

**SUBMISSION ON PROPOSED PLAN CHANGE 54 TO THE WHANGANUI DISTRICT PLAN
PURSUANT TO CLAUSE 6 OF THE FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT
1991**

To: **Kym Fell, Chief Executive**
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Via email only: Leayne.Huirua@whanganui.govt.nz

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Hereafter referred to as the Oil Companies

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INTRODUCTION

1. The Oil Companies receive, store and distribute refined petroleum products around New Zealand. In the Whanganui District, the Oil Companies' core business relates to distributing petroleum products and operating retail fuel outlets, including service stations and truck stops.
2. Whanganui District Council (*Council*) has, for some years, been conducting a "rolling review" of its district plan provisions. As part of this review, Council notified Proposed Plan Change 54 – Industrial (*PC54*) on 3rd July 2021.
3. This submission relates primarily to the proposed changes to the Hazards and Risks provisions contained within Part 2 – District Wide Matters of the plan but also addresses proposed changes to definitions contained in Part 1 – Introduction and General Provisions.

THE SPECIFIC PROVISIONS OF THE PROPOSED PLAN THAT THE OIL COMPANIES' SUBMISSION RELATES TO ARE SUMMARISED AS FOLLOWS

4. The specific provisions submitted on, the rationale for the Oil Companies' submission on each of these matters, and the relief sought is contained in the schedules below. Changes sought to the provisions are shown by deletion in ~~strike through~~ and addition in underline. The Oil Companies support alternative relief that achieves the same outcomes.
5. 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 Horizons Regional Council's 'One Plan';
 - 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 change 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.

THE OIL COMPANIES WISH TO BE HEARD IN SUPPORT OF THIS SUBMISSION.


IF OTHERS MAKE SIMILAR SUBMISSIONS THE OIL COMPANIES MAY BE PREPARED TO CONSIDER PRESENTING A JOINT CASE WITH THEM AT ANY HEARING.

THE OIL COMPANIES COULD NOT GAIN AN ADVANTAGE IN TRADE COMPETITION THROUGH THIS SUBMISSION.

THE OIL 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 'Megan Barr', with a long horizontal line extending to the right.

Megan Barr
Senior Planning and Policy Consultant
30 July 2021

SCHEDULE ONE - GENERAL

A. THE SPECIFIC PARTS OF PROPOSED PLAN CHANGE 54 THAT THIS SUBMISSION RELATES TO ARE:

- Contaminated Land Chapter and provisions, which is supported
- Deletion of Appendix F – Hazardous Facility Screening Procedure, which is supported
- Hazardous Substances standards NFL-CESM-S4, GRZ-S9, CRZ-S3, GRUZ-S3, RLZ-S6, RPROZ-S3, SETZ-S3, COMZ-CC-S3, COMZ-NC-S7, and AZ-S3, which are opposed
- Hazardous facilities definition, which is opposed

B. THE REASONS FOR THE SUBMISSION ARE:

1. Contaminated Land

The provisions relating to Contaminated Land were not visible to this submitter on the Council's website until 27th July 2021 after inquiry with Council staff. It is not clear if this unavailability has caused potential scope or natural justice issues for other submitters.

The provisions are as follows:

Objective CL-O1

The risks to human health from contaminated land are avoided, remedied or mitigated.

Policy CL-P1

Identify sites that are known to contain contaminated soil as a result of current and historical land use and activities.

Policy CL-P2

Ensure that contaminated or potentially contaminated land is suitable for use and minimises the risk to human health by requiring investigation, remediation or management, where necessary, at the time of any subdivision, site re-development or change in land use.

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 does not contain an objective or policy to assist in guiding decision making for discretionary activities. It is appropriate there is such a policy framework in the Plan while relying on the NESCS for the rules. For this reason, the proposed provisions are supported.

2. Appendix F – Hazardous Facility Screening Procedure

PC54 proposes to remove Appendix F – Hazardous Facility Screening Procedure. The Section 32 Report indicates that the intent of this is to remove “*unnecessary overlaps and inefficiencies with the Hazardous Substances and New Organisms Act, particularly as current plan provisions have been superseded by more recent legislative requirements governing hazardous substance management*”.

