

**SUBMISSION ON THE PROPOSED TE TAI O POUTINI PLAN PURSUANT TO CLAUSE 6 OF THE
FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991**

To: Te Tai o Poutini Plan Committee
Westland District Council
Grey District Council
Buller District Council

Via email: info@tppp.nz

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Hereafter referred to as the Fuel Companies

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A. INTRODUCTION

bp Oil New Zealand Limited, Mobil Oil New Zealand Limited, and Z Energy Limited (*the Fuel Companies*) receive, store and distribute refined petroleum products around New Zealand. In the West Coast, the Fuel Companies' core business relates to retail fuel outlets, including service stations and truck stops, and supply to commercial facilities.

Te Tai o Poutini Plan (TTPP) is the combined district plan for the Buller, Grey and Westland District Councils. TTPP was notified on 14th July 2022.

The Council invited the public to provide input on the Draft TTPP (*the draft plan*) in early 2022 prior to notification. The Fuel Companies provided comments on the draft plan to the Council in March 2021.

This submission relates to the Infrastructure, Hazardous Substances, Contaminated Land, Earthworks, Natural Hazards, and Transport provisions contained within Part 2 – District Wide Matters, and the definitions contained within Part 1 – Introduction and General Provisions.

B. THE SPECIFIC PROVISIONS OF THE TTPP THAT THE FUEL COMPANIES' SUBMISSION RELATES TO ARE SUMMARISED AS FOLLOWS

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. Specific changes sought to the provisions are highlighted **yellow** with deletions in ~~single strikethrough~~ and additions in single underline. The Fuel Companies support alternative relief that achieves the same outcome(s).

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 (RMA) and consistency with the relevant provisions in Sections 6 - 8 RMA;
 - ii. Give effect to the West Coast Regional Policy Statement;
 - iii. Assist the Council to carry out its functions under Section 31 RMA;
 - iv. Meet the requirements of the statutory tests in section 32 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 COMPANIES 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 on behalf of Z Energy Limited, bp Oil New Zealand Limited and Mobil Oil New Zealand Limited

A handwritten signature in black ink, appearing to read 'Phil Brown', written in a cursive style.

Phil Brown
Senior Planner
11th November 2022

SCHEDULE A

A. INFRASTRUCTURE

1. The Fuel Companies' activities in the district do not fall under the proposed definitions of infrastructure or network utility operator (which are RMA definitions and therefore considered appropriate and supported), and the provisions of the TTPP in relation to infrastructure and network utilities have therefore not been considered further.

B. HAZARDOUS SUBSTANCES

Background

2. 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 Resource Management Act 1991 (RMA).
3. Councils have responded differently to the RLAA. Several councils propose no rules relating to hazardous substances (for instance the proposed Porirua District Plan) while others propose focused provisions on MHF (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 - significant hazards facilities (SHF), for instance the proposed New Plymouth District Plan and the Proposed Waikato District Plan). The Fuel Companies have provided feedback to these draft/proposed plans and have been generally supportive of the approaches taken, except where the definitions of MHF or SHF are not appropriately risk based in relation to their core activities.

The TTPP

4. The TTPP recognises the role that other legislation plays in controlling hazardous substances, with the overview section of the hazardous substances chapter stating "*The District Councils have limited powers and responsibilities under HSNO and HSWA, which are administered by other agencies*". This approach, which follows the advice provided in the Hazardous Substances and Contaminated Land Section 32 report¹, is consistent with the RLAA and is supported by the Fuel Companies. However it is important that the plan recognises the need to avoid duplication of the requirements and obligations that arise under other hazardous substances legislation and regulations. This can be achieved through the addition of a new policy (as proposed in Schedule B).
5. No rules are proposed in the TTPP and this approach is supported on the assumption that the Councils' analysis has identified none are required in the region.
6. Objective HS-01 and Policy HS-P1 seek to minimise risks to the environment and human health associated with development and activities involving the storage of hazardous substances. We consider that these provisions need to be reworked to ensure that they are consistent with the Hazardous Substances and Contaminated Land Section 32 report.
 - a. These provisions refer to hazardous substances in general, rather than major hazardous facilities. The Section 32 report advises that adverse effects on human health and the environment are primarily controlled under HSNO, and in para 8, states that *In terms of Te Tai o Poutini Plan the staff view is that only major hazardous facilities should be the focus of provisions*. We consider that Objective HS-01 and Policy HS-P1 should specifically refer to hazardous facilities, rather than to hazardous substances.

