BEFORE THE ENVIRONMENT COURT **ENV-2022-AKL**

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 Hawke's Bay Regional Council on Proposed Plan Change 9 to the Hawke's Bay Regional Resource Management Plan
BETWEEN	**BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED AND Z ENERGY LIMITED** Appellant
AND	**HAWKE'S BAY REGIONAL COUNCIL** Respondent

NOTICE OF APPEAL BY BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED, AND Z ENERGY LIMITED
DATED 26 OCTOBER 2022

To: The Environment Court Registrar
Specialist Courts and Tribunals Centre
Level 2
41 Federal Street
Auckland 1010

INTRODUCTION

1. BP Oil New Zealand Limited, Mobil Oil New Zealand Limited, and Z Energy Limited (***The Oil Companies***) appeal against parts of a decision of Hawke's Bay Regional Council (***the Council***) on the Proposed Plan Change 9 to the Hawke's Bay Regional Resource Management Plan (***PPC9***).

2. The Oil Companies made submissions, further submissions, submitted evidence, and presented oral evidence on PPC9.

3. The Oil Companies are not trade competitors for the purposes of section 308D of the Resource Management Act 1991 (***the RMA***).

4. The Oil Companies received notice of the Council's decisions on 9th September 2022.

BACKGROUND

5. The Oil Companies receive, store, and distribute refined petroleum products. Within the geographic extent of the Tūtaekurī, Ahuriri, Ngaruroro and Karamū catchments, the Oil Companies own, operate and/or supply service stations and truck stops, and supply various commercial activities. These facilities provide an essential service to the residents and businesses of this area.

THE PARTS OF THE DECISION BEING APPEALED

6. The parts of the decision that the Oil Companies' appeal relates to is Discretionary Activity Rule TANK 10 – Groundwater and surface water take (low flow), and in particular TANK 10(b)(ii) and the potential for temporary construction dewatering takes to cascade to a prohibited activity status.

REASONS FOR APPEAL

7. The general reasons for the appeal are that the decision:

   (a) Does not adequately address the submission or evidence of the Oil Companies on PPC9.

   (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 Hawke's Bay 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 Proposed Hawke's Bay Regional Resource Management Plan.

(e) Will potentially impose unnecessary and unjustified costs.

8. Without limiting the generality of the above, the specific reasons for the Oil Companies' appeal are set out below.

The Oil Companies' Submissions

9. The Oil Companies' submission highlighted the importance of providing a clear policy pathway for temporary construction dewatering activities. The submission explained that dewatering is often required for the installation of underground fuel tanks as a result of excavations encountering groundwater, and that dewatering associated with tank installations is an infrequent, temporary, and short-term undertaking, with very limited potential effects on water allocation.

10. The evidence provided for the Oil Companies further explained the importance of enabling temporary construction dewatering activities, and in particular the importance of preventing these from activities cascading to a prohibited activity status.

The Council's Decision

11. The decisions version of PPC9 provides a permitted activity pathway for groundwater takes through Rule TANK 7, subject to compliance with standards. If new takes do not comply with Rule TANK 7, they must be assessed against Rule TANK 10 (discretionary activity groundwater take rule). Rule TANK 10 reads as follows:

> ***TANK 10: Groundwater and Surface Water Take***
> *The take and use of surface (low flow allocations) or groundwater*
> *Discretionary Activity*
> *a) The activity does not comply with the conditions of Rules TANK 8 or TANK 9*
> *b) Either:*
> *i. The application is either for the continuation of a water take and use previously authorised in a permit that was issued before 2 May 2020 or is a joint or global application that replaces these existing water permits previously held separately or individually*
> *Or:*
> *ii. The total amount taken, either by itself or in combination with other authorised takes in the same water quantity area does not cause the total allocation limit in the relevant quantity area as specified in Schedule 30 to be exceeded except this clause does not apply to takes for:*
> *1. frost protection*

2. *takes of water associated with and from or dependant on release of water from a water storage impoundment, or managed aquifer recharge scheme*
3. *water takes that are non- consumptive*
4. *temporary water takes*
5. *water required as part of a programmed or staged development existing as at 2 May 2020 that is not otherwise Actual and Reasonable water use.*

12. As addressed in the oral evidence provided on behalf of the Oil Companies[1], the wording of the decisions version of clause (b)(ii) of Rule TANK 10 is unclear. In particular the decisions version may be interpreted as exempting the listed activities from the clause itself rather than from the Schedule 30 allocation limits. If the listed activities are exempt from clause (b)(ii), then they must comply with clause (b)(i). If not (i.e. takes which are neither continuous or replacement takes do not meet (b)(i)), then these do not meet the criteria to fall as a discretionary activity under Rule TANK 10. If compliance is not achieved with Rule TANK 11 (non-complying activity rule), then these cascade to prohibited activity status under Rule TANK 12.

13. This outcome does not reflect the intent of Council as set out in the decision report whereby the Council recommended changes to Rule TANK 10(b)(ii) to reflect that temporary water takes (*such as for construction dewatering*) are not subject to the water allocation limits[2] and to provide a default discretionary activity pathway for non-compliant takes[3]. Subsequent to the release of decisions, the Council confirmed that its intent was to exempt the listed water takes from the allocation limits and provide a discretionary activity pathway for the listed takes under Rule TANK 10(b)(ii).[4]

Relief Sought

14. Per the oral evidence provided on behalf of the Oil Companies, it is considered that Rule TANK 10 of the decisions version should be amended as follows (additions in underline, deletions in strikethrough):

TANK 10: Groundwater and Surface Water Take
The take and use of surface (low flow allocations) or groundwater
Discretionary Activity
a) The activity does not comply with the conditions of Rules TANK 8 or TANK 9
b) Either:
i. The application is either for the continuation of a water take and use previously authorised in a permit that was issued before 2 May 2020 or is a joint or global application that replaces these existing water permits previously held separately or individually

[1] Para 10 of Oral Presentation of Philip Brown for the Oil Companies, dated 21 June 2021.
[2] Para 9.37 of Decision of the Independent Hearing Panel: Proposed Plan Change 9, dated August 2022.
[3] Para 9.38 of Decision of the Independent Hearing Panel: Proposed Plan Change 9, dated August 2022.
[4] Email from Mary-Anne Baker (HBRC Team Leader Policy and Planning) to Philip Brown, dated 17 October 2022.

Or:

ii. The total amount taken, either by itself or in combination with other authorised takes in the same water quantity area does not cause the total allocation limit in the relevant quantity area as specified in Schedule 30 to be exceeded except ~~this clause does~~ <u>these allocation limits do</u> not apply to takes for:

1. *frost protection*
2. *takes of water associated with and from or dependant on release of water from a water storage impoundment, or managed aquifer recharge scheme*
3. *water takes that are non- consumptive*
4. *temporary water takes*
5. *water required as part of a programmed or staged development existing as at 2 May 2020 that is not otherwise Actual and Reasonable water use.*

Signature of person authorised to sign on behalf of the Oil Companies

.....

Philip Brown
Senior Planner

Dated this 26th day of October 2022

<u>Address for Service:</u>
4Sight Consulting Limited
PO Box 911 310
Victoria Street West
AUCKLAND 1142
Attention: Philip Brown

Ph: 027 467 1566
E-Mail: philipb@4sight.co.nz

Annexures:

A. A copy of the Oil Companies' 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 Oil Companies' submissions

SUBMISSION ON PROPOSED PLAN CHANGE 9 TO THE OPERATIVE HAWKE'S BAY REGIONAL RESOURCE MANAGEMENT PLAN PURSUANT TO CLAUSE 6 OF THE FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991

To:

Hawke's Bay Regional Council
Private Bag 6006
Napier 4142
Attention: Planning Technician

By E-Mail only: etank@hbrc.govt.nz

Submitter:

Z Energy Limited[1]
PO Box 2091
WELLINGTON 6140

BP Oil NZ Limited
PO Box 99 873
AUCKLAND 1149

Mobil Oil NZ Limited
PO Box 1709
AUCKLAND 1140

Hereafter, collectively referred to as the Oil Companies

Address for Service:

4Sight Consulting Limited
201 Victoria Street West
Auckland Central
PO Box 911 310, Victoria Street West
AUCKLAND 1142

Attention: Mark Laurenson
Phone: 021 0868 8135
Email: markl@4sight.co.nz

[1] On behalf of the wider Z group, including the Z Energy and Caltex operations in New Zealand.

INTRODUCTION

1) Plan Change 9 (*PC9*) of the Hawke's Bay Regional Resource Management Plan (*RRMP*) seeks to amend the RRMP as it relates to water quality and quantity for the Tūtaekurī, Ahuriri, Ngaruroro and Karamū (*TANK*) catchments.

2) Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (*the Oil Companies*) receive, store and distribute refined petroleum products, including retail and aviation facilities in the TANK catchments. The Oil Companies also supply petroleum products to individually owned retail outlets and commercial clients within the TANK catchments. The bulk storage and marine facilities operated by the Oil Companies are outside the TANK catchments.

3) The Oil Companies' submission on proposed PC9 is focused on the key issues relevant to the ongoing operation, maintenance, and upgrade of its facilities. The Oil Companies consider it is critical that the following activities are appropriately provided for by the RRMP:

   - Storage and use of hazardous substances in accordance with good practice;
   - Discharges of stormwater from petroleum industry sites managed in accordance with the Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand (MfE, 1998, *the Guidelines*);
   - Disturbance of contaminated soils;
   - Passive discharges from legacy contaminated land; and
   - Groundwater takes and discharges for temporary construction dewatering associated with the installation of underground petroleum storage systems

4) It follows that the PC9 issues of interest to the Oil Companies relate to hazardous substances, contaminated land, water quality, and water quantity.

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

5) 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 attached table. Changes sought to the provisions are shown by deletion in ~~strikethrough~~ and addition in <u>underline</u>. The Oil Companies support alternative relief that achieves the same outcomes.

6) 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 the National Policy Statement for Freshwater Management and the RPS provisions in the operative RRMP;

      iii. Assist the Council to carry out its functions under Section 30 RMA;

      iv. Meet the requirements of the statutory tests in section 32 of the 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 RRMP 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 A SIMILAR SUBMISSION, THE OIL COMPANIES WOULD BE PREPARED TO CONSIDER PRESENTING A JOINT CASE AT ANY HEARING.

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

a) The Oil Companies are directly affected by an effect of the subject matter of that submission that -

   i. Adversely affects the environment; and

   ii. Does not relate to trade competition or the effects of trade competition.