The Oil Companies support the removal of the HFSP provisions as proposed by Council and made in response to the repeal of Section 31(1)(b)(ii) of the RMA (by the Resource Legislation Amendment Act 2017), namely that territorial authorities no longer have the explicit function relating to preventing or mitigating any adverse effects of the storage, use, disposal or transportation of hazardous substances.

It is noted that, although PC54 proposes to remove Appendix F in its entirety, PC54 does not include the deletion of references to the Hazardous Facility Screening Procedure elsewhere in the District Plan, for example, in COMZ-OC-S4. This is matter that Council may wish to correct.

3. Hazardous Substances Standards NFL-CESM-S4, GRZ-S9, CRZ-S3, GRUZ-S3, RLZ-S6, RPROZ-S3, SETZ-S3, COMZ-CC-S3, COMZ-NC-S7, and AZ-S3

PC54 includes new standards across all District Plan zones requiring “*all activities shall comply with the standards in HAZ – Hazards and Risks*”. However, Appendix 2 – Proposed District Plan Text Changes does not contain any standards. Furthermore as the Hazards and Risk provisions are District Wide matters any cross reference is technically redundant. If Council wishes to retain a link to the Hazards and Risk Chapter then the word “standards” should be deleted and replaced with “provisions”.

4. Definition of Significant Hazardous Facilities

PC54 proposes to revise the definition of *significant hazardous facilities* as follows:

Significant hazardous facilities

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

- a. *Manufacturing and associated storage of hazardous substances (including manufacture of agrichemicals fertilisers, acids/alkalis or paints.*
- b. *Petroleum exploration and petroleum production.*
- c. *The storage/use of more than 100,000L of petrol.*
- d. *The storage/use of more than 100,000L of 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 (except where milk processing plant is specifically designed to contain and store milk so that any reasonably potential spillage of milk is contained within the site of the plant until it can be disposed of to an approved wastewater system).*
- n. *Fibreglass manufacturing.*
- o. *Polymer foam manufacturing.*

For (c) and (d) it does not include the underground storage of petrol at service stations undertaken in accordance with HSNOCOP 44 Below Ground Stationary Containers Systems for Petroleum – Operation.

Both the Section 32 Report and Appendix 2 – Proposed District Plan Text Changes contain references to *significant hazardous facilities*, including in Rules HAZ-R1 and HAZ-R2. However, it was noticed that PC54, as accessible through the Council website up to 27th July, only had the term “hazardous facility” defined in the tracked change version of the PC54 provisions. Following discussions with Council staff on the 27th of July, the definition was amended to “significant hazardous facility”. This potentially raises some scope and prejudice issues that Council should address before any hearing as the definition may not have been appropriately notified, i.e. some potentially interested parties may not have submitted, for instance if they were classified as “hazardous facilities” but the new provisions only related to “significant hazardous facilities”.

Further, it is not clear what the risks are that Council is seeking to control through the scope of the definition. For example, it would be unusual for there to be off-site risks associated with diesel storage. The Oil Companies accept that there can be land use implications of locating sensitive activities near some major hazardous facilities. (as defined in the Health and Safety at Work (Major Hazard Facilities) Regulations 2016). However, the definition of *significant hazardous facilities* as proposed would appear to leave out some other potential major hazardous facilities.

In not picking up a range of major hazard facilities (as defined in the Major Hazard Facilities Regulations), the “significant hazardous facilities” definition will not require consent for activities which may have potential off-site effects. For instance, a facility that stores and dispenses more than 5 tonnes of hydrogen would not appear to be picked up and yet under the Major Hazard Facilities Regulations would be a major hazardous facility.

Conversely, the proposed significant hazardous facilities definition combined with the provisions has potential to trigger consents for a wide range of activities, both hazardous facilities and other activities in the wider vicinity of hazardous facilities, irrespective of there likely not being any significant off-site risk to address. For instance, the significant hazardous facilities definition will capture a range of manufacturing facilities that use hazardous substances and any subsequent development of ‘sensitive activities’ within 250m of those activities would require consent as a non-complying activity. The Section 32 Report does not include the reasoning behind the proposed buffer distance of 250m or any justification for this figure. As the proposed definition of “significant hazardous facilities” includes a wide range of activities with varying degrees of risk, it is considered inappropriate to adopt the figure of 250m without providing supporting evidence to justify why such a significant buffer distance is required for each of these activities.

