

**SUBMISSION ON THE PROPOSED WAITOMO DISTRICT PLAN PURSUANT TO CLAUSE 6 OF
THE FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991**

To: Waitomo District Council
PO Box 404
Te Kuiti 3941
Attention: Planning Technician

Via email: districtplan@waitomo.govt.nz

Submitter: BP Oil New Zealand Limited Z Energy Limited
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Hereafter referred to as the Fuel Companies

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Date: 23rd December 2022

A. INTRODUCTION

1. BP Oil New Zealand Limited and Z Energy Limited (*the Fuel Companies*) receive, store and distribute refined petroleum products around New Zealand. In the Waitomo District, the Fuel Companies' core business relates to retail fuel outlets.
2. The Waitomo District Council (*the Council*) is undertaking a district plan review and publicly notified the Proposed Waitomo District Plan (*the Proposed Plan*) on 20th October 2022.
3. The Council invited the public to provide input on the Draft Waitomo District Plan (*the Draft Plan*). The Fuel Companies provided comments on the Draft Plan in May 2022.
4. This submission relates to the provisions in Part 1 (Definitions) and Part 2 (Hazardous Substances, Transport, Network Utilities, Natural Hazards, Earthworks and Contaminated Land). It is relevant to note that the Fuel Companies have service stations in Te Kuiti which are within the proposed Building Platform Suitable Area – C. This is reflected in the submission points of Schedule C related to flood risks.

B. THE SPECIFIC PROVISIONS OF THE PROPOSED WAITOMO DISTRICT PLAN THAT THE FUEL COMPANIES' SUBMISSION RELATES TO ARE SUMMARISED BELOW.

5. The specific provisions submitted on, the rationale for the Fuel Companies' submission on each of these matters, and the relief sought is contained in the schedules below. Changes sought to the provisions are shown by deletion in ~~striketrough~~ and additions in underline. The Fuel Companies support alternative relief that achieves the same outcome(s).
6. In addition to the specific outcomes and relief sought, the following general relief is sought:
 - a. achieve the following:
 - i. the purpose and principles of the Resource Management Act 1991 (*the RMA*) and consistency with the relevant provisions in sections 6 to 8 of the RMA;
 - ii. give effect to the Waikato Regional Policy Statement;
 - iii. assist the Council to carry out its functions under section 31 of the RMA;
 - iv. meet the requirements of the statutory tests in section 32 of the RMA; and
 - v. avoid, remedy or mitigate any relevant and identified environmental effects;
 - b. make any alternative or consequential relief as required to give effect to this submission, including any consequential relief required in any other sections of the proposed plan that are not specifically subject of this submission but where consequential changes are required to ensure a consistent approach is taken throughout the document; and
 - c. any other relief required to give effect to the issues raised in this submission.

C. THE FUEL COMPANIES WISH TO BE HEARD IN SUPPORT OF THIS SUBMISSION.

D. IF OTHERS MAKE SIMILAR SUBMISSIONS, THE FUEL COPMANIES MAY BE PREPARED TO CONSIDER PRESENTING A JOINT CASE WITH THEM AT ANY HEARING.

E. THE FUEL COMPANIES COULD NOT GAIN AN ADVANTAGE IN TRADE COMPETITION THROUGH THIS SUBMISSION.

- F. THE FUEL COMPANIES ARE DIRECTLY AFFECTED BY AN EFFECT OF THE SUBJECT MATTER OF THE SUBMISSION THAT:
- I. ADVERSELY AFFECTS THE ENVIRONMENT; AND
 - II. DOES NOT RELATE TO TRADE COMPETITION OR THE EFFECTS OF TRADE COMPETITION.

Signed for and on behalf of BP Oil New Zealand Limited and Z Energy Limited

A handwritten signature in black ink, appearing to read 'Thomas Trevilla', with a horizontal line above the first few letters.