¹ Technical Update: Hazardous Substances and Contaminated Land Objectives and Policies, prepared by Lois Easton, Principal Planner, dated March 2021.

- b. These provisions seek to *minimise* residual risk. We consider the word *minimise* to be problematic, and inconsistent with the advice provided in the Section 32 report, which states in para 9 that the focus should be on *managing* residual risk. In the New Zealand Oxford Dictionary, minimised is defined as *to reduce (something especially something undesirable) to the smallest possible amount or degree*. The difference between minimise and mitigate in an RMA context is that to minimise is to make (something) as small or insignificant as possible, while to mitigate is to reduce, lessen or decrease. In short, the Fuel Companies do not consider that it is appropriate to require minimisation but rather to manage to acceptable levels, and recommend that Objective HS-01 and Policy HS-P1 are amended to reflect this distinction.
7. Policies HS-P2, P3 and P4 address matters in relation to major hazardous facilities, including proximity to overlay areas and natural hazards, providing for major hazard facilities in particular areas and managing sensitive activities in proximity to major hazard facilities. The Fuel Companies support these policies and consider them to be appropriate.
8. The TTPP does not include a definition of major hazard facilities, however our assumption is that this has been adopted from the definition provided in the HSWA. In order to avoid confusion, we consider that a definition of major hazard facilities is provided, with reference to the HSWA definition.

C. CONTAMINATED LAND

9. The Fuel Companies support the TTPP's reliance on the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS) to provide a rule framework for activities involving the use, development and disturbance of contaminated soil. In particular, the Fuel Companies are supportive of a policy framework based on management or risk to human health to ensure contaminated land is appropriate for its intended use.
10. Having read the Contaminated Land Section 32 report, we understand that the key consideration in relation to the use and development of contaminated land is associated with the human health effects, with reference to paras 16 and 20. However, the objectives and policies of the TTPP also refer to effects on the wider environment, and this does not reflect the advice provided in the Section 32 report. The inclusion of a policy framework to manage effects on the wider environment is also inconsistent with the NESCS which focuses on human health, noting that the regional council already manages environmental effects in relation to discharge of contaminated land. Accordingly, changes are sought to the relevant objectives and policies to focus solely on human health effects, or if broader provisions are appropriate, this should be demonstrated, including in terms of efficiency and effectiveness.

D. EARTHWORKS

11. The Overview section of the Earthworks Chapter states "*Where earthworks associated with the removal of contaminated land and soil are undertaken, the provisions of the National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil for Human Health will also apply.*" The Fuel Companies anticipate this statement is intended to mean that the NESCS applies in addition to the earthworks provisions in certain instances and respond on that basis below.
12. The permitted activity earthworks rules (EW-R1 and EW-R2) contain standards in relation to earthworks depth, controls and provide a permitted pathway for specific activities, subject to meeting any applicable overlay and zone standards. The Fuel Companies would like to see the maintenance and replacement and removal of underground petroleum storage tanks exempt from these earthworks requirements, noting that the specific exemptions provided in EW-R1(1)(a-c) would not capture these works and this is not an exempted activity under EW-R2. The removal and replacement of underground petroleum storage systems (UPSS) is the most common type of earthworks undertaken by the Fuel Companies, and is a necessary component of the maintenance cycle for the underground infrastructure on these sites. This activity is predominantly controlled by and subject to the NESCS, which links into HSNO (including the requirement to comply with HSNO COP44 and 45) and relevant contaminated site guidelines (including (Module 7 of) the MfE Guidelines: Guidelines for Assessing and Managing Petroleum Hydrocarbon

Contaminated Sites in New Zealand). Those requirements ensure good site management practices. There is no need for a further layer of regulation, and it is important that the TTPP recognises this.

13. With regards to EW-R1(3), it is important that this recognises the importance of not only establishing erosion and sediment control measures but also maintaining them for the duration of works. Additionally, the reference in this clause to the need to avoid any sediment entering Council's network will be unachievable in most instances and does not recognise that, despite good practice management measures, trace levels of sediment will be discharged during earthworks.

