

**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

**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”)**

(SUBMITTER S335 AND FURTHER SUBMITTER FS347)

HEARING 1 (INTRODUCTION, GENERAL PROVISIONS, TANGATA WHENUA)

13 May 2024

1. INTRODUCTION

- 1.1 My full name is Thomas Gabriel Dela Cruz Trevilla. I have over four years of experience in the field of resource management planning. I hold the degree of Bachelor of Urban Planning (Honours) from the University of Auckland. I am an Intermediate Member of the New Zealand Planning Institute.
- 1.2 I am employed as a Senior Project Consultant (Planning) at SLR Consulting New Zealand Limited ("SLR") (previously 4Sight Consulting Limited). I have been employed by SLR since October 2022. Prior to SLR, I was a Planning Assistant at Barker & Associates Limited from January 2019 to October 2020 and Planner at Babbage Consultants Limited from October 2020 to October 2022.
- 1.3 My principal role at SLR is to provide planning services with a particular focus on the residential, commercial, industrial and infrastructure sectors (fuel, electricity, stormwater and telecommunications). This includes preparing or processing resource consent applications, providing consenting and policy advice, and preparing submissions, further submissions and hearing statements. At SLR, I have provided planning services to private, commercial, council and infrastructure clients, including the Fuel Companies, both collectively and separately.
- 1.4 I have recently prepared submissions and/or further submissions on behalf of the Fuel Companies on proposed plans or plan changes in the Whangārei, Waitomo, Wairarapa (Masterton, Carterton and South Wairarapa) and Timaru districts. On the Proposed Far North District Plan ("the PDP"), I note that my colleague at SLR, Sarah Westoby, prepared the Fuel Companies' submissions and I support the intent of the relief sought by those submissions. I prepared the Fuel Companies' further submissions on the PDP.

2. CODE OF CONDUCT FOR EXPERT WITNESSES

- 2.1 I have read the Environment Court's Practice Note January 2023 as it relates to expert witnesses. My brief of evidence is prepared in compliance with the Code of Conduct, and I agree to comply with it in appearing before the Independent Hearings Panel. I am not, and will not behave as, an advocate for my client. I am engaged by the Fuel Companies as an independent expert and SLR provides planning services to the Fuel Companies along with a range of other corporate, public agency and private sector clients. I have no other interest in the outcome of the proceedings.

- 2.2 I confirm that my evidence is within my area of expertise and that I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions. I have not relied on the evidence or opinion of any other person in preparing my evidence.
- 2.3 I acknowledge that other planners of SLR are the reporting officers for the Far North District Council (“the Council”) on other hearing topics of the PDP and the Council has been made aware of this. In accordance with its standard processes, SLR is carefully managing any conflict of interest issues as they arise for specific topics at each hearing. SLR is not involved in the s 42A reporting and recommendations for this hearing. As such, I consider that there are no conflict of interest issues in relation to my evidence.

3. SCOPE OF EVIDENCE

- 3.1 The Fuel Companies¹ are submitter S335 and further submitter FS347 on the PDP. This statement of evidence relates to submission S335.006 (“the Fuel Companies’ submission”). My evidence specifically addresses the Fuel Companies’ interest in contaminated land provisions, the Fuel Companies’ submission, and the recommendation of the s 42A report² prepared by Sarah Trinder (“the Reporting Officer”) on the submission.

4. THE FUEL COMPANIES’ INTEREST IN CONTAMINATED LAND PROVISIONS

- 4.1 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.
- 4.2 The Fuel Companies have an interest in contaminated land provisions as service stations are a listed activity (F.5) on the Hazardous Activities and Industries List (“the HAIL”) and are usually identified on the selected-land use register (“the SLUR”) of regional councils, including the SLUR of the Northland Regional Council (“the NRC”).

¹ The Fuel Companies were previously referred to as “the Oil Companies” and this is reflected in the Fuel Companies’ submission and s 42A report.

² Report titled “Section 42A Report - Part 1 and General / Miscellaneous” prepared by Sarah Trinder and dated 29 April 2024.

4.3 In addition to regional plan rules, the Fuel Companies' activities often require a review of the regulations of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health³ ("the NES-CS") in relation to soil disturbance or the removal, upgrade or replacement of underground fuel tanks. Where the permitted standards cannot be met, the Fuel Companies require resource consent under the NES-CS for activities such as retanking or certain redevelopment works at their sites. The interface between the Fuel Companies' activities and the NES-CS is discussed further in the analysis section of my evidence.

