

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

**ORAL STATEMENT 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 9 March 2023

1. Introduction

My name is Sarah Westoby and I am a Principal Planner employed by 4Sight Consulting Limited which is now part of SLR. I have been working with fuel industry clients for the past three and a half years primarily on planning applications relating to refuelling facilities and inputs to various plan changes and proposed plans throughout the country.

I will not repeat my evidence on PC91, including my formal introduction and experience, as I understand it has been read. I've travelled here from Auckland this morning to assist the Chair / Panel on matters within my area of expertise being Planning.

Since preparing my evidence, I have reviewed the pre-circulated evidence of Mr Badham and Mr Garnham for Ngā Tai Ora as well as the evidence of Lynette Wharfe for Horticulture NZ.

I may also refer to "other legislation" in this oral statement and I use that term as stated in Footnote 1 on page 2 of my evidence.

Firstly I accept that councils do retain a broad power under the RMA to manage hazardous substances. This should only be exercised where the potential environmental effects are not adequately addressed by other legislation and there is an identified issue. I therefore, as a starting point, disagree with the suggestion that a precautionary approach needs to be taken in relation to the management of hazardous substances as stated in Mr Garnham's opening statement of his evidence (1.1).

2. My experience with Resource Consents for the storage and use of hazardous substances

My understanding is that HSNO and HSWA consider surrounding land uses generically, by including different clearances with respect to substances (HSNO) or surrounding land uses (HSWA). Most of these controls apply regardless of where that substance is stored or used and apply a precautionary approach which provides for an acceptable level of safety in most circumstances.

This has been reflected in my experience of land use consents granted for typical hazardous substance storage where councils have typically only addressed matters controlled under other legislation and don't elicit a different outcome in relation to managing adverse effects on people, property or the environment. This is particularly so for typical retail and commercial refuelling facilities where the nature of the activities and compliance with other legislation enables hazardous substance risks to be contained within the site.

I have undertaken an analysis of some work that 4Sight and its staff have been involved with for fuel industry clients in Whangārei. One being an application by bp in 2019 for resource consent to establish and operate an above ground diesel tank at an existing truck stop facility on Union Street in Whangārei. The site was in the Business 4 zone under the operative plan at the time. It proposed a 40kl a/g diesel tank at an existing TS which contained an existing 50kl a/g diesel tank. The activity needed a resource consent for exceeding the total quantity ratio for the zone. After some back and forth with the council the application was determined on a non-notified basis with one condition that relates to hazardous substances. The condition simply duplicated the HSWA 2017 requirements. Such a process is unnecessary and inefficient. In my reading of the dialogue between 4Sight planners and WDC officers in this case, I found there was a clear misunderstanding of the HFSP procedure which is a screening procedure used for the sole purpose of establishing if land use consent is required and is not a tool for a risk assessment.

I have also reviewed a 2013 RC for the installation of a diesel emission fluid tank at an existing truck stop at 30 Kioreroa Road Whangārei (a Z Energy TS).

Despite being located in the former Business 4 Zone which provided for a wide range of business activities, the activity needed a DA resource consent for exceeding the HFSP threshold. This was the only trigger for a consent and the conditions did not require anything over and above requirements of other legislation. For example Condition 4 requires the consent holder to provide detailed specifications of the DEF tank to the council after installation. Including that the tank must be designed and installed as required by HSNO legislation. Providing that information to the council as part of a RC condition doesn't illicit any additional information nor will it avoid, remedy, mitigate or minimise any adverse effects from residual risks any more efficiently or effectively than is required by other legislation.

I share these examples to demonstrate the type of real world outcomes that can be incurred where unnecessary provisions are adopted in a Plan which duplicate requirements of other legislation, without a thorough analysis of such other legislation.

I am happy to append these decisions to this statement after today if it would assist.

I am also happy to provide a brief overview of other examples I personally have been involved with, in Auckland for instance, where this typical scenario has also occurred if such context would be useful to the Panel.

Moreover, further to my own experience in consenting hazardous substances primarily resulting in duplication of processes, similar findings have been found elsewhere. I refer to paragraphs 51 – 55 of the IHPs decision (March 2016) for the Christchurch Replacement Plan.

It states that a review of 11 resource consents granted by CCC for the management of hazardous substances in the period February 2012 to March 2014, found that only one of those decisions had measures employed beyond what is required by default under the HSNO regulations.

3. Process

In terms of process, as a first step to reviewing hazardous substance provisions, I consider district councils should identify:

- specific hazardous substance related activities that are occurring within their area that might pose a risk off site (using MHF as a starting point and noting that in Whangārei District there are only three such sites listed by WorkSafe namely the Marsden Marsden Point Import Terminal (upper tier), Genera Limited (Port Marsden, lower tier) and Wiri Oil Services Limited - truck refuelling facility (adjacent to the Refinery, lower tier)); and
- the probability of a particular risk event (such as a fire or explosion); and
- sensitive land uses that may require additional protection not otherwise provided for.

Councils should then confirm whether there is appropriate environmental protection through HSNO or HSWA or any other relevant legislation to address these matters. If not, consideration should be given to whether adequate controls are provided through zoning/overlay controls (in combination with compliance with HSNO and HSWA) and, if not, then establish if it is necessary to provide additional protection for any of these areas or activities in the District Plan.

