor level as stated in a Flood Risk Certificate issued in accordance with NH-S1.</p>	<p>Activity status when compliance not achieved: Restricted Discretionary</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>1. The level of risk relating to likelihood and consequence of the natural hazard and the toxicity, volume, characteristics, and potential consequences of the hazardous substance; and</li> <li>2. The extent to which hazardous substances can be safely contained to minimise effects from natural hazards.</li> <li>3. Potential effects on land use activities in the surrounding area; and</li> </ol>

	<p><u>Note: This rule does not apply to underground fuel storage tanks at service stations within a Flood Assessment Area, Earthquake Fault Awareness Area, Liquefaction Awareness Area, High Hazard Area, Sea Water Inundation Overlay, or Drinking Water Protection Area.</u></p>	<ol style="list-style-type: none"> <li>4. The potential effects on natural ecosystems, sensitive <u>locations environments</u> and life-supporting capacity of land and water from escape or spillage; and</li> <li>5. Potential risk and effects on SASM <u>within the sensitive locations</u>; and</li> <li>6. Potential risk to human health and safety; and</li> <li><del>7. Potential effects on natural character and the amenity of sensitive areas and sensitive uses;</del> <del>and</del></li> <li>8. Potential for cumulative effects of other activities where hazardous substances are stored, used or disposed of.</li> </ol>
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Amend HS-R4 as follows:

HS-R4      New Major Hazard Facilities <del>and additions to Major Hazard Facilities</del>		
All zones	Activity Status: Discretionary	Activity status when compliance not achieved: Not applicable

## **Appendix B**

Recommendations of the s 42A reports on the Fuel Companies' submissions and further submissions regarding hazardous substances and contaminated land provisions

Provision	Ref #	Submission Reason and Relief Summary	Reporting Officer Recommendation	Fuel Companies' Position
The Fuel Companies				
Definition				
Hazardous Facility	196.2	Supports the definition of Hazardous Facility which includes a list of exceptions, that include a facility or activity that involves the use, storage or disposal of any hazardous substance.  <b>Retain</b> the 'Hazardous Facility' definition as notified.	Accept in part  <b>Amend</b> the 'Hazardous Facility' definition as per the s 42A report.	Agree
Major Hazard Facility	196.6	Supports the definition and the removal of the previously drafted definition of Significant Hazard Facility (SHF).  <b>Retain</b> the 'Major Hazard Facility' definition as notified.	Accept  <b>Retain</b> the 'Major Hazard Facility' definition as notified.	Agree
Unacceptable Risk	196.14	Generally supports the definition as it is assumed it was from the NSW HIPAP4. However, the necessity of both the proposed definition and its use throughout the chapter is questioned.  <b>Amend</b> the 'Unacceptable Risk' definition as follows:  Unacceptable Risk <del>[in relation to Hazardous Substances]</del> In relation to major hazard facilities, means exposure of sensitive activities (including residential dwelling) to an individual fatality risk level exceeding 1 x 10 <sup>-6</sup> per year (one in a million).	Reject  <b>Retain</b> the 'Unacceptable Risk' definition as notified.	Agree
Contaminated Land				
General	196.43	Throughout this Chapter, the provisions use the term 'Land Disturbance' which has a specific and relatively limited definition and relates to where the profile of the land is not altered on a permanent basis. The Submitter considers it would be more appropriate, given the chapter seeks to manage human health risks, to use the term "soil disturbance" in this chapter as applied under the NES-CS.  <b>Amend</b> the chapter by replacing the words "land disturbance" with "soil disturbance".	Accept  <b>Amend</b> the chapter as per the s 42A report with "land disturbance" replaced with "soil disturbance".	Agree
CL-O1	196.44	Supports CL-P1 which appropriately focuses on managing contaminated land, and change of use, disturbance, development and subdivision, so that it is safe for human health.  <b>Retain</b> CL-O1 as notified.	Accept in part  <b>Amend</b> CL-O1 as per the s 42A report:  <del>Contaminated land is made safe for human health and its intended use before any</del> <a href="#">The change of use, land soil disturbance, development or subdivision of contaminated land does not result in a risk to human health.</a>	Disagree  Addressed in evidence.
CL-P1	196.45	The submitter assumes that this policy requires an understanding of a site, its history and associated potential risks to human health before those activities are undertaken, rather than requiring a PSI or DSI to be prepared in order for an activity to achieve this policy. On this basis, the policy is supported  <b>Retain</b> CL-P1 as notified.	Accept  <b>Retain</b> CL-P1 as notified.	Agree
CL-P2	196.46	Supports CL-P2 and considers this policy is appropriate. The Fuel Companies support CL-P2 which focuses on a best practice approach to the management of contaminated soil to protect human health and to ensure the land is suitable for its intended use. The Fuel Companies consider this this policy is appropriate to manage effects on human health both from the carrying out of the physical works and ensuring that land is suitable for its intended use from a human health perspective. If methodologies are in place to appropriately manage contaminants in soils to protect human health (as required by proposed CL-P2), a prior investigation of the potentially contaminated soils sought by CL-P1 is not required.  <b>Retain</b> CL-P2 as notified.	Accept  <b>Retain</b> CL-P1 as notified.	Agree
CL-P3	196.47	Considers policy appropriately recognises that human health risks do not increase from remediation or management of contaminated land, and encourages reduction of such risks.  <b>Retain</b> CL-P3 as notified.	Accept in part  <b>Amend</b> CL-P3 as per the s 42A report:  Ensure that <del>the risks to human health from</del> any remediation of, or any management works	Disagree  Addressed in evidence.

