

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of submissions and further submissions of Z Energy Limited, bp Oil New Zealand Limited, and Mobil Oil New Zealand Limited to Proposed Plan Change 91 – Hazardous Substances to the Whangārei District Plan

**STATEMENT OF EVIDENCE OF SARAH WESTOBY FOR
BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED & Z ENERGY
LIMITED (*THE FUEL COMPANIES*)
(Submitter 6 and Further Submitter X009)
Dated 2 March 2023**

1. INTRODUCTION

- 1.1 My full name is Sarah Louise Cartner Westoby. I have over 11 years' experience in the field of resource management and planning. I hold a Bachelor of Planning degree with Honours from the University of Auckland and am an intermediate member of the New Zealand Planning Institute.
- 1.2 I am currently a Principal Planning and Policy Consultant at 4Sight Consulting Limited (now part of SLR) (*4Sight*). I have been employed with 4Sight since June 2019. Before then, I was employed as a Senior Planner at Beca Limited based in Auckland between April 2017 and June 2019. My previous employment includes local authority resource consenting roles in both New Zealand and the United Kingdom.
- 1.3 My principal role at 4Sight has been to provide planning and resource management consenting and policy advice to a range of clients in relation to various projects and planning instruments. This has included preparation of applications for resource consent (including AEEs), policy analysis, provision of strategic policy advice and preparation of submissions, hearing statements and evidence. I have provided planning services to a range of infrastructure, Government, Council, commercial and private clients, including Z Energy Limited and The Fuel Companies.
- 1.4 I have been involved in a wide range of matters affecting clients at both regional and district council levels across much of the country. Of most relevance to PC91 I have significant experience relating to provisions addressing hazardous substances, Major Hazard Facilities (*MHF*), and environmental risks including through planning applications relating to refuelling facilities and inputs to various plan changes and proposed plans throughout the country. Recently this has included preparing a submission to Plan Change 78 to the Auckland Unitary Plan: Operative in Part (*AUP:OP*) for the Fuel Companies addressing the various land use controls around the Wiri Oil Terminal. In addition, I prepared a response to the Draft Wellington PDP and, on behalf of the Fuel Companies, worked alongside the reporting officer in drafting the now proposed Hazardous Substances chapter rules. Whilst not named on the submission, I participated in the drafting of the submission to the Wellington PDP on behalf of the Fuel Companies. I have recently prepared a submission to the Proposed Timaru District Plan on behalf of the Fuel Companies with a particular focus on the Hazardous Substance provisions and the land use controls relating to the Port/Terminal. 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*)¹ in

¹ For the avoidance of doubt, in my evidence where I refer to 'other legislation' I am primarily referring to these two pieces of legislation however can also include other legislation including the Health and Safety at Work (Hazardous Substances) Regulations 2017, the Land Transport Act 1998 and the Building Act 2004.

relation to the management of hazardous substances.

2. CODE OF CONDUCT FOR EXPERT WITNESSES

- 2.1 I have read the Environment Court's Practice Note January 2023 as it relates to expert witnesses. My brief of evidence is prepared in compliance with the Code of Conduct and I agree to comply with it in appearing before the hearings panel. I am not, and will not behave as, an advocate for my client. I am engaged by The Fuel Companies as an independent expert and 4Sight provides planning services to The Fuel Companies along with a range of other corporate, public agency and private sector clients. I have no other interest in the outcome of the proceedings.
- 2.2 I confirm that my evidence is within my area of expertise and that I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

3. SCOPE OF EVIDENCE

- 3.1 This statement of evidence relates to the Fuel Companies' submissions and further submissions to Plan Change 91: Hazardous Substances to the Whangarei District Plan (PC91). The Fuel Companies are Submitter 6.
- 3.2 In particular, my evidence addresses the following matters raised in the Fuel Companies' submissions:
- (a) Objective HSUB-O2 Reverse Sensitivity (submission point 6/2); and
 - (b) Having no rules in the proposed hazardous substances chapter (submission point 6/7).
- 3.3 It also addresses the following matters raised in the Fuel Companies' further submissions (X009):
- (a) The inclusion of a definition of 'Residual Risk' as sought by Horticulture NZ in its submission point 4/1.
 - (b) The inclusion of a rule framework for the management, storage, use, transport and disposal of hazardous substances in PC91 as sought by Ngā Tai Ora – Public Health Northland (*Ngā Tai Ora*) in its submission point 5/1; and
 - (c) The inclusion of new policy and accompanying rules, seeking to avoid the storage, use, transport, and disposal of hazardous substances in natural hazard areas in PC91 as sought by Ngā Tai Ora in its submission point 5/3.
- 3.4 With reference to all other matters raised by the Fuel Companies in their submission and

further submissions², the Fuel Companies support the recommendations of the Section 42A Reporting Officer – Taya Lauren Baxter (*the reporting officer*) in the report entitled ‘Proposed Plan Change 91: Hazardous Substances Section 42A Hearing Report’ (*the S42A Report*). After having reviewed the Fuel Companies’ submission and further submission points, and the s42A Report, I also support these points.

