



**SUBMISSION ON FAR NORTH DISTRICT COUNCIL'S PROPOSED DISTRICT PLAN PURSUANT
TO CLAUSE 6 OF THE FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991**

To: Far North District Council
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Via email: submissions@fndc.govt.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 Far North District (*the district*), the Fuel Companies' core business relates to retail fuel outlets, including service stations and truck stops, and supply to commercial facilities.

Far North District Council (*FNDC or Council*) notified its Proposed District Plan (*PDP*) on 27th July 2022.

The Council invited the public to provide input on the Draft District Plan (*the draft plan*) in 2021 prior to notification. The Fuel Companies provided comments on the draft plan to the Council in April 2021.

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

B. THE SPECIFIC PROVISIONS OF THE PDP 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 Northland 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 'Sarah Westoby', written in a cursive style.

Sarah Westoby
Principal Planner

21st October 2022

SCHEDULE A

A. INFRASTRUCTURE

1. The Fuel Companies' activities in the district do not fall under the proposed definitions of infrastructure or network utilities (which is considered appropriate and supported) and the provisions of the PDP 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.
4. In terms of Waikato district, decisions on the district plan have now been released. Waikato District Council essentially sought to rollover existing hazardous substance threshold controls in its proposed district plan. Through the hearing process, the Hearing Panel determined that the threshold approach was inappropriate and recommended provisions relating to SHF only. As relevant to the Fuel Companies, the definition of SHF only captures above ground storage of both petrol (in excess of 50kl) and diesel (in excess of 100kl), neither of which will capture typical hazardous substance storage for retail purposes.

The PDP

5. The PDP includes the RMA definition of hazardous substance and a definition of SHF as follows:

means the use of land and/or buildings (or any part of) for one or more of the following activities:

- a. Any Major Hazard Facility desingated [sic] under the Health and Safety at work (Major Hazard Facilities) Regulations 2016, including the Ngawha Geothermal Plant.
- b. Manufacturing, including the associated storage, of hazardous substances (including agrichemicals, fertilisers, acids/alkalis or paints).
- c. Petroleum exploration and petroleum production facility.
- d. The storage/use of more than 100,000L of petrol or diesel.
- e. The storage/use of more than 6 tonnes of LPG.
- f. Galvanising plants.
- g. Electroplating and metal treatment.
- h. Tanneries.
- i. Timber treatment.
- j. Freezing works and rendering plants.
- k. Wastewater treatment plants.
- l. Metal smelting and refining (including battery refining or recycling).
- m. Milk processing plants.
- n. Polymer foam manufacturing

The storage of petrol and diesel in (c) above does not include the underground storage at service stations and commercial refuelling facilities undertaken in accordance with HSNOCOP 44 Below Ground Stationary Container Systems for Petroleum - Design and Installation and HSNOCOP 45 Below Ground Stationary Containers Systems for Petroleum - Operation (or more recent HSNO code or practice for underground fuel storage.)

6. The inclusion of any MHF designated under the HSWA in (a) is supported.
7. How the definition addresses petrol and diesel is of most interest to the Fuel Companies. The last paragraph in the proposed definition exempts underground storage of petrol and diesel in relation to service stations and other commercial refuelling facilities. The Fuel Companies assume this includes truck stops and therefore supports this exemption. Moreover, the Fuel Companies suggest that reference to (c) in the exemption paragraph should refer to '(d)'. The Fuel Companies also support the principle of recognising that there is the potential for relevant (current) HSNO codes of practice to be superseded by other documents in the future. However, there is no certainty in terms of the type (or naming convention) of future guidance documents. Such documents may not be strictly 'codes of practices' for example, and therefore relief is sought in Table 1 below to remove the specificity and acknowledge that such storage should be undertaken in accordance with documents with broader reference, which still achieves the same intent.
8. It is acknowledged that historically the Fuel Companies have accepted volume thresholds for petrol, diesel, and LPG in district plans as they provided for typical activities. However, those thresholds are not risk based and more recently the industry has shifted towards larger storage volumes (enabled by large capacity, modern double-skinned fibreglass tanks) to increase efficiencies and this has triggered particular consents of consenting pathways where not justified by risk. Notwithstanding the proposed volumes are not risk based, in the context of the district and the Fuel Companies activities, the proposed above ground volume thresholds for storage of diesel and petrol are accepted.
9. The Fuel Companies support Objective HS-O1 which seeks to minimise to acceptable levels, risks to people, property and the environment. The Fuel Companies support Objective HS-O2 which requires that SHF and sensitive activities are managed through separation distances and other methods to avoid to the extent practicable, or otherwise mitigate, reverse sensitivity effects. The fact that the focus is not solely on distance, the objective appropriately recognises that a range of factors are relevant to potential reverse sensitivity effects, although doesn't identify what they are or could be. The Fuel Companies note, however, that the objective HS-O1, as has been evaluated in the s32 report, differs from the version in the PDP¹.
10. Policy HS-P2 is supported as the policy requires separation distances or mitigation, to manage the effects of reverse sensitivity between SHF and sensitive activities.
11. The Fuel Companies support proposed Rule HS-R1 (maintenance and repair of a SHF) which is a permitted activity subject to the following four standards:

PER-1 The volume of hazardous substances used by the significant hazardous facility does not increase;
PER-2 The location of hazardous substances on the site will not be located closer to any sensitive activities.
PER-3 The type of hazardous substances on the site remains the same;
PER-4 Alterations to the significant hazardous facility do not increase any residual risks.
12. The rule only relates to 'maintenance and repair' of an SHF and it is unclear whether the rule is intended to capture other activities such as alterations, upgrades and changes. The section 32 report indicates that the intent of the rule is to "enable maintenance, repair and alteration of Significant Hazardous Facilities (SHF) to occur as a permitted activity provided there is no increase in residual risks" (section 1 Executive Summary).

¹ <https://farnorth.isoplan.co.nz/eplan/rules> accessed on 07/10/2022.

C. CONTAMINATED LAND

13. The Fuel Companies understand that Council proposes to rely on regulations under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS), and applicable regulation and mapping by Northland Regional Council (NRC) but are concerned that no objectives and policies relating to contaminated land are included in the PDP. A contaminated land policy framework is particularly important for consideration of NESCS consents, noting that the NESCS does not contain objectives and policies. It is therefore recommended that objectives and policies are included in the Plan which seek, generally:

- Contaminated land is managed to protect human health and the environment and to enable land to be used in the future.
- Require any proposal to subdivide, use or develop contaminated land to apply a best practice approach to investigate and manage risks to protect people and the environment.

Table 1 IN Schedule B provides the relief sought by the Fuel Companies in relation to provision of a policy framework.

14. In terms of rules, the Fuel Companies consider that the NESCS provides appropriate land use controls in relation to both land disturbance and changes of use in relation to contaminated soils and therefore supports the PDP having no rules in relation to contaminated land.

D. EARTHWORKS

15. Note 6 at the beginning of the Earthworks Rules states *“where soil sampling and land disturbance is proposed on land where a hazardous activity or industry has been, is more likely than not have been or is currently operating, then the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 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.

16. The earthworks rules as drafted are in particular prescriptive categories with a default to a discretionary status for activities not provided for. Unless considered ‘building activities’, a term which is not defined, the Fuel Companies are not clear that typical operation, maintenance, and upgrade works at petroleum industry sites under any activity category, for instance the removal and replacement of underground assets like tanks or drainage devices, are provided for. This reflects the specific definitions of infrastructure and network utilities which would not capture underground assets at petroleum industry sites. Given all the proposed standards apply to all earthworks activities, the Fuel Companies are unclear why all earthworks cannot be permitted subject to compliance with standards, irrespective of what they are proposed in relation to. As a minimum, the Fuel Companies consider amendments are necessary to provide more broadly for earthworks for a range of activities with a focus on effects, not activities.

17. In addition, the Fuel Companies seek a specific exemption for earthworks undertaken in relation to the removal or replacement of underground fuel storage systems, noting that these are specifically addressed under the NESCS and should not be duplicated under the district plan. This may be the intention of Note 6 (at least in part) and relief is sought in this regard in Table 1.