Provision	Ref #	Submission Reason and Relief Summary	Reporting Officer Recommendation	Fuel Companies' Position
			undertaken on, contaminated land, do not increase <a href="#">risks to human health from the contamination that is present</a> , and, where possible encourage the reduction of those risks.	
Hazardous Substances				
Introduction	196.57	<p>The Introduction is supported in part. In particular, supports Council seeking only to control matters in relation to hazardous substances that are not covered by other more specific legislation including HSNO and HSWA.</p> <p><b>Retain</b> the chapter introduction as notified.</p>	<p>Accept in part</p> <p><b>Amend</b> the chapter introduction as per the s 42A report.</p>	<p>Agree</p> <p>The amendments are appropriate.</p>
HS-O1	196.58	<p>Considers there are inconsistencies between the chapter and the objective itself with respect to "transportation". Consider this object seems to be aimed for 'MHF' only, as 'unacceptable risks' is only applicable to MHF.</p> <p><b>Amend</b> HS-O1 as follows:</p> <p>The <a href="#">risks associated with</a> use, storage <a href="#">and</a> disposal <del>and transportation</del> of hazardous substances <a href="#">are managed and, in relation to MHF, occurs where</a> unacceptable risks <del>to the environment and human health</del> are avoided.</p>	<p>Accept in part</p> <p><b>Amend</b> HS-O1 as per the s 42A report:</p> <p>The <a href="#">risks associated with the</a> use, storage, <a href="#">and</a> disposal <del>and transportation</del> of hazardous substances <a href="#">are managed and, in relation to Major Hazardous Facilities, occurs where</a> unacceptable risks to the environment and human health are avoided</p>	<p>Agree</p>
HS-O2	196.59	<p>The submitter seeks to ensure that unacceptable risks are avoided, including associated with intensification of any existing sensitive activities (consistent with the definition of reverse sensitivity).</p> <p><b>Amend</b> HS-O2 as follows:</p> <p>New sensitive activities <a href="#">and increased scale or intensity of existing sensitive activities</a> are <a href="#">designed and</a> located to minimise <del>reverse reverse</del> sensitivity effects on major hazard facilities and to avoid unacceptable risks to the sensitive activity.</p>	<p>Accept in part</p> <p><b>Amend</b> HS-O2 as per the s 42A report.</p> <p>New <a href="#">or expanded</a> sensitive activities are <a href="#">designed</a> and located to minimise <del>reverse reverse</del> sensitivity effects on major hazard facilities and to avoid unacceptable risks to the sensitive activity</p>	<p>Agree</p> <p>The amendments are appropriate.</p>
HS-P1	196.60	<p>Concerns over the practical implications of this policy:</p> <ul style="list-style-type: none"> <li>The use of the term "additions" without qualification;</li> <li>Clause 1 seems aim to avoid unacceptable risks from new and additional Major Hazard Facilities (MHFs) to sensitive activities. Clause 1 does not clearly reflect this intent.</li> <li>Questions the need of Clause 2 which seeks to avoid cumulative effects, which is included in the definition of 'effects' in clause 3 of the RMA, hence must be considered where relevant.</li> <li>Clause 3 seeks that MHF are located outside of sensitive environments, as all existing MHF are located within sensitive environments. The submitter therefore considers this clause should apply to new MHF only.</li> <li>Clause 4(a) seeks to avoid or minimise adverse effects from natural hazards on hazardous facilities and MHF. This sub-clause addresses both hazardous facilities and MHF which could cause problems in a policy assessment as part of the sub-clause does not relate to the principal policy intent. This is similar for Clause (b). It is recommended that Sub clauses 4(a) and (b) are separated out into a new policy with amendments.</li> </ul> <p><b>Amend</b> HS-P1 as follows:</p> <p>Avoid unacceptable risks of new Major Hazard Facilities and additions to Major Hazard Facilities by:</p> <ol style="list-style-type: none"> <li>using Quantitative Risk Assessments to ensure <a href="#">there is no unacceptable risk to sensitive activities the risk of an individual human fatality is not greater than 1 x 10<sup>-6</sup> per year (one in a million)</a>, including cumulative effects; and</li> <li><del>ensuring Major Hazard Facilities do not cause unacceptable cumulative effects by locating too close to each other; and</del></li> </ol>	<p>Accept in part</p> <p><b>Amend</b> HS-P1 as per the s 42A report:</p> <p>Avoid unacceptable risks of new Major Hazard Facilities and additions to Major Hazard Facilities by:</p> <ol style="list-style-type: none"> <li>using Quantitative Risk Assessments to ensure <a href="#">there is no unacceptable risk the risk of an individual human fatality is not greater than 1 x 10<sup>-6</sup> per year (one in a million), including cumulative effects</a>; and</li> <li>ensuring Major Hazard Facilities do not cause unacceptable cumulative effects by locating too close to each other; and</li> <li>locating <a href="#">new</a> Major Hazard Facilities outside of sensitive <del>locations-environments</del>, except for Natural Hazard Areas (not defined as a High Hazard Area);</li> <li>ensuring, in Natural Hazard Areas (not defined as a High Hazard Area), suitable measures are to undertaken to: <ol style="list-style-type: none"> <li>avoid or minimise adverse effects from natural hazards on <del>hazardous facilities and</del> Major Hazard Facilities; and</li> <li>minimise the risk of hazardous substances entering the environment in the event of a natural hazard event.</li> </ol> </li> </ol>	<p>Disagree</p> <p>Addressed in evidence.</p>