E. TRANSPORT

14. The Fuel Companies support the strategic direction of the TTPP in the Energy, Infrastructure and Transport Chapters that seeks resilience to the effects of climate change and supports reduction in greenhouse gas emissions. The Fuel Companies consider the use of electric vehicles (EVs) to be a key utilisation of new renewable technologies that will help achieve the Council's greenhouse gas reduction and climate change goals. Policies TRN-P6 and TRN-P8 enable and encourage the provision of electric vehicle charging stations. The Fuel Companies support these policies.
15. The Fuel Companies consider that it is important to have a clear permitted activity pathway to support this policy framework which doesn't differentiate where such facilities should be located. In this regard, it is considered that Rule TRN-R6 should provide for the establishment of electric bike and vehicle charging stations in any zone as a permitted activity, and not just in the transport corridor. This will enable for example, installation of an EV charging station at an existing service station. In addition, it is not clear why thresholds on the maximum size and height of EV charging facilities are set out in in TRN-R6 (as this was not addressed in the Section 32 report) and these limits do not recognise that modern and high speed EV charging infrastructure and facilities can sometimes exceed this threshold. For example, some common charging units in the market today measure up to 2.5m in height and are required to be situated atop an approximately 0.3m high concrete pad. Corresponding changes are sought to restricted discretionary Rule TRN-R11. Establishing a clear permitted activity rule will assist to promote a broader network of EV charging stations and therefore greater uptake of EV use in the district and would contribute to the district's carbon reduction and climate change goals.

SCHEDULE B

Table 1: Fuel Companies relief to the FNDC PDP

Plan Provision	Position	Reason	Relief Sought
Definitions			
New definition: <i>Major Hazard Facility (MHF)</i>		Paragraphs 2-8, Schedule A	Introduce a definition of Major Hazard Facility as follows: <i>Major Hazard Facility: has the same meaning as in regulation 4 of the Health and Safety at Work Act 2015.</i>
HS – Hazardous Substances			
Objective HS-O1	Support in part	Paragraphs 2-8, Schedule A	Amend Objective HS-O1 as follows: <i>HS – O1</i> <i>The benefits associated with the use of hazardous substances are recognised while ensuring that risks to the environment and human health arising from subdivision use and development activities involving hazardous substances at major hazard facilities are minimised.</i>
Policy HS-P1	Support in part	Paragraphs 2-8, Schedule A	Amend Policy HS – P1 as follows: <i>HS – P1</i> <i>Activities and facilities involving the use and storage of hazardous substances at major hazard facilities shall be designed, located, constructed and operated so as to minimise manage residual risk to people and the environment.</i>
Policies HS-P2, HS-P3, HS-P4	Support	Paragraphs 2-8, Schedule A	Retain Policies HS-P2, HS-P3, HS-P4 as notified
New policy:		Paragraphs 2-8, Schedule A	Introduce a new policy (Policy HS-P5) as follows:

Plan Provision	Position	Reason	Relief Sought
Policy HS-P5			Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the Plan.
CL – Contaminated Land			
Objective CL-O1	Support in part	Paragraphs 9-10, Schedule A	<p>Amend Objective CL-O1 as follows:</p> <p>CL - O1</p> <p>To ensure that contaminated land is used, subdivided, developed or managed in a way that avoids or mitigates manages adverse effects on the environment and human health to an acceptable level.</p>
Policy CL-P1	Support in part	Paragraphs 9-10, Schedule A	<p>Amend Objective CL-P1 as follows:</p> <p>CL - P1</p> <p>At the time of subdivision, change of use or development, identify sites that may be subject to potential contamination as a result of historical land use and activities and investigate the risks to human health and the environment.</p>
Policy CL-P2	Support in part	Paragraphs 9-10, Schedule A	<p>Amend Policy CL-P2 as follows:</p> <p>CL-P2</p> <p>Ensure that when contaminated land is used, subdivided and/or developed, the land is managed or remediated in a way that avoids or mitigates adverse effects on the environment and manages the risk to human health to a level that is appropriate for the intended use.</p>
Earthworks			

Plan Provision	Position	Reason	Relief Sought
Objective EW-O1 and Policies EW-P1, EW-P2, EW-P3, EW-P4.	Support	Paragraphs 9-10, Schedule A	Retain Objective EW-O1 and Policies EW-P1, EW-P2, EW-P3, EW-P4 as notified.
Rule EW-R1	Oppose in part	Paragraphs 9-10, Schedule A	<p>Amend Rule EW-R1 as follows:</p> <p><i>EW - R1</i></p> <p><i>All Permitted activities must comply with the following relevant standards.</i></p> <p><i>1. Earthworks must not exceed a maximum depth or height above ground level of 1.5m measured vertically within 1.5m of a boundary except where these are for the maintenance, removal or replacement of an underground petroleum storage tank or are undertaken by a network utility operator for the purpose of:</i></p> <p><i>a. Pole foundations;</i></p> <p><i>b. Backfilled trenches; or</i></p> <p><i>c. Installation of services by trenchless methods such as directional drilling;</i></p> <p><i>2. All imported fill must consist of cleanfill material;</i></p> <p><i>3. Erosion and sediment control measures must be put in place designed, installed and maintained for the duration of earthworks to avoid minimise sediment run-off from earthworks activities entering a Council reticulated network or into waterbodies.</i></p> <p><i>4. No diversion of stormwater and overland flow shall occur beyond the site boundary and water must not be diverted to adjacent properties or the road;</i></p> <p><i>5. Any earthworks within the vicinity of overhead electric lines must comply with the New Zealand Electrical Code of Practice for Electrical Safety Distances (NZECP 34:2001);</i></p>