Thomas Trevilla
Planning and Policy Consultant
4Sight Consulting Limited

Dated this 23rd day of December 2022

SCHEDULE A – HAZARDOUS SUBSTANCES

A1 The specific parts of the Proposed Plan that this submission relates to are:

- **SUPPORT** – Hazardous Substances Chapter – Overview
- **SUPPORT** – Hazardous Substances Chapter – Objective HS-O1
- **SUPPORT** – Hazardous Substances Chapter – Policies HS-P1 to HS-P4
- **SUPPORT** – Hazardous Substances Chapter – Rules HS-R1 to HS-R2
- **SUPPORT IN PART** – Definitions Chapter – Significant Hazardous Facility

A2 Reasons for the submission and the relief sought

1.1 The Fuel Companies support the provisions of the Hazardous Substances Chapter and, in particular, the amended version of Policy HS-P3 which recognises that SHF can be located within hazard areas provided there is a functional need and it does not pose an increased risk to people, property and the environment. The Fuel Companies also generally support the definition of a ‘Significant Hazardous Facility’ (SHF) and, in particular, the inclusion of above ground storage of diesel and petrol (greater than 100,000L and 50,000L respectively), the exclusion of underground storage) and inclusion of Major Hazard Facilities as defined under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016.

1.2 However, the Fuel Companies consider that the underground storage of diesel and petrol should be specifically referred to in the exclusions. This is to ensure consistency with the approach identified in paragraph 1.1 above.

1.3 The following relief is sought:

- a. Retain the Hazardous Substances Chapter overview, objectives, policies and rules as notified.
- b. Amend the exclusions of the SHF definition as follows:

[...] For the avoidance of doubt, the following activities are not significant hazardous facilities:

- (i) The incidental use and storage of hazardous substances in minimal domestic scale quantities;*
- (ii) Retail outlets for hazardous substances intended for domestic usage (eg supermarkets, hardware stores, and pharmacies);*
- (iii) The incidental storage and use of agrichemicals, fertilisers and fuel for land based primary production activities;*
- (iv) Pipelines used for the transfer of hazardous substances such as gas, oil, trade waste and sewage;*
- (v) Fuel in motor vehicles, boats, airplanes and small engines;*
- (vi) Military training activities;*
- (vii) The transport of hazardous substances; ~~and~~*
- (viii) Emergency management activities; and*
- (iv) The underground storage of diesel and petrol.*

SCHEDULE B – ELECTRIC VEHICLE CHARGING

B1 The specific parts of the Proposed Plan that this submission relates to are:

- **SUPPORT IN PART** – Transport Chapter – Policy TRAN-P2
- **SUPPORT IN PART** – Transport Chapter – Rule TRAN-R3
- **SUPPORT IN PART** – Network Utilities Chapter – Rule NU-R8

- **SUPPORT IN PART** – Plan-wide – Terms related to electric vehicle charging infrastructure

B2 Reasons for the submission and the relief sought

- 1.1 The Proposed Plan seeks to provide for a modal shift towards low to no emission transport options such as electric vehicles (EV). Regarding EV charging infrastructure, the Proposed Plan includes:
- a. Policy TRAN-P2, which seeks to maintain the safety and efficiency of the transport system by a range of means, including the appropriate location, maintenance, and operation of ‘electric vehicle charging stations’ (EVCS).
 - b. Rule TRAN-R3, which provides for EVCS as a permitted activity in all zones and precincts subject to compliance with two performance standards which relate to the location and dimensions of the ‘electric vehicle charging device’ (EVCD). Non-compliance would result in a restricted discretionary activity.
 - c. Rule NU-R8, which provides for ‘electric vehicle charging facilities’ (EVCF) as a permitted activity subject to compliance with two performance standards identical to those of Rule TRAN-R3. Non-compliance would result in a restricted discretionary activity. Additionally, any EVCF is a restricted discretionary activity on outstanding natural features, heritage buildings and structures, sites and areas of significance to Māori, or significant archaeological sites. There are no objectives or policies in the Chapter for EVCF.
- 1.2 The Fuel Companies support the direction of these provisions and the permitted activity pathway which can support a broader network of EV charging infrastructure, encourage EV use and contribute to carbon emissions reduction and climate change goals.
- 1.3 However, the Fuel Companies do seek amendments. Firstly, they consider that the proposed maximum permitted height and area of Rule TRAN-R3 need to be increased. This is because some common charging devices in the market exceed these dimensions, with heights such as 2.5m and requirements to be situated on concrete pads of approximately 0.3m in height. Some devices are also designed with poles or cables that extend above the main structure (like a typical petrol fuel hose extension). To provide for these devices, they seek that the standard be amended as set out below. Secondly, for consistency and to give the Council scope to make such amendments, they seek that the performance standards of Rule NU-R8 be aligned with those sought for Rule TRAN-R3. And lastly, for consistency, they seek that only the term ‘electric vehicle charging devices’ is used in the Plan to refer to EV charging infrastructure.
- 1.4 The following relief is sought:
- a. Amend clause (5) of Policy TRAN-P2 as follows:

5. Appropriately locate, maintain and operate electric vehicle charging ~~stations~~ devices;
 - b. Amend the title and performance standards of Rule TRAN-R3 as follows:

TRAN-R3. Electric vehicle charging ~~stations~~ devices

 - 1. The electric vehicle charging device is installed in an existing, permitted or consented vehicle parking space, vehicle depot or garage structure or is installed on the road reserve; and*
 - 2. The electric vehicle charging device does not exceed a height of ~~1.8~~ 3.0 m as measured from ground level, and an area of ~~1.5~~ 3.0 m².*

This rule does not apply to poles, cables and cable support systems associated with the electric vehicle charging device.

- c. Amend the title and performance standards of Rule NU-R8 as follows:

NU-R8. New electric vehicle charging ~~facilities~~ devices

1. Be installed in an existing, permitted or consented vehicle parking space, vehicle depot or garage structure, or installed on the road reserve; and

2. Not exceed a height of ~~1.8~~ 3.0 m and an area of ~~1.5~~ 3.0 m².

This rule does not apply to poles, cables and cable support systems associated with the electric vehicle charging device.

- d. Use 'electric vehicle charging devices' in all other instances in the Plan which currently use other terms to refer to electric vehicle charging infrastructure. These terms include, but are not limited to, 'electric vehicle charging stations' or 'electric vehicle charging facilities'.

SCHEDULE C – NATURAL HAZARDS, LAND DISTURBANCE AND EARTHWORKS

C1 The specific parts of the Proposed Plan that this submission relates to are:

- **SUPPORT** – Natural Hazards Chapter – Policy NH-P4
- **SUPPORT IN PART** – Natural Hazards Chapter – Policy NH-P5
- **SUPPORT IN PART** – Natural Hazards Chapter – Rule NH-R5
- **SUPPORT** – Earthworks Chapter – Rule NH-R6
- **SUPPORT** – Earthworks Chapter – Rule EW-R6
- **SUPPORT IN PART** – Earthworks Chapter – Rule EW-R7

C2 Reasons for the submission and the relief sought

1.5 The largest scale land disturbance activities undertaken by the Fuel Companies are typically those associated with the replacement and/or removal of fuel storage systems. These are specifically and appropriately addressed under the provisions of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (*the NES-CS*) and should not be duplicated by a district plan. The ongoing operation, maintenance and upgrade of retail fuel facilities also necessitate land disturbance for a range of other reasons.

1.6 The Proposed Plan makes a distinction between earthworks and land disturbance in its definitions:

- a. *“Earthworks means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fence posts.”*
- b. *“Land disturbance means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) that does not permanently alter the profile, contour or height of the land.”*

1.7 It is assumed that the Council intends that land disturbance is a subset of earthworks and this is reflected in the comments below. Clarity in the Plan in this respect would assist plan users.

