

**IN THE MATTER**

of an appeal under Clause 14 of the First  
Schedule to the Resource Management Act  
1991

**AND**

**IN THE MATTER**

of the decisions of the Otago Regional  
Council on Proposed Otago Regional Policy  
Statement – Non-freshwater 2021

**BETWEEN**

**BP OIL NEW ZEALAND LIMITED, MOBIL OIL  
NEW ZEALAND LIMITED AND Z ENERGY  
LIMITED**

Appellant

**AND**

**OTAGO REGIONAL COUNCIL**

Respondent

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**NOTICE OF APPEAL BY BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED, AND  
Z ENERGY LIMITED  
DATED 14 MAY 2024**

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**To:** The Environment Court Registrar  
Justice & Emergency Services Precinct,  
20 Lichfield Street,  
Christchurch

## **INTRODUCTION**

1. BP Oil New Zealand Limited, Mobil Oil New Zealand Limited, and Z Energy Limited (***The Fuel Companies***) appeal against parts of the decision of Otago Regional Council (***the Council***) on the Proposed Otago Regional Policy Statement 2021 – (Non-freshwater parts) (**PORPS-NF**).
2. The Fuel Companies made submissions, further submissions, submitted evidence, and presented oral evidence on PORPS-NF.
3. The Fuel Companies are not trade competitors for the purposes of section 308D of the Resource Management Act 1991 (***the RMA***).
4. The Fuel Companies received notice of the Council’s decisions on 3 April 2024.

## **BACKGROUND**

5. The Fuel Companies receive, store and distribute refined petroleum products. The core business of the Fuel Companies is the operation and management of retail fuel networks, commercial refuelling facilities and bulk storage (terminal) facilities. The Fuel Companies also supply petroleum products to individually owned businesses. The nature of the Fuel Companies’ activities at the Port of Otago is critical to their interests in the PORPS-NF.
6. The Port of Otago provides the sole point of entry for ships carrying bulk petroleum products into the Otago Region. There are three existing bulk fuel storage terminals at the Port:
  - Z Energy 2015 Limited (previously Chevron New Zealand), 203 Fryatt Street;
  - Z Energy Limited, 9-25 Wickliffe Street; and
  - BP Oil New Zealand Limited, Parry Street.

## THE PARTS OF THE DECISION BEING APPEALED

7. The parts of the decision that the Fuel Companies' appeal relates to are the following policies contained in the HAZ – Hazards and Risk Chapter and HAZ-CL – Contaminated Land subchapter of the PORPS-NF:
- HAZ-CL-P14 Managing Contaminated land, and in particular, HAZ-CL-P14 (3) relating to avoiding, as the first priority, or mitigating or remedying the adverse effects of contaminants on the environment; and
  - HAZ-CL-P15 New contaminated land relating to the avoidance of the creation of new contaminated land.

## REASONS FOR APPEAL

8. The general reasons for the appeal are that the decision:
- (a) Does not adequately address the submission and evidence of the Fuel Companies on PORPS-NF.
  - (b) Does not promote the sustainable management of natural and physical resources and is contrary to Part 2 and other provisions of the RMA.
  - (c) Does not enable people and communities of Otago to provide for their social and economic wellbeing and their health and safety.
  - (d) Is not consistent with the relevant objectives and policies of the PORPS-NF.
  - (e) Will potentially impose unnecessary and unjustified costs.
9. Without limiting the generality of the above, the specific reasons for the Fuel Companies' appeal are set out below.

## POLICY HAZ-CL-P14

### *Reasons for the Appeal*

10. The decisions version of PORPS-NF provides for the management of contaminated land to protect human health and prevent harm to the environment in Otago. HAZ-CL-P14 (3) requires

avoiding the adverse effects from the management of contaminated land as the first priority, and then mitigate or remediate. Policy HAZ-CL-P14 reads as follows:

***HAZ-CL-P14 Managing contaminated land***

*Manage contaminated or potentially contaminated land so that it does not pose an unacceptable risk to people and the environment, by:*

- 1) assessing and, if required, monitoring contaminant levels and environmental risks,*
- 2) protecting human health in accordance with regulatory requirements,*
- 3) avoiding, as the first priority, and only where avoidance is not reasonably practicable, mitigating or remediating, adverse effects of the contaminants on the environment,*
- 4) requiring closed landfills to be managed in accordance with a closure plan that sets out monitoring requirements and, where necessary, any remedial actions required to address ongoing risks, and*
- 5) prioritising the identification and management of closed landfills and contaminated land at risk from the effects of climate change.*