Signed on and behalf of Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited

Mark Laurenson

Principal Planning and Policy Consultant

14 August 2020

Notified Provision	Support/ Oppose	Rationale	Relief Sought (alternative relief may achieve the same outcome)
5.10.1 TANK Objectives			
General Objectives			
OBJ TANK 1 The Council, tangata whenua and the urban and rural community work together in a way that recognises the kaitiaki and guardianship roles they each play in freshwater management and; a) recognise the importance of monitoring, resource investigations and the use of mātauranga Māori to inform decision making and limit setting for sustainable management; b) ensure good land and water management practices are followed and where necessary, mitigation or restoration measures adopted; c) support good decision making by resource users including rural and urban communities through marae and hapū initiatives, community or other catchment management programmes and monitoring initiatives, urban stormwater programmes, landowner collectives, farm management plans and industry good practice programmes.	Support	The Oil Companies support the objective and in particular the focus at b) on good land and water management practices and recognition that restoration may be appropriate in some instances. This is particularly relevant to addressing the effects of contaminated land which may be more appropriately managed in situ than by restoration.	Retain as notified
Water Quality General			
OBJ TANK 4 Land and water use, contaminant discharge and nutrient loss activities are carried out so that the quality of the TANK freshwater bodies is maintained where objectives are currently being met, or is improved in degraded waterbodies so that they meet water quality attribute states in Schedule 26 by 2040 provided that: a) For any specific water body where the attribute state is found to be higher than that given in Schedule 26, the higher state is to be maintained; and b) Maintenance of a state is at the measured state.	Support	The Oil Companies have assets in a number of areas affected by PC9 overlays, including the Ahuriri and Karamu Freshwater Management Units, and the Heretaunga Plains Groundwater Management Unit. The Oil Companies support the overarching intent to improve degraded waterbodies so that they meet water quality attribute states by 2040 and to maintain water quality where objectives are currently being met. The support of the Oil Companies is predicated on their interpretation that the underlying policies giving effect to this	Retain as notified

		objective do not require individual discharges in themselves to improve degraded water. For instance it is the Oil Companies' view that renewal of an existing stormwater discharge permit for a discharge managed in accordance with good practice would be consistent with this provision and would not in itself be required to improve degraded water when renewed, provided it was in accordance with good practice.	
Objective 9 Activities in source protection areas for Registered Drinking Water Supplies are managed to ensure that they do not cause water in these zones to become unsuitable for human consumption, and that risks to the supply of safe drinking water are appropriately managed.	Support in part	The Oil Companies have not undertaken a detailed analysis but anticipate having existing industrial or trade premises in the notified Source Protection Zones and in the provisional Source Protection Extent for Registered Drinking Water Supplies that supply drinking water to between 25 and 500 people for not less than 60 days per year. Objective 9 refers to these areas collectively as source protection areas. The Oil Companies support the management of activities in source protection areas to address risk to the supply of safe drinking water and to ensure potable water does not become unsuitable for human consumption. The Oil Companies consider that management of their activities in accordance with the Environmental Guidelines for Water Discharges from Petroleum Industry Sites in NZ (MfE, 1998) and various codes of practice, for instance those relating to the design and operation of fuel tanks, represents good	Amend to clarify that the objective is to protect source water *Activities in source protection areas for Registered Drinking Water Supplies are managed to ensure that they do not cause source water in these zones to become unsuitable for human consumption, and that risks to the supply of safe drinking water are appropriately managed.*

		practice, and is important to the achievement of this objective. The Oil Companies understand that the notified Source Protection Zones can be amended but that this will be subject to a consenting process and that this consent process will ensure property owners who may be affected by any change will be notified and aware of any implications.[2] Similarly the Oil Companies understand that the provisional Source Protection Extents will apply until existing resource consents are replaced or an application is made to amend the provisional extent. A minor amendment is sought to clarify that the objective is to protect **source** water not all water in the zone. This is to reflect that there may be localised effects on shallow groundwater at some sites, for instance industrial or trade premises or legacy contaminated land, but that the objective seeks to ensure that the source water is not affected. This focus on source water is consistent with the underlying 'Protection of **Source** Water' policies.	
Catchment Objectives			

[2] Section 32 Evaluation Report, page 304-305

OBJ TANK 10 In combination with meeting the water quality states specified in Schedule 26, the use and development of land, the discharge of contaminants and nutrients, and the taking, using damming and diverting of freshwater is carried out in the **Ahuriri** freshwater catchments so that the mauri, water quality and water quantity are maintained and enhanced where necessary to enable: a) Ahuriri estuary sediments to be healthy and not accumulate excessively; b) healthy ecosystems that contribute to the health of the estuary; c) healthy and diverse indigenous aquatic plant, fish and bird populations; d) people and communities to safely meet their domestic water needs; e) primary production water for community social and economic well-being; and provide for; f) contribution to the healthy functioning of the Ahuriri estuary ecosystem and enable people to safely carry out a wide range of social, cultural and recreational activities including swimming and the collection of mahinga kai in the estuary. **OBJ TANK 11** In combination with meeting the water quality states specified in Schedule 26, the use and development of land, the discharge of contaminants and nutrients, and the taking, using damming and diverting of freshwater is carried out in the **Ngaruroro River catchment** so that the mauri, water quality and water quantity are maintained in the mainstem above the Whanawhana Cableway and in the Taruarau River, and are improved in the tributaries and lower reaches where necessary to enable; a) healthy ecosystems; b) healthy and diverse indigenous aquatic plant, animal and bird populations especially whitebait, torrent fish, macroinvertebrate communities, bird habitat on braided river reaches and a healthy trout fishery; c) people to safely carry out a wide range of social, cultural and recreational activities especially swimming and cultural practices of Uu and boating, including jet-boating in the braided reaches of the Ngaruroro; d) protection of the natural character, instream values and hydrological functioning of the Ngaruroro mainstem and Taruarau and Omahaki tributaries; e) collection of mahinga kai to provide for social and cultural well-being;	Support	The Oil Companies support the maintenance and enhancement of water quality and quantity to enable the particular outcomes in each of the catchments.	Retain Objectives 10 -to 15 as notified.

f) people and communities to safely meet their domestic water needs; g) primary production water needs and water required for associated processing and other urban activities to provide for community social and economic well-being; and provide for; h) contribution to water flows and water quality in the connected Heretaunga Plains Aquifers; i) contribution to the healthy functioning of Waitangi Estuary ecosystem and to enable people to safely carry out a wide range of social, cultural and recreational activities and the collection of mahinga kai in the estuary. **OBJ TANK 12** In combination with meeting the water quality states specified in Schedule 26, the use and development of land, the discharge of contaminants and nutrients, and the taking, using damming and diverting of freshwater is carried out in the **Tūtaekurī River** catchment so that the mauri, water quality and water quantity are maintained in the upper reaches of the mainstem and are improved in the tributaries and lower reaches where necessary to enable: a) healthy ecosystems; b) healthy and diverse indigenous aquatic and bird populations especially , whitebait, torrent fish, macroinvertebrate communities and a healthy trout fishery; c) people to safely carry out a wide range of social, cultural and recreational activities, especially swimming and cultural practices of Uu and boating; d) protection of the natural character, instream values and hydrological functioning of the Tūtaekurī mainstem and Mangatutu tributary; e) collection of mahinga kai to provide for social and cultural well-being; f) people and communities to safely meet their domestic water needs; g) primary production water needs and water required for associated processing and other urban activities to provide for community social and economic well-being; and provide for; h) contribution to the healthy functioning of Waitangi Estuary ecosystem and to enable people to safely carry out a wide range of social, cultural and recreational activities and the collection of mahinga kai in the estuary.			

OBJ TANK 13 In combination with meeting the water quality states specified in Schedule 26, the use and development of land, the discharge of contaminants and nutrients, and the taking, using damming and diverting of freshwater is carried out in the **Karamū and Clive Rivers** catchment so that the mauri, water quality and water quantity are improved to enable; a) healthy ecosystems; b) healthy and diverse indigenous aquatic and bird populations, especially black patiki, tuna and whitebait, and healthy macroinvertebrate communities; c) people to safely carry out a wide range of social, recreational, and cultural activities, including swimming and cultural practices of Uu and rowing and waka ama in the Clive/Karamū; d) collection of mahinga kai to provide for social and cultural well-being; e) people and communities to safely meet their domestic water needs; f) primary production water needs and water required for associated processing and other urban activities to provide for community social and economic well-being; and provide for; g) contribution to the healthy functioning of the Waitangi Estuary ecosystem and to enable people to safely carry out a wide range of social, cultural and recreational activities and the collection of mahinga kai in the estuary. **OBJ TANK 14** In combination with meeting the water quality states specified in Schedule 26, the use and development of land, the discharge of contaminants and nutrients, and the taking and using of freshwater is carried out so that the mauri, water quality, water quantity and groundwater levels are maintained in the **Groundwater** connected to the Ngaruroro, Tūtaekurī and Karamū rivers and their tributaries to enable; a) people and communities to safely meet their domestic water needs and to enable the provision of safe and secure supplies of water for municipal use; b) primary production water needs and water required for associated processing and other urban activities to provide for community social and economic well-being; and provide for;			

c) the maintenance of groundwater levels at an equilibrium that accounts for annual variation in climate and prevents long term decline or seawater intrusion; d) contribution to water flows and water quality in connected surface waterbodies. **OBJ TANK 15** In combination with meeting the water quality states specified in Schedule 26, the use and development of land, the discharge of contaminants and nutrients, and the taking, using damming and diverting of freshwater connected to the **Wetland and lake waahi taonga** within the TANK catchments is managed so that mauri, water quality and flows, and levels are maintained and improved to enable; a) healthy and diverse indigenous fish, bird and plant populations in wetland and lake areas and connected waterways; b) improved hydrological functioning in wetland and lakes and in connected waterways; c) people to safely carry out a wide range of social and cultural activities; d) collection of mahinga kai to provide for social and cultural well-being; e) contribution to improved water quality in connected surface waters; f) the protection of the outstanding values of the Kaweka Lakes, Lake Poukawa and Pekapeka Swamp and the Ngamatea East Swamp; And to; increase the total wetland area by protecting and restoring 200ha hectares of existing wetland and reinstating or creating 100ha of additional wetland by 2040.			