It is noted that there are currently no Major Hazard Facilities listed on the Worksafe website in Whanganui. However, this does not preclude such facilities establishing within the Whanganui District in future.

The intent to exclude underground storage of petrol at service stations where it complies with HSNOCOP 44 is acknowledged and supported. However, there are a number of issues with this. It is accepted that underground storage of vehicle fuels (i.e. petrol and diesel) do not pose significant off-site risks when underground and this is why they are not identified as “major hazardous facilities” as defined in the Health and Safety at Work (Major Hazard Facilities) Regulations 2016. This would also apply to any underground fuel facility irrespective of whether it is a service station. Furthermore, it is understood that HSNOCOP 44 is likely to be changed to a Worksafe instrument under the Worksafe legislation and why the Oil Companies consider there should be a more appropriate focus on major hazardous facilities.

The Oil Companies oppose the proposed definition of “significant hazardous facilities” and seek to ensure that any facilities that are subject to the provisions are only captured where they result in demonstrable off-site effects and / or are out of zone. This could be achieved by deleting the definition of “significant hazardous facilities” and replacing it with the definition of “major hazard facility” in section 4(1) of the Health and Safety at Work (Major Hazard Facilities) Regulations 2016.

C. THE RELIEF SOUGHT IS:

Where specific changes are proposed, these are shown in ~~strike through~~ (deletions) and underline (additions).

1. Contaminated Land

- a. Confirm that the Contaminated Land provisions and the proposed definition of Significant Hazardous Facilities were appropriately notified, that there has not been any prejudice to potential submitters and, if not, adjust the process accordingly.
- b. Retain the objective and policies of the Contaminated Land chapter without further modification (CL-O1, CL-P1 and CL-P2).

2. Appendix F – Hazardous Facility Screening Procedure

Retain the intent and ensure deletion of Appendix F – Hazardous Facility Screening Procedure from the District Plan.

3. Hazardous Substances Standards NFL-CESM-S4, GRZ-S9, CRZ-S3, GRUZ-S3, RLZ-S6, RPROZ-S3, SETZ-S3, COMZ-CC-S3, COMZ-NC-S7, and AZ-S3

- a. That Hazardous Substances Standards NFL-CESM-S4, GRZ-S9, CRZ-S3, GRUZ-S3, RLZ-S6, RPROZ-S3, SETZ-S3, COMZ-CC-S3, COMZ-NC-S7, and AZ-S3 be deleted in their entirety.
- b. That if Council wishes to retain a link to the Hazards and Risk Chapter then the word “standards” should be deleted and replaced with “provisions”.

4. Definition of Significant Hazardous Facilities

- a. That the proposed definition of “significant hazardous facilities” is deleted in its entirety and replaced with “major hazard facility”, as follows:

~~hazardous facilities~~

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

- ~~p. Manufacturing and associated storage of hazardous substances (including manufacture of agrichemicals fertilisers, acids/alkalis or paints.~~*
- ~~q. Petroleum exploration and petroleum production.~~*
- ~~r. The storage/use of more than 100,000L of petrol.~~*
- ~~s. The storage/use of more than 100,000L of diesel.~~*
- ~~t. The storage/use of more than 6 tonnes of LPG.~~*
- ~~u. Galvanising plants.~~*
- ~~v. Electroplating and metal treatment.~~*
- ~~w. Tanneries.~~*
- ~~x. Timber treatment.~~*
- ~~y. Freezing works and rendering plants.~~*
- ~~z. Wastewater treatment plants.~~*
- ~~aa. Metal smelting and refining (including battery refining or recycling).~~*
- ~~bb. Milk processing plants (except where milk processing plant is specifically designed to contain and store milk so that any reasonably potential spillage of milk is contained within the site of the plant until it can be disposed of to an approved wastewater system).~~*
- ~~cc. Fibreglass manufacturing.~~*

~~dd. Polymer foam manufacturing.~~

~~For (c) and (d) it does not include the underground storage of petrol at service stations undertaken in accordance with HSNOCOP 44 Below Ground Stationary Containers Systems for Petroleum — Operation.~~

major hazard facility

has the same meaning as “major hazard facility” in section 4(1) of the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 (as set out in the box below)

means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20 of the Health and Safety at Work (Major Hazard Facilities) Regulations 2016