11. The Fuel Companies' submission sought the deletion of clause (3) as it is not appropriate to apply an avoid, remedy mitigate hierarchy in all circumstances for what is existing contamination, for the following reasons:
  - (a) A requirement to avoid effects where practicable does not recognise that what may be practicable, may not be necessary in terms of achieving an acceptable risk to human health or the environment.
  - (b) The policy implies that active management is always necessary. This may unnecessarily trigger the requirement for additional actions to manage contaminated sites that may be best managed by monitoring and passive approaches.
  - (c) The actions required by clause (3) may not be proportionate to the scale of effects of the contamination.
  - (d) This outcome of clause (3) does not reflect the intent of the decision report<sup>1</sup> that supports the rationale of the s42A author<sup>2</sup> indicating that clause (3) is about addressing further adverse effects on the environment.

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<sup>1</sup> Report and recommendations of the Non-Freshwater and Freshwater Hearings Panels to the Otago Regional Council, Appendix One: Section 11 Hazards and Risks (HAZ), paragraph 72 and 75, p280

<sup>2</sup> Report 12: HAZ – Hazards and risk, paragraph 513, p127

12. Policy HAZ-CL-P14 (3) should be about ensuring contaminated land does not pose an unacceptable risk to people and the environment, and any remedial actions to address ongoing risks (similar to the requirement in clause (4) for closed landfills).

**Relief Sought**

13. Amend Policy HAZ-CL-P14 (3) of the decisions version should be amended as follows (additions in underline, deletions in strikethrough):

***HAZ-CL-P14 Managing contaminated land***

*Manage contaminated or potentially contaminated land so that it does not pose an unacceptable risk to people and the environment, by:*

- 1) *assessing and, if required, monitoring contaminant levels and environmental risks,*
- 2) *protecting human health in accordance with regulatory requirements,*
- 3) *~~avoiding, as the first priority, and only where avoidance is not~~ minimising to the extent reasonably practicable, ~~mitigating or remediating,~~ the adverse effects of the contaminants on the environment and, where necessary, any remedial actions required to address ongoing risks,*
- 4) *requiring closed landfills to be managed in accordance with a closure plan that sets out monitoring requirements and, where necessary, any remedial actions required to address ongoing risks, and*
- 5) *prioritising the identification and management of closed landfills and contaminated land at risk from the effects of climate change.*

## POLICY HAZ-CL-P15

### ***Reasons for the Appeal***

1. The decisions version of PORPS-NF provides for management of contaminated land to protect human health and prevent harm to Kāi Tahu, values and the environment in Otago. Policy HAZ-CL-P15 reads as follows:

#### ***HAZ-CL-P15 New contaminated land***

*Avoid the creation of new contaminated land or, where this is not practicable, minimise to the extent reasonably practicable adverse effects on the environment and Kāi Tahu values.*

14. HAZ-CL-P15 confuses the concepts of managing hazardous substances and managing contaminated land. There is inherent risk in the handling of hazardous substances and this is managed through national regulation. The only way to truly avoid the creation of new contaminated land is to not allow the storage or use hazardous substances. This is not a practical or appropriate outcome.
- 15.
16. This outcome does not reflect the intent of the decision report<sup>3</sup> to manage the adverse effects of contaminants on receptors other than soils and to avoid duplication with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. The only appropriate way to deal with contaminated land is for it to be managed, as set out in Policy HAZ-CL-P14, so that it does not pose an unacceptable risk to people and the environment.

### ***Relief Sought***

17. That Policy HAZ-CL-P15 of the decisions version is deleted as follows (additions in underline, deletions in strikethrough):

#### ***HAZ-CL-P15 New contaminated land***

~~*Avoid the creation of new contaminated land or, where this is not practicable, minimise to the extent reasonably practicable adverse effects on the environment and Kāi Tahu values.*~~

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<sup>3</sup> Report and recommendations of the Non-Freshwater and Freshwater Hearings Panels to the Otago Regional Council, Hazards chapter, paragraph 59-60, p277

**RELIEF SOUGHT**

18. The Fuel Companies seek the following relief from the Court:

- (a) The relief specified in this notice of appeal under each heading 'Relief sought'; and
- (b) Such further, consequential or alternative relief as may be necessary or appropriate to address the Fuel Companies' concerns as outlined in this appeal and to give full and proper effect to the relief sought.