Water Quantity			
OBJ TANK 16 Subject to limits, targets and flow regimes established to meet the needs of the values for the water body, water quantity allocation management and processes ensure water allocation in the following priority order; a) Water for the essential needs of people; b) The allocation and reservation of water for domestic supply including for marae and papakāinga, and for municipal supply so that existing and future demand as described in HPUDS (2017) can be met within the specified limits; c) Primary production on versatile soils; d) Other primary production food processing, industrial and commercial end uses; e) Other non-commercial end uses. **OBJ TANK 17** The allocation and use of water results in; a) the development of Māori economic, cultural and social well-being supported through regulating the use and allocation of the water available at high flows for taking, storage and use; b) Water being available for abstraction at agreed reliability of supply standards; c) Efficient water use; d) Allocation regimes that are flexible and responsive, allowing water users to make efficient use of this finite resource; **OBJ TANK 18** The current and foreseeable water needs of future generations and for mauri and ecosystem health are secured through; a) water conservation, water use efficiency, and innovations in technology and management; b) flexible water allocation and management regimes; c) water reticulation; d) aquifer recharge and flow enhancement; e) Water harvesting and storage.	Support	The Oil Companies support the proposed water quantity objectives which do not in themselves require the avoidance of over allocation. The importance of this to the Oil Companies' activities is discussed further in relation to temporary construction dewatering activities which may be required time to time in over allocated catchments.	Retain objectives 16 to 18 as notified.

5.10.2 Policies: Surface Water and Groundwater Quality Management			
Priority Management Approach			
1. The Council with landowners, local authorities, industry and community groups, mana whenua and other stakeholders will regulate or manage land use activities and surface and groundwater bodies so that water quality attributes are maintained at their current state or where required show an improving trend towards the water quality targets shown in Schedule 26 by focussing on: a) water quality improvement in sub-catchments (as described in Schedule 28) where water quality is not meeting specified freshwater quality targets; b) sediment management as a key contaminant pathway to also address phosphorus and bacteria losses; c) the significant environmental stressors of excessive sedimentation and macrophyte growth in lowland rivers and nutrient loads entering the Ahuriri and Waitangi estuaries; d) the management of riparian margins; e) the management of urban stormwater networks and the reduction of contaminants in urban stormwater; f) the protection of water quality for domestic and municipal water supply.	Support	The Oil Companies support these policies, particularly the focus on appropriate management of contaminants in stormwater. The Oil Companies consider that the MfE Guidelines represent good practice in relation to stormwater discharges from petroleum industry sites and that compliance with them will be important to appropriate management of stormwater in these catchments.	Retain policies1, 2 and 5 as notified.
2. In the **Clive/Karamū Rivers** and their tributaries, in addition to Policy 1 the Council will work with mana whenua, landowners and the Hastings District Council to: a) reduce water temperature and increase the level of dissolved oxygen by; (i) the establishment of riparian vegetation to shade the water and reduce macrophyte growth while accounting for flooding and drainage objectives ; (ii) reducing excessive macrophyte growth by physical removal of aquatic plants in the short term; b) adopt flow management regimes to remedy or mitigate the effects of surface and ground water abstraction; c) reduce the amount of sediment and nutrients entering the freshwater from adjacent land;			

d) improve stormwater and drainage water quality and the ecosystem health of urban waterways and reduce contamination of stormwater associated with poor site management practices, spills and accidents in urban areas (refer also to Policies 28 - 31).			
5. In the tributaries of the **Ahuriri Estuary**, in addition to Policy 1 the Council will work with mana whenua, landowners and the Napier City Council to: a) improve water clarity and reduce deposited sediment by reduce the amount of sediment being lost from land and river banks; b) reduce risk of proliferation of algae by reducing nutrient losses from land, including through management of phosphorous loss associated with sediment; c) improve stormwater and drainage water quality and the ecosystem health of urban waterways and reduce contamination of stormwater associated with poor site management practices, spills and accident in urban areas; d) carry out further investigations to understand the estuary hydrology, functioning and environmental stressors.			
Protection of Source Water			
6. The quality of **groundwater of the Heretaunga Plains and surface waters used as source water** for Registered Drinking Water Supplies will be protected, in addition to Policy 1, by the Council: a) identifying a source protection extent for small scale drinking water supplies or Source Protection Zones for large scale drinking water supplies by methods defined in Schedule 35; and b) regulating activities within Source Protection Zones that may actually or potentially affect the quality of the source water or present a risk to the supply of safe drinking water because of; i. direct or indirect discharge of a contaminant to the source water including by overland flow or percolation to groundwater; ii. an increased risk to the safety of the water supply as a result of a non-routine event :	Support	As set out in relation to Objective 9, the Oil Companies consider that management of their activities in accordance with the MfE Guidelines and various codes of practice, for instance those relating to the design, installation and operation of below ground petroleum tanks, represents good practice and is important to management of risk associated with the Oil Companies' activities. The Oil Companies understand that this policy is reflected in the provisions relating to discharges from sites used for the storage, use or transfer of hazardous substances.	Retain as notified

iii. potentially impacting on the level or type of treatment required to maintain the safety of the water supply; iv. shortening or quickening the connection between contaminants and the source water, including damage to a confining layer; v. in the case of groundwater abstraction, the rate or volume of abstractions causing a change in groundwater flow direction or speed and/ or a change in hydrostatic pressure that is more than minor.			
7. When considering applications to take water for a Registered Drinking Water Supply, the Council will: a) provide for the replacement or amendment of a source protection extent or Source Protection Zone which reflects the level of protection required for that supply, according to a method specified in Schedule 35; b) provide for the amendment of a Source Protection Zone where new information changes the outputs from the method specified in Schedule 35; c) require applications to include an assessment of the Source Protection Zone required, taking into account the factors set out in Schedule 35; d) have regard to: i. the extent to which the application reflects the factors and methodology in Schedule 35 when establishing the Source Protection Zone; and ii. the impacts, including any costs and benefits, of any additional restrictions in the Source Protection Zone; iii. the level of consultation with land owners in the Source Protection Zone.	Support in part	The potential impacts of source protection zones on other activities is reflected at d) and is supported, including the potential requirement for consultation with affected landowners. The Oil Companies consider that this should, however, be broadened to owners and occupiers, to recognise affected parties will not necessarily be the landowners.	Amend 7d)iii) as follows: *d)iii) the level of consultation with land owners <u>and occupiers</u> in the Source Protection Zone.*
8. The Council will, when considering applications to discharge contaminants or carry out land or water use activities within: a. the source protection extent for Registered Drinking Water Supplies, take into account possible contamination pathways and risks to the quality of the source water for the water supply, b. A Source Protection Zone, avoid or mitigate risk of contamination from the activity of the source water for the water supply by taking into account criteria including but not limited to;	Support in part	As set out in relation to Objective 9 and Policy 6, the Oil Companies consider that management of their activities in accordance with the MfE Guidelines and various codes of practice, which reflect good practice, are important to the achievement of this objective. The Oil Companies seek specific reference to the role of codes of practice and	Amend b)vi) to specifically reference codes of practice and guidelines: *vi. the effectiveness of any mitigation measures to avoid or mitigate risk of contaminants entering the source water and the extent to which the effectiveness of the mitigation*

i. the amount, concentration and type of contaminants likely to be present as a result of the activity or in any discharge; ii. the potential pathways for those contaminants, including any likely or potential preferred pathways; iii. the mobility and survival rates of any pathogens likely to be in the discharge or arising as a result of the activity; iv. any risks the proposed land use or discharge activity has either on its own or in combination with other existing activities, including as a result of non-routine events; v. ensuring the water supplier is aware of any abstraction of groundwater where abstraction has the potential to have more than a minor impact on flow direction or speed and/ or hydrostatic pressure; vi. the effectiveness of any mitigation measures to avoid or mitigate risk of contaminants entering the source water and the extent to which the effectiveness of the mitigation measure can be verified; vii. notification, monitoring or reporting requirements to the Registered Drinking Water Supplier.		guidelines in the policy. The proposed changes enable the value and merits of any particular guidelines/code of practice to be considered on their merits.	*measure can be verified, including with regard to relevant codes of practice and guidelines;*
9. The Council will work with the agencies which have roles and responsibilities for the provision of safe drinking water, including Napier City Council, Hastings District Council, Hawkes Bay District Health Board and Drinking Water Assessors and through multi-agency collaboration to: a. implement a multi-barrier approach to the delivery of safe drinking water for Registered Drinking Water Supplies, through the consideration of source protection measures, water treatment and supply distribution standards; b. understand the nature and extent of the water resources used to supply communities, their connectivity with other waterbodies and their recharge sources; c. understand the nature of the relationship between water age and water quality, the use of water age as an attribute and implications for its management;	Support in part	The importance of source control as an additional means of controlling water quality is addressed further in relation to Policy 29 but is also appropriately referenced in Policy 9 in relation to safe drinking water.	Require consideration of source control at 9a and delete clause 9g which appears to effectively be a duplication of 9a. *a. implement a multi-barrier approach to the delivery of safe drinking water for Registered Drinking Water Supplies, through the consideration of source control, source protection measures, water treatment and supply distribution standards;* g. ~~*implement a multi-barrier approach to the delivery of safe drinking water for Registered Drinking Water*~~

d. understand risks to the quality of water used for Registered Drinking Water Supplies, including through consultation on any applicable resource applications in Source Protection Zones; e. maintain shared databases of activities, including information in consents for land and water use, that have the potential to adversely affect quality of water used for community supply; f. develop solutions that address risks to water quality including wastewater reticulation solutions in Source Protection Zones; g. implement a multi-barrier approach to the delivery of safe drinking water for Registered Drinking Water Supplies, through the consideration of source protection measures, and water treatment and supply standards.			~~*Supplies, through the consideration of source protection measures, and water treatment and supply standards.*~~
Managing point source discharges			
10. The Council will manage point source discharges (that are not stormwater discharges) so that after reasonable mixing, contaminants discharged either by themselves or in combination with other discharges do not cause the objectives for water quality in Schedule 26 to be exceeded and when considering applications to discharge contaminants will take into account: a. measurement uncertainties associated with variables such as location, flows, seasonal variation and climatic events; b. the degree to which a discharge is of a temporary nature, or is associated with necessary maintenance work. c. when it is an existing activity, identification of mitigation measures, where necessary, and timeframes for their adoption that contribute to the meeting of water quality objectives.	Support in part	This provision is potentially relevant to discharges of treated dewatering water like those undertaken from time to time to enable installation or replacement of underground tanks. The specific recognition of reasonable mixing and temporary takes is supported but the Oil Companies seek that the policy is expanded to reference replacement and upgrades.	Amend clause b. to refer to maintenance and upgrading. *b. the degree to which a discharge is of a temporary nature, or is associated with necessary maintenance, <u>replacement or upgrading</u> work.*
5.10.4 Policies: Stormwater Management			
Urban Infrastructure			
28. The adverse effects of stormwater quality and quantity on aquatic ecosystems and community well-being arising from existing and new urban development (including infill development)	Support in part	As set out above, the Oil Companies support the good practice approach and consider the MfE Guidelines provide this for stormwater	Amend clauses g, j and k as follows: *g. adopting, where practicable, a good practice approach to stormwater*