Plan Provision	Position	Reason	Relief Sought
			<p><i>6. No earthworks are to be undertaken on or within 10m of any public natural hazard mitigation structure unless under the written approval has been obtained from the relevant local government agency; and</i></p> <p><i>7. In the event of discovery of any sensitive or archaeological material that the Accidental Discovery Protocol outlined in Appendix Four must be followed.</i></p> <p><i>Advice Notes:</i></p> <p><i>1. Earthworks are also regulated by the West Coast Regional Land and Water Plan and the NES - Freshwater 2020 administered by the West Coast Regional Council.</i></p> <p><i>2. Earthworks undertaken in areas of contaminated land are subject to the Rules in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.</i></p>
Rule EW-R2	Oppose in part	Paragraphs 9-10, Schedule A	<p>Amend Rule EW-R2 as follows:</p> <p><i>Activity Status Permitted</i></p> <p><i>Where:</i></p> <p><i>EW-R2</i></p> <p><i>1. All standards in Rule EW - R1 are complied with; and</i></p> <p><i>2. These earthworks are:</i></p> <p><i>a. Associated with the construction of an approved building platform and access; or</i></p>

Plan Provision	Position	Reason	Relief Sought
			<p><i>b. These are earthworks associated with an approved subdivision consent; or</i></p> <p><i>c. These are earthworks associated with an approved well or bore; or</i></p> <p><i>d. These are earthworks including stockpiles required for network utility or critical infrastructure maintenance, operation, repair, upgrade, or installation of new network utilities including public roads; or</i></p> <p><i>e. These are earthworks associated with installation of swimming pools; or</i></p> <p><i>f. The earthworks are for interments in a cemetery or urupā;</i></p> <p><i>g. The earthworks are for natural hazard mitigation structures constructed by a statutory agency or their authorised contractor; or</i></p> <p><i>h. The earthworks are test pits for geotechnical or contaminated land assessment where the land is reinstated within 48 hours; or</i></p> <p><i>i. They are earthworks within the National Grid Yard where:</i></p> <p><i>i. Any earthworks must not exceed a depth or fill from original ground level of 300mm, except for:</i></p> <p><i>A. Earthworks for a network utility or as part of a renewable electricity generation activity; and</i></p> <p><i>B. Earthworks undertaken as part of agricultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track.</i></p>

Plan Provision	Position	Reason	Relief Sought
			<p><i>j. These are earthworks associated with the removal, upgrade or replacement of an underground petroleum storage tank.</i></p> <p>Advice Notes:</p> <p>Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters of this Plan.</p> <p>Earthworks undertaken in areas of contaminated land are subject to the Rules in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.</p>
Transport			
Policy TRN-P6 and Policy TRN-P8	Support	Paragraph 14, Schedule A	Retain Policy TRN-P6 and Policy TRN-P8 as notified.
Rule TRN-R6	Support in part	Paragraph 14 and 15, Schedule A	<p>Amend Rule TRN-R6 as follows:</p> <p><i>Establishment of e-bike and e-vehicle charging stations in all zones and the transport corridor</i></p> <p>Activity Status Permitted</p> <p>Where:</p> <p>1. All performance standards in Rule TRN - R1 are complied with; and</p> <p>2. <i>These are not more than 2m in height and 10m in area.</i></p> <p>Advice Note: If within the legal road reserve, contact the appropriate land transport authority to obtain a license to occupy.</p>
Rule TRN-R11	Support in part	Paragraph 14 and 15, Schedule A	<p><i>Establishing e-bike and e-vehicle charging stations in the transport corridor</i> not meeting Permitted Activity standards</p>

Plan Provision	Position	Reason	Relief Sought
			<p><i>Activity Status Restricted Discretionary</i></p> <p><i>Discretion is restricted to:</i></p> <ul style="list-style-type: none"> <i>a. Effects on the transport network; and</i> <i>b. Outcome of consultation with the relevant transport agency.</i> <i><u>c. Effects on amenity values.</u></i>