4. OBJECTIVE HSUB-O2: REVERSE SENSITIVITY (PRIMARY SUBMISSION POINT 6/2)

4.1 The Fuel Companies supported the intent of Objective HSUB-O2 which seeks that sensitive activities do not unduly compromise established hazardous facilities but submitted that the phrase ‘unduly compromise’ as proposed in HSUB-O2 is ambiguous and open to interpretation.³

4.2 The reporting officer has addressed this submission point in paragraphs 65 and 66 as follows:

65. In response to the submission from The Fuel Companies, I do not agree that the phrase ‘unduly compromise’ is ambiguous and open to interpretation. The Concise Oxford Dictionary defines:

- *Unduly is a derivative of ‘undue’ which is defined as “unwarranted or inappropriate because excessive or disproportionate.”*
- *Compromise is defined as “the expedient acceptance of standards that are lower than is desirable”.*

66. I consider that in the context of the objective ‘unduly compromise’ means that sensitive activities will be unable to establish in areas where hazardous facilities/activities are located where these activities have the potential to constrain or curtail the operation of a lawfully established hazardous facility. As noted in the s32 (paras 65 and 66) sensitive activities are discouraged in areas where reverse sensitivity risks are most likely to occur. Additionally, ‘unduly compromise’ is used three times in the operative Noise and Vibration (NAV) Chapter and I am not aware of any issues being raised about its interpretation.

4.3 The reporting officer recommends that the Fuel Companies submission point is rejected.

4.4 The reporting officer has provided a dictionary definition for each of the two words in the phrase ‘unduly compromise’ and, in paragraph 66, goes on to address what the phrase is intended to mean in the context of reverse sensitivity and hazard facilities. In particular it is helpful to understand that the reporting officer considers activities would unduly compromise an established hazard facility where they “*have the potential to constrain or curtail the operation of a lawfully established hazardous facility*”. I consider this explanation to be helpful and support the intent but consider it would be better conveyed by alternative

² Submission points 6/1, 6/2 (regarding HSUB-01), 6/3, 6/4, 6/5, 6/6, 6/8, 6/9; Further submission points: X009 to 5/2 and 2/1.

³ Submission point 6/2

drafting.

- 4.5 In my opinion, any activity which compromises a lawfully established activity which stores, uses or disposes of hazardous substances, in particular MHF (which, in the case of Marsden Point Truck Loading Facility⁴ is regionally significant infrastructure), is unacceptable. In this regard, whether or not such compromise is 'undue' is irrelevant when it comes to the intent of the Objective as stated by the reporting officer (which I understand is to protect hazardous facilities from reverse sensitivity effects).

Relief sought

- 4.6 In my opinion this could be achieved by amending Objective HSUB-O2 as follows (deletions in strikethrough, additions in underlain):

Sensitive activities do not ~~unduly compromise~~ constrain or curtail existing areas and activities which use, store or dispose of hazardous substances.

5. DEFINITION OF RESIDUAL RISK (PRIMARY SUBMISSION POINT 4/1 AND FURTHER SUBMISSION X009)

- 5.1 The Fuel Companies (X009) were neutral to the inclusion of a new definition of 'residual risk' and sought that, if one is adopted, that it is clearly focussed on off-site risk associated with the storage and use of hazardous substances that remains following compliance with other legislation or regulations.
- 5.2 The recommendation in the s42A Report (paragraph 101) is to accept in part the submission point of Horticulture NZ (4/1), with a definition as follows:

"Definitions

Residual Risk *(This definition only applies to the Hazardous Substances Chapter of the District Plan)*

means any risk of an adverse effect after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work Act (2015) and regional planning instruments, have been complied with."

- 5.3 I consider the intent of the definition recommended by the reporting officer is appropriate, including recognising that the plan should focus on effects following compliance with other legislation which I support. In this respect I consider it should focus on off-site risk as on site risk is appropriately addressed under HSWA.

⁴ A Lower Tier MHF operated by Wiri Oil Services Limited (WOSL). WOSL operates the truck loading facility on behalf of its owners: BP, Mobil and Z Energy.

Relief sought

- 5.4 In my opinion this could be achieved by amending the definition as follows (deletions in strikethrough, additions in double underline):

Residual Risk *(This definition only applies to the Hazardous Substances Chapter of the District Plan)*

means any risk of an adverse effect beyond the site boundary after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work Act (2015) and regional planning instruments, have been complied with.