industrial and trade premises and associated infrastructure, will be reduced or mitigated no later than 1 January 2025, by: a. Local Authorities adopting an integrated catchment management approach to the collection and discharge of stormwater; b. requiring stormwater to be discharged into a reticulated stormwater network where such a network is available or will be made available as part of the development; c. requiring increased retention or detention of stormwater, while not exacerbating flood hazards; d. taking into account site specific constraints including areas with high groundwater, source protection zones, and/or an outstanding water body ; e. taking into account the collaborative approach of HBRC, Napier City and Hastings District councils in managing urban growth on the Heretaunga Plains as it relates to stormwater management; f. taking into account the effects of climate change when providing for new and upgrading existing infrastructure; g. adopting, where practicable, a good practice approach to stormwater management including adoption of Low Impact Design for stormwater systems; h. amending district plans, standards, codes of practice and bylaws to specify design standards for stormwater reticulation and discharge facilities through consent conditions, that will achieve the freshwater objectives set out in this plan; i. developing and making available to the public advice about good stormwater management options (including through HBRC's guidelines); j. encouraging, through education and public awareness programmes, greater uptake and installation of measures that reduce risk of stormwater contamination; k. requiring, no later than 1 January 2025, the preparation and implementation of a site management plan and good site management practices on industrial and trade		management on petroleum industry sites. What constitutes a 'high risk of stormwater contamination' is not defined. This is discussed in part in the section 32 report, particularly in relation to rule TANK 22.[3] That discussion and the rule framework indicates that the Council proposes to define risk based on the size of the industrial or trade ***premises*** but suggests the option of an alternative approach through the use of an effects matrix to determine degree of risk. The Oil Companies consider that the size of the industrial or trade premise is not determinative of risk at petroleum industry sites but acknowledge that a number of plans around the country use industrial or trade activity ***areas*** (ie the area where hazardous substances are stored and used) and that what is most important is that the risk of the storage and use of hazardous substances is appropriately mitigated. In relation to petroleum industry sites, the Oil Companies consider that the MfE Guidelines constitute good practice and are not high risk. This is discussed further below in relation to the stormwater rules but mitigation where hazardous substances are stored and used would be appropriately referenced at g. In relation to clause k, the Oil Companies	*management including adoption of Low Impact Design for stormwater systems <u>and suitable mitigation where hazardous substances are stored and used</u>;* *j. encouraging, through education and public awareness programmes, greater uptake and installation of measures that reduce risk of stormwater contamination<u>, including source control</u>;* *k. requiring, no later than 1 January 2025, the preparation and implementation of a site management plan and good site management practices on industrial ~~and~~<u>or</u> trade premises with a high risk of stormwater contamination and those in the high priority areas:…* Clarify that MfE Guideline compliant petroleum industry sites are not high risk, for instance in the Auckland Unitary Plan.

[3] Section 32 Evaluation Report, page 238

premises with a high risk of stormwater contamination and those in the high priority areas: i. of the Ahuriri catchment; ii. of the Karamū River and its tributaries; iii. of land over the unconfined aquifer; and iv. within identified drinking water Source Protection Zones.		recognise that it is appropriate that these sites are operated in accordance with appropriate operational stormwater management plans, including spill response plans. As the companies operate nationwide networks, these are not site specific plans but are standardized to ensure good practice network wide. Specific reference to source control as means to reduce risk of stormwater contamination is necessary at j to address an important aspect of stormwater control that is largely overlooked in PC9. This is discussed further in relation to Policy 29 below. References to industrial and trade premises should be amended to industrial or trade premises, as defined in the RMA.	
Source control			
29. Sources of stormwater contamination and contaminated stormwater will be reduced by: a) specifying requirements for the design and installation of stormwater control facilities on sites where there is a high risk of freshwater contamination arising from either the direct discharge of stormwater to freshwater, the discharge of stormwater to land where it might enter water or the discharge to a stormwater or drainage network; b) requiring the implementation of good site management practices on all sites where there is a risk of stormwater contamination arising from the use, or storage of contaminants; c) controlling, and if necessary avoiding, activities that will result in water quality standards not being able to be met.	Support in part	The section 32 report addresses source control but focuses on doing so at the point of discharge through appropriate site design. The Oil Companies consider that this misses the opportunity to more efficiently manage contaminants by minimizing them arising in the first instance. While this is in part a national issue, the Oil Companies consider it is one that the Council, in conjunction with the relevant agencies, is well placed to lead a collaborative approach on, for instance through Local Government New Zealand. A requirement for Council to lobby Council in this regard is sought.	Recognise the important role of reducing contaminants through source control. This could be achieved by a new clause as follows: *d) Council working with the agencies which have roles and responsibility for the management of stormwater and through multi-agency collaboration to lobby central government seeking national measures and industry standards to reduce the discharge of contaminants in stormwater, including zinc and copper*

			from metal roofs, car tyres and brake linings.
Dealing with the legacy			
30. Aquatic ecosystem health improvements and community wellbeing and reduced stormwater contamination will be achieved by HBRC working with the Napier City and Hastings District Councils requiring discharges from stormwater networks to meet: a) water quality objectives (where they are degraded by stormwater) and the identification of measures that ensure stormwater discharges will achieve at least: i. the 80th percentile level of species protection in receiving waters by 1 January 2025; and ii. the 95th percentile level of species protection by 31 December 2040. and b. except as in (a) above, the management objectives in Schedule 26 for freshwater and estuary health through resource consent conditions, including requirements; i. to apply the Stream Ecological Valuation methodology to inform further actions; ii. to install treatment devices within the drainage network where appropriate; iii. for stream planting/re-alignment for aquatic ecosystem enhancement; iv. for wetland creation, water sensitive design and other opportunities for increasing stormwater infiltration where appropriate; v. recognise existing and planned investments in stormwater infrastructure.	Support in part	Policy 10 recognises that it is appropriate that water quality measures relating to point source discharges apply after reasonable mixing. The Oil Companies consider that the same should be reflected in relation to policy 30 to provide clarity that these are not 'end of pipe' standards as frequently interpreted by Councils.	Amend Policy 30 as follows: *30. Aquatic ecosystem health improvements and community wellbeing and reduced stormwater contamination will be achieved by HBRC working with the Napier City and Hastings District Councils requiring discharges from stormwater networks to meet (after reasonable mixing): …*
Consistency and Collaboration; Integration of city, district and regional council rules and processes.			
31. To achieve the freshwater quality objectives in this Plan, HBRC, with the Napier City and Hastings District Councils will, no later than 1 January 2025, implement similar stormwater performance standards including through the adoption of: a. good practice engineering standards: b. consistent plan rules and bylaws;	Support	The Oil Companies support this approach and consider it can appropriately apply to education and advocacy in relation to a range of measures, including source control.	Retain as notified.

c. shared information and approaches to education and advocacy; d. shared information and processes for monitoring and auditing individual site management on sites at high risk of stormwater contamination; e. consistent levels of service for stormwater management and infrastructure design; f. an integrated stormwater catchment management approach; g. undertaking a programme of mapping the stormwater networks and recording their capacity; h. aligning resource consent processes and having joint hearings to achieve integrated management of proposals for urban activities particularly in respect of stormwater, water supply and wastewater provisions and implementation of the Heretaunga Plains Urban Development Strategy (2017).			
5.10.6 Policies: Heretaunga Plains Groundwater Levels and Allocation Limits			
Heretaunga Plains Aquifer Management			
36. The Council recognises the actual and potential adverse effects of groundwater abstraction in the Heretaunga Plains Water Management Unit on: a. groundwater levels and aquifer depletion; b. flows in connected surface waterbodies; c. flows of the Ngaruroro River; d. groundwater quality through risks of sea water intrusion and water abstraction; e. tikanga and mātauranga Māori; and will adopt a staged approach to groundwater management that includes; f. avoiding further adverse effects by not allowing new water use g. reducing existing levels of water use; h. mitigating the adverse effects of groundwater abstraction on flows in connected water bodies; i. gathering information about actual water use and its effects on stream depletion;	Oppose in part	The Oil Companies are concerned that this policy and in particular the avoidance of adverse effects at clause f will not support permitted activity takes in the catchment, including for short term construction dewatering activities with limited potential for adverse effects. This could be addressed by amending clause f to avoid the granting of new water permits, as opposed to not allowing any water use, including as could be provided for by permitted activity provisions.	Amend clause f as follows: *f. avoiding further adverse effects by not ~~allowing~~ granting water permits for new water use;*

j. monitoring the effectiveness of stream flow maintenance and habitat enhancement schemes; k. including plan review directions to assess effectiveness of these measures.			
37. In managing the allocation and use of groundwater in the Heretaunga Plains Water Management Unit, the Council will; a) adopt an interim allocation limit of 90 million cubic meters per year based on the actual and reasonable water use prior to 2017; b) avoid re-allocation of any water that might become available within the interim groundwater allocation limit or within the limit of any connected water body until there has been a review of the relevant allocation limits within this plan; c) manage the Heretaunga Plains Water Management Unit as an over-allocated management unit and prevent any new allocations of groundwater; d) when considering applications in respect of existing consents due for expiry, or when reviewing consents, to; (i) allocate groundwater the basis of the maximum quantity that is able to be abstracted during each year or irrigation season expressed in cubic meters per year; (ii) apply an assessment of actual and reasonable use that reflects land use and water use authorised in the ten years up to August 2017 (except as provided by Policy 50); e) mitigate stream depletion effects on lowland streams by providing for stream flow maintenance and habitat enhancement schemes.	Support in part	Subject to amendments to provide a permitted activity pathway for temporary construction dewatering, the Oil Companies do not oppose this provision on the basis that allocation limits are based on water allocated in water permits, not as provided for by permitted activities.	Ensure this policy supports permitted activity provisions with low potential for adverse effects.
General Water Allocation Policies			
45. When assessing applications to take water the Council will; a. provide that the abstraction of water that has been taken at times of high flow and stored and released for subsequent use, is not subject to allocation limits; b. require water meters to be installed for all water takes authorised by a water permit and water use to be recorded and reported via telemetry provided that	Support in part	The Oil Companies seek a permitted activity pathway for temporary construction dewatering takes. This will avoid a technical requirement for metering takes which are not readily metered, for instance due to partially full pipes, but can be estimated	Provide a permitted activity pathway for temporary construction dewatering takes to avoid a technical requirement for water metering which is not practicable given the nature of these