Signature of persons authorised to sign on behalf of the Fuel Companies



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Gavin McCullagh  
Principal Planner

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Miles Rowe  
Principal Planning Consultant

Dated this 14<sup>th</sup> day of May 2024

**Address for Service:**

SLR Consulting Limited  
Level 1, 426 Moray Place  
Central Dunedin  
DUNEDIN 9016  
Attention: Gavin McCullagh

Ph: 022 037 9932

E-Mail: [gavin.mccullagh@slrconsulting.com](mailto:gavin.mccullagh@slrconsulting.com) / [miles.rowe@slrconsulting.com](mailto:miles.rowe@slrconsulting.com)

**Annexures:**

- A. A copy of the Fuel Companies' submissions and further submissions
- B. A copy of the decision on the relevant points subject to this appeal
- C. Names and addresses of the persons to be served with a copy of this notice

## **Advice to recipients of copy of notice of appeal**

### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see [form 38](#)).

### *\*How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission or the part of the decision appealed. These documents may be obtained, on request, from the appellant.

### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.



**ANNEXURE 1**

**A copy of the Fuel Companies' submissions and further submissions are attached**



**ANNEXURE 2**

**A copy of the decision on the relevant points subject to this appeal**

**HAZ-CL-P14 – Managing contaminated land, HAZ-CL-P15 – New contaminated land and HAZ-CL-P18 – Waste facilities and services**

69. HAZ-CL-P14, HAZ-CL-P15 and HAZ-CL-P18 were notified as follows:

**HAZ-CL-P14 – Managing *contaminated land***

Actively manage contaminated or potentially contaminated land so that it does not pose an unacceptable risk to people and the environment, by:

- (1) assessing and monitoring contaminant levels and environmental risks,
- (2) protecting human health in accordance with regulatory requirements,
- (3) avoiding, as the first priority, and only where avoidance is not practicable, mitigating or remediating, adverse effects of the contaminants on the environment, and
- (4) requiring closed landfills to be managed in accordance with a closure plan that sets out monitoring requirements and, where necessary, any remedial actions required to address ongoing risks.

**HAZ-CL-P15 – New *contaminated land***

Avoid the creation of new *contaminated land* or, where this is not practicable, minimise adverse *effects* on the *environment* and *mana whenua* values.

**HAZ-CL-P18 – *Waste facilities and services***

When providing for the development of facilities and services for the storage, recycling, recovery, treatment and disposal of *waste* materials:

- (1) avoid adverse *effects* on the health and safety of people,
- (2) minimise the potential for adverse *effects* on the *environment* to occur,
- (3) minimise *risk* associated with *natural hazard* events, and
- (4) restrict the establishment of activities that may result in reverse sensitivity *effects* near *waste* management facilities and services.

70. A new recommended cause (5) for HAZ-CL-P14 relating to closed landfills was recommended in Mr Maclennan's supplementary evidence following the pre-hearing meeting as follows:

(5) prioritising the identification and management of closed landfills and *contaminated land* at risk from the *effects* of *climate change*.

71. We consider this to be a sound addition.

72. Submissions from Ravensdown and the Fuel Companies sought to delete HAZ-CL(3) or amend clause (3) to remove the reference to “avoid”. Ms Taylor, in her evidence for Ravensdown, accepted the s.42A report’s reasons for retaining clause (3). We are of the same view although, in line with our discussions and recommendations for other provisions in the PORPS, we recommend that ‘is not practicable’ be replaced with ‘is not reasonably practicable’.

73. Turning to HAZ-CL-P15 and on a similar note, in response to a submission by Queenstown Airport Mr McLennan has recommended adding ‘to the greatest extent practicable’ before ‘adverse effects’. We recommend that this be amended to ‘to the extent reasonably practicable’ and consider that this is consistent with the submission of Queenstown Airport.

74. Similarly, ‘to the greatest extent practicable’ was recommended to be added to clause (2) of HAZ-CL-P18. We support the intent of this amendment in response to submissions by Forest and Bird and Kāi Tahu ki Otago but consider that this should be reworded to read ‘to the extent reasonably practicable’ for reasons discussed earlier in our report.

75. In relation to other submissions on both of these policies, we support the reasoning and recommendations of Mr Maclennan.

#### 4.3.1. Recommendation

76. We recommend that HAZ-CL-P14 be amended as follows:

***HAZ-CL-P14 – Managing contaminated land***

~~Actively~~ *Manage contaminated or potentially contaminated land so that it does not pose an unacceptable risk to people and the environment, by:*

*(1) assessing and, if required, monitoring contaminant levels and environmental risks,*

*(2) protecting human health in accordance with regulatory requirements,*

*(3) avoiding, as the first priority, and only where avoidance is not reasonably practicable, mitigating or remediating, adverse effects of the contaminants on the environment, and*

*(4) requiring closed landfills to be managed in accordance with a closure plan that sets out monitoring requirements and, where necessary, any remedial actions required to address ongoing risks, ~~and~~*

*(5) prioritising the identification and management of closed landfills and contaminated land at risk from the effects of climate change.*

