

Level 1
2-8 Northcroft St
Takapuna, Auckland 0622

PO Box 33 817
Takapuna, Auckland 0740
New Zealand

Phone 09 917 4300
Fax 09 917 4311

12/138
Mark Laurensen
DDI (09) 917 4302
mLaurensen@burtonconsultants.co.nz

13 July 2016

Kapiti Coast District Council
Private Bag 60601
Paraparaumu 5254

districtplanreview@kapiticoast.govt.nz

Dear Sir/Madam,

RE: HEARING STATEMENT ON BEHALF OF THE OIL COMPANIES (SUBMITTER 512 AND FURTHER SUBMITTER 131) ON CHAPTER 9 (HAZARDS) OF THE PROPOSED KAPITI COAST DISTRICT PLAN

1. INTRODUCTION

We refer to the abovementioned matters set down for hearing commencing 2nd August 2016. Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (*the Oil Companies*) were a submitter and further submitter on Chapter 9 (Submitter 512, Further Submitter 131). The Oil Companies will not be attending the hearing as they are generally in agreement with the recommendations of the reporting planner but ask that this statement be tabled before the Hearings Panel.

The statement has been prepared on behalf of the Oil Companies and represents their views. The statement relates to the relevant submissions and further submissions by the Oil Companies, including how they have been addressed in the Section 42A report, and focuses on those matters which could still inappropriately restrict or limit the existing and future operations of the Oil Companies.

Annexure 1 to this statement sets out the recommendations of the reporting planner which are supported.

2. SUBMISSION POINT 512.17 – Section 9.6.1 (Section 9.6.3 as notified)

The Oil Companies' submission sought the retention without modification of the text under the heading 9.6.3 Contaminated and Potentially Contaminated Land in the Kapiti Coast Proposed District Plan (*the PDP*).

Section 9.6.3 Contaminated and Potentially Contaminated Land has been renumbered 9.6.1 Introduction. The reporting planner accepts in part the Oil Companies' submission but has proposed a number of revisions to the wording as notified in the PDP, including the changes to the paragraph below to better address the roles of District and Regional Council's (additions in underline, deletions in strikethrough):

Both District and Regional Councils have roles in managing contaminated land. Under the RMA (Section 30(1)(ca)), Regional Councils are charged with the investigation of land to identify and monitor contaminated sites, while District Councils control the effects of land use, development and protection to prevent or mitigate the adverse effects of the development, subdivision or use of contaminated land (Section 31~~(1)~~).

The principle of these changes is supported but the following amendments are sought to more accurately reflect the requirements of S31(1)(b) of the Resource Management Act (*the Act*) (deletions in bold and strikethrough, additions in bold).

Both District and Regional Councils have roles in managing contaminated land. Under the RMA (Section 30(1)(ca)), Regional Councils are charged with the investigation of land to identify and monitor contaminated sites, while District Councils control the effects of ~~land~~ ~~the~~ use, development ~~and~~ ~~protection of land~~ to prevent or mitigate the adverse effects of the development, subdivision or use of contaminated land (Section 31~~(1)~~).

The balance of changes proposed by the reporting planner to the introductory text at Section 9.6.1 are supported.

Recommendation to the Committee: The Oil Companies seek the following revisions to the first paragraph of the introductory text at Section 9.6.1 of the Contaminated Land section to better reflect the requirements of Section 30 of the Act. The Oil Companies seek retention of the balance of Section 9.6.1 as proposed by the reporting planner.

Both District and Regional Councils have roles in managing contaminated land. Under the RMA (Section 30(1)(ca)), Regional Councils are charged with the investigation of land to identify and monitor contaminated sites, while District Councils control the effects of ~~land~~ ~~the~~ use, development ~~and~~ ~~protection of land~~ to prevent or mitigate the adverse effects of the development, subdivision or use of contaminated land (Section 31~~(1)~~).

3. SUBMISSION POINT 512.15 – Section 9.6.4

The Oil Companies sought the following amendments to the paragraphs under the heading 9.6.4 Hazardous Substances and Contaminated Land Rules and Standards additions in underline, deletions in strikethrough):

The following rules shall apply to activities that involve the ~~disturbance or use of contaminated or potentially contaminated land, or use, storage, and/or disposal of hazardous substances.~~ Consideration shall be given to the relevant rules and conditions for the zone in which the activity is to be located. Regard shall be had to all Objectives and Policies which may be relevant to any proposed activity subject to the provisions of these rules.

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, which the Council is responsible for enforcing, is applicable to this topic. The rules of the NES apply to managing the effects of contaminants in soil on human health. ~~The District Plan rules apply to managing other effects, including the effects of contaminants on eco-systems.~~ The Standard is available at: <http://www.mfe.govt.nz> and at Kāpiti Coast District Council office and is included in Appendix X

The reporting planner proposes to delete the paragraphs above and to include the following new paragraphs to direct applicants to the NES:

For areas containing contaminated and potentially contaminated sites as defined under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the 'NES'), the NES applies in its entirety.

No rule in any chapter of this Plan that duplicates or conflicts with the NES shall apply. The NES applies in addition to all other rules in any chapter of this Plan applicable to the same areas or sites.

The Oil Companies support these changes in principle but seek amendments to more clearly convey the correct relationship between the NES and the PDP, including recognising that the NES relates to contaminated land as opposed to contaminated sites. This is a subtle but important change which recognises that it is not uncommon to encounter a small area of contaminated land in what may potentially be a much wider site. Similarly important is the rewording of the sentences addressing the relationship between the PDP provisions and the NES. As drafted by the reporting planner the statement addressing the relationship between the NES and the PDP is contradictory. On one hand it appears to be suggesting that the PDP will not apply but on the other suggests that both the NES and PDP provisions apply. Clarity regarding this relationship could however be achieved by restructuring these sentences to

better reflect S44A of the Act (additions in bold and underline, deletions in bold and strikethrough):

For areas containing contaminated and potentially contaminated **sites land** as defined under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the 'NES'), the NES applies in its entirety.

~~No rule in any chapter of this Plan that duplicates or conflicts with the NES shall apply.~~
The NES applies in addition to all other rules in any chapter of this Plan, **applicable to the same areas or sites**, however no rule in any chapter of this Plan that duplicates or conflicts with the NES shall apply.

Recommendation to the Committee: Amend Section 9.6.4 as follows to clearly convey the correct relationship between the NES and the PDP as set out in S44A of the Act (additions in bold and underline, deletions in bold and strikethrough):

For areas containing contaminated and potentially contaminated **sites land** as defined under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the 'NES'), the NES applies in its entirety.

~~No rule in any chapter of this Plan that duplicates or conflicts with the NES shall apply.~~
The NES applies in addition to all other rules in any chapter of this Plan, **applicable to the same areas or sites**, however no rule in any chapter of this Plan that duplicates or conflicts with the NES shall apply.

Yours sincerely

BURTON PLANNING CONSULTANTS LIMITED



Mark Laurensen
Senior Planner