telemetry will not normally be required where the consented rate of take is less than 5l/sec or where there are technical limitations to its installation; c. ensure water allocation from tributaries is accounted for within the total allocation limit for the relevant zone and that the total abstraction from any tributary does not exceed 30% of the MALF for that tributary unless otherwise specified in Schedule 31; d. offset the stream depletion effects of any groundwater takes in Zone 1, that were not previously considered stream depleting, by managing them as if they were in the Heretaunga Plains Water Management Unit; and (i) require contributions to an applicable lowland stream enhancement programme at a rate equivalent to the stream depletion effect consistent with Policy 39; or (ii) require the water take to cease when the minimum flow for the affected river is reached if a permit holder does not contribute under clause (i) where there is an applicable lowland stream enhancement; and (iii) allow further technical assessments to determine the extent of stream depletion effect.		based on pumping rates and durations.	takes.
Over-Allocation			
52. The Council will phase out over-allocation by; a. preventing any new allocation of water (not including any reallocation in respect of permits issued before 2 May 2020; b. for applications in respect of existing consents due for expiry or when reviewing consents, to; i. allocate water according to demonstrated actual and reasonable need (except as provided for by Policy 50) ii. impose conditions that require efficiency gains to be made, including through altering the volume, rate or timing of the take and requesting information to verify efficiency of water use relative to industry good practice standards;	Support in part	Temporary construction dewatering takes are unusual in that measures are typically taken to reduce the amount of water to be taken and the water itself is not of benefit to the taker. They are, however, important to enable a range of activities, including encouraging replacement/upgrading of aging underground infrastructure. A permitted activity pathway for these takes is required to avoid a potential conflict with this policy.	Provide a permitted activity pathway for temporary construction dewatering takes.

c. provide for, within the duration of the consent, meeting water efficiency standards where hardship can be demonstrated; d. reducing the amount of water permitted to be taken without consent, including those provided for by Section 14 (3)(b) of the RMA, except for authorised uses existing before 2 May 2020; e. encouraging voluntary reductions, site to site transfers (subject to clause (f)) or promoting water augmentation/harvesting; f. prevent site to site transfers of allocated but unused water that does not meet the definition of actual and reasonable use; g. enabling and supporting permit holders to develop flexible approaches to management and use of allocatable water within a management zone including through catchment collectives, water user groups , consent or well sharing or global water permits; h. enabling and supporting the rostering of water use or reducing the rate of takes in order to avoid water use restrictions at minimum or trigger flows.			
Frost protection			
53. When considering applications to take water for frost protection, the Council will avoid, remedy or mitigate actual and potential effects of the take on its own or in combination with other water takes; a) from groundwater in the Heretaunga Plains Water Management Unit on; (i) neighbouring bores and existing water users;. (ii) connected surface water bodies; (iii) water quality as a result of any associated application of the water onto the ground where it might enter water; b) from surface water on; (iv) instantaneous flow in the surface water body; (v) fish spawning and existing water users; (vi) applicable minimum flows during November to April;	Oppose in part	There is potential for the proposed provisions to prohibit temporary construction dewatering activities. Subject to a permitted activity pathway, this potential is reduced but in the event that compliance with permitted standards cannot be achieved it is important that there is provision to consider the effects of these temporary shallow takes.	Amend policy 53 to apply to both frost protection and temporary construction dewatering. *Frost protection and temporary construction dewatering* *53. When considering applications to take water for frost protection or temporary construction dewatering, the Council will avoid, remedy or mitigate actual and potential effects of the take on its own or in combination with other water takes;* *…*

(vii) water quality as a result of any associated application of the water onto the ground where it might enter water; By; c) taking into account any stream depletion effects of groundwater takes; d) imposing limits in relation to minimum flows or groundwater levels; e) requiring water metering, monitoring and reporting use of water for frost protection.			
Chapter 6 New Regional Rules			
Rule - Tank 8 Groundwater take Activity - The take and use of groundwater in the TANK Water Management Zones including under Section14(3)(b) of the RMA Status – Permitted Conditions/Standards/Terms a) Any take first commencing after 2 May 2020 is not from the Poukawa Freshwater Management Unit (quantity). b) There is only one point of take per property and the take does not exceed 5 cubic metres per day except; (i) takes existing as at 2 May 2020 may continue to take up to 20 cubic metres per property per day and to meet the reasonable needs of animals for drinking water. (ii) Takes occurring for a period of less than 28 days within any 90 day period, the total volume taken on any property shall not exceed 200 cubic metre per 7 day period. (iii) The taking of water for aquifer testing is not restricted c) The rate of take shall not exceed 10 l/s other than aquifer testing for which the rate of take is not restricted.	Oppose in part	Rules 53 and 54 of the operative RRMP provide permitted activity pathways for minor takes and uses of groundwater subject to compliance with standards. Where compliance is not achieved, discretionary activity consent is required pursuant to Rule 55. Dewatering takes are important for the installation and maintenance of other underground infrastructure and for many construction activities. For the Oil Companies, they are most relevant to the installation of underground assets, primarily fuel storage tanks, where groundwater is less than five to six metres below ground level. These dewatering takes are essential to enable the safe and appropriate installation of underground fuel storage tanks in line with the relevant code of	Amend TANK 8 to provide a permitted activity pathway for temporary construction dewatering activities. This could be achieved by amending clauses b) and c) as follows: *b) There is only one point of take per property and the take does not exceed 5 cubic metres per day except;* … *(iii) The taking of water for aquifer testing and construction dewatering for up to 10 consecutive days is not restricted* *c) The rate of take shall not exceed 10 l/s other than for temporary construction dewatering which shall not exceed 40 l/s and aquifer testing for which the rate of take is not*

d) The take shall not prevent from taking water, any other lawfully established efficient groundwater take, or any lawfully established surface water take, which existed prior to commencement of the take. e) The take shall not cause changes to the flows or levels of water in any connected wetland. f) Backflow of water or contaminants into the bore shall be prevented.		practice[4], including allowing contractors to safely access the base of tank pits to anchor tanks to beams to help prevent them floating out of position. While dewatering may, in a technical sense, be considered a form of abstraction, it is the result of the interception of groundwater rather than any desire to take and or use that water. Significant measures are in fact taken to minimise the volume of water taken, typically including overlapping metal piles (sheet piles) around the perimeter of a tank pit to minimise lateral movement of water through the walls of the excavation. Tank installs are also infrequent activities with tanks typically having a 20 to 25-year life cycle. The duration of dewatering takes is the time taken to excavate below the water table to complete the tank pit base preparation, install the tank, and backfill the excavation. This usually comprises approximately three to five days of potentially continuous pumping, but contingency is generally sought for at least 10 days to allow for variation in local conditions and unforeseen circumstances, for instance if works are stopped during unpredicted bad weather or during technical malfunctions. Rates of take	*restricted.*

[4] HSNOCOP 44: Below ground stationary container systems for petroleum – design and installation, June 2013

		are estimated by the rate of pumping, as opposed to metering, and can be up to 40 litres per second (l/s) during the initial drawdown phase, often decreasing within 24 hours to be 0-20 l/s to maintain the lowered water level. Actual rates depend on a range of factors, particularly the permeability of the base of the tank pit. Until an excavation is undertaken and pumping commences, it is not practicable to accurately predict dewatering rates and volumes. Under the proposed rules, these takes in the TANK catchments would not comply with permitted volumes and rates and would require a water permit in all instances. The Oil Companies understand that the intent of PC9 is that TANK 11 would provide a discretionary activity pathway for takes within the Schedule 31 allocation limits and that takes exceeding the allocation limits would be prohibited by Rule TANK 12.[5] This pathway is discussed further below in relation to TANK 11. The potential effects of these temporary and shallow dewatering takes on water quantity are such that the Oil Companies consider it is appropriate that they be provided for as a permitted activity as they are in a range of plans around the country. Amendments to	

[5] Section 32 Evaluation Report, page 289

		this effect are sought and incorporate limits on the duration and rate of take that are at the upper end of what is required by the Oil Companies in most instances	
Rule - Tank 11 Groundwater and surface water take (low flow) Activity - The take and use of surface (low flow allocations) or groundwater Status – Discretionary Conditions/Standards/Terms a) The activity does not comply with the conditions of Rules TANK 9 or TANK 10. b) Either (i) The application is either for the continuation of a water take and use previously authorised in a permit that was issued before 2 May 2020 or is a joint or global application that replaces these existing water permits previously held separately or individually in the following Management Units; i. Ahuriri ii. Poukawa iii. Ngaruroro groundwater iv. Tūtaekurī groundwater v. Heretaunga Plains or (ii) The total amount taken, either by itself or in combination with other authorised takes in the same water management unit does not cause the total allocation limit in the relevant management unit as specified in Schedule 31 to be exceeded except this clause does not apply to takes for: i. frost protection; ii. takes of water associated with and dependant on release of water from a water storage impoundment.	Oppose in part	Where a proposed groundwater take does not comply with TANK 8 standards, and Section 124 RMA does not apply (and therefore TANK 9 and 10 are not applicable), the s32 report states that TANK 11 would apply where schedule 31 allocation limits are not exceeded and other standards met. However, non compliance with TANK 8 is not referenced in the first standards. This is required to avoid any confusion that non-compliance with TANK 8 could cascade to TANK 12. To ensure temporary groundwater takes for construction dewatering activities do not default to a prohibited activity status (Tank 12) in the event that compliance with TANK 8 cannot be achieved, reference to temporary construction dewatering takes is required in addition to reference to frost protection and takes associated with and dependent on the release of water from an impoundment.	Amend as follows: *a) The activity does not comply with the conditions of Rules TANK 8, TANK 9 or TANK 10.* *b) Either* *(i) The application is either for the continuation of a water take and use previously authorised in a permit that was issued before 2 May 2020 or is a joint or global application that replaces these existing water permits previously held separately or individually in the following Management Units;* *i. Ahuriri* *ii. Poukawa* *iii. Ngaruroro groundwater* *iv. Tūtaekurī groundwater* *v. Heretaunga Plains* *or* *(ii) The total amount taken, either by itself or in combination with other authorised takes in the same water management unit does not cause the total*

			allocation limit in the relevant management unit as specified in Schedule 31 to be exceeded except this clause does not apply to takes for: *i. frost protection;* *ii. takes of water associated with and dependant on release of water from a water storage impoundment.* iii. *<u>temporary construction dewatering</u>*
Rule – TANK 12 Activity – The take and use of surface or groundwater Status – Prohibited Conditions/Standards/Terms a) The activity does not comply with the conditions of Rule TANK 11 No application may be made for this activity	Oppose	The s32 report addresses non-complying or prohibited activity status options for TANK 12 and considers it is finely balanced as to which is the more appropriate and goes on to recognise that a prohibited status poses a risk in relation to the level of certainty about whether a take should not be contemplated in any circumstances. [6] The Oil Companies consider the example of temporary construction dewatering, which may be required in catchments exceeding allocation limits, provides a clear example of the risk of a prohibited activity approach. Such a limit could potentially hinder the safe installation of underground tanks and	Amend the activity status of TANK 12 from prohibited to non-complying