We recommend that HAZ-CL-P15 be amended as follows:

***HAZ-CL-P15 – New contaminated land***

*Avoid the creation of new contaminated land or, where this is not practicable, minimise to the extent reasonably practicable adverse effects of contamination on the environment and mana whenua Kāi Tahu values.*

**ANNEXURE 3**

**Names and addresses of persons to be served  
with a copy of this notice**

Submitter Number	Submitter	Contact Details
00139	Dunedin City Council	50 The Octagon, Dunedin PO Box 5045, Dunedin 9054  Attention: Anna Johnson <a href="mailto:Anna.Johnson@dcc.govt.nz">Anna.Johnson@dcc.govt.nz</a> Ph: (03) 477 4000
00226	Kāi Tahu ki Otago / Aukaha	PO Box 446, Dunedin 9054  Attention: Sandra McIntyre <a href="mailto:sandra@aukaha.co.nz">sandra@aukaha.co.nz</a> Ph: 021 246 4138
00301	Port of Otago Ltd	15 Beach St, Port Chalmers 9023  Rebecca McGrouther <a href="mailto:rmcgrouter@portotago.co.nz">rmcgrouter@portotago.co.nz</a> Ph: 03 472 9716
00239	Federated Farmers of New Zealand	PO Box 5242 Dunedin 9058  Eleanor Linscott <a href="mailto:elinscott@fedfarm.org.nz">elinscott@fedfarm.org.nz</a>
00236	Horticulture New Zealand	PO Box 10-232 Wellington  Rachel McClung <a href="mailto:rachel.mcclung@hortnz.co.nz">rachel.mcclung@hortnz.co.nz</a> Ph: 027 582 7474
00211	LAC Properties Trustees Ltd	Laura McLaughlan <a href="mailto:laura.mclaughlan@al.nz">laura.mclaughlan@al.nz</a>
FS00315	Aurora Energy Ltd	10 Halsey Street PO Box 5140 Dunedin 9058  Joanne Dowd <a href="mailto:joanne.dowd@auroraenergy.nz">joanne.dowd@auroraenergy.nz</a> Ph: 021 610 378
00210	Lane Hocking	Anderson Lloyd Level 2, 13 Camp Street, Queenstown 9300, New Zealand PO Box 201, Queenstown 9348  Laura McLaughlan <a href="mailto:laura.mclaughlan@al.nz">laura.mclaughlan@al.nz</a>



00118	Maryhill Ltd	Anderson Lloyd Level 2, 13 Camp Street, Queenstown 9300, New Zealand PO Box 201, Queenstown 9348  Laura McLaughlan <a href="mailto:laura.mclaughlan@al.nz">laura.mclaughlan@al.nz</a>
00114	Mt Cardona Station	Anderson Lloyd Level 2, 13 Camp Street, Queenstown 9300, New Zealand PO Box 201, Queenstown 9348  Laura McLaughlan <a href="mailto:laura.mclaughlan@al.nz">laura.mclaughlan@al.nz</a>
00121	Ravensdown Ltd	Planz Consultants Limited (Planz) PO Box 1845 CHRISTCHURCH 8140  Carmen Taylor <a href="mailto:carmen@planzconsultants.co.nz">carmen@planzconsultants.co.nz</a>
00209	Universal Developments Hawea Ltd	Anderson Lloyd Level 2, 13 Camp Street, Queenstown 9300, New Zealand PO Box 201, Queenstown 9348  Laura McLaughlan <a href="mailto:laura.mclaughlan@al.nz">laura.mclaughlan@al.nz</a>
FS00234	Te Rūnanga o Ngāi Tahu	15 Show Place, Addington, Christchurch 8024 PO Box 13-046, Christchurch, New Zealand  Tanya Stevens <a href="mailto:Tanya.Stevens@ngaitahu.iwi.nz">Tanya.Stevens@ngaitahu.iwi.nz</a>
00115	Oceana Gold (New Zealand) Ltd	22 Maclaggan Street, Dunedin 9016  Alison Paul <a href="mailto:alison.paul@oceanagold.com">alison.paul@oceanagold.com</a>
FS00230	Royal Forest and Bird Protection Society NZ	PO Box 6230, Dunedin North, Dunedin 9059  Rick Zwaan <a href="mailto:r.zwaan@forestandbird.org.nz">r.zwaan@forestandbird.org.nz</a> Ph: 021 845 587

00313	Queenstown Airport Corporation Ltd	PO Box 2641 Queenstown 9349  Melissa Brook <a href="mailto:melissa.brook@queenstownairport.co.nz">melissa.brook@queenstownairport.co.nz</a>
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