18. The Fuel Companies have reviewed the permitted activity standards in the context of temporary earthworks undertaken as part of the normal maintenance, upgrade and operation of petroleum industry sites. EW-S2 prescribes a maximum depth and slope of cut and fill which does not provide for the type of temporary earthworks activities which may be involved in upgrading of drainage systems, for example. The rationale for seeking to control these earthworks is unclear and is likely to capture a range of works with limited potential for adverse effects. As a minimum, the Fuel Companies seek that temporary cuts and fills are excluded from EW-S2.

19. EW-S6 appears to require minimum setbacks be achieved regardless of the scale (depth and volume) of earthworks to be undertaken. Again, this could result in resource consent being required for minor earthworks undertaken as part of the normal maintenance, upgrade and operation of a range of activities. The Fuel Companies consider that the balance of standards provide adequate controls for these activities, for instance EW-S7, which states: *“Earthworks must not result in any instability of land at or beyond the boundary of the property where the earthworks occurs.”*

E. NATURAL HAZARDS

20. A number of the Fuel Companies assets in the Far North district are subject to flood hazard overlays. The Fuel Companies support the intent of the provisions in the Natural Hazards and seek that they are retained as drafted.
21. In particular, Rules NH-R2 and NH-R3 are supported in that they enable alterations to existing buildings and structures (NH-R2), and new minor buildings and structures (NH-R3), in flood hazard areas subject to performance standards. The Fuel Companies support these rules in that they would enable minor upgrading and maintenance works to retail fuel facilities where those works will have minimal effect on the flood bearing capacity of the land.

F. TRANSPORT

22. The Fuel Companies support the strategic direction of the PDP 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. Policy TRAN-P5 encourages new land uses to support, inter alia, the provision of charging stations for electric vehicles. The Fuel Companies support this policy subject to ensuring it also is applicable to existing land uses, for example, installation of an EV charging station at an existing service station. Permitted activity TRAN-R4 (electric vehicle charging stations) is supported because it 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 FNDC’s carbon reduction and climate change goals. Performance Standard PER-1 and the associated Note under Rule TRAN-R4 are similarly supported.

G. DEFINITIONS

23. The definition of airport activity includes fuel installations and fuel servicing facilities. Recognition of the important role these facilities provide at airports is supported.
24. “Commercial activities” and “commercial services” are defined separately. A service station or truck stop would appear to be a subset of a commercial activity but not a commercial service. This is supported.
25. The Fuel Companies note that the PDP does not contain a definition (or use anywhere in the PDP) of “drive-thru”, which was part of the draft plan to which the Fuel Companies commented on. In light of this removal, and further to the paragraph above, the Fuel Companies consider that a truck stop is a Commercial activity under the PDP.

SCHEDULE B

Table 1: Fuel Companies relief to the FNDC PDP

Plan Provision	Position	Reason	Relief Sought
Hazardous Substances			
<p>Definition</p> <p>Significant Hazardous Facility (SHF)</p>	Support in Part	Paragraphs 2-8, Schedule A	<p>Amend the definition of SHF as follows:</p> <p><i>means the use of land and/or buildings (or any part of) for one or more of the following activities:</i></p> <ul style="list-style-type: none"> a. Any Major Hazard Facility desingated designated under the Health and Safety at work (Major Hazard Facilities) Regulations 2016, including the Ngawha Geothermal Plant. b. Manufacturing, including the associated storage, of hazardous substances (including agrichemicals, fertilisers, acids/alkalis or paints). c. Petroleum exploration and petroleum production facility. d. The storage/use of more than 100,000L of petrol or diesel. e. The storage/use of more than 6 tonnes of LPG. f. Galvanising plants. g. Electroplating and metal treatment. h. Tanneries. i. Timber treatment. j. Freezing works and rendering plants. k. Wastewater treatment plants. l. Metal smelting and refining (including battery refining or recycling). m. Milk processing plants. n. Polymer foam manufacturing <p><i>The storage of petrol and diesel in (e) (d) above does not include the underground storage at service stations and commercial refuelling facilities undertaken in accordance with HSNO COP 44</i></p>