[6] Section 32 Evaluation Report, page 286

		prevent replacement of aging underground petroleum storage systems and would not promote sustainable management. A non-complying activity status would enable Council to refuse applications, including on the grounds of cumulative effects but would reduce the potential for unintended consequences due to takes arising that are not anticipated by the provisions of the RRMP.	
6.10.3 Stormwater			
Rule - Tank 19 Small scale stormwater activities Activity - The diversion and discharge of stormwater into water, or onto land where it may enter water from any new or existing and lawfully established: (a) residential activities; (b) non-industrial or trade premise; (c) industrial or trade premise with less than 1,000 m2 of impervious areas; (d) rural building. Status – Permitted Conditions/Standards/Terms a) The diversion and discharge shall not; (i) cause any permanent bed scouring or bank erosion of land or any water course at or beyond that point of discharge (ii) cause or contribute to flooding of any property (iii) cause any permanent reduction in the ability of the receiving environment to convey flood flows	Oppose in part	Under the operative RRMP, the diversion and discharge of stormwater is addressed by Rules 42 and 43. Rule 42 provides a permitted activity pathway but does not provide for discharges from industrial or trade premises used for the storage of any hazardous substance. Rule 43 provides a controlled activity pathway subject to all reasonable measures being taken to avoid particular effects in receiving waters after reasonable mixing. The s32 analysis that accompanies PC9 states that the status quo provisions are not adequate for managing water quality within the receiving water to a level that will allow the objectives of PC9 to be achieved. The Oil Companies operate industrial or trade premises, including in locations where properties cannot connect to reticulated stormwater networks.	Amend TANK 19(c) as follows to refer to the area used for industrial or trade activity: *(c) industrial or trade premise with less than 1,000 m2 ~~of impervious areas~~ used for the storage, use or transfer of hazardous substances;* *or* *(c) industrial or trade premise with an industrial or trade activity area less than 1,000 m2 ~~of impervious areas~~;* The Auckland Unitary Plan provides a comprehensive definition of ITA area which could be adopted to provide further explanation of how such an area is calculated. That definition is as follows:

(iv) contain hazardous substances or, be from a site used for the storage, use or transfer of hazardous substances (v) contain drainage from a stockyard (vi) cause to occur or contribute to any of the following after reasonable mixing: i. production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials ii. any emission of objectionable odour iii. any conspicuous change in colour or the visual clarity of the receiving water body (including the runoff from bulk earthworks) iv. any freshwater becoming unsuitable for consumption by farm animals (vii) cause to occur or contribute to the destruction or degradation of any habitat, mahinga kai, plant or animal in any water body or coastal water (viii) cause to occur or contribute to the discharge of microbiological contaminants including sewage, blackwater, greywater or animal effluent. b) The property cannot connect to a current or planned reticulated stormwater network. c) Any structure associated with the point of discharge or diversion is maintained in a condition such that it is clear of debris, does not obstruct fish passage and is structurally sound. The person who discharges or diverts, or who causes the discharge or diversion to occur, shall provide such information upon request by the Council to show how Condition (a) will be met or has been met.		As currently drafted, sub clause a(iv) would preclude permitted activity discharges from the Oil Companies sites as they store, use or transfer hazardous substances. This is consistent with the approach taken in the operative RRMP but effectively sets a zero contaminant threshold and will necessitate consent requirements for a range of activities with low potential for adverse effects, including discharges from MfE Guideline compliant petroleum industry sites. From a water quality perspective (which is assumed to be the driver given impervious area would otherwise be reflected in the pathway for other activities), the Oil Companies do not consider a 1,000m2 impervious area limit is determinative of risk for industrial or trade premises. It follows that it should not be used to exclude activities from this permitted pathway. In the context of a MfE Guideline compliant service station site for instance, hazardous substances are only stored, used and transferred in particular parts of the site and stormwater from these areas is appropriately directed to an oil-water separator. The balance of areas do not contribute to risk associated with the industrial or trade premise and should not be a factor in determining the consenting pathway. The Oil Companies consider that clause (c) of the rule should instead refer to the industrial or trade activity area or the area where	*The area of land or coastal marine area where a particular industrial or trade activity is being undertaken, which may result in the discharge of environmentally hazardous substances associated with that activity onto or into land or water. The calculation of the industrial or trade activity area must be based upon the following areas:* • *all roof areas onto which environmentally hazardous substances generated by the activity are deposited;* • *all outdoor storage, handling or processing areas of materials and/or products that may contribute to the quality or quantity of environmentally hazardous substance discharges (including occasional or temporary use of areas);* • *the area at risk from failure of the largest unbunded container used for the activity that may contribute to the quality or quantity of environmentally hazardous substance discharges: and* • *all areas (including roofs) that contribute runoff to the Industrial or trade activity area.*

		hazardous substances are stored, used or transferred. The latter would avoid the potential need for a definition of an industrial or trade activity. Alternatively, the Oil Companies are not opposed to a risk matrix to determine risk associated with particular discharges. As set out in relation to Policy 28, the Oil Companies do not consider MfE Guideline compliant discharges to be high risk. This is reflected in a range of plans around the country which permit discharges in accordance with the Guidelines.	*The calculation of the industrial or trade activity area excludes the following areas:* • *all areas that discharge lawfully into an authorised trade waste system;* • *areas that are not used for or affected by the industrial or trade activity;* • *all indoor or roofed areas which do not discharge onto or into land or water; and* • *areas used for the storage of inert materials, provided that if suspended solids are generated by the materials and entrained in stormwater, the stormwater from such storage areas is treated in accordance with the best practicable option or is otherwise lawfully authorised.* In the alternative, differentiate the pathway for industrial or trade premises by preparation of a risk matrix for the range of industrial or trade activities, reflecting that MfE Guideline compliant sites are not high risk. Amend standard a(iv) so that it does not exclude all hazardous substances and provides for activities that are appropriately regulated, for instance

			stormwater discharges from petroleum industry sites managed in accordance with the MfE Guidelines, at least for existing lawfully established activities.
Rule – TANK 20 Small scale stormwater activities Activity - The diversion and discharge of stormwater into water, or onto land where it may enter water from any new or existing and lawfully established: (a) residential activities; (b) non-industrial or trade premise; (c) industrial or trade premise with less than 1,000 m2 of impervious areas; (d) rural building. Status – Restricted Discretionary Conditions/Standards/Terms a) The activity does not comply with the conditions of Rule TANK 19 Matters for Control/Discretion 1. Location of the point of diversion and discharge including its catchment area. 2. Volume, rate, timing and duration of the discharge, in relation to a specified design rainfall event. 3. Effects of the activity on downstream flooding. 4. Contingency measures in the event of pipe capacity exceedance. 5. Actual or likely adverse effects on fisheries, wildlife, habitat or amenity values of any surface water body. 6. Actual or likely adverse effects on the potability of any ground water.	Oppose in part	Rule 43 of the operative RRMP provides a controlled activity pathway for discharges from industrial or trade premises used for the storage of any hazardous substance. As set out above in relation to TANK 19, the Oil Companies do not support the 1,000m2 threshold for industrial or trade premises. The Oil Companies are not opposed to a risk matrix to determine risk associated with particular discharges. As set out in relation to Policy 28, the Oil Companies do not consider MfE Guideline compliant discharges to be high risk. The Oil Companies consider that specific discretion should be retained for compliance with relevant codes of practice and guidelines.	Provide a restricted discretionary activity pathway for MfE Guideline compliant discharges that do not comply with TANK 19. This could be achieved by: Amending TANK 20(c) as follows to refer to the area used for industrial or trade activity and reference compliance with codes of practice and guidelines as a matter of discretion: *(c) industrial or trade premise with less than 1,000 m2 ~~of impervious areas~~ used for the storage, use or transfer of hazardous substances;* *or* *(c) industrial or trade premise with an industrial or trade activity area less than 1,000 m2 ~~of impervious areas~~;* The Auckland Unitary Plan provides a comprehensive definition of ITA area which could be adopted to provide further explanation of how such an area is calculated (see above). In the alternative, differentiate the pathway for industrial or trade premises by preparation of a risk matrix for the range of industrial or trade activities, reflecting that MfE Guideline compliant

7. The actual or potential effects of the activity on the quality of source water for Registered Drinking Water Supplies and any measures to reduce the risk to the water quality including notification requirements to the Registered Drinking Water supplier. 8. The actual of potential effects of the activity on the water quality objectives set out in Schedule 26. 9. Duration of the consent. 10. A compliance monitoring programme. 11. Bonds or Administrative charges.			sites are not high risk and should be considered as permitted (via TANK 19) or restricted discretionary (via TANK 20) activities. Add an additional matter for control/discretion as follows: *Compliance with relevant codes of practice or guidelines*
Rule – TANK 21 Stormwater activities Activity - Diversion and discharge of stormwater from an existing or new local authority managed stormwater network into water, or onto land where it may enter water Status – Controlled	Oppose	This rule is subject of a long list of standards, including a requirement that the diversion and discharge shall not contain hazardous substances or be from a site used for the storage, use or transfer of hazardous substances. The Oil Companies anticipate that the exclusion of hazardous substances will effectively preclude most if not all stormwater discharges from this pathway because there will be some level of detectable hazardous substance from impervious surfaces. If consents are granted for network discharges under this rule, operators will not be able to receive discharges from a range of industrial or trade premises, including existing lawful connections. This will generate a requirement for discharges from those sites to obtain resource consent as a discretionary activity under TANK 23, despite what is otherwise an available network.	Recognise that stormwater network discharges will almost invariably contain hazardous substances and should be considered on that basis.

