

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of application CRC190445 by the Christchurch City Council for a comprehensive resource consent to discharge stormwater from within the Christchurch City area and Banks Peninsula settlements on or into land, into water and into coastal environments

**REPLY MEMORANDUM ON BEHALF OF Z ENERGY LIMITED, BP OIL NZ LIMITED
AND MOBIL OIL NZ LIMITED (*THE OIL COMPANIES*) IN RESPONSE TO:**

- (a) MINUTE FIVE DATED 29 NOV 2018;
(b) APPLICANT MEMORANDUM DATED 8 FEB 2019**
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Rob Enright
Barrister
Magdalene Chambers
Level 1, 28 Customs St East
Britomart, Auckland
e: rob@publiclaw9.com
m: 021 276 5787

- 1 This memorandum is filed by the Oil Companies in reply to amended consent conditions filed by the Applicant (Council memorandum dated 8 Feb 2019); and Minute 5 (dated 22 Feb 2019). The Oil Companies adopt without repeating matters raised in their evidence and legal submissions. Relevant matters include:
 - (a) absence of relevant risk for stormwater discharges from appropriately managed petroleum industry sites;
 - (b) uncertainty as to how these discharges are provided for under the proposed resource consent;
 - (c) wording of proposed consent conditions, including general conditions 2 and 3;
 - (d) specific issues that arise from actions proposed by the applicant, including source control and engagement with industry groups, primarily addressed at condition 38.

- 2 The Oil Companies remain of the view that stormwater discharges from appropriately managed petroleum industry sites are not high risk and can be appropriately managed under the resource consent pre and post 2025. However, the intent of changes in the 8 Feb 2019 version of conditions 2 and 3 are considered to be an improvement. For clarity, the Oil Companies maintain a first preference for MfE Guideline compliant discharges from petroleum industry sites to be explicitly provided for under the consent. Proposed amendments below are the “second preference”.

Condition 2

- 3 Condition 2(d) retains discretion for the consent holder regarding discharges from listed sites on the Land Use Register. That discretion remains problematic because it does not provide certainty.

- 4 The Oil Companies remain open to assurances from the consent holder as to how this consent condition will be implemented in practice. Noting the position of the applicant’s experts in evidence, the Consent Holder may be more receptive to approving discharges from new or re-developed petroleum industry sites pre-2025; an Augier undertaking by the applicant would improve certainty and reduce legal validity concerns.

- 5 As to condition 2(f), the origin of the sites listed at Schedule 1 is unclear to the Oil Companies. The list includes at least one service station site, albeit one that discharges to soakage as it is beyond the area served by the reticulated stormwater network (Z Sawyers Arms, 530 Sawyers Arms Road). It is unclear why this site was excluded and the service station could reasonably be connected to the network in the future as the network is expanded. This is a less substantive issue to the Oil Companies if the list is essentially wiped clear at 1 January 2025, as appears to be the intent of condition 3 (but noting comments below).

- 6 Condition 3 requires that discharges into the network from the sites excluded by (inter alia) condition 2(f) are authorised under this consent on 1 January 2025, or when current discharge permits expire or are surrendered, unless excluded through the transitional arrangements or audits. Clarity re the application of schedule 1 in this regard would be helped by naming the lists of excluded sites differently, for instance

Schedule 1 (Excluded sites pre 2025) and Schedule X (Excluded sites post 2025).

Condition 3

- 7 As a starting point, condition 3 remains subject to legal uncertainty and validity concerns. It is unorthodox to have a consent condition that authorises a discharge “unless” the consent holder decides otherwise. The preferred approach would be for all discharges to be consented, but with scope for the consent holder to apply to exclude those discharges, through a s127 or perhaps s128 RMA process. The onus is then on the consent holder to follow due process, and the discharger has opportunity to challenge that decision through the independent testing mechanisms allowed for in the RMA (submission and appeals process). The consent holder should be incentivised to address these issues in a timely manner; and a default position that all discharges are consented, subject to a review process, is more legally sound and preferable to judicial review or declaration (being arguably the discharger’s only option, in the event that the consent holder decides the site poses “..unacceptably high risk”). The applicant’s amendments improve the process but do not answer these validity concerns. Other drafting issues are as follows:
- 8 Changes are also proposed by the applicant to condition 3 regarding the timeline and process for development of the risk matrix. The intent is supported although the Oil Companies remain concerned that the ongoing importance of the matrix is minimised by including it under a heading ‘transitional arrangements’ and not cross referencing it in relation to other key conditions, for instance those in relation to Stormwater Management Plans where it would seem to be an important consideration.
- 8 The Oil Companies would prefer to see the risk matrix condition as a standalone condition (Counsel is instructed that this was raised with the applicant prior to the memo being filed on 8 Feb 2019). In addition, the heading ‘Transitional Arrangements’ would be better amended to ‘Determination of Risk post 2025’, or similar.
- 9 Proposed amendments require consultation with the ‘Industry Liaison Group’, including feedback loops. Ultimately, however, the discretion at condition 3 rests with the consent holder. In the event that the consent holder was to take a stance regarding risk that was not justified, the Oil Companies, or other members of the Industry Liaison Group have no clear recourse, save for judicial review or declaration.
- 10 It is therefore suggested that condition 3(b) be amended to require any outstanding issues raised by the Industry Liaison Group under 3(b)(v) be put to the Stormwater Technical Peer Review Panel (Stormwater TPRP, now proposed by the applicant to peer review draft Stormwater Management Plans) for recommendation or (preferably) determination. To avoid validity issues, the applicant can agree to such a wording on an *Augier* basis.
- 11 The Stormwater TPRP was not previously an option available but has been put forward by the applicant at condition 8 to review draft SMPs. The same panel would be well placed to provide independent determination of any fundamental differences regarding the risk matrix. A new clause 3(b)(vi) is proposed to achieve this intent although alternative relief may achieve the same outcome.

