

19 November 2024

Attention: Hearing Administrator
Napier City Council
Private Bag 6010
Napier 4142

Via email: districtplanreview@napier.govt.nz

SLR Project No.: 810.V15683.00001

RE: Hearing Statement of the Fuel Companies (S215 and FS464) – Hearing Stream 2 of the Proposed Napier City District Plan

Introduction

1. This hearing statement is prepared on behalf of bp Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited (**the Fuel Companies**), identified as submitter (S215) and further submitter (FS464) to the Proposed Napier City District Plan (**the PDP**).
2. The Fuel Companies have an interest in the PDP to the extent that it relates to, or impacts on, their activities and sites (service stations, truck stops and bulk fuel storage terminals) in the Napier district. The Fuel Companies have a range of submission points allocated to the Coastal Environment, Signs, Earthworks, Light and Subdivision topics being addressed as part of Hearing Stream 2.
3. This hearing statement represents the views of the Fuel Companies and is not expert evidence. The Fuel Companies will not be attending the hearings for Hearing Stream 2 as, aside from 3 minor matters, they support the recommendations of the Section 42A reports¹ as they relate to the Fuel Companies' submissions.
4. It would be appreciated if this hearing statement could be tabled before the Hearings Panel. If the Hearings Panel does have any questions for the Fuel Companies, we would be pleased to provide representation at the Hearing.

Coastal Environment

5. The Fuel Companies **support** all recommendations on their submission points allocated to the Coastal Environment topic.²

Signs

6. The Fuel Companies **support** all recommendations on their submission points allocated to the Signs topic.³

¹ Report topic, author and date: Coastal Environment (Brooke Hemmings, 22 October 2024), Signs (Jeriel Sajan, 19 October 2024), Earthworks (Lilly Lawson, 18 October 2024), Light (Jeriel Sajan, 21 October 2024) and Subdivision (Connie Mills, 23 October 2024).

² 215.94 (CE-I1), 215.95 (CE-P1), 215.96 (CE-P2) and 215.97 (CE-P10).

³ 215.193 ('Official Sign' definition) and 215.195 ('Sign' definition).

Earthworks

7. The Fuel Companies **support** all the Reporting Officer recommendations on their submission points allocated to the Earthworks topic.⁴
8. The Fuel Companies, however, wish to draw attention to a minor editorial error, whereby the recommended amendment to EW-R3A in response to the Fuel Companies' submission 215.111, set out at para [243] of the Section 42A report, has not been carried through to the track change version of the Earthworks chapter in Appendix A to the S42A Report.
9. Ms Lawson's recommended amendment, which the Fuel Companies support, is:
EW-R3A
Activity Status: Permitted
Where:
Compliance with the Earthworks effects standards EW-S3 and EW-S5 – EW-S8
[Reporting Officer's insertions in red underline]
10. The track-change version of the Earthworks chapter should be updated to reflect this recommendation.

Light

11. The Fuel Companies made a further submission (FS 476.222.134) in support of submission 222.134 from Amelia Longley to retain LIGHT-S1 as notified. The Reporting Officer recommends 222.134 is accepted and FS 476.222.134 is accepted in part. However, she also recommends amendments to LIGHT-S1 based on submission 277.79 from New Zealand Transport Agency – Waka Kotahi (NZTA), such that it would read as follows (Reporting Officer's additions in red underline and deletions in ~~red strikethrough~~):
LIGHT-S1
All Commercial, Industrial, and Rural Zones and Precincts
 1. *Light spill conditions for all land uses other than for the purposes of illuminating a road or rail corridor and to meet health and safety requirements:*
 - a. ...
 - b. *outdoor lighting must be selected, located, aimed, adjusted, screened, and maintained to ensure that glare resulting from the lighting ~~does not cause significant~~ avoids adverse effects on the occupants of residential activities, road users, or aircraft.*
12. The Fuel Companies **do not support** the recommended amendment to clause (1)(b) of LIGHT-S1.
13. The reason given in NZTA submission 277.79 for seeking an amendment to LIGHT-S1 is to align with Policy P2, which reads as follows (Reporting Officer's additions in red underline and deletions in ~~red strikethrough~~):

⁴ 215.98 (EW-O1), 215.99 (EW-O3), 215.100 (EW-P1), 215.101 (EW-P2) and 215.102 (EW-P6), 215.103 (EW-R1A), 215.104 (EW-R1B), 215.105 (EW-R3), 215.106 (EW-R5) and 215.107 (EW-R7), 215.108 to 215.115 (EW-S1 to EW-S8), and 215.116 (EW-AC1).