Rule – TANK 22 Stormwater activities Activity – Discharge of stormwater to water or onto land where it may enter water from any industrial or trade premises. Status – Restricted Discretionary	Support	Support subject to provision of potential permitted and RDA pathways for MfE Guideline compliant discharges not meeting the provisions of TANK 19 and TANK 20.	Retain as notified, subject to the amendments sought to TANK 20.
Rule – TANK 23 Stormwater activities Activity – The diversion and discharge of stormwater into water, or onto land where it may enter water. Status – Discretionary	Support	The Oil Companies support the default to a discretionary activity consent requirement	Retain as notified.
Schedules			
Schedule 26: Freshwater Quality Objectives	Support		Retain as notified.
Schedule 27: Freshwater Quality Objectives	Support		Retain as notified
Schedule 31: Flows, Levels and Allocation Limits	Support		Retain as notified
Schedule 34: Urban Site Specific Stormwater Management Plan	Support in part	As sought in this submission, the consenting pathways for the Oil Companies may not ultimately trigger requirements for these management plans. However, if they are required, the Oil Companies seek flexibility that they need not be site specific in circumstances where sites are part of a nationwide network and standardized documentation can manage risks appropriately.	Recognise that standardized stormwater management plans for operations which are part of nationwide networks may appropriately manage risk.
Schedule 35 – Source Protection for Drinking Water Supplies	Support	The schedule provides clarity with regard to how these will be determined	Retain as notified
Glossary			

Allocation limit for Groundwater means the maximum quantity that is able to be allocated in water permits and abstracted during each year, expressed in cubic metres per year, and is calculated as the sum of maximum water permit allocations for the groundwater zone. Allocations for irrigation will be calculated on the basis of the irrigation period of November-May. The Heretaunga Plains Water Management Unit groundwater allocation limit will be addition to water taken and used for frost protection which is expressed as an instantaneous take in litres per second and calculated as the sum of water permit allocations	Support	The Oil Companies support the allocation limit being based on water permits, not permitted takes and consider this is important to a range of potentially permitted takes.	Retain as notified
Registered Drinking Water Supply (or Supplies) means a drinking water supply that is recorded in the drinking water register maintained by the Chief Executive of the Ministry of Health (the Director-General) under section 69J of the Health Act 1956 that provides no fewer than 25 people with drinking water for not less than 60 days in each calendar year	Support	These definitions, in conjunction with the schedule, help provide clarity regarding when and how these areas will be determined.	Retain as notified
Source Protection Zone (SPZ) means an area surrounding the point of take for a registered drinking water supply that provides no fewer than 501 people with drinking water for not less than 60 days in each calendar year where plan provisions apply and includes any provisional Source Protection Zone and is defined by methods specified in Schedule 35 (information about the location of SPZs can be found on the Council's webpage)	Support		
Source Protection Extent is an area surrounding the point of take for a registered drinking water supply that provides no less than 25 and no more than 500 people with drinking water for not less than 60 days in each calendar year and includes any Provisional Source Protection Extent and is defined by methods specified in Schedule 35 (information about the location of these areas can be found on the Council's webpage.	Support		

FURTHER SUBMISSIONS ON PROPOSED PLAN CHANGE 9 TO THE OPERATIVE HAWKE'S BAY REGIONAL RESOURCE MANAGEMENT PLAN PURSUANT TO CLAUSE 8 OF THE FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991

To:

Hawke's Bay Regional Council
Private Bag 6006
Napier 4142
Attention: Planning Technician

By E-Mail only: etank@hbrc.govt.nz

Submitter:

Z Energy Limited[1]
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BP Oil New Zealand Limited
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Hereafter, collectively referred to as the Oil Companies

Address for Service:

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AUCKLAND 1142

Attention: Mark Laurenson
Phone: 021 0868 8135
Email: markl@4sight.co.nz

LAND. PEOPLE. WATER.

[1] On behalf of the wider Z group, including the Z Energy and Caltex operations in New Zealand.

The Oil Companies' further submissions are as contained in the attached Table.

1. **The Oil Companies' interest in the proposed plan is greater than the interest of the general public.**
2. **The Oil Companies do wish to be heard in support of their further submissions.**
3. **If others make similar submissions the Oil Companies may be prepared to consider presenting a joint case with them at any hearing.**

Signed on and behalf of Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited

Phil Brown

Planning and Policy Consultant

9 December 2020

FURTHER SUBMISSIONS ON BEHALF OF THE OIL COMPANIES
ON SUBMISSIONS TO PROPOSED PLAN CHANGE 9
TO THE OPERATIVE HAWKE'S BAY REGIONAL RESOURCE MANAGEMENT PLAN

Name of Person/group making original submission	Original Submission Number	Provision	Relief Sought By Submitter (additions in underline, deletions in strike through)	Position of further submitter	Reason For Support / Opposition and Relief Sought by The Further Submitter
Napier City Council Hastings District Council	63.5 207.5	Policy 37A	Introduce an additional Policy (referred to as Policy 37A) to guide situations where the granting of new takes will be considered. Proposed wording as follows: *Policy 37A:* *Notwithstanding Policy 37b) and c), and provided:* *(i) There are no feasible alternatives,* *(ii) Significant progress is being or is likely to be made toward achieving the target in Policy 37(a), and* *(iii) The allocation limits in Schedule 31 and 32 as at <the operative date> are not or are not likely to be exceeded;* *the re-allocation of groundwater not otherwise addressed under Policy 37(d) or 50 may be considered where the proposed use is:*	Support in part	The Oil Companies' primary submission seeks a permitted activity status for temporary takes of groundwater for construction dewatering. Subject to amendments to that effect, the Oil Companies supported Policy 37 which addresses water allocated in water permits, not as provided for as a permitted activity (and therefore would not be inconsistent with the permitted pathway sought by the Oil Companies). The Oil Companies do, however, support the intent of a new policy to enable consent to be granted for water takes in particular circumstances and consider that temporary construction dewatering is one such instance (where not permitted), recognising that significant measures are typically taken to reduce dewatering and the water itself is not of benefit to the taker (further detail in relation to the dewatering activities undertaken by the Oil Companies is provided in its primary submission). This could be achieved by

			1. *Necessary for beverage, food or fibre processing;* 2. *to enable the development of Māori economic, cultural and social well-being;* 3. *to enable significant local employment opportunities or wider economic benefits* 4. *To enable the servicing of urban growth (including new zones) and social infrastructure facilities;* *The volume of take and consent duration may also be distinguishing factors.*		amending the proposed Policy 37A as follows (additions in underline): ….. 5. *Necessary for temporary construction dewatering.*
Hawkes Bay Regional Council	129.40	Definition of "allocation limit"	Allocation limit - Delete meaning and replace with new meaning as follows: *…..Allocation limit for surface water means the maximum quantity that is able to be allocated in water permits in a management unit and abstracted for consumptive water use, expressed in L/s and calculated as the average rate required to abstract the maximum weekly or 28 day volume allocated to each water permit and summed for all water permits in the applicable management unit.*	Support in part	The Oil Companies support what appears to be the intent to exclude non-consumptive takes from the definition of allocation limit but seek that any such amendment is provided to both surface water and groundwater and is supported by appropriate definitions to provide clarity re what is non-consumptive, including recognition that temporary takes of groundwater for construction dewatering are non-consumptive.
Hawkes Bay Regional Council	129.42	Definition of 'consumptive water use'	Consumptive Water Use - Insert new definition as follows: *Consumptive water use – means any use of fresh water that alters the flows and or levels in a water body on either a temporary or*	Support in part	The Oil Companies sought through primary submissions to ensure an appropriate pathway for temporary construction dewatering activities, recognising their limited potential for adverse effects on allocation.

			permanent basis, but excludes any non-consumptive use where: *a) the same amount of water is returned to the same water body at or near the location from which it was taken; and* *b) there is no significant delay between the taking and returning of the water.* *For the purposes of allocation limits and specified rationing provisions in the rules, the term 'consumptive use' does not apply to water used in hydro-electric power generation or water use or diversions which substantially return the water used to the same water body.*		The Oil Companies are not opposed to the principle of providing that pathway through exceptions for non-consumptive takes but consider it is important that any such pathway recognises that it is often not practicable to discharge dewatering water to ground and therefore it may be discharged to reticulated networks. This could be recognised through an amendment to the proposed definition as set out below, noting that these temporary construction dewatering takes have limited potential effects on allocation and are essential to facilitate a range of activities, including the replacement of aging infrastructure: *Consumptive water use – means any use of fresh water that alters the flows and or levels in a water body on either a temporary or permanent basis, but excludes any non-consumptive use where:* *a) the same amount of water is returned to the same water body at or near the location from which it was taken; and* *b) there is no significant delay between the taking and returning of the water.* *For the purposes of allocation limits and specified rationing provisions in the rules, the term 'consumptive use' does not apply to:* • *water used in hydro-electric power generation;* ~~*or*~~

					• *water use or diversions which substantially return the water used to the same water body;* • *Groundwater takes for temporary construction dewatering, including where dewatering water is discharged to reticulated networks.*

ANNEXURE 2

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

Discussion, Findings and s32AA Analysis

9.35 We support the s42A Reporting Officers' recommended changes to Rules TANK 9 and 10. These simplify the rules, take out redundant wording and clarify other wording and make non/limited notification possible in both rules. We consider these recommended changes make the two rules more efficient and effective, and so meet they meet the requirements of s32AA of the RMA.

Rule TANK 11

9.36 This rule allows water takes and associated uses from either surface water or groundwater in the TANK catchments that existed before 2 May 2020, but do not comply with the conditions of any of Rules TANK 7-10, to seek consent as a discretionary activity.

9.37 Changes are recommended to Rule TANK 11, most particularly to specify that four activities are not subject to Schedule 31 limits: these are for frost protection, takes of water from or dependent on release from a water storage impoundment or aquifer recharge scheme, non-consumptive takes and temporary water takes (such as for construction dewatering).

Discussion and Findings

9.38 Rule TANK 11 is what is known as a "default rule", which means that if an activity does not meet any other relevant rules (in this case Rules TANK 7-10) it is treated as discretionary activity. Such a rule is an essential part of a "rule cascade", and we support its inclusion in PPC9.

9.39 We also support the recommended specification of what activities are not subject to Schedule 31 minimum flow requirements, which clarifies and improves the rule. This now includes frost-fighting, the reasons for which are discussed under the heading "POL TANK 53" below.

Rule TANK 12

9.40 This is a prohibited activity rule, which as presently drafted applies to any new take and use of groundwater. It would apply regardless of what "actual and reasonable" turns out to be. It will take several years to work that out given that large numbers of present consents have expired, and so are continuing under s124 of the RMA. These will all need to now be processed and decisions made under the provisions of PPC9.

Should Provision for a Non-Complying Activity Rule be Made?

9.41 POL TANK 50 states in part that "in making decisions about resource consent applications for municipal and papakāinga water supply the Regional Council will **ensure** the water needs of future community growth are met within water limits" (emphasis added). The policy then under Condition (b) lists comprehensive efficiency standards that the TLAs will have to meet with their existing water takes and associated uses.