Provision	Ref #	Submission Reason and Relief Summary	Reporting Officer Recommendation	Fuel Companies' Position
		<p>3. locating <u>new</u> Major Hazard Facilities outside of sensitive environments, except for Natural Hazard Areas (not defined as a High Hazard Area); <del>and</del></p> <p>4. <del>ensuring, in Natural Hazard Areas (not defined as a High Hazard Area), suitable measures are to undertaken to:</del></p> <p><del>a. avoid or minimise adverse effects from natural hazards on hazardous facilities and Major Hazard Facilities; and</del></p> <p><del>b. minimise the risk of hazardous substances entering the environment in the event of a natural hazard event.</del></p>		
New policy	196.61	<p>Considers a new policy that seeks that suitable measures are undertaken to avoid or minimise effects or risks, by using good practice measures would provide better direction.</p> <p><b>Insert</b> a new policy into the chapter as follows:</p> <p><u>Ensure, in Natural Hazard Areas (not defined as a High Hazard Area), good practice measures are to undertaken to:</u></p> <p><u>a. avoid or minimise adverse effects from natural hazards on hazardous facilities and Major Hazard Facilities; and</u></p> <p><u>b. minimise the risk of hazardous substances entering the environment in the event of a natural hazard event.</u></p>	Reject	Disagree Addressed in evidence.
HS-P2	196.62	<p>Supports HS-P2 as it enables the repair and maintenance of existing MHF. The submitter also considers that changes, additions and upgrades to existing MHF, where such changes, additions or upgrades do not alter by increasing the risk profile of the MHF, should also be enabled in this chapter, either through HS-P2, or a new policy.</p> <p><b>Retain</b> HS-P2 as notified.</p>	Accept <b>Retain</b> HS-P2 as notified.	Agree
HS-P3	196.63	<p>Supports HS-P3 as it seeks to require sensitive activities to be sufficiently separated from MHF to minimise reverse sensitivity effects on the MHF and to avoid unacceptable risks to the sensitive activity.</p> <p><b>Amend</b> HS-P3 as follows:</p> <p>Require sensitive activities <u>and increased scale or intensity of existing sensitive activities</u> to be sufficiently separated from Major Hazard Facilities to minimise reverse sensitivity effects on the Major Hazard Facility and to avoid unacceptable risks to the sensitive activity.</p>	Reject <b>Retain</b> HS-P3 as notified.	Agree
HS-P4	196.64	<p>Oppose the proposed policy approach of HS-P4. Considers use of definition of sensitive environment is not appropriate as it extends to a range of matters not specific to hazardous substances. Considers the policy is unclear if applied to works within and extension of existing facilities. Considers the relationship between the effects of hazardous facilities and sensitive environments would be better managed through provisions applicable to all activities affected by these specific areas or overlays and hazardous substance activities is better determined on a case-by-case basis. Comments on HS-R1 address this matter further on a practical basis.</p> <p><b>Delete</b> HS-P4.</p>	Accept in part <b>Amend</b> HS-P4 as per the s 42A report:	Agree The amendments are appropriate.
HS-R1	196.65	<p>Opposes in part given the permitted activity status relies on the facility not being located in a sensitive environment other than Flood Assessment Area. The submitter notes it is unclear whether the proposed rule relates to alterations or changes to existing hazardous facilities.</p> <p><b>Amend</b> HS-R1 as follows:</p> <p>Activity status: Permitted <del>Where:</del> <del>PER-1</del></p>	Accept in part <b>Amend</b> HS-R1 as per the s 42A report:  Activity status: Permitted Where:  PER-1 The hazardous facility is located outside <del>a of</del> sensitive <u>locations environment (other than a Flood Assessment Area Overlay)</u> ; and	Addressed in evidence.