3(b)(vi) Any outstanding matters of disagreement of the Industry Liaison Group regarding the risk associated with different types of discharges in the matrix shall be put to the Stormwater TPRP for determination. The final matrix shall be submitted to Canterbury Regional Council per condition 3(c)(ii).

- 12 In conjunction with this change, it is suggested that the Stormwater TPRP is defined in the definitions section of the consent. This will allow simplification of condition 8 and support reference to it elsewhere in the conditions, for instance at condition 3.
- 13 A number of other minor amendments are proposed to condition 3 and are shown in grey shading below. Primarily they are proposed to improve clarity and consistency although the amendment at 3(b) is considered more substantive but necessary to ensure the matrix defines risks by types of discharges, not all discharges.

- (a) Within 6 months of ~~the commencement of this consent being in legal effect~~, the consent holder will engage with the Canterbury Regional Council to obtain full details of all of the consented ~~discharges activities~~ excluded from this consent until 2025, including information on site activities, conditions and compliance records;
- (b) Within 30 months of the commencement of this resource consent the consent holder shall draft a risk matrix ~~used~~ to identify and rate the risk associated with ~~each types of the~~ stormwater discharges. The risk matrix shall be developed as follows:
- i. Within 18 months of the commencement of this consent, the consent holder shall prepare a draft risk matrix and provide it to the Industry Liaison Group for comment;
 - ii. The consent holder shall invite the Industry Liaison Group, ~~including the Oil Industry Environmental Working Group~~, to provide comment within 2 months;
 - iii. Within 3 months of receiving the comment referenced in Condition 3(~~eb~~)(ii), the consent holder shall prepare a memo and/or revised risk matrix addressing feedback received from the engagement required by condition 3(~~eb~~)(i) and circulate it to the Industry Liaison Group along with an invitation to an Industry Liaison Group meeting;
 - iv. Within one month of the meeting held under Condition 3(~~eb~~)(iii), the consent holder shall circulate minutes, including points of agreement and disagreement between the parties;
 - v. Any changes to the draft risk matrix shall be provided to the Industry Liaison Group for feedback no less than 2 months prior to being submitted to Canterbury Regional Council.
 - vi. Any outstanding matters of disagreement of the Industry Liaison Group regarding the risk associated with different types of discharges in the matrix shall be put to the

Stormwater TPRP for determination. The final matrix shall be submitted to Canterbury Regional Council per condition 3(c)(ii).

- (c) Within 3 years of the commencement of this consent ~~being in legal effect~~, the consent holder ~~will deliver~~ shall provide to the Canterbury Regional Council a Transition Plan for the ~~discharges excluded by conditions 2(d), 2(e) and 2(f)~~ that includes, but is not limited to:
- (i) a description of the regulatory methods that will be used by the consent holder to ensure that previously excluded ~~discharges sites~~ will be subject to standards that achieve required environmental outcomes as described in condition 3(~~be~~);
 - (ii) ~~a description of how a the risk matrix prepared under Condition 3(~~eb~~) will be used for risk rating and to identify particular high risk and how they will be managed and audited;~~
 - (iii) a description of site specific monitoring plans for particular sites ~~at which the discharge is~~ rated high in the risk matrix;
 - (iv) a description of the process that the consent holder will use to determine, in collaboration with ~~CRG~~ Canterbury Regional Council and through engagement with affected site owners and/or operators, whether a site will remain excluded from authorisation under this consent due to its ~~discharge~~ posing an unacceptably high risk of surface water or groundwater contamination;
- (d) if as a result of the risk matrix and process set out in condition 3 it is determined that the discharge poses an unacceptably high risk of surface water or groundwater contamination then that discharge will remain excluded from this consent and listed on the attached Schedule ~~1X Discharges excluded post 1 January 2025~~;
- (e) the consent holder shall ensure that all other sites referred to in condition 3(a) are, from the date on which the discharges are authorised under this resource consent, subject to standards that result in the same or better environmental outcomes for the quality and quantity of the discharge as those that were in the relevant site specific resource consent issued by the Canterbury Regional Council.

Advice note: Discharge into the Christchurch City Council stormwater network will still require approval from Christchurch City Council, as owner and operator of the stormwater network, ~~when they expire or are surrendered at the expiry of discharge permits for the sites noted above, or from 1 January 2025, whichever is the latest.~~

Other Actions by the Consent Holder

- 14 The Oil Companies support the intent of revised condition 38, particularly source control at 38(a), 38(k), 38(m) and 38(n). Condition 38(o) appears to repeat 38(k).
- 15 The intent of condition 38(q) is also supported but as drafted does not provide for two way dialogue. The following amendments are proposed to promote ongoing and constructive engagement with industry for the benefit of all parties:
- q. The consent holder shall invite industry groups, including the Oil Industry Environmental Working Group, to have representatives on an Industry Liaison Group. The consent holder and shall convene meetings of the Industry Liaison Group at least once annually to discuss the effectiveness of the operation of this consent. At each meeting the Industry Liaison Group shall also be updated by the consent holder on matters relating to the exercise of this consent, including but not limited to:
- i. development of the risk matrix required under Condition 3 (eb) (ii);
 - ii implementation of the industrial site audit process under Condition 41;
 - iii any new technologies in stormwater contaminant reduction or preventative measures;
 - iv. compliance and monitoring results as reported under Condition 53.

Minutes of the meeting shall be circulated by the consent holder to the Industry Liaison Group within four weeks of the meeting.

Dated this 22nd day of February 2019



Rob Enright
Counsel for the Oil Companies