5. THE FUEL COMPANIES' SUBMISSION AND THE REPORTING OFFICER'S RECOMMENDATION

5.1 The Fuel Companies' submission supported the PDP's approach of relying on the NES-CS' rules framework involving contaminated land but expressed concern over the absence of a contaminated land chapter with objectives and policies, as the NES-CS does not contain such provisions.

5.2 The Fuel Companies' submission therefore requested the insertion of a new contaminated land chapter, and proposed an objective and two policies for such a chapter, to provide a brief but targeted policy framework to assist the assessment of applications requiring resource consent under the NES-CS.

5.3 I note that a further submission (FS354.002) in support of the Fuel Companies' submission was made by Horticulture New Zealand⁴. This was the only further submission received on the Fuel Companies' submission.

5.4 The Fuel Companies' submission is addressed by the Reporting Officer at paragraph [181] of the s 42A report as follows:

While some district plans nationwide have included a contaminated land chapter. I consider that is appropriate to avoid duplication in process and potential inconsistency, by relying upon the National environmental standard for Assessing and Managing contaminants in soil and to Protect Human Health

³ Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

⁴ Horticulture New Zealand's further submission FS354.002 states that "while the NESCS provides the framework for managing contaminated land this can be assisted by an objective and policy framework in the Plan as sought by the submitter".

(NESCS) rather than establishing a new chapter. I recommend that this submission is rejected.

- 5.5 My understanding of this recommendation is that the Reporting Officer does not support the principle of a contaminated land chapter in the PDP. The Reporting Officer did not comment on the proposed provisions and as such it is unclear what their opinion would be on these provisions if a chapter was to be inserted.
- 5.6 I disagree with the recommendation of the Reporting Officer. In forming my opinion, I turned my mind to three overarching issues:
- (a) the function of territorial authorities in relation to contaminated land under the Act and NES-CS;
 - (b) whether a contaminated land chapter will result in a duplication in process or inconsistency; and
 - (c) whether a contaminated land chapter will assist the assessment of applications requiring resource consent under the NES-CS.
- 5.7 The following analysis expresses my opinion and responds to these issues.

6. ANALYSIS

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

- 6.1 For my analysis, it is important to briefly discuss the function of territorial authorities in relation to contaminated land and the NES-CS.
- 6.2 The functions of territorial authorities under the Act are specified by s 31 and these include the prevention or mitigation of adverse effects from the development, subdivision or use of contaminated land (subs (1)(b)(iia)).
- 6.3 While not part of its regulations, the explanatory note within the NES-CS provides insight into its function. The NES-CS establishes nationally consistent standards for activities on “pieces of land”⁵ which may be contaminated in such a way that they pose a risk to human health. It seeks to ensure that land affected by contaminants in soil is appropriately identified and assessed when it is disturbed or developed and, if necessary, the land is remediated or the contaminants contained

⁵ Being land where an activity or industry on the HAIL is, has or is more likely than not to have been undertaken on it (reg 5(7)).

so that it is safe for human use. The regulated activities include the removal or replacement of fuel storage systems, soil sampling, soil disturbance, subdivision and changing use, and are classed as permitted through to discretionary.

- 6.4 As specified by reg 4, the NES-CS only deals with the functions of territorial authorities, and not regional councils, under the Act. Section 72 of the Act states that the purpose of district plans is to assist territorial authorities in carrying out their functions and ss 73 to 77 sets out their contents and the matters that territorial authorities must consider when preparing them. In terms of the NES-CS, it does not provide for district plan rules to be more stringent than its regulations and, pursuant to ss 44A(1) and 44A(2), district plan rules must not duplicate or conflict with the NES-CS. The Council is responsible for observing and enforcing the NES-CS pursuant to ss 44A(7) and 44A(8).
- 6.5 Taking the above into account, I consider that having a clear policy and rule framework for managing activities on contaminated land is within the scope of, and is important to achieving, the Council's function under the Act and NES-CS.

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

- 6.6 The Reporting Officer considers that a contaminated land chapter is not needed, and that the NES-CS should be relied on, to “avoid duplication in process and potential inconsistency”⁶. I disagree with the Reporting Officer and address their concerns of duplication and inconsistency below.
- 6.7 Firstly, I consider that an appropriate contaminated land chapter will not result in a “duplication in process” which, based on the word “process”, I infer is in the context of the resource consenting process. Provided that the contaminated land chapter does not contain rules, I see no duplication of process with resource consenting under the NES-CS or the Northland Regional Plan⁷ (“the NRP”).
- 6.8 Secondly, I consider that an appropriate contaminated land chapter will not duplicate or result in “inconsistency” with the NES-CS. This is because the NES-CS does not contain objectives or policies and a district plan policy framework will therefore complement the NES-CS' rules framework.