LIGHT-P2: Adverse effects of artificial lighting

Artificial lighting is located, designed, and operated to:

- a. avoid light spill and glare creating a nuisance in residential and open space zones;*
- b. control the maximum level of light overspill;*
- c. manage adverse light spill effects on adjacent properties to ensure that the health and safety of people and views of the night sky are not reduced, and*
- d. avoid adverse effects on the safety of the transport network, including air, road and rail.*

14. The Fuel Companies agree that the threshold set by LIGHT-S1, as notified, that outdoor lighting must not cause 'significant' adverse effects is too high and inconsistent with LIGHT-P2. However, they note that LIGHT-P2 applies a slightly different approach to managing the effects of light spill and glare on residential and open space zones (LIGHT-P2 (a)) compared to that applied to the safety of the transport network (LIGHT-P2(d)), which is of relevance to NZTA. With regard to residential and open space zones, nuisance effects must be avoided. In comparison, all adverse effects must be avoided on the safety of the transport network.
15. The Fuel Companies accept that adverse effects of artificial lighting on residential areas need to be managed to an acceptable level. In this regard, they note that Terminal Managers at the Fuel Companies' existing bulk fuel terminal sites at Ahuriri have sought to maintain open communications with their residential neighbours to ensure any such concerns are appropriately addressed.
16. However, the Fuel Companies consider a requirement in LIGHT-S1 to entirely avoid all adverse effects of light spill and glare on residential activities is too absolute and may be difficult to achieve, particularly at the interface between existing industrial and residential activities, such as at the Fuel Companies' existing bulk fuel terminal sites at Ahuriri. This could also be problematic in a situation where sites that are vulnerable to reverse sensitivity effects from changing land-use, including the introduction of more sensitive land uses, may be reliant on a need to demonstrate existing use rights in relation to existing levels of lighting, including any need to balance lighting necessary for health and safety and security reasons with residential amenity.
17. On this basis, the Fuel Companies consider the recommendation to amend LIGHT-S1 in a way that requires all adverse effects on residential areas to be entirely avoided to be inappropriate. An appropriate alternative may be to adopt the same wording used in LIGHT-P2(a), which requires the avoidance of nuisance effects on residential and open space zones, rather than all adverse effects.
18. The Fuel Companies, therefore, urge the Hearings Panel to further amend LIGHT-S1 to ensure it remains consistent with Light-P2 as it applies to residential and open space zones. This could be achieved by making changes along the following lines (additions in double-underline, and deletions in ~~double-strikethrough~~):

LIGHT-S1

All Commercial, Industrial, and Rural Zones and Precincts

1. *Light spill conditions for all land uses other than for the purposes of illuminating a road or rail corridor and to meet health and safety requirements:*
 - a. ...*
 - b. outdoor lighting must be selected, located, aimed, adjusted, screened, and maintained to ensure that glare resulting from the lighting does not cause*



nuisance effect on the occupants of residential activities and does not cause significant avoids adverse effects on ~~the occupants of residential activities~~, road users, or aircraft.