- b. Notwithstanding the in principle issues identified above, in the event the definition of “significant hazardous facilities” is retained, the Oil Companies seek that the reference to underground storage is amended as follows:

~~For (c) and (d) it does not include the underground storage of petrol or diesel at service stations undertaken in accordance with HSNOCOP 44 Below Ground Stationary Containers Systems for Petroleum — Operation.~~

SCHEDULE TWO – HAZARDOUS SUBSTANCES

A. THE SPECIFIC PARTS OF PROPOSED PLAN CHANGE 54 THAT THIS SUBMISSION RELATES TO ARE:

- HAZ – Hazards and Risks, Hazardous Substances – Overview, which is supported in part
- HAZ-Issues I1 and I2, which are supported in part
- HAZ-Objectives O1 and O2, which are supported in part
- HAZ Policies P1 to P4, which are supported in part
- HAZ-Rules R1 and R2, which are opposed

B. THE REASONS FOR THE SUBMISSION ARE:

1. HAZ – Hazards and Risks, Hazardous Substances – Overview

The Oil Companies support the approach of Council to Hazardous Substances where it is seeking only to control matters in relation to hazardous substances that are not covered by other more specific legislation.

The focus of the proposed provisions is appropriately on hazardous facilities rather than “hazardous substances”. This would helpfully be reflected in the naming of the subheading of the chapter to Hazardous Facilities.

In addition, as outlined in Schedule One above, the proposed definition of “significant hazardous facilities” is opposed. Therefore it is requested that all references to “significant hazardous facilities” be replaced by the term “major hazard facilities”.

2. HAZ-Issues HAZ-I1 and HAZ-I2

The Oil Companies support the general intent of Issues HAZ-I1 and HAZ-I2 but request that all references to “significant hazardous facilities” be replaced by the term “major hazard facilities”.

3. HAZ Objectives HAZ-O1 and HAZ-O2

The Oil Companies support Objectives HAZ-O1 and HAZ-O2 in part. For the reasons outlined in Schedule One above, it is requested that all references to “significant hazardous facilities” be replaced by the term “major hazard facilities”.

In addition, it is requested that the word “minimised” in Objective HAZ-O1 be replaced with the word “managed”.

This reflects that the term “minimised” requires reduction to the smallest possible amount or degree and that this does not align with the appropriate focus in the balance of provisions on reduction of risk to acceptable levels.

4. HAZ Policies HAZ-P1 to HAZ-P4

The Oil Companies support Policy HAZ-P3 as drafted.

The Oil Companies support Policies HAZ-P1, HAZ-P2 and HAZ-P4 in part. For the reasons outlined in Schedule One above, it is requested that all references to “significant hazardous facilities” be replaced by the term “major hazard facilities”.

In addition, it is requested that the word “minimised” in Objective HAZ-P1 be replaced with the word “managed”.

This reflects that the term “minimised” requires reduction to the smallest possible amount or degree and that this does not align with the appropriate focus in the balance of provisions on reduction of risk to acceptable levels.

5. HAZ-Rules R1 and R2

The wording of HAZ-R1 and HAZ-R2, as drafted, does not make it clear whether the rules apply solely to new activities establishing on a site or also to the expansion of existing activities on a site. If the provisions were intended to cover the expansion of existing activities as well as the establishment of new activities then Council may wish to re-word the provisions to make this explicit.

The current wording of the provisions is likely to present interpretation challenges, for example if an existing “sensitive activity” located within 250m of a “significant hazard facility” was to expand, would this require resource consent as a non-complying activity?

In addition, it is anticipated that the proposed 250m buffer will trigger a wide range of consents for sensitive activities where in most instances it is not anticipated there is a risk to justify the same. It is also a potential issue for a range of ‘live / work’ activities.

It is considered that zoning may be the most appropriate tool for most of the activities listed in the proposed definition of “significant hazardous facilities”.

The Section 32 Report does not identify the risks that the 250m buffer is intended to control or provide an evidence base for the figure of 250m. It is considered that Council should map the facilities within the District that are considered “significant hazardous facilities” if they are going to be subject to the proposed restrictions. This would enable people to determine whether they are potentially affected by these provision in addition to zoning and zone-based rules and standards.

