

BEFORE A HEARINGS PANEL APPOINTED BY HUTT CITY COUNCIL

In the Matter of the Resource Management Act 1991 (RMA)

And

In the Matter of submissions by bp Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited (**the Fuel Companies**) (S471/F32) (S468)

**FURTHER LEGAL SUBMISSIONS FOR THE FUEL COMPANIES –
IMPLICATIONS OF PLAN-STOP TO RELIEF (S471/F32), (S468)**

**HEARING STREAM 2: CONTAMINATED LAND, HAZARDOUS
SUBSTANCES, AND SEAVIEW MARINA ZONE**

Dated 08 June 2026

- 1 The Panel has reserved leave to the Fuel Companies to provide brief legal submissions on the impact of the Plan-Stop process on their request for a new definition of “sensitive environment” for the PDP.
- 2 In summary, the Fuel Companies submit that there is scope to introduce a new definition of ‘sensitive environment’ for the Hazardous Substances chapter, provided that the new definition does not refer to provisions deleted by the plan-stop process. For example, any PDP definition could not refer to the deleted overlays.
- 3 While (to a large extent) the Fuel Companies’ specific relief (on a definition of sensitive environment) is constrained by the plan-stop process, this does not preclude an alternative definition being promulgated by the PDP, that does not reference the overlays (and plan-stop deleted provisions).
- 4 It is submitted that expert caucusing should address the merits question of alternative definitions (that are within scope).
- 5 Relevant background (including submission points) is set out below.

Plan-stop (partial withdrawal) of the PDP

- 6 On 15 January 2026, HCC wrote to submitters to advise that Council had withdrawn parts of the PDP that are not exempt from the new plan-stop requirements. This withdrawal is required under section 80Q RMA.
- 7 Relevant parts withdrawn are:
 - The Historical and Cultural Values chapters, schedules and overlays (excluding those related to Notable Trees),
 - Natural Environment Values chapters, schedules and overlays,
 - Non-hazard parts of the Coastal Environment chapter and associated schedules and overlays (relating to coastal natural character), and

- Parts relating to Highly Productive Land (in the General Rural Zone chapter) and the associated overlay.

Legal Advice to HCC

8 As detailed in 'Minute 2 Hearing Procedures', Council officers requested legal advice on a range of matters relating to the scope of submissions, including the withdrawal of some parts of the notified plan, under the 'plan stop' legislation.

9 Specifically, the Council asked:

g. Where a submission is on a provision that has been withdrawn, have their submissions now effectively fallen away, and they can be excluded from the hearing process? Or do they still need to be provided an opportunity to speak at a hearing, and possibly seek alternative relief through the parts of the PDP that have an exemption?

10 Legal advice from Mr Stephen Quinn (dated 9 March 2026, and attached as Appendix A to Minute 2) is:

Yes, the submissions on withdrawn provisions cannot be progressed. As those provisions no longer exist, there is nothing to be presented through submissions (as the panel has no jurisdiction to grant relief for submissions addressing withdrawn provisions). In order to avoid confusion or disappointment by submitters, some communication to the affected submitters from Council would be good practice. For a submitter who has only submitted on a withdrawn provision, they would not need to be scheduled to be heard (as the panel would have no jurisdiction to listen to and determine their submission). If any of them want to seek alternative relief within the scope of the exemption approved PDP provisions, this would need to be filed as a late submission. That would require determination by the panel as to whether to accept such a late submission.

Relevant submissions of Fuel Companies

11 The Fuel Companies lodged submissions relating to the term 'sensitive environments', including:

- 471.84, which seeks to introduce a definition of 'sensitive environments' to the PDP for the purposes of the hazardous substances chapter in order to provide greater certain as to the specific locations in which the relevant provisions would apply.
- 471.158, a chapter wide-submission seeking to replace all references to the term 'sensitive environments' in the hazardous substances chapter with the term 'specified overlay', which is a term included in the notified version of the PDP.
- 471.159, 471.162, 471.165, 471.166, seeking changes to the specific provisions that use the term 'sensitive environments'¹ with an alternative term, with 'specified overlay' being suggested.

12 A copy of submission points 471.84 and 471.158 are included as **Attachment A.**

13 The specific relief suggested in 471.84 is to introduce the following definition:

Sensitive activities: Means, for the purposes of the (HS) Hazardous Substances chapter, any area located in the following overlays:

- a. *Outstanding Natural Feature*
- b. *Outstanding Natural Landscape*
- c. *Outstanding Coastal Natural Character Area*
- d. *High and Very High Coastal Natural Character Area*
- e. *Coastal Environment*

14 It is relevant to note that the definition suggested is similar to, but not same as the defined term 'specified overlay'.

