

**BEFORE AN INDEPENDENT HEARINGS PANEL APPOINTED BY THE FAR NORTH
DISTRICT COUNCIL**

IN THE MATTER OF the Resource Management Act 1991 (“the Act”)

AND

IN THE MATTER OF the submissions of bp Oil New Zealand Limited, Mobil Oil New
Zealand Limited and Z Energy Limited on the Proposed Far
North District Plan

**SUMMARY STATEMENT OF EVIDENCE OF
THOMAS GABRIEL DELA CRUZ TREVILLA FOR
BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED AND Z
ENERGY LIMITED (“THE FUEL COMPANIES”)
HEARING 1 (INTRODUCTION, GENERAL PROVISIONS, TANGATA WHENUA)**

28 May 2024

1. INTRODUCTION

1.1 My name is Thomas Trevilla. This is a summary statement of my evidence dated 13 May 2024 in relation to the Fuel Companies' submission S335.006 ("the submission") on the Proposed Far North District Plan ("the PDP") of the Far North District Council ("the FNDC"). I outlined my qualifications, employment, experience and commitment to comply with the Environment Court's Code of Conduct for Expert Witnesses in my evidence.

2. SUMMARY OF EVIDENCE

2.1 The submission supported the PDP's approach of relying on the rules framework of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ("the NES-CS") but expressed concerned over the absence of a complementary contaminated land policy framework. The submission requested the insertion of a chapter and proposed an objective and two policies to provide a brief but targeted policy framework to assist the assessment of applications requiring resource consent under the NES-CS.

2.2 The Reporting Officer, Sarah Trinder, recommends the rejection of the submission. My understanding of Ms Trinder's recommendation at para [181] of the s 42A report is that she does not support the principle of a contaminated land chapter and considers that the NES-CS should be relied on to "avoid duplication in process and potential inconsistency". I disagree with Ms Trinder's recommendation. In forming my opinion, I turned my mind to three issues which I analysed in my evidence and summarise as follows.

Issue 1: What is the function of territorial authorities in relation to contaminated land under the Act and NES-CS?

2.3 The Council's functions under s 31 of the Act include the prevention or mitigation of adverse effects from the development, subdivision or use of contaminated land. The NES-CS provides a nationally consistent standard and rules to manage the specified activities on land which may be contaminated in such a way that poses a risk to human health. The NES-CS seeks that contaminated land is appropriately identified and assessed and, if necessary, remediated or the contaminants contained, to ensure that it is safe for its intended use. The NES-CS only relates to the functions of territorial authorities and the Council is required to observe and enforce the NES-CS pursuant to s 44A of the Act. Taking these into account, I

consider that having a clear policy and rule framework is within the scope of, and is important to achieving, the Council's function under the Act and NES-CS.

Issue 2: Will a contaminated land chapter result in a duplication in process or inconsistency?

- 2.4 Firstly, in terms of a duplication in "process", I infer that Ms Trinder's concern relates to the resource consenting process. In that regard, I see no duplication with resource consenting under the NES-CS if the chapter does not contain any rules.
- 2.5 Secondly, an appropriately drafted chapter will not duplicate or result in inconsistency with the NES-CS. This is because the NES-CS does not contain any objectives or policies and as such a PDP policy framework would complement its rules framework. I also note that having a contaminated land policy framework is not unique among the new "generation" of district plans; para [6.10] of my evidence cites operative plans across New Zealand that apply the same approach. In Northland, this is applied by the Whangārei District Council in its operative plan and, based on its draft plan, the Kaipara District Council intends to apply it too.
- 2.6 Thirdly, while Ms Trinder's recommendation did not reference regional planning instruments, I also consider that a chapter will not conflict with those of the Northland Regional Council ("the NRC"). This is because the Regional Policy Statement for Northland ("the NRPS") does not contain contaminated land provisions and the contaminated land provisions of the Regional Plan for Northland ("the RPN") reflect the NRC's responsibility for a different aspect of contaminated land management, being the investigation of contaminated land (for the purpose of identification and monitoring) and managing the adverse effects of contaminant discharges on the "wider" environment (e.g., soil, water, air and ecosystems).
- 2.7 Para [6.16] of my evidence sets out characteristics which I consider are reflective of an appropriately drafted chapter. I considered these characteristics in drafting the relief recommended by my evidence.

Issue 3: Will a contaminated land chapter assist the assessment of applications requiring resource consent under the NES-CS?

- 2.8 Policy analyses are important for all applications, but it is particularly important for those for a discretionary or non-complying activity. In terms of the latter, my evidence recognises that, as the NES-CS does not contain non-complying activity rules, this status, in the case of the Fuel Companies' activities, would likely arise in

more substantial service station works that may have a range of resource consent triggers and may include a district plan non-complying activity rule.

- 2.9 A policy analysis is a critical limb of the s 104D assessment for a non-complying activity and, more broadly, an important limb of the s 104 assessment for any activity. Without a contaminated land policy framework in the PDP, a gap is created when undertaking policy analyses as:
- (a) there is no national policy statement for contaminated land;
 - (b) there are no contaminated land objectives or policies in the NRPS; and
 - (c) there are no objectives and policies in the NES-CS.
- 2.10 Applicants and the Council could thus only look to the “intent” of the NES-CS, based on their understanding of the regulations and explanatory note, which does not represent a clear nor consistent policy framework in comparison to objectives and policies. Therefore, I consider that a contaminated land chapter will avoid this policy gap and assist their assessments.

3. CONCLUSION

- 3.1 Overall, my view is that having a contaminated land policy framework in the PDP:
- (a) is within the scope of, and is important to achieving, the function of the Council under the Act;
 - (b) is not unique, as operative district plans across New Zealand have contaminated land chapters that take a similar approach (including the Whangārei District);
 - (c) if drafted appropriately, will not result in a duplication in process or inconsistency with the NES-CS or other planning instruments, nor conflict with the Council’s duties under s 44A and the contents of district plans under s 75 of the Act; and
 - (d) will assist both applicants and the Council in assessing applications that require resource consent under the NES-CS, particularly in the context of policy analyses under ss 104D and/or 104 of the Act.
- 3.2 Para [7.2] of my evidence recommends the insertion of a contaminated land chapter. The recommended provisions consist of a chapter overview, an objective, two policies and a brief rules footnote that there are no additional contaminated

land rules in the PDP. The submission did not include an overview and I have recommended one to be in line with other PDP chapters and so that the resource management issue and provisions are contextualised for plan users. The recommended objective and policies are identical to those in the submission except for some minor corrections.

3.3 Pursuant to s 32AA of the Act, Appendix A of my evidence contains an evaluation of the recommended amendments where I considered:

- (a) the appropriateness of the objective in achieving the purpose of the Act;
- (b) the appropriateness of the policies in achieving the objective;
- (c) the anticipated benefits and costs of the amendments; and
- (d) the risk of acting or not acting.

3.4 The evaluation supports the recommended amendments.

Thomas Trevilla

28 May 2024