Plan Provision	Position	Reason	Relief Sought
			<i>Below Ground Stationary Container Systems for Petroleum - Design and Installation and HSNOCOP 45 Below Ground Stationary Containers Systems for Petroleum - Operation (or more recent relevant WorkSafe guidance HSNOCOP code or practice for underground fuel storage.)</i> S335.001
Objective HS-O1	Support	Paragraph 9, Schedule A	Retain Objective HS-O1 as notified S335.002
Objective HS-O2	Support	Paragraph 9, Schedule A	Retain Objective HS-O2 as notified S335.003
Policy HS-P2	Support	Paragraph 10, Schedule A	Retain Policy HS-P2 as notified S335.004
Rule HS-R1	Support in Part	Paragraphs 11-12, Schedule A	Amend Rule HS-R1 as follows: S335.005 Maintenance, <u>and</u> repair <u>and alteration</u> of a significant hazardous facility
Contaminated Land			
No chapter	Oppose	Paragraphs 13-14, Schedule A	Include a new Contaminated Land Chapter in the PDP to include objectives and policies as follows: S335.006 <u>CL-O1</u> <i>Contaminated land is identified and managed so that it remains acceptable and safe for human health and its intended use.</i> <u>CL-P1</u> <i>Identify contaminated land prior to subdivision, change of use or development by:</i> <ol style="list-style-type: none">1. <i>Working with Northland Regional Council to maintain the Selected Land-use Register; and</i>2. <i>Requiring the investigation of contaminant risks for sites with a history of land use or activity that could have resulted in contamination of soil.</i>

Plan Provision	Position	Reason	Relief Sought
			<p>CL-P2 Minimise the risk to human health from the subdivision, change of use or specified development of contaminated land by:</p> <ol style="list-style-type: none"> 1. Requiring a good practice approach to site management of contaminated land; 2. Ensuring the land is safe for its intended use.
Earthworks			
Note 6	Support in Part	Paragraph 15 Schedule A	Amend Note 6 as follows: S335.007 6. Where soil sampling and land disturbance is proposed on land where a hazardous activity or industry has been, is more likely than not have been or is currently operating, then the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 also apply.
New Note	Support in Part	Paragraph 17, Schedule A	Include a new Note 7 before the Rules section as follows: <u>Earthworks undertaken in relation to the removal or replacement of a fuel storage system as defined under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 are exempt from this chapter.</u> S335.008
Rules EW-R1 – EW-R13	Oppose	Paragraph 16, Schedule A	Delete rules EW-R1 – EW-R13 S335.009, S335.0010, S335.0011, S335.0012, S335.0013, S335.0014, S335.0015, S335.0016, S335.0017, S335.0018, S335.0019, S335.0020 and S335.0021 And include a new rule as follows: EW-R1 All Zones Earthworks Activity Status: Permitted Where: PER-1 <u>Compliance with standards EW-S1 – EW-S9 is achieved.</u>

Plan Provision	Position	Reason	Relief Sought
Rule EW-R14	Oppose	Paragraph 16, Schedule A	Delete Rule EW-R14 S335.022 OR Amend activity status to Restricted Discretionary
Standard EW-S2	Support in Part	Paragraph 18, Schedule A	Amend Standard EW-S2 as follows: S335.023 <i>The maximum depth of any cut or height of any fill shall not exceed:</i> <i>i. 1.5m, i.e. maximum permitted cut and fill height may be 3m; or</i> <i>ii. 3m subject to it being retained by a n engineered retaining wall, which has had a building consent issued.</i> Note: This standard does not apply to temporary cuts and fills.
Standard EW-S6	Oppose	Paragraph 19, Schedule A	Delete Standard EW-S6 S335.024
Natural Hazards			
Rule NH-R2	Support	Paragraphs 20-21, Schedule A	Retain Rule NH-R2 as notified S335.025
Rule NH-R3	Support	Paragraphs 20-21, Schedule A	Retain Rule NH-R3 as notified S335.026
Transport			
Policy TRAN-P5	Support	Paragraph 22, Schedule A	Retain Policy TRAN-P5 as notified S335.027
Rule TRAN-R4	Support	Paragraph 22, Schedule A	Retain Rule TRAN-R4 as notified including PER-1 and the Note S335.028
Other Definitions			
Commercial Activities	Support	Paragraph 24-25, Schedule A	Retain definition of Commercial Activities as notified. S335.029
Airport Activities	Support	Paragraph 23, Schedule A	Retain definition as notified S335.030