⁶ At paragraph [181] of the s 42A report.

⁷ Proposed Regional Plan for Northland (February 2024); all appeals have been resolved and the plan is treated as operative under s 86F of the Act.

- 6.9 It is also important to note that having a contaminated land chapter is not unique among the new “generation” of district plans; there are district plans throughout New Zealand with contaminated land chapters that contain a brief policy framework and refer to the NES-CS for rules. This is the approach that the Fuel Companies request for the PDP and which I support.
- 6.10 Some examples of district plans that have been tested by the plan making process and are operative include:
- (a) Whangārei District Plan (Operative in Part 2022)⁸;
 - (b) Southland District Plan (Operative 2018);
 - (c) Whanganui District Plan (Operative 2020);
 - (d) Kāpiti Coast District Plan (Operative 2021);
 - (e) Rotorua District Plan (Operative 2016); and
 - (f) Thames-Coromandel District Plan (Operative in Part 2024).
- 6.11 There are also draft and proposed district plans throughout New Zealand that are taking the same approach, including the Draft Kaipara District Plan (2022).
- 6.12 At the regional level, while regional planning instruments were not referenced in the Reporting Officer’s recommendation, I also consider that an appropriate contaminated land chapter will not duplicate the NRC’s function or its planning instruments. The NRC is responsible for a different aspect of contaminated land management than the Council, with regional council functions specified by s 30 and restrictions on regional land use and general contaminant discharge activities specified by ss 9 and 15 of the Act.
- 6.13 In that regard, the NRC maintains the SLUR and the rules of the NRP (C.6.8) relate to investigating potentially contaminated land, remediating contaminated land, and discharging contaminants from contaminated land to soil, water and air. As for contaminated land objectives and policies, the Northland Regional Policy Statement⁹ does not contain any while the NRP contains one objective (F.1.14) and one policy (D.4.7).

⁸ Noting that the Whangārei District Plan has been subject to a “rolling review” via plan changes rather than an entirely new plan in the case of other districts.

⁹ Regional Policy Statement for Northland (May 2016).

- 6.14 Having reviewed these provisions, I consider that, while human health is mentioned in the objective and policy, the NRP focuses on the adverse environmental effects of contaminant discharges of regional significance (e.g., on soil, water, air and ecosystems). In contrast, the policy framework of a contaminated land chapter, complementing the existing rules framework of the NES-CS, would focus on human health effects from subdividing, changing use and developing contaminated land.
- 6.15 Therefore, I consider that an appropriate contaminated land chapter will not duplicate process or be inconsistent with the NES-CS and the NRP's planning instruments, nor will it conflict with the Council's duties under s 44A and the contents of district plans under s 75 of the Act.
- 6.16 In my view, an appropriately drafted contaminated land chapter includes the following characteristics:
- (a) recognises the function of the Council;
 - (b) recognises the function of the NES-CS and that contaminated land rules at the district level are contained solely in the NES-CS;
 - (c) recognises the function of the NRC and the SLUR;
 - (d) ensures that the objectives and policies give effect to any relevant national planning instrument and the NRPS¹⁰, and are not inconsistent with or duplicate the contaminated land provisions of the NRP; and
 - (e) ensures that the wording of objectives or policies does not have unintended consequences, for example, a policy that prevents the Council from allowing any activity that infringes the NES-CS.

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

- 6.17 I consider that an appropriate contaminated land chapter will assist the assessment of applications requiring resource consent under the NES-CS. This is important for all applications, but it is particularly important for those for a discretionary activity or, more notably, a non-complying activity.
- 6.18 In the case of the Fuel Companies' activities, a discretionary activity under the NES-CS usually arises for service station retanking work as the permitted soil

¹⁰ Noting that there is currently no national policy statement for contaminated land and the NRPS does not currently contain specific contaminated land provisions.

disturbance volume under reg 8(1) is usually exceeded. While there is a controlled or restricted discretionary activity pathway under regs 9 or 10 respectively, both require the existence of a detailed site investigation (“DSI”). A DSI is not undertaken in most situations of retanking at an operational site as it will not be feasible (i.e., drilling through sealed forecourts around underground tanks) nor offer any particular benefit as the nature of potential contaminants (e.g., petroleum hydrocarbons) is known and there are appropriate remediation or management measures to undertake such works. As such, the Fuel Companies usually apply for a discretionary activity under reg 11 where permitted standards will not be met.