Section 42A Report

15 The Section 42A report and Section 42A Report ERRATA, prepared by Mr Wesley, both address the Fuel Companies' submission on the

¹ The term 'sensitive environments' is used in the introduction to the hazardous substances chapter, together with Policy HS-P1, and as a matter of discretion for Rules HS-R1 and HS-RS.

use of the term 'sensitive environment' in the hazardous substances chapter and note that²:

In addition, as I noted in paragraph 59 of the original s42A Report, the definition of specified overlay in the notified PDP may need to be deleted as a result of the overlays listed in this definition being withdrawn from the PDP to comply with the Minister's exemption. This same issue arises with the requested definition of 'sensitive environments' which refers to these withdrawn overlays.

Relationship between Fuel Company Submissions and Plan Stop

- 16 The legal advice of Mr Quinn is that '*submissions on withdrawn provisions cannot be progressed*'.
- 17 In contrast, the submissions of the Fuel Companies are very clearly 'on' the provisions of the hazardous substances chapter and the way in which the term 'sensitive environments' is used in the context of that chapter.
- 18 That is, the submissions seek greater certainty as to what specific locations are to be considered as 'sensitive environments' when considering proposals relating to 'significant hazardous facilities' under the hazardous substances chapter.
- 19 The submissions suggest two alternative ways of doing that:
 1. To introduce a new definition of the term 'sensitive environments'; or
 2. To substitute all references to the term 'sensitive environments' in the hazardous substances chapter with the term 'specified overlay' which is a defined term in the notified version of the PDP, which is anticipated by the Fuel Companies to generally equate to the types of sensitive environments in which additional control of hazardous substances under the PDP may be warranted.

² Refer para 14 of the Section 42A report – Haz Substances and Cont Land ERRATA

- 20 While the specific relief sought by the Fuel Companies refers to overlays withdrawn from the PDP, the general relief is wider. For example, it seeks a new definition of 'sensitive environments' specific to the Hazardous Substances chapter.
- 21 This more general identification of relief sits alongside the Fuel Companies request for alternative or consequential relief, especially in the context of hazardous substances (where 'sensitive activities' are a recognised technical term used by the NSW guidelines, and elsewhere in NZ).
- 22 It is therefore open to the Panel (and within scope) to provide alternative relief to address the request for a new definition of 'sensitive environment' (provided this does not refer to the withdrawn overlays, or other withdrawn provisions).
- 23 Such an approach responds to the underlying fairness considerations involved on a scope issue (i.e. in circumstances where the Fuel Companies have made a submission point that raises a legitimate, and orthodox, planning issue for the PDP, and some forms of relief to that submission point are within jurisdiction (whereas others are not, as a result of an unanticipated and supervening process – the plan-stop).
- 24 It is submitted that this better reflects the s5 RMA sustainable management purpose, noting that the "topic" of how to define "sensitive environment" has been clearly identified to all submitters, with the specific form of relief (the definition) being ultimately a matter for the Panel's discretion.
- 25 In summary, it is open to Council to adopt alternative relief to address the Fuel Companies' submissions, the key premise of which is that where additional controls are applied to the locations in which hazardous substances can be used and stored under the PDP, including neighbouring locations that include sensitive activities, a high level of certainty is required as to where those locations are.

- 26 As identified by the Fuel Companies submission points (and subsequent evidence), that is not achieved by a generic reference to 'sensitive environments'.
- 27 Further, that the use of additional RMA controls over and above the level of control already in place by way of the primary legislation relating to hazardous substances (HSWA and HSNO), should be clearly justified and should only address matters not appropriately addressed under other legislation. While the Fuel Companies' acknowledge additional controls may be appropriate in relation to some sensitive receiving environments, there is insufficient certainty in the use of a generic term 'sensitive environments' to understand where those additional controls may be applied.
- 28 It is submitted that this issue should be the subject of expert conferencing, to consider the mechanics and merits of alternative definitions, before the Panel forms a final view on scope.

Other matters

- 29 Finally, Counsel notes that the Panel requested copies of case law referred to at the hearing of this matter. Copies of cases have been filed with the Hearings Secretariat.

Dated this 08 June 2026



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