Subdivision

19. The Fuel Companies (215.91) made a submission on the Hazardous Substances chapter (HAZS) seeking relief to manage intensification of residential activities within the 'Significant Hazardous Facility Risk Management' (SHFR) overlay. As noted at para 423 of the Officer's Report for the Subdivision Chapter, while no specific relief was sought in relation to subdivision provisions, subdivision of properties within the SHFR overlay may have consequential impacts on the integrity of the risk management approach, whereby enabling subdivision of allotments within the SHRF by way of a controlled activity consent may result in intensification of residential development in close proximity to the bulk fuel storage terminals. As addressed in evidence on behalf of the Fuel Companies to the Hazardous Substances chapter, that may result in unacceptable levels of risk to sensitive activities and/or reverse sensitivity effects on the operation and development of the existing regionally significant terminal sites.
20. At paragraphs 425 and 426 of the Section 42A Report, consideration is given to management of this issue in the subdivision chapter, as follows:
- '425. Two options could be considered to manage intensification within the subdivision chapter; 1) introduce a new rule setting a high threshold for residential subdivision i.e. noncomplying, or 2) retain the plan as drafted.*
- 426. In my opinion, the latter is the most appropriate solution in terms of management of duplication and plan efficiency. For a subdivision activity to be afforded the controlled activity pathway under SUB-R1A it must either be around an existing group of dwellings with no vacant lots to be create or be demonstrated that 'it is practicable to construct on every allotment within the proposed subdivision'. No new dwellings could be built within the SHFR overlay without first obtaining a non-complying land use consent, therefore there is little risk that developers would build first then subdivide to effectively navigate the subdivision process. As the goal presented by the Fuel Companies is to avoid residential intensification in the SHFR, I consider the PDP as notified effectively manages this risk.*
21. With regard to the statement in paragraph 426 that *'For a subdivision activity to be afforded the controlled activity pathway under SUB-R1A it must either be around an existing group of dwellings with no vacant lots to be create or be demonstrated [in accordance with the minimum net site area standard SUB-S1(clause 1)⁵] that 'it is practicable to construct on every allotment within the proposed subdivision'* the Fuel Companies note that a third controlled activity pathway is available under SUB-R1A. This is provided where compliance with SUB-S1 Minimum net site area – residential, clause (2) can be achieved and allows a new vacant lot to be created as a controlled activity, where a minimum net site area of 350m² is achieved. For subdivisions considered under SUB-S1(2) as opposed to SUB-S1(1) there is no requirement to demonstrate that *'it is practicable to construct on every allotment within the proposed subdivision'*. On this basis, the Fuel Companies do have some remaining concern that subdivision may be able to be undertaken as a controlled activity within the SHFR overlay, with no consideration afforded to risk issues and associated future land uses, in a manner that could potentially undermine the risk management approach.

⁵ Addition made by Fuel Companies to identify the subdivision standard that contains this requirement



22. The Fuel Companies accept that the non-complying land use activity status applying to additional dwellings in the SHFR overlay should act as a deterrent, but note that advice from Council staff has been that in many situations, subdivision is progressed on its' own without the associated land use consent, and that in a situation where a new vacant site of more than 350m² net site area is created, there does not appear to be any requirement to consider future land uses. Rather such subdivisions could be progressed as a controlled activity, to which consent must be granted.
23. The Fuel Companies consider there to be a disjoint between the availability of a controlled activity status for subdivision of residential land within the SHFR (whereby subdivision has to be granted) and the non-complying activity status applied to new residential and sensitive activities by way of the Hazardous Substances provisions. Further, that this may leave the Council vulnerable to inappropriate pressure to grant subsequent resource consent applications for residential activity on newly created 'controlled activity' allotments with a residential zoning, notwithstanding the non-complying status, in order to enable development of a vacant property.
24. As noted at paragraph 14 of the s42A Report, there was some email correspondence between the Fuel Companies and Council staff in relation to the subdivision controls prior to preparation of the Council's s42A Report. This is acknowledged and appreciated. At that time one option suggested by Council staff was to include a standard requiring building platforms to be located outside the SHFR overlay, with a default to restricted discretionary activity status where that could not be achieved. The suggestion was framed in a slightly different context and was not supported by the Fuel Companies at the time. However, on reflection and taking into account the recommended structure and wording of the subdivision chapter as a whole, it is considered that would provide a pragmatic approach to resolving the disconnect between a controlled activity status available for subdivision of residential land within the SHFR and the non-complying activity status applied to subsequent residential development.
25. On this basis, the Fuel Companies urge the Hearings Panel to further amend SUB-S8: Building Platform to include a requirement that each allotment must contain a building platform located outside and exclusive of the SHFR. The implication for sites in the SHFR would be that a building platform could never be located outside the SHFR overlay, such that a restricted discretionary, rather than controlled, status would always apply. This could be achieved by making the following changes (additions in bold and double-underlined):

SUB-S8: Building platform All zones

...

3. *The building platform must be located outside and exclusive of any:*
 - a. *Coastal Erosion Hazard Area;*
 - b. *significant natural area;*
 - c. *public access corridor;*
 - d. *archaeological site;*
 - e. *land required for access or the disposal of stormwater or wastewater, and*
 - f. *highly productive land and*
 - g. *setback at least 30m from highly productive land on adjacent properties.*
 - h. Significant Hazardous Facility Risk Management overlay**



Conclusion

26. Thank you for your time and acknowledgement of the matters raised in the submissions of the Fuel Companies and this hearings statement. Please do not hesitate to contact the writer should you wish to clarify any matters addressed herein.

Regards,

SLR Consulting New Zealand



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