C. THE RELIEF SOUGHT IS:

Where specific changes are proposed, these are shown in ~~strike through~~ (deletions) and underline (additions).

1. HAZ – Hazards and Risks, Hazardous Substances – Overview

- a. That the chapter sub-heading be amended from “Hazardous Substances” to “Hazardous Facilities”.
- b. That the Overview be amended to replace the term “significant hazardous facilities” with the term “major hazard facilities” wherever it occurs.

2. HAZ-Issues HAZ-I1 and HAZ-I2

That Issues HAZ-I1 and HAZ-I2 be amended to replace the term “significant hazardous facilities” with the term “major hazard facilities” wherever it occurs.

3. HAZ Objectives HAZ-O1 and HAZ-O2

- a. That HAZ-O1 is amended to require management rather than minimisation of residual risk, as follows:

HAZ-O1

Recognise the benefits associated with the use, storage, and disposal of hazardous substances, while ensuring that unacceptable risks to the environment and human health are avoided and that any residual risks are ~~minimised~~ managed to be as low as reasonably practicable.

This reflects that minimise requires reduction to the smallest possible amount or degree and that this does not align with the appropriate focus in the balance of provisions.

- b. That HAZ-O2 is amended to replace the term “significant hazardous facilities” with the term “major hazard facilities” wherever it occurs.

4. HAZ Policies HAZ-P1 to HAZ-P4

- a. That Policy HAZ-P3 be retained as drafted.
- b. That Policies HAZ-P1, HAZ-P2 and HAZ-P4 be amended as follows:

HAZ-P1

Manage ~~significant hazardous~~ major hazard facilities to ensure they are located, designed, constructed and managed to internalise adverse effects on the environment and human health within the facility's site and by:

- a. *avoiding unacceptable risk; and*
- b. *~~minimising~~ managing residual risk to be as low as reasonably practicable.*

HAZ-P2

Ensure that new or expanding ~~significant hazardous~~ major hazard facilities are located appropriately, having regard to:

- a. *the type, scale, intensity, duration and frequency of the effects of the activity on the environment and human health and safety;*
- b. *the extent to which adverse effects can be avoided, or where avoidance is not possible, remedied or mitigated;*
- c. *the design and site layout of the activity and the ability for any associated effects to be internalised within the site;*
- d. *whether the activity has the potential to compromise tangata whenua's relationship with their ancestral lands, water, sites, wāhi tapu, and other taonga and if so, the outcomes of any consultation with tangata whenua, including with respect to mitigation measures;*
- e. *adequate separation from sensitive activities and identified key waterbodies and archaeological sites to ensure conflict between activities, adverse effects and reverse sensitivity effects are minimised;*
- f. *avoidance or management of risks associated with natural hazards, particularly flooding and subsidence;*
- g. *any potential adverse cumulative or synergistic effects; and*

- h. whether effective rehabilitation of the site will occur, either by a staged process or at the end of the life of the facility, having regard to the expected life of the facility.

HAZ-P4

Avoid the establishment of new sensitive activities in areas that are exposed to unacceptable risks from existing ~~significant hazardous~~ major hazard facilities.

5. HAZ-Rules R1 and R2

The Oil Companies seek that Rules HAZ-R1 and HAZ-R2 be amended as follows:

HAZ-R1	Significant Hazardous <u>Major Hazard</u> Facilities in the General Industrial, Rural Production, Rural Lifestyle, General Rural and Rural Settlement zones.	Discretionary (DISC)
HAZ-R2	<ol style="list-style-type: none"> 1. Significant Hazardous <u>Major Hazard</u> Facilities in all other zones. 2. Sensitive activities and visitor accommodation activities within 250m of an existing Significant Hazardous <u>mapped Major Hazard</u> Facility in any zone. 3. Significant Hazardous <u>Major Hazard</u> Facilities within: <ol style="list-style-type: none"> a. any Land Stability Assessment or Flood Risk Area identified on the District Plan maps; b. 50m of any key waterbody identified in Policy NFL-P1; c. the buffer area of any archaeological site identified in Appendix K - Archaeological and Wāhi Tupuna. 	Non-Complying (NC)