6. RULES (SUBMISSION POINTS 5/1 and 5/3, and 6/7, FURTHER SUBMISSION POINT X009)

- 6.1 The Fuel Companies submitted in support of there being no rules in the Hazardous Substances Chapter⁵ and effective reliance on other legislation and regulations as well as zone rules to appropriately manage the storage, use, and disposal of hazardous substances.
- 6.2 Ngā Tai Ora, in its submission, sought that rules be included in PC91 for the management, storage, use, transport, and disposal of hazardous substances⁶ as well as the inclusion of a new policy and rules relating to the avoidance of the storage, use, transport, and disposal of hazardous substances in natural hazard areas⁷.
- 6.3 The Fuel Companies (X009) opposed each of these submission points for the following reasons (briefly summarised from the Fuel Companies' Further Submission):
- (a) The Resource Management Act 1991 (*RMA*) has a role to play in managing the storage and use of hazardous substances however this should only be exercised where the potential environmental effects are not adequately addressed by other legislation and there is an identified issue or problem which requires District Plan intervention. Within this legislative context, no issues or problems have been identified by the Submitter⁸.
 - (b) A policy approach requiring the avoidance of hazardous substances in natural hazard areas (as sought by Submission 5/3) is not risk based and would necessitate rules prohibiting the same. Doing so would likely exclude the ongoing operation,

⁵ Submission point 6/7

⁶ Submission point 5/1

⁷ Submission point 5/3

⁸ Submission point 5/1

maintenance and upgrading of a range of facilities, including regionally significant infrastructure at Marsden Point.

Analysis

- 6.4 The Resource Legislation Amendment Act 2017 (*RLAA*) removed the explicit function of district and regional councils to control the adverse effects of the storage, use, disposal, or transportation of hazardous substances under sections 30 and 31 of the RMA. While councils do retain a broad power under the RMA to manage hazardous substances through plans and policy statements to achieve the purpose of the RMA and to carry out the function of integrated management of natural and physical resources in their region/district, this should only be exercised where the potential environmental effects are not adequately addressed by other legislation.
- 6.5 In my experience, there are examples of districts where risks associated with activities involving the use or storage hazardous substances are appropriately managed by zoning and compliance with other legislation without further intervention required at the District Plan level. I understand that this is what has been determined by the Council in preparing PC91 and hence the absence of specific hazardous substance rules and reliance on the proposed objective and policies of PC91, coupled with the zoning provisions.
- 6.6 I consider this is particularly appropriate for typical retail and commercial refuelling facilities where the nature of activities and compliance with other legislation enables hazardous substance risks to be contained within the site. My experience has been that land use consents granted for typical hazardous substance storage only duplicate controls under other legislation.
- 6.7 The Marsden Point Truck Loading Facility is located in the Heavy Industrial Zone, and is adjoined by large land parcels in other Heavy Industry Zoned sites and the Port Zone. In the Heavy Industry Zone a non-complying activity resource consent is required for, amongst others, residential activities, care centres, education facilities, hospitals, general commercial and general community facilities, whether or not they are a primary or ancillary activity. Similarly, residential, community, entertainment and commercial activities and entertainment facilities, grocery stores and funeral homes (amongst others) are a non-complying activity in the Port Zone whether or not they are a primary or ancillary activity. I understand that this would also apply to the Channel Terminal Services Limited facility which is also located within the Heavy Industrial Zone.
- 6.8 These provisions effectively require a non-complying activity resource consent for activities sensitive to risks associated with the storage and use of hazardous substances, including those which may give rise to reverse sensitivity effects. Any application for consent will need to be assessed against the policy framework of the Hazardous Substances chapter. I consider this process, subject to my relief sought in paragraphs 4.6

and 5.4 above, is appropriate to manage both residual risk and potential reverse sensitivity effects on MHF.

Relief Sought

6.9 For the reasons set out above, I recommend the Panel adopts the recommendation of the reporting officer in relation to submission points 5/1 and 5/3, being to reject the relief sought by Ngā Tai Ora.

7. SUMMARY OF RELIEF SOUGHT

7.1 In summary, the relief sought in my evidence above is as follows:

1. **Adopt** the recommendations of the reporting officer in relation to the following:
 - Submission points 6/1, 6/2 (regarding HSUB-01), 6/3, 6/4, 6/5, 6/6, 6/8, 6/9;
 - Further submission points: X009 to 5/2 and 2/1.
2. **Reject** the recommendation of the s42A officer in relation to Objective HSUB-O2 **and adopt** the following relief (deletions in strikethrough, additions in underlain):

Amend Objective HSUB-O2 as follows:

“Sensitive activities do not ~~unduly compromise~~ constrain or curtail existing areas and activities which use, store or dispose of hazardous substances.”
3. **Amend** the definition of ‘Residual Risk’ as recommended by the reporting officer (relating to submission point 4/1) as follows (additions in double underlain):

“Residual Risk (This definition only applies to the Hazardous Substances Chapter of the District Plan)

means any risk of an adverse effect beyond the site boundary after other industry controls, legislation and regulations, including the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998, the Health and Safety at Work Act (2015) and regional planning instruments, have been complied with.”
4. **Adopt** the recommendation of the reporting officer in relation to submission points 5/1 and 5/3, being to reject the relief sought by Ngā Tai Ora.

Sarah Westoby

2 March 2023