- 6.19 As for a non-complying activity, as the NES-CS does not contain non-complying activity rules, this would, in the case of the Fuel Companies, likely arise during more substantial work at a service station or truck stop (e.g., redevelopment or increase in fuel storage). This work usually triggers a range of resource consent requirements which could include a non-complying activity rule under the district plan. A non-complying activity status triggers the “gateway test” under s 104D of the Act whereby the Council can only grant resource consent if it is satisfied that the activity’s adverse environmental effects will be minor (subs (1(a)), or, the activity will not be contrary to the objectives and policies of the relevant plan and/or proposed plan (subs (1)(b)).
- 6.20 A policy analysis is thus 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 for applicants and the Council in undertaking appropriate 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.
- 6.21 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.
- 6.22 Therefore, I consider that an appropriate contaminated land chapter will avoid this policy gap and assist applicants and the Council in their assessment of resource consent applications.

7. CONCLUSION AND RECOMMENDED RELIEF

7.1 For the reasons expressed in my evidence, I disagree with the Reporting Officer's recommendation on the Fuel Companies' submission. In summary, I consider that a contaminated land policy framework in the PDP:

- (a) is within the scope of, and is important to achieving, the functions of the Council under the Act;
- (b) is not unique, as district plans that have been tested by the plan making process and are operative 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 the NRC's 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.

7.2 I therefore recommend the following relief:

- (a) reject the recommendation of the Reporting Officer in relation to the Fuel Companies' submission S335.006; and
- (b) amend the PDP as follows:

Insert a new Contaminated Land chapter under the Hazards and Risks section of Part 2 – District Wide Matters containing the following (insertions underlined):

Overview

Contaminated land in the district can have adverse effects on human health if it is not appropriately managed. The subdivision, change of use, or development of contaminated land can expose people to increased levels of contamination.

Council has responsibilities under the RMA in relation to contaminated land. This includes observing and enforcing the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NES-CS) which provides a national environmental standard for activities on pieces of land where soil may be contaminated in such a way that they pose a risk to human health. The NES-CS seeks to ensure that land affected by

contaminants in soil is appropriately identified and assessed when soil disturbance and/or land development activities take place and, if necessary, remediated or the contaminants contained to make the land safe for human health and its intended use.

The rules framework of the NES-CS directs the requirement for resource consent or otherwise for activities on contaminated land. There are no independent or additional contaminated land rules in the District Plan. However, as there are no objectives or policies in the NES-CS, this chapter provides a policy framework for assessing applications which require resource consent under the NES-CS.

Northland Regional Council (NRC) has other responsibilities under the RMA in relation to contaminated land. This includes identifying and monitoring contaminated land through the Selected Land-use Register (SLUR), a regional database of sites that have been, or may have been, used for activities and industries included in the Hazardous Activities and Industries List (HAIL).

Objectives

CL-O1 Contaminated land is identified and managed so that it remains acceptable and safe for human health and its intended use.

Policies

CL-P1 Identify contaminated land prior to subdivision, change of use or development by:

- a. working with NRC to maintain the SLUR; and
- b. requiring the investigation of contaminant risks for land with a history of land use or activity that could have resulted in contamination of soil.

CL-P2 Minimise the risk to human health from the subdivision, change of use or development of contaminated land by:

- a. requiring a good practice approach to site management of contaminated land; and
- b. ensuring the land is safe for its intended use.

Rules

1. The NES-CS provides a complete rules framework that deals with assessing and managing contaminated land. The District Plan does not contain any independent or additional set of rules.

- 7.3 As the Fuel Companies' submission did not propose a contaminated land chapter overview, I have recommended an overview that is in line with my evidence and:
- (a) explains the resource management issue and the functions of the Council, NES-CS, NRC and SLUR in relation to it; and
 - (b) introduces the matters raised in the recommended objectives, policies and rules note.
- 7.4 The recommended objective and policies are identical to that sought by the Fuel Companies' submission except for minor corrections that I have made:
- (a) changed "specified development" to "development" under Policy CL-P2 to align with the wording of Policy CL-P1 and s 31(1)(b)(iia) of the Act;
 - (b) changed "site" to "land" under Policy CL-P2(b) to align with the wording of the other provisions; and
 - (c) changed the formatting of the sub-clauses and abbreviations to align with the chapter overview and other provisions.
- 7.5 Pursuant to s 32AA of the Act, Appendix A provides an evaluation of the recommended amendments to the PDP.