1.8 The Fuel Companies recognise the need to manage earthworks and particularly those in flood risk areas but consider that the provisions as notified do not appropriately distinguish between the risks of earthworks and land disturbance. Clause 1 of Policy NH-P5, for example, seeks to manage the adverse effects of 'land disturbance' on flood risks in a Building Platform Suitability Area - C

(BPSA-C) but the corresponding rule, Rule NH-R6, refers to 'earthworks'. In the Fuel Companies' experience, land disturbance, which, by definition, is temporary and will not permanently alter the land, does not create issues related to flood risk and Policy NH-P5 should thus focus only on earthworks, not land disturbance. Amendments to that effect are outlined below. Rule NH-R6 is supported on the basis that it does not apply to land disturbance (as it is not referenced by the rule and having regard to the reasons outlined in this paragraph). Therefore, land disturbance would not be managed by the BPSA-C rules and would be permitted in these areas. The Fuel Companies also support Policy NH-P4 as notified.

1.9 Rule NH-R5 does not control structures that are not buildings or accessory buildings in a BPSA-C. Any such structures would therefore fall to be permitted. The Fuel Companies support this and it will help ensure that structures such as unroofed storage tanks with limited potential effects on flood risks are not unduly restricted. A minor amendment to the title of Rule NH-R5 is, however, proposed as the rule manages non-habitable accessory buildings and shipping containers but neither are referenced.

1.10 Regarding the Earthworks Chapter, the Fuel Companies support Rule EW-R6, including the permitted earthworks volume of 1,000m³ in the Industrial Zone. Regarding Rule EW-R7, the Fuel Companies consider that land disturbance associated with the replacement and/or removal of underground fuel storage systems and drainage devices should have its own exclusion as the tanks or devices may need to be in a different location than the existing due to operational or site requirements and may therefore not necessarily fall to be considered as 'like for like'. Amendments to that effect are outlined below.

1.11 The following relief is sought:

- a. Retain Policy NH-P4 as notified.
- b. Amend clause (1) of Policy NH-P5 as follows:

1. In Building Platform Suitability Area C, ensuring that the potential adverse effects of ~~land disturbance~~ earthworks activities on flood storage capacity, overland flows and run-off volumes on surrounding properties and infrastructure, are avoided or mitigated; and

- c. Amend the title of Rule NH-R5 as follows:

NH-R5. Non-habitable accessory buildings or shipping containers, and Additions to an existing building, or construction of a new building housing a sensitive activity

- d. Retain Rule NH-R6 as notified.
- e. Retain Rule EW-R6 as notified.
- f. Amend the performance standards of Rule EW-R7 as follows:

1. The cut depth or fill height (measured vertically) must not exceed:

- (i) Outside the minimum building setback for the underlying zone - 1.5 m; and*
- (ii) Inside the minimum building setback for the underlying zone - 0.5 m; and*
- (iii) Where no minimum building setback applies (eg in the road reserve), the cut depth or fill height shall not exceed 1.5 m vertically.*

This rule does not apply to:

- (a) Lawfully established underground tanks (excluding underground fuel storage systems) and septic systems where the replacement is 'like for like'. That is a cut or fill*

that is in the same location and the effects are the same or similar in character, intensity and scale to those that previously existed-; and

(b) Land disturbance associated with the replacement and/or removal of underground fuel storage systems and drainage devices.

SCHEDULE D – CONTAMINATED LAND

D1 The specific parts of the Proposed Plan that this submission relates to are:

- **SUPPORT** – Contaminated Land Chapter – Overview
- **SUPPORT** – Contaminated Land Chapter – Objective CL-O1
- **SUPPORT** – Contaminated Land Chapter – Policies CL-P1 and CL-P2

D2 Reasons for the submission and the relief sought

- 1.2 The Fuel Companies consider that the NES-CS provides an appropriate rule framework for activities involving the use, development and disturbance of contaminated and potentially contaminated soil.
- 1.3 The Proposed Plan’s Contaminated Land Chapter appears to acknowledge this point, stating that “[t]here are no rules in this plan with respect to contaminated land. The NES-CS provides a complete framework of rules for managing subdivision, use, development or redevelopment of contaminated or potentially contaminated land”. The Fuel Companies support this approach and the Chapter overview, objectives and policies as notified.
- 1.4 The following relief is sought:
 - a. Retain the Contaminated Land Chapter overview, Objective CL-01, and Policies CL-P1 and CL-P2 as notified.