Hazardous substances in non-domestic quantities in urban areas are usually associated with industrial activities, which are generally undertaken in industrial zones. Industrial activities are less likely to experience reverse sensitivity effects from neighbours who would typically be undertaking similar activities.

Conversely, activities that use hazardous substances in large quantities in more sensitive zones (i.e. within residential areas) are often non-residential activities and it is more likely that resource consent would be required for such activities in any event and the effects of any associated hazardous substance use or storage could be addressed at that stage. I acknowledge the section 32 reporting planner's similar position that this is likely to be the case through existing zoning provisions in the WDP. In other words, the zone-based framework in the District Plan prevents incompatible activities from locating in industrial zones (section 8.2.2, s32 Report).

In the case of the existing MHF in Whangārei, the surrounding zoning (Industrial or Port zoning) and corresponding provisions in my view, appear to be appropriate to achieve the proposed objectives and policies of the PC91 Hazardous Substance Chapter which seek to, broadly, manage reverse sensitivity effects and protect people, property and the environment from any unacceptable adverse effects of residual risk.

I am unaware of any s32 analysis for PC91 which deems it 'necessary' to require controls over and above those provided by HSNO and HSWA, in relation to MHF or other facilities.

If in fact it is demonstrated that there is a gap, then additional land use controls may help address it. Careful consideration would, however, need to be given to the identified issue to be addressed and the potential controls to ensure intervention was necessary to promote sustainable management.

This exercise has been undertaken comprehensively in a number of districts. Ms Wharfe, in paragraphs 6.6 – 6.12 of her evidence statement, provides what I consider to be a helpful overview of the relationship between HSNO and the RMA and some of the considerations which went into the IHPs decision on the Christchurch Replacement Plan in 2016. I am familiar with the CCC decision and agree with Ms Wharfe's position.

In that instance, the IHP (which included both a High Court and an Environment Court Judge) after a rigorous examination process, rejected Christchurch City Council's hazardous substance controls (which were based on an activity status table approach) and only retained controls relating to hazardous substances in close proximity to the National Grid.

The decision also adopted overlays around MHF to protect critical infrastructure from reverse sensitivity effects as it was deemed to be "necessary".

In terms of new MHF and changes to existing MHF (though not defined in CCCs district plan) this appears to be controlled through specified zoning.

For instance in the Special Purpose (Lyttleton Port) Zone, Hazardous substances in the "Bulk Liquids Storage Area" is a controlled activity. Any other hazardous substance facility elsewhere would be captured by a zone's rules such that it may require a consent for the activity if in a sensitive zone.

4. District Plan responses to hazardous substances post RLAA 2017

In terms of proposed plans and plan changes post the RLAA 2017, Councils have responded differently.

Several Councils propose no rules relating to hazardous substances (for instance the proposed Porirua District Plan) while others propose focused provisions on MHF¹ (as defined in the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 (*the MHF Regs*), for instance the proposed Selwyn District Plan and the proposed Wellington District Plan) or have come up with a new definition – such as significant hazards facilities.

I am overseeing a colleague preparing an analysis of district and unitary plans around the country (around 40 complete at this stage with the balance to be completed soon) and how each District Plan manages hazardous substances. Once complete, it will differentiate between those notified pre and post the RLAA. Of the hazardous substance provisions that we have identified to date that have been notified post RLAA, and progressed through to at least the decision stage (of which there are three), none have included threshold or zone based rules or the HFSP approach, and all three have what I've termed a "no" or "low threshold" intervention approach, where no means that there are no rules, and low implies using a form of SHF and/or MHF in some capacity with limited rule based intervention. Hastings has MHF rules only, Opotiki has no hazardous substance rules, and Waikato District has an SHF / MHF approach albeit with limited intervention.

We have prepared this in tabular form with a comment column addressing the Fuel Companies' involvement in each and an overview of where each Plan review/change is at in the decision-making process.

Whilst it is still a work in progress, if it would assist the Panel I am happy to share this table after today.

I am happy to answer any questions. Thank you

My final point to make is regarding flooding and to respond to matters brought up by others before me:

I can appreciate that there may be particular instances where Council may seek to control the storage and use of particular hazardous substances (or activities involving the same), for instance in areas affected by flood hazards. However, this is more often an issue about what is occurring in an area affected by flood hazards and it is not confined to hazardous substances. For example outdoor storage of a range of materials such as fertiliser, timber, saw dust, scrap metal would, if liberated, likely result in adverse effects. A building, notwithstanding what it does or contain, may result in water displacement which may create an adverse effect or a potential adverse effect. However, other activities that involve the storage and use of hazardous substances may be resilient to those effects, for instance service stations in Kaikohe that are flooded but not at risk of liberating product, or bulk fuel storage facilities.

- bp petrol station in Riverside Drive, Parahaki,
- This site floods not infrequently
- These sites are resilient to this, given the containment design; and that was highlighted again by recent flood events.
- Bp has been asked about this at a meeting this year, they had some instances of water finding its way into tanks but nothing more significant than that.

Sarah Westoby

¹ Facilities which use or store hazardous substances exceeding the volumes in Schedule 2 of the MHF Regs.