Provision	Ref #	Submission Reason and Relief Summary	Reporting Officer Recommendation	Fuel Companies' Position
		<del>The hazardous facility is located outside a sensitive environment (other than a Flood Assessment Area Overlay); and</del> <del>PER-2</del> <del>The activity is within a Flood Assessment Area Overlay and the hazardous facility has a finished floor level equal to or higher than the minimum floor level as stated in a Flood Risk Certificate issued in accordance with NH-S1.</del>	PER-2 The activity is within a Flood Assessment Area Overlay and the hazardous facility has a finished floor level equal to or higher than the minimum floor level as stated in a Flood Risk Certificate issued in accordance with NH-S1.  [And changes to the matters of discretion]	
HS-R2	196.66	The submitter supports the rule however considers it should include upgrades, changes and additions that do not increase or materially change the risk profile.  <b>Amend</b> HS-R2 as follows:  Maintenance <del>and</del> , repair, <u>upgrades, additions and alterations</u> of Major Hazard Facilities  Activity Status: Permitted  <u>Where:</u>  <del>PER-1</del> <del>The activity does not increase or enlarge the risk profile of the major hazard facility, as measured from the date of notification of this Plan.</del>  <del>Activity status where compliance not achieved: Discretionary</del>	Accept in part (Recommendation summary table of the s 42A report appendix states 'Reject in error')  <b>Amend</b> the HS-R2 as per the s 42A report:  Maintenance <del>and</del> , repair, <u>upgrades, additions and alterations</u> of Major Hazard Facilities  Activity status: Permitted  <u>Where:</u>  <del>PER-1:</del> <del>The activity does not increase the risk profile of the Major Hazard Facility as stated in a Quantitative Risk Assessment prepared by a suitably qualified and experienced practitioner; and</del>  <del>PER-2</del> <del>The volume of total hazardous substances manufactured, used, stored, or disposed of at the Major Hazard Facility does not increase by more than 10 %.</del>  Activity status when compliance not achieved: <del>Not applicable</del> <u>Discretionary</u>	Agree  The amendments are appropriate to provide a permitted activity pathway for activities at existing MHF, with risk-based permitted activity requirements, and are supported.
HS-R3	196.67	The submitter supports this rule as PER-1 requires a Quantitative Risk Assessment to be provided and PER-2 requires sensitive activities to not be located within 250m of MHF where a QRA is not provided.  <b>Retain</b> HS-R3 as notified.	Accept  <b>Retain</b> HS-R3 as notified.	Agree
HS-R4	196.68	Opposes the blanket approach to requiring a consent for additions and considers it is unclear what is intended by 'additions' to MHF. Consider additions to MHF should be provided for in HS-R2. Refer to submission on Rule HS-R2.  <b>Amend</b> HS-R4 as follows:  HS-R4 New Major Hazard Facilities <del>and additions to Major Hazard Facilities</del>	Reject  <b>Retain</b> HS-R4 as notified.	Disagree  Addressed in evidence.
Z Energy Limited				
Planning Maps	116.15	<b>Remove</b> SHF-8 notation from the PDP Maps.	Accept  <b>Remove</b> SHF-8 notation from the PDP Maps.	Agree