9.42 However, in PPC9 as notified, and in PPC9 as recommended to be amended by the s42A Reporting Officers, there is no consenting pathway available for any further water to be provided to communities. This was highlighted in Ms Davidson's legal submissions made on behalf of the NCC and HDC, which we included in the discussion of POL TANK 50 in Chapter 8 of our report.

9.43 We had asked the s42A Reporting Officers for the potential wording of a non-complying activity rule that would enable some water to be provided to users such as the TLAs. That was

Rule	Activity	Status	Conditions/Standards/Terms	Matters for Control/Discretion	Non-notification
			A Means of Compliance for Condition d) Installation of a screen or screens on the river intake that has a screen mesh size not greater than 3 millimetres and is constructed so that the intake velocity at the screen's outer surface is less than 0.3 metres per second and is maintained in good working order at all times. Note – Conditions of this rule do not apply to the take and use of water in accordance with RMA Section 14(3)(e).		
TANK 7 **Groundwater take**	**The take and use of groundwater in the TANK Water Quantity Areas including under Section14(3)(b) of the RMA**	**Permitted**	a) Any take first commencing after 2 May 2020 is not from the Poukawa Water Quantity Area. b) There is only one point of take per property and the take does not exceed 5 cubic metres per day except: i. Lawful takes existing as at 2 May 2020 may continue to take up to 20 cubic metres per property per day ii. New takes to meet reasonable individual domestic needs may take up to 15 cubic metres over any 7 day period per dwellinghouse on the property[6] iii. Lawful takes for stock drinking water on the property existing as at 2 May 2020 iv. Takes occurring for a period of less than 28 days within any 90 day period, the total volume taken on any property shall not exceed 200 cubic metres per 7 day period. v. The taking of water for non-consumptive uses including aquifer testing is limited to 20 cubic metres per day.		

Rule	Activity	Status	Conditions/Standards/Terms	Matters for Control/Discretion	Non-notification
			c) The rate of take shall not exceed 10 l/s other than aquifer testing for which the rate of take is not restricted d) The take shall not prevent from taking water, any other lawfully established efficient groundwater take, or any lawfully established surface water take, which existed prior to commencement of the take e) The take shall not cause changes to the flows or levels of water in any connected wetland f) Backflow of water or contaminants into the bore shall be prevented. Note – Conditions a) and b) do not apply to the take and use of water for emergency or training purposes in accordance with RMA Section 14(3)(e).		
TANK 8 **Groundwater Take – Heretaunga Plains**	**Replacement of an existing Resource Consent to take and use water from the Heretaunga Plains Groundwater Quantity Area**	**Restricted Discretionary**	a) The activity does not comply with the conditions of Rule TANK 7 b) An application is either for the continuation of a water take and use previously authorised in a permit that was issued before 2 May 2020 or is a joint or global application that replaces these existing water permits previously held separately or individually. **Actual and Reasonable Re-allocation** c) The quantity taken and used, other than provided for under d), is the **Actual and Reasonable** amount d) The quantity taken and used for municipal, community and papakāinga water supply is: i) the quantity specified on the permit being replaced or ii) any lesser quantity applied for.	1. The extent to which the need for water has been demonstrated and is Actual and Reasonable provided that the quantities assessed or calculated may be amended after taking account of: a. the completeness of the water permit and water meter data record b. the climate record for the same period as held by the Council (note: these records will be kept by the Council and publicly available) and whether that resulted in water use restrictions or bans being imposed c. effects of water sharing arrangements d. crop rotation/development phases.	Applications may be considered without notification and without the need to obtain the written approval of affected persons in accordance with section 94(1)(b) of the RMA. Applications may be notified if special circumstances exist in terms of section 95B(10) of the RMA or upon review of a consent.

Rule	Activity	Status	Conditions/Standards/Terms	Matters for Control/Discretion	Non-notification
				13. The duration of the consent (Section 123 of the RMA) as provided for in Schedule 33 timing of reviews and purposes of reviews (Section 128 of the RMA) 14. Lapsing of the consent (Section 125(1) of the RMA) 15. For takes from Zone 1 Groundwater in the Ngaruroro and Tūtaekurī Water Quantity Areas review of permit and new conditions to be imposed in respect of contribution to a Stream flow maintenance and habitat enhancement scheme, when applicable.	
TANK 10 **Groundwater and Surface water take (low flow)**	**The take and use of surface (low flow allocations) or groundwater**	**Discretionary**	a) The activity does not comply with the conditions of Rules TANK 8 or TANK 9 b) Either: i. The application is either for the continuation of a water take and use previously authorised in a permit that was issued before 2 May 2020 or is a joint or global application that replaces these existing water permits previously held separately or individually Or: ii. The total amount taken, either by itself or in combination with other authorised takes in the same water quantity area does not cause the total allocation limit in the relevant quantity area as specified in Schedule 30 to be exceeded-except this clause does not apply to takes for: 1. frost protection 2. takes of water associated with and from or dependant on release of water from a water storage impoundment, or		

Rule	Activity	Status	Conditions/Standards/Terms	Matters for Control/Discretion	Non-notification
			managed aquifer recharge scheme 3. water takes that are non- consumptive 4. temporary water takes 5. water required as part of a programmed or staged development existing as at 2 May 2020 that is not otherwise Actual and Reasonable water use.		
TANK 11 **Groundwater take**	**The take and use of groundwater**	**Non-complying**	a) The activity does not comply with the conditions of Rule TANK 10 b) The take and use is for: i. essential human health needs or ii. an unforeseeable non-commercial need.		
TANK 12 **Groundwater and Surface water take**	**The take and use of surface or groundwater**	**Prohibited**	a) The activity does not comply with the conditions of Rule TANK 10 or 11 No application may be made for this activity.		
TANK 13 **Taking water – high flows**	**The taking and use of surface water at times of high flow** (including for storage in an impoundment)	**Discretionary**	a) The take on its own or in combination with other authorised takes is still available for allocation within the limits specified in both columns (D) and (E) of Schedule 31 where applicable b) The activity either on its own or in combination with other activities does not cause the flow regime of the river to be altered by more than c) the amount specified in Schedule 31 where applicable.		

ANNEXURE 3

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

Submitter Number	Submitter	Full Name	Email
12	Ministry of Education	Alec Duncan	alec.duncan@beca.com
13	Fire and Emergency New Zealand	Alec Duncan	alec.duncan@beca.com
21	Newstead Farm Ltd	Robert & Helen Patullo	newstead@ruralinzone.net
66	Ngaruroro Irrigation Society Incorporated	Anthony Davoren	tony@swims.co.nz
67	Focus Maraekakaho	Helen Liddle	admin@focusmkk.org.nz
123	Department of Conservation	Jenny Nelson-Smith	mgraham@doc.govt.nz jnsmith@doc.govt.nz
207	Hastings District Council	Mark Clews	markac@hdc.govt.nz
23	Pattullo's Nurseries Limited	Kerry Sixtus	kerry@appletrees.co.nz
32	Kent Griffiths	Kent Griffiths	kentokid@xtra.co.nz
35	Colin Campbell	Colin Campbell	colin.campbell117@gmail.com
37	Dartmoor Estate Ltd	Greg Evans	greg@grochem.com
38	Roger Brownlie	Roger Brownlie	the.orchard@xtra.co.nz
44	Omahuri Orchards (2019) Ltd.	Brian Fulford	omahuri@xtra.co.nz
49	John Parsons	John Parsons	john.parsons@xtra.co.nz
61	Greg Simpson	Greg Simpson	gpsorchard@xtra.co.nz
62	Jonty Moffett	Jonty Moffett	jonty@moffetts.co.nz
69	Dames Limited	Jos Dames	jos@dames.co.nz
71	Bellingham Orchard Ltd.	Carl Knapp	ctmjknapp@gmail.com
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86	Peter Scott	Peter Scott	omapereholdings@gmail.com
91	Berry Farms NZ	Johnny Milmine	johnny@berryfarms.co.nz
95	Prime Limes	Johnny Milmine	johnny@primelimes.co.nz
97	DN & LR Wilson Ltd	Lesley Wilson	lesley@miltonvilla.nz
99	Twyford Water	Jerf van Beek	Jerfvanbeek@gmail.com
104	Rockit Global Limited	John Loughlin	admin@rockitapple.com
105	Scott Lawson	Scott Lawson	scott@trueearth.co.nz
110	Whyte & Co	Edward Whyte	whyte.co2004@gmail.com

122	Ngai Tukairangi Trust	Richard Penreath	richard@ngaituk.co.nz
129	Hawke's Bay Regional Council	Ceri Edmonds	ellen.robotham.govt.nz
132	Te Taiwhenua o Heretaunga	Marei Apatu	marei.apatu@ttoh.iwi.nz
142	Big Hill Station Limited	Bill Glazebrook	bighill@farmside.co.nz
185	Tremaine Farms Ltd	Allen Kittow	allen@kittow.co.nz
186	Berrilea Orchards Ltd, Waitohi Trust and SP&GC Horn	Stewart Horn	stewart.horn@xtra.co.nz
195	Federated Farmers of New Zealand	Peter Matich	pmatich@fedfarm.org.nz
196	Oderings Nurseries	Julian Odering	julian@oderings.co.nz
210	Royal Forest and Bird Protection Society of New Zealand (Forest & Bird)	Tom Kay	t.kay@forestandbird.org.nz
211	Brian McLay	Brian McLay	b.mclay@airnet.net.nz
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217	Johnny Appleseed Holdings Ltd	Paul Paynter	Paul.Paynter@yummyfruit.co.nz
218	Irrigation Services	Adian Mannering	adrian@irrigationservices.co.nz
219	Michael & Julie Russell	Michael & Julie Russell	mrussell@airnet.net.nz
220	Gillum Springfield Trust	Steve Gillum	blenkarne@gmail.com
221	WT Scott	WT Scott	roz-billy@xtra.co.nz
194	Pernod Ricard Winemakers New Zealand Limited	Ezekiel Hudspith	ezekiel.hudspith@dentons.com
63	Napier City Council	Keith Marshall	chiefexecutive@napier.govt.nz
124	Brownrigg Agriculture Group Ltd	Bridget Margerison	bridget@brownrigg.co.nz
43	Merios Orchard Limited	CA & GW Wilson	meiros@xtra.co.nz
44	Omahuri Orchards (2019) Ltd.	Brian Fulford	omahuri@xtra.co.nz
49	John Parsons	John Parsons	john.parsons@xtra.co.nz
54	Apatu Farms Ltd	Mark Apatu	mark@apatugroup.com
96	Davis Orchards Ltd	Mike Davis	michael.davis@xtra.co.nz
135	Ravensdown Limited	Anna Wilkes	anna.wilkes@ravensdown.co.nz
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