Thomas Trevilla

13 May 2024

Appendices Appendix A: Section 32AA evaluation of the amendments recommended by this statement of evidence

Appendix A: Section 32AA evaluation of the amendments recommended by this statement of evidence

Pursuant to s 32AA of the Act, the following evaluation contains a level of detail that corresponds to the scale and significance of the amendments recommended to the PDP.

Is the recommended objective the most appropriate way to achieve the purpose of the Act?

Identifying and managing contaminated land is an important component of sustainable management under s 5 of the Act as the potential adverse effects of activities on contaminated land poses risks to the health and wellbeing of people. Recommended Objective CL-O1 is the most appropriate way to achieve sustainable management by providing a brief but clear objective that has been drafted:

- in light of the Council's function under s 31(1)(b)(iia);
- in light of the function of the NES-CS and the Council's responsibility to observe and enforce it under s 44A; and
- to identify the expectations and benefits associated with contaminated land management for plan users.

The recommended chapter overview introduces the above matters.

Are the recommended policies the most appropriate way to achieve the recommended objective?

Recommended Policy CL-P1 is the most appropriate way to achieve Objective CL-O1 in relation to identifying contaminated land. It recognises the function of the NRC and the SLUR in undertaking this, as well as opportunities for collaboration in the SLUR's maintenance, and requires the investigation of contaminant risks where relevant.

Recommended Policy CL-P2 is the most appropriate way to achieve Objective CL-O1 in relation to managing contaminated land. It seeks that human health risks from activities on contaminated land are minimised by requiring the implementation of best practice contaminated land management and ensuring that the land is safe for its intended use¹¹.

¹¹ I note that the phrase "safe for its intended use" in both recommended Objective CL-O1 and Policy CL-P2 arises from reg 7 of the NES-CS; it is in the context of subdividing or changing the use of land and ensuring that contaminant levels are safe with respect to risk profile or sensitivity of the intended use. This varies, for example, for residential activities, industrial activities or, in the case of the Fuel Companies, sealed service station sites.

The recommended chapter overview introduces the above matters.

What are the anticipated benefits and costs of the recommended provisions?

The anticipated benefits of the recommended provisions include the following:

- Environmental: Minimising human health risks from subdividing, changing use or developing contaminated land in the District.
- Environmental and economic: Supporting the Council in achieving its functions under s 31 and responsibility of enforcing the NES-CS under s 44A of the Act, while avoiding duplication or inconsistency with other planning instruments.
- Environmental and economic: Making the contaminated land policy framework clear for all plan users thereby contributing to consistency and efficiency in the District's resource consenting process.
- Social and economic: The appropriate management of contaminated land can provide for its safe use and activities that contribute to the social and economic wellbeing in the District.

The anticipated costs of the recommended provisions include the following:

- Environmental: The provisions only relate to human health and not the wider environment, however, these are managed by the contaminated land rules and policy framework of the NRP, in accordance with the NRC's functions.
- Economic: The downstream expenditures associated with remediating, managing or monitoring contaminated land in the District.

No specific anticipated cultural benefits or costs have been identified; however, there may be a cultural benefit of remediating contaminated land which may then maintain or restore cultural values which may be associated with that land.

What is the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions?

The alternative option is to not contain a policy framework in the PDP. This leads to the risk of not acting, being a policy gap for both applicants and the Council when undertaking policy analyses, particularly under ss 104D and 104 of the Act, for applications that require resource consent under the NES-CS.

The policy gap will arise due to the absence of a national policy statement on contaminated land and the absence of contaminated land objectives and policies in the NRPS and NES-

CS. 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 clear and targeted objectives and policies. The recommended provisions avoid this risk, for the reasons discussed in this appendix and the statement of evidence, and additionally:

- They will not result in duplication or inconsistency with the NES-CS as the NES-CS does not contain objectives or policies, rather, they will be consistent with the outcomes sought by the NES-CS as I understand them to be.
- They will not result in duplication or inconsistency with the NRP as the NRP focuses on the adverse environmental effects of contaminant discharges of regional importance (e.g., on soil, water, air and ecosystems) whereas the recommended provisions focus on adverse human health effects.
- They will not conflict with the Council’s duties under s 44A and the contents of district plans under s 75 of the Act.

What is the recommended option?

The recommended option is having a contaminated land policy framework in the PDP that is contained in a contaminated land chapter. The reasons for selecting this option are discussed